THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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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 RESPONDENT'S MOTION TO DISMISS THE APPEAL

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 Motion to Dismiss The Appeal.

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. (*Id.*).

Respondent simultaneously served all 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. *(Id.).* 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).* Appellants asserted their right to arbitration as one of their grounds for relief from default. *(Id.)*

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 Master's direction, Appellants provided certain relevant documents and basic written discovery responses to Respondent.

On July 11, 2016, the Appellants filed a formal 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 to Stay and Compel mandatory mediation/arbitration were pending before the Master at this time.[1]

The parties reconvened before the Master on July 14, 2016. *(Exhibit M).* The Appellants also filed a Memorandum in Support of their Motion to Lift Entry of Default on July 14, 2016, which included Appellants' continued assertion of their right to arbitration. *(Exhibit N).* During the reconvened hearing the Master stated that the Clerk of Court "closed out" the Respondent's Motion to Stay and Compel. *(Exhibit M).* The Clerk's closure of the motion occurred despite Appellants' joinder in the motion. The Master issued a bench ruling finding that the Clerk's action 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 mandatory mediation/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

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1 While Respondent asserts that it "set aside" or "withdrew" its Motion to Compel and to Stay, Appellants have not been provided a copy of documentation reflecting Respondent's setting aside or withdrawal of said motion, and, there is likewise nothing in the record substantiating same.

decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. *(Exhibit T).* The Master asked the parties to advise if this plan was acceptable. *(Id.).* The Appellants informed the Master that this plan was acceptable. *(Id.).* The Respondent notified the Master that it would defer to the Master, but preferred the damages hearing to proceed on October 4, 2016 and the motions hearing to be held thereafter on October 11, 2016. *(Id.).*

After further consideration, the Master then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would proceed on October 4, 2016 and the motions hearing would be held on October 11, 2016. *(Id.).* The 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 forced a waiver of Appellants' rights to mandatory mediation/arbitration. Therefore, subject to, without waiving and in fully preserving said rights to mediation/arbitration, the Appellants commenced an appeal in this matter on September 30, 2016. *(Exhibit U).*

On September 30, 2016, after service of the Notice of Appeal on Respondent, the Appellants filed the Notice of Appeal with the Charleston County Clerk of Court. *(Exhibit V).* On October 3, 2016, the Respondent filed its first Motion to Dismiss Appeal. *(Exhibit W).* The Court of Appeals returned Respondent's first Motion to Dismiss on October 4, 2016 because no Notice of Appeal had been filed with the court as of that date. *(Exhibit X).*

On October 5, 2016, the Appellants filed the Notice of Appeal, along with the filing fee and copies of the order(s) challenged on appeal with the Clerk of the Court of Appeals. *(Exhibit Y).* The copies of the order(s) filed with the Clerk of the Court of Appeals included the Master's Bench Order contained in the transcript of the July 14, 2016 hearing and the Master's formal written order dated July 14, 2016. *(Id.).* The Appellants simultaneously served the Respondent with a copy of the October 5, 2016 filing with the Clerk of the Court of Appeals on October 5, 2016. *(Id.).*

On October 6, 2016, the Appellants refiled the Notice of Appeal, along with a second

filing fee and copies of the order(s) challenged on appeal with the Clerk of the Court of Appeals. *(Exhibit Z)* The Appellant refiled these documents to include the court reporter's certification of the July 14, 2016 hearing transcript containing the Master's bench order. *(Id.)*. The court reporter's certification has been inadvertently omitted from the Appellants' October 5, 2016 filing with the Clerk of the Court of Appeals. *(Id.)*. The Appellants simultaneously served the Respondent with a copy of the October 6, 2016 filing with the Clerk of the Court of Appeals on October 6, 2016. *(Id.)*.

Despite that this case was under appeal, the Master notified all parties that he intended to go forward with the hearing set for October 4, 2016. *(Exhibit AA)*. During that hearing, the Court did not proceed with the damages hearing nor issue a ruling on the Rule 59(e) motion, but stated that it wished to establish a record for appellate court review of this matter. *(Exhibit BB)*. Accordingly, the Master accepted Appellants' Memorandum in Support of Defendant's Motion to Reconsider and to Alter or Amend, discussed the procedural posture of the case, allowed the parties to proffer information related to Appellant's Motion to Reconsider and to Alter or Amend and allowed Respondent to proffer information related to damages alleged, to which Appellant's vehemently objected. *(Id.)*. Further, the Court asked Respondent to provide a responsive memorandum to Appellants' Rule 59(e) motion within ten (10) days, and allowed Appellants five (5) days to reply. *(Id.)* Respondent filed its memorandum in opposition on October 26, 2016 and Appellants replied thereto on October 25, 2016. *(Exhibits CC and DD)*.

On October 27, 2016, the Respondent filed its second Motion to Dismiss Appeal. *(Exhibit EE)*. Thereafter, on November 10, 2016, the Court of Appeals issued an order stating that based on the Master's actions at the October 4, 2016 hearing, it appeared the Master intended to issue a final written order on the Rule 59(e) motion. *(Exhibit FF)*. Accordingly, the Court of Appeals dismissed Appellants' initial appeal without prejudice ruling that the Appellants' could appeal after the Master's issuance of a final, written order on the Rule 59(e) motion. *(Id.)*.

On October 28, 2016, the Master issued an order ruling on Appellants' motion to reconsider pursuant to Rule 59, SCRCP. *(Exhibit GG)*. The Master's Order dated October 28,

2016: (a) Denied Defendants' Motion to Amend on the basis that Defendants have not shown good cause to lift the default and (b) Denied Defendants' Motion to Stay and Compel filed July 11, 2016 on the basis that the affirmative defense of arbitration had been waived and therefore the motion was not properly made. Appellants received written notice of entry of this order on November 2, 2016.

The Appellants commenced the instant appeal on November 14, 2016, appealing the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28, 2016. *(Exhibit HH).*

Respondent filed its Motion to Dismiss this Appeal on December 6, 2016. Insomuch as Respondent has failed to provide documentation from the record supporting their Background Facts as required by SCRAP 240(c)(3), Appellants contend that facts presented by Respondent should not be considered in the Court of Appeal's analysis of the Motion to Dismiss.

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 orders dated July 14, 2016 and October 28, 2016. The Master's July 14, 2016 Order ruled that "Defendants' motion to stay and to compel arbitration is denied as Defendant is in Default." The Master's October 28, 2016 Order ruled that "the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made." As such, both orders refuse to stay this action and deny Appellants' application and rights to compel arbitration.

The Master's orders refusing to stay this litigation and denying Appellants' application and rights to compel arbitration are immediately appealable under both federal and state law. Under federal law, an order that favors litigation over arbitration—whether it refuses to stay the litigation in deference to arbitration or refuses to compel arbitration—is immediately appealable, even if interlocutory in nature. *See* 9 U.S.C.A. § 16(a)(1); *Stedor Enter., Ltd. V. Armtex, Inc.*, 947 F.2d 727 (4th Cir. 1991).

Likewise, under state law an order denying an application to compel arbitration is

immediately appealable. S.C. Code Ann. § 15-48-200 (a)(1); *Cape Romain Contractors, Inc. v. Wando E, LLC*, 405 S.C. 115, 747 S.E. 2d (S.C. 2013).

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. <u>The Master's Orders Denying Appellant's Motions to Compel Arbitration Are Immediately Appealable And, Therefore, The Master's Entire Orders Should Be Considered On Appeal</u>

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 issues of the Master's refusal to stay this action and the denial of Appellants' applications and rights 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. <u>All Appellants, Including The Ward Appellants, Are Entitled To Mandatory Mediation/Arbitration In This Matter.</u>

The Respondent asserts that the individual Appellants, Reuben Mark Ward and Lynnette Pennington Ward ("Ward Appellants") are not entitled to mediation/arbitration in this matter because they are not signatories to the contract that contains the arbitration provisions. The Respondent's argument lacks merit for a number of reasons.

First, the Respondent's Complaint, and the causes of action asserted against all Appellants, including the Ward Appellants, allegedly arise out of or are related to the contract containing the arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. *(Exhibit A, §§ 6.1.1 and 6.2).*

Second, the arbitration provisions of the contract expressly allow for the joinder of non-signatories to the arbitration. Specifically, § 6.3.4 of the contract states in relevant part:

"Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law 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."

The Ward Appellants consented in writing to their joinder in the arbitration in their Motion to Stay and Compel. Specifically, the Ward Appellants stated in their motion:

"The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. *The Defendants hereby join in and consent to Plaintiff's motion and the relief requested herein, including the stay of this matter and submission of Plaintiff's claims to mediation and, if necessary, binding arbitration."* (emphasis added).

Furthermore, the Respondent is equitably estopped from denying the applicability of the mandatory mediation/arbitration clause as to all Appellants. The record establishes that Respondent initially acknowledged the validity of the arbitration provisions to all claims in this matter by filing its Motion to Stay and Compel at the commencement of this action. The Respondent's motion demanded that all claims in this action, including Respondent's claims against the Ward Appellants, be stayed and compelled to mediation, and if necessary, to

arbitration. "The very essence of equitable estoppel is to prevent a party from taking one position when it is to that party's advantage, and taking the opposite position when it is to that party's advantage." *U.S. ex rel. Coast Roofing v. P. Browne & Assoc.*, 585 F.Supp. 2d. 708, 715 (D.S.C.). Thus, the fact that Respondent acknowledged the validity of the arbitration provision, and all Appellants' standing to be involved in mediation and arbitration under the provision, "strongly speaks to both the provision's validity and [all of] the Appellants' standing to enforce the arbitration provision in the agreement." *See Id.*

In addition to Respondent's own acknowledgement of the Appellants' standing under the arbitration provisions, the "intertwined claims" doctrine further equitably estops Respondent from denying all Appellants, including the Ward Appellants, standing to enforce the arbitration provisions. *See Id.*

Under the intertwined claims test, "the circuits have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed." *Id. (*quoting *Thomson-CSF, S.S. v. Am. Arabitration Assoc.*, 64 F. 3d. 773, 779 (2d. Cir. 1995); *see also Choctaw Generation Ltd. P'ship v. American Home Assur. Co.*, 271 3d. 403, 406 (2d Cir. 2001). To be equitably estopped from denying the applicability of an arbitration clause, the signatory need not necessarily assert a cause of action against the nonsignatory for breach of the contract containing the arbitration clause. *Id.* Instead, estoppel is appropriate if "in substance [the signatory's underlying] complaint [is] based on the [nonsignatory's] alleged breach of the obligations and duties assigned to it in the agreement." *Am. Bankers Ins. Group, Inc. v. Long*, 453 F. 3d. 623, 627-28 (4th Cir. 2006) (quoting *Sunkist Soft Drinks. Inc. v. Sunkist Growers. Inc.*, 10 F. 3d. 753, 757 (11th Cir. 1993).

Such is unquestionably the case here. While Plaintiff does not include a cause of action for breach of the primary contract against the Ward Appellants in its complaint, at the heart of its various claims against the Ward Appellants is its allegations that: (a) Respondent relied to its detriment on representations made by Appellant Reuben Mark Ward that he would manage the construction Project awarded under the primary contract and that all monies thereform would be used to pay for material and labor supplied to the Project; and (b) all Appellants, including the Ward Appellants, are contractually bound to pay funds on

claims made on the surety bond required by the primary contract for the Project. Therefore, it is clear that Respondent's claims are substantively "intertwined" with the obligations it alleges the Ward Appellants assumed in connection with the primary contract. *See U.S. ex. Rel. Coast Roofing*, 585 F. Supp 2d. 708.

Based on the above, as well as the remaining authorities cited in Appellants' Return to Respondent's Motion to Dismiss, all of the Appellants, including the Ward Appellants, have standing to enforce the mandatory mediation/arbitration provisions and be involved in mediation and arbitration of the claims asserted in this matter. *Id.*

D. The Respondent's Arguments That The Right To Arbitrate Is An Affirmative Defense Which Has Been Waived By Appellants Lack Merit

The Respondent argued to the Master that Appellants' right to arbitration under the arbitration agreement is an affirmative defense which has been waived by Appellants under both state and federal law. The Master, without citing any supporting authority, ruled in his October 28, 2016 order that "the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made." *(Exhibit GG).* The Respondent asserts its same arguments in their Motion to Dismiss.

(1): State Law Analysis

The Respondent first claims that "arbitration" is an affirmative defense as *specifically defined* by Rule 8(c) SCRCP. However, neither the right to arbitration nor the existence of an arbitration agreement are listed as affirmative defenses under Rule 8(c) SCRCP. Instead, the only arbitration defense *specifically defined* in Rule 8(c) is the defense of "arbitration and award." The defense of "arbitration and award" is an affirmative defense asserting that the subject matter of the action has already been settled in arbitration. *Black's Law Dictionary* 120 (9th ed. 2009). Thus, the specified arbitration defense contained in Rule 8(c) is limited to the situation where a dispute already has been arbitrated and an award has been obtained. *Id.* Neither of these events has occurred in this case and Respondent's reliance on Rule 8(c) is erroneous.

The Respondent next asserts that South Carolina courts have consistently held that

arbitration is an affirmative defense. Respondent cites two South Carolina cases for this proposition; namely, *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E. 2d 312 (2012) and *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E. 2d 602 (2010).

As a procedural matter, the Defendant in the *Bradley* case asserted *lack of jurisdiction* due to an arbitration agreement as an affirmative defense in its responsive pleading. The Defendant asserted its **right to arbitration in a motion to stay the proceedings and compel arbitration** filed concurrently with its responsive pleading. The Plaintiff initially opposed Defendant's motion to compel arbitration on the ground that Defendant waived the right to assert the affirmative defense due to Defendant's delay in responding to discovery requests. Thus, the issue of whether, in South Carolina, the right to arbitration is an affirmative defense that is waived if not pled in Defendant's answer was not before the *Bradley* court. Furthermore, the *Bradley* court specifically stated that it did not need to address Plaintiff's waiver argument *concerning delayed discovery* in light of its disposition on the merits.

Regarding the merits, the Plaintiff claimed that the arbitration agreement in question was not subject to the Uniform Arbitration Act ("UAA") or the Federal Arbitration Act ("FAA"). In response, the Defendant argued that even if the arbitration provision in the agreement did not comply with the requirements of the UAA, it was subject to the FAA as the transaction involved interstate commerce.

The *Bradley* court found that the arbitration agreement did not meet the requirements of the UAA and spent the remainder of its analysis on the legal issue of whether the transaction involved interstate commerce thus rendering the arbitration agreement enforceable under the FAA. The *Bradley* court ultimately held that the motion to stay the proceedings and compel arbitration must be denied due to a lack of sufficient evidence of interstate commerce.

In short, the *Bradley* court did not hold or otherwise rule that, in South Carolina, the right to compel arbitration is an affirmative defense that is waived if not pled by Defendant in a responsive pleading.

In *Partain*, the Defendant asserted three affirmative defenses in its Answer, including an arbitration agreement with Plaintiff. While a statement of fact as to the mechanics of

Defendant's Answer and the defenses asserted by it therein, the *Partain* court's reference to these defenses in the procedural history of the case did not constitute a ruling that the right to arbitration is an affirmative defense under South Carolina law. In fact, the sole legal issue before the *Partain* court was whether the Plaintiff's claims were within the scope of the arbitration agreement. Once again, the *Partain* court did not hold or otherwise rule as a matter of South Carolina law that the right to compel arbitration is an affirmative defense that is waived if not pled by Defendant in a responsive pleading.

The Respondent concludes its arguments under South Carolina law with the assertion that an affirmative defense is waived if not pled. Respondent cites three South Carolina cases for this proposition. A review of these remaining three cases cited by Respondent establish that they are distinguishable and inapposite to the arbitration issues before this court.

The first case cited is *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E. 2d 615 (Ct. App. 2013). The *Delta* case does not involve an arbitration agreement nor the issue of waiver of the right to arbitration. Also, the *Delta* case does not involve a situation wherein, as here, all parties to the litigation applied for arbitration via Motions to Stay and Compel arbitration. Instead, the *Delta* case concerns the defenses of res judicata and collateral estoppel.

The second case cited is *Howard v. S.C. Dep't of Highways*, 343 S.C. 149, 538 S.E. 2d 291 (Ct. App. 2000). Likewise, the *Howard* case does not involve an arbitration agreement, the issue of waiver of the right to arbitration, nor the filing of applications for arbitration by all parties to the litigation. Instead, the *Howard* case concerns the defense of assumption of the risk.

The third and final case cited is *RIM Assocs. V. Blackwell*, 359 S.C. 170, 597 S.E. 2d 152 (Ct. App. 2004). Once again, the *RIM Assocs.* case does not involve an arbitration agreement, the issue of waiver of the right to arbitration, nor the filing of applications for arbitration by all parties to the action. Instead, the *RIM Assocs.* case concerns the defense of res judicata.

Contrary to the Respondent's arguments and cited cases is the Court of Appeals opinion rendered in *General Equipment v. Keller Rigging*, 344 S.C. 553, 544 S.E. 2d 643

(Ct. App. 2001). In *General Equipment*, the defendants filed an answer denying the plaintiff's allegations, but did not include an affirmative defense of arbitration. Six months later, two weeks prior to the scheduled trial, the defendants filed a motion to compel arbitration. The Master denied defendant's motion to compel arbitration and the defendants appealed.

If, under South Carolina law, the defendants had waived their right to arbitration by failing to plead arbitration as an affirmative defense, the court would have been bound to affirm the denial of defendant's motion to compel arbitration. As a corollary, the Court would not have analyzed the traditional issues under South Carolina's established standard for waiver concerning the extent of the parties involvement in litigation, the period of delay and the undue burden and prejudice caused by that delay. Instead, the court applied the established South Carolina standard for waiver, held that the defendants had not waived their rights to arbitration and reversed the Master's decision.

Based on the above, as well as the remaining controlling authorities cited in Appellants' Return to Respondent's Motion to Dismiss, the Appellants have not waived their right to arbitration under South Carolina law.

(2): <u>Federal Law Analysis</u>

The Respondent first claims that "arbitration" is an affirmative defense as *specifically defined* by Rule 8(c) FRCP. However, neither the right to arbitration nor the existence of an arbitration agreement are listed as affirmative defenses under Rule 8 (c) FRCP. To the contrary, the only arbitration defense *specifically defined* in Rule 8(c) is the defense of "arbitration and award." The defense of 'arbitration and award" is an affirmative defense asserting that the subject matter of the action has already been settled in arbitration. *Black's Law Dictionary* 120 (9th ed. 2009). Thus, the specified arbitration defense contained in Rule 8(c) is limited to the situation where a dispute already has been arbitrated and an award has been obtained. *Id.*; *Lee v. Grandcor Medical Systems, Inc.*, 702 F. Supp. 252 (D. Colo. 1988). Neither of these events have occurred in this case and Respondent's reliance on Rule 8(c) is erroneous.

The Respondent next cites *McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152 (D. Conn. 1985) for the proposition that under federal law arbitration is an affirmative defense that must appear in the answer and that "a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation." *Id.*, 620 F. Supp. 152, 155-56.

The *McDonnell* case is an opinion issued by the United States District Court for the District of Connecticut. The District of Connecticut is located within the Second Circuit Court of Appeals. In the *McDonnell* case the Plaintiff filed his federal action in April 1982. He filed claims against his securities broker, Dean Witter, Reynolds, Inc. ("Dean Witter") and a former Dean Witter employee for the alleged mismanagement of his securities account. Plaintiff filed his original and several amended complaints during the period between April 1982 and February 1983. Defendant filed a motion to dismiss and an answer during this 11 month period. The Defendants' motion and answer failed to assert the right to arbitration.

Thereafter, for almost two years the parties engaged in lengthy discovery proceedings including interrogatories, depositions and production of documents. *Id.* On several occasions, the Court's intervention was necessary to resolve disputes which arose during the discovery process. *Id.*

Finally, in an effort to dispose of the case, the Court ordered the parties to try the action in January 1985. *Id.* However, the case was continued to allow completion of discovery two times up until a trial date was set on April 4, 1985. *Id.*

Three days before jury selection, Defendant Dean Witter for the first time sought to compel arbitration of Plaintiff's state law claims. *Id.* On April 4, 1985, Defendant Dean Witter amended its motion to request arbitration of Plaintiff's federal law claims as well. *Id.* On April 26, 1985, Defendants moved to amend their answer to assert a "Sixth Affirmative Defense" for arbitration. *Id.* at 155. On May 2, 1985 Defendants filed a "Clarified Motion to Compel Arbitration and for a Stay of Proceedings." *Id.*

The *McDowell* Court started its analysis by stating that arbitration is an affirmative defense that will be waived if not pled in a party's answer. *Id.* at 155. In making this statement, the *McDowell* court was citing the standard applied in the United States Court of Appeals for the Second Circuit. The court was not citing the standard applied in the United States Court of Appeals for the Fourth Circuit or the District of South Carolina.

Following this statement, the *McDowell* Court next addressed the issue of whether the motion to amend the answer to assert the arbitration defense should be granted. The Court determined that under the facts of the case it would be unfair and unjust to grant defendants' motion to amend. Specifically, the Court held that: (a) granting the motion would cause prejudice and injustice to the plaintiff due to his engagement in comprehensive and expensive discovery, motion practice, and other proceedings preparatory to a trial in the court; (b) denying the motion would not be unjust or prejudicial to defendants since they would have a forum in this court to raise their defenses to plaintiff's claims and they had already expended substantial sums for discovery in this court, so that the only additional expense to Defendants would be the expense of trial; and (c) the delay in seeking arbitration via the motion to amend was blatantly tardy, overwhelming and undue since the motion to amend was filed after the case was assigned for trial three times, and only three days before a jury was to be selected in this three-year old case. *Id.* at 156.

After issuing this ruling, the *McDowell* court turned to the merits of the arbitration waiver question and fully analyzed this issue *even though the defendants had not asserted arbitration as an affirmative defense in their pleading.* The court cited the following standards as the proper test by which to determine the question of waiver in cases pending in the Second Circuit: (1) whether the delay in the filing of a motion to compel arbitration prejudices the opposing party; or (2) whether there has been the litigation of substantial issues going to the merits by the time an intention to arbitrate was communicated by the defendant to the plaintiff. Also, the court stated that the giving of notice of an intention to arbitrate to the party opposing arbitration was an important factor in Second Circuit cases as well.

Applying these principles to the facts of the case, the *McDowell* court stated "it is clear that Dean Witter has waived its right to arbitrate. Plaintiff, without notice that Dean Witter might move to compel arbitration, embarked on lengthy and expensive discovery and will be greatly prejudiced and inconvenienced by the delay. For its part, Dean Witter has engaged in robust pretrial litigation over a period of nearly three years, and *at no point raised the arbitration defense in an answer* ***or other filing.*** (emphasis added). In addition to moving for several extensions and attending chambers conferences, Dean Witter has engaged

in discovery that would not have been available to it if it had gone to arbitration. The instant motion was filed only after this case was assigned and reassigned for trial. Under these circumstances, not only has Dean Witter's delay prejudiced plaintiff, but Dean Witter also has litigated "substantial issues going to the merits." *Sweater Bee*, 754 F.2d at 461. Accordingly, under either of the standards set forth in *Sweater Bee* and *Carcich*, Dean Witter has waived its right to compel arbitration of this dispute." *McDonnell*, 620 S. Supp. At 159.

Turning to the present case, none of the Second Circuit factors considered dispositive by the *McDowell* court are present. Specifically, in the present case: (1) there has been no substantial discovery or proceedings preparatory for trial in the lower court; (2) notice of the right to arbitration was timely inasmuch as Respondent itself moved to stay this action and compel arbitration contemporaneously with the filing of its' complaint and Appellants' joined in this motion and filed their own motion to stay and compel arbitration less than four (4) months thereafter; (4): While the Appellants did not raise the arbitration defense in an answer, they did raise the defense early and often both in their Motion to Lift Entry of Default, Motion to Stay and Compel arbitration, and in their joinder in Respondent's Motion to Stay and Compel arbitration (3): there has been no litigation whatsoever of substantial issues going to the merits; (4): there has been no prejudice to the Respondent associated with Appellants' applications for arbitration; and (5): pursuant to the Master's orders below, the Appellants will would be prejudiced since they would be restricted to a damages hearing and not have a forum in the court to raise their defenses to Respondent's claims. Thus, under even the Second Circuit standard the Appellants have not waived their right to arbitration.

Turning to the proper and applicable standard applied by the United States District Court for the Fourth Circuit, it is equally clear the Appellants have not waived their right to arbitration thereunder. In *Patten Grading & Paving v. Skanska USA Building*, 380 F.3d 200 (4th Cir. 2004), the defendant appealed the denial of its motion to stay and compel arbitration by the United States District Court for the District of South Carolina. The defendant did not assert arbitration as an affirmative defense in a responsive pleading. Instead, it filed a motion to stay and compel arbitration eight (8) months after the filing of plaintiff's complaint. Opposing defendant's motion, the plaintiff in *Patten Grading* asserted, as one of its grounds, the same claim as raised by the Respondent herein; namely, that the defendant's failure to

raise arbitration as an affirmative defense constituted a waiver of its right to arbitration.

On that issue, the court stated "[a]lthough Patten does not formally make the following distinction, under Federal Rule of Civil Procedure 8(c), Skanska's failure to invoke the arbitration clause in its answer to Patten's complaint *arguably* (emphasis added) constitutes a waiver of that right, and thus an issue that is seemingly distinct from whether Skanska's participation in the litigation during the resulting delay in asserting that right amounts to a default under the FAA. However, it is well established that an affirmative defense is not waived absent unfair surprise or prejudice. *See, e.g., S. Wallace Edwards & Sons. Inc. v. Cincinnati Ins. Co.*, 353 F.3d 367, 373-74 (4th Cir. 2003). Because both rules require a showing of prejudice, we do not consider these to be distinct issues. *Cf. MicroStrategy*, 268 F.3d at 249 (noting "this principle of 'default' [in the FAA] is akin to waiver" (internal quotations omitted))." *Patten Grading*, 380 F.3d at 209.

Rejecting the claim that defendant's failure to raise arbitration as an affirmative defense constituted a waiver, the *Patten Paving* court applied the established federal standard for waiver in the Fourth Circuit, ruled that the defendant had not waived its rights to arbitration and reversed the district court's decision.

Based on the above, as well as the remaining controlling authorities cited in Appellants' Return to Respondent's Motion to Dismiss, the Appellants have not waived their right to arbitration under federal law.

E. The Appellants Have Not Defaulted Upon Nor Waived Their Right To Mediation/Arbitration Under The Mandatory Alternative Dispute Resolution Provisions Of The Contract And Applicable Law.

(1): Appellate Standard of Review.

The denial of a motion to compel arbitration, based on a finding of waiver, is a legal conclusion subject to *de novo* review on appeal. *Carlson v. S.C. State Plastering, LLC,* 404 S.C. 250, 743 S.E. 2d 868 (Ct. App. 2013); *MailSource, LLC v. M.A. Bailey & Assoc.*, 356 S.C. 370, 374, 588 S.E. 2d 639, 641 (Ct. App. 2003).

(2): Public Policy Supports Contractually Agreed Arbitration.

The parties' contract is clearly an integrated and executed written agreement whereby

Respondent and the Appellants agreed to resolve their disputes through mandatory mediation, and if necessary, through arbitration. *(Exhibit A).* Pursuant to S.C. Code §15-48-10, such an agreement is "valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* Likewise, under federal law such an agreement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law of in equity for the revocation of any contract." 9 U.S.C. §2.

Moreover, "the policy of the United States and South Carolina is to favor arbitration of disputes." *Tritech Elec. v. Frank M. Hall & Co.*,343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000) (quoting *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E. 2d 135, 136 (1995). Further, South Carolina and federal courts resolve any doubts concerning the scope of arbitrable issues in favor of arbitration. *See Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E. 2d 349 (2002); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E. 2d 839 (Ct. App. 1999); *see also Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed. 2d 765 (1983) ("as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself *of an allegation of waiver, delay, or a like defense...* ") (emphasis added).

Given both the United States and South Carolina's well recognized and articulated preference for arbitration, and the fact that the parties entered into a written agreement to arbitrate all disputes arising out of or related to the contract, the South Carolina Court of Appeals should reverse the Master's ruling, stay this action and compel the matter to mandatory mediation/arbitration.

(3): <u>The Appellants' Motion to Stay and Compel, Which Motion The Defendants Joined In And Consented To, Should Be Properly Adjudicated And The Relief Requested Therein Granted.</u>

The Respondent filed and served a Motion to Stay and Compel mandatory mediation/arbitration contemporaneously with the commencement of this action. The Defendants joined in and consented to this motion as a part of their Motion to Stay and Compel filed on July 11, 2016, thus rendering Respondent's original motion a joint motion for all parties to the case.

The Clerk of Court "closed out" this motion due to referral of the case to the Master. *(Exhibit M).* The Clerk's closure of the motion occurred despite Appellants' formal joinder in the motion. The Master issued a bench ruling, finding that the Clerk's action constituted an adjudication of this joint motion. *Id.* The Master's ruling became final in his written order denying Appellants' Motion to Stay and Compel dated July 14, 2016. The summary closure of this joint motion as an administrative matter and the Master's "adjudication" of this motion on that basis does not constitute a proper adjudication of this motion nor a valid basis for waiver of Appellants' arbitration rights. *See General Equipment v. Keller Rigging*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001) (finding that the referral of a case to the Master-in Equity does not constitute a waiver of the right to arbitration).

For this reason, and based on the remaining controlling authorities cited in Appellants' Return to Respondent's Motion to Dismiss, the joint motion should be properly adjudicated and a judicial decision rendered granting the motion and submitting the matter to mandatory mediation/arbitration.

(4): Applying the Proper Standard To The Question Of Waiver Establishes That Appellants Have Not Waived Their Rights To Mandatory Mediation/Arbitration.

The parties' contract contains mandatory alternative dispute resolution provisions requiring the parties to mediate, and if necessary, arbitrate their disputes. *(Exhibit A).* The question before this court is whether these rights have been waived under the applicable law as applied to the facts of this case.

State Law Standard

The standards for establishing waiver of the right to arbitration are well established in South Carolina. *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 743 S.E. 2d 868 (Ct. App. 2013). In South Carolina, "[i]n order to establish waiver of the right to enforce an arbitration clause, a party must show prejudice through an undue burden caused by delay in demanding arbitration." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E. 2d 749, 753 (Ct. App. 1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.* (internal quotation marks omitted).

The Court of Appeals has recognized three factors to consider when determining whether a party has waived its right to compel arbitration: These three factors are as follows: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 131, 713 S.E. 2d 799, 807 (Ct. App. 2011) (internal quotation marks omitted).

To establish prejudice, the non-moving party must show something more than mere inconvenience. *Id.* (internal quotation marks omitted). In addition to the above factors, the Court of Appeals has also considered the extent to which the parties have availed themselves of the circuit court's assistance. *See id.* at 133, 713 S.E. 2d at 808.

Federal Law Standard

The standards to determine waiver are equally well established in federal law jurisprudence of the Fourth Circuit Court of Appeals and U.S. District Courts in South Carolina. *Brown v. Green Tree Services, LLC* 585 F. Supp. 2d 770 (D.S.C. 2008). Under this federal jurisprudence governing arbitration agreements subject to the Federal Arbitration Act, the party opposing arbitration bears a heavy burden of proving default or waiver. *Id.* Default or waiver only arises when the party seeking arbitration "so substantially utilize[ed] the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay." *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *see also Brown v. Green Tree*, 585 F. Supp. 2d 779; *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506 (Ct. App. 2003) (applying the provisions of the FAA as interpreted under federal law adopted by the federal courts of the Fourth Circuit). Because of the strong federal policy favoring arbitration the federal courts do not lightly infer the circumstances constituting waiver. *Patten Grading*, 389 F. 3d 200.

Applying the Proper Standards To The Facts Of This Case Establish The Appellants Did Not Waive Their Rights To Mandatory Mediation/Arbitration

In the present case, the Appellants moved to set aside the entry of default, one of the grounds for which included Appellants' right to arbitration, within 2 ½ months after

commencement of this action and within 1 ½ months after the entry of default. In addition, the Appellants filed their motion to compel arbitration less than four (4) months after commencement of the action, within 2 ½ months after the entry of default and within five 5 weeks of learning of the entry of default.

Discovery has been extremely limited in this case. No depositions have been taken in this action. The Appellants have not served interrogatories, requests to produce nor any other form of written discovery. The Respondent has not responded to any interrogatories, requests to produce or any of other form of written discovery. In fact, the only discovery to date is in the form of Appellants' answers to Respondent's basic First Set of Interrogatories and First Request for Production. This participation in discovery by Appellants was minimal and carried out pursuant to the direction of the Master-in-Equity. *See Patten Grading*, 380 F. 3d at 206 (reciting precedent that the party seeking arbitration will not "lose its contractual right by prudently pursuing discovery in the face of a court-ordered deadline").

The Master's assistance has been limited to: (a) two brief motions hearings concerning motions for a continuance of the damages hearing, to lift entry of default and to stay this action and compel mediation/arbitration and (b) one brief status conference to allow the proffer of information for the record on appeal and Respondent's alleged damages.

Finally, the Respondent has failed to show actual prejudice through an undue burden caused by the short delay in Appellants' demand for arbitration. The record contains no evidence which demonstrates actual and legally sufficient prejudice to Respondent in this matter. *See Appellants' Return to Respondent's Motion to Dismiss, Section F.7.*

Applying the above standards to the facts of this case, it is clear that the Appellants have not defaulted upon nor waived their right to mandatory mediation/arbitration under either applicable state or federal law. *See 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); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001); *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*., 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC*, 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 506 (Ct. App. 2003).

(5): <u>The Entry Of Default Does Not Constitute A Default Or Waiver Of Appellants' Right To Mandatory Mediation/Arbitration.</u>

The Respondent argues that in the context of a party in default seeking to compel arbitration, unless the movant is able to show good cause for its default, the defaulting party has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court. The Respondent cites one West Virginia case to support its proposition. The case cited by Respondent is *State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 539 S.E. 2d 106 (2000). This West Virginia case is distinguishable from the case at bar on numerous grounds.

This case applies West Virginia law, not South Carolina law or federal law from the Fourth Circuit. While a default judgment was entered in the *Barden* case, the legal principles and foundation upon which this West Virginia case is based is entirely different than the case at bar. At the time of this decision, West Virginia **had not** enacted the Uniform Arbitration Act, and furthermore, had no codified codes or statutes that applied to the general application of arbitration to legal disputes. The West Virginia code made sporadic and cursory references to arbitration only in terms of specific situations.

South Carolina, on the other hand, is one of the majority of states that have enacted in one form or another the Uniform Arbitration Act. The Uniform Arbitration Act as adopted in South Carolina contains the following sections that clearly distinguish South Carolina from the West Virginia law applied in *Barden* in multiple critical areas:

S.C. Code §15-48-10(a) (2005) states in pertinent part: A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

S.C. Code §15-48-20(a) (2005) states in pertinent part: On application of a party showing an agreement described in §15-48-10, and the opposing party's refusal to arbitrate, the court **shall** order the parties to proceed with arbitration… (emphasis added.)

S.C. Code §15-48-20 (c) (2005) states in pertinent part: If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein.

S.C. Code §15-48-20 (d) (2005 states in pertinent part: Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section... When the application is made in such action or proceeding, the order for arbitration shall include such stay.

S.C. Code §15-48-170 states in pertinent part: Except as otherwise provided, an application to the court under this chapter shall be **by motion** and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. (emphasis added.)

The above noted statues clearly delineate that the standards and foundation upon which the South Carolina Courts are working under the South Carolina Uniform Arbitration Act are wholly and substantially different than those employed by the West Virginia Court of Appeals in the *Barden* case.

A review of the Federal Arbitration Act ("FAA") statutes render the same result. The review below substitutes the word "Court" for any reference to the federal courts in the statutes in recognition of the South Carolina courts addressing FAA issues in cases before them involving interstate commerce.

9 U.S.C. §2 states in pertinent part: A written provision in a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the contract.

9 U.S.C. §3 states in pertinent part: If any suit or proceeding be brought [in Court]...upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall on application of one of the parties** stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. *See Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F.3d 200 (4th Cir. 2004) (noting the principle of default in the FAA is akin to waiver).

9 U.S.C. §4 states in pertinent part: A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any [Court] which, save for such agreement, would have jurisdiction...in a civil action of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement....The court shall hear the parties, and upon being satisfied that the making of the agreement for

arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the [Court] in which the petition for an order directing such arbitration is filed.

9 U.S.C. §6 states: Any application to the court hereunder **shall be made and heard in the manner provided by law for the making and hearing of motions**, except as otherwise herein expressly provided. (emphasis added.)

Similar to South Carolina's Uniform Arbitration Act, the FAA employs a standard and foundation totally and significantly different than the West Virginia standard used in the *Barden* case.

Furthermore, while fully acknowledging that other courts find the arbitration defense in Rule 8(c) pertains exclusively to completed arbitration proceedings, the *Barden* Court states that arbitration is an affirmative defense that *may, under appropriate circumstances, be deemed waived* if not pled under W. Va. R. Civ. P. 8(c). Thus, even under West Virginia law the failure to assert arbitration as an affirmative defense does not automatically constitute waiver. Instead, further *appropriate circumstances* are required, and even then, this *may be*, but is not required to be deemed a waiver.

However, the review of South Carolina jurisprudence as well as the federal court opinions from the Fourth Circuit contained in Appellants' Return establish that failure to raise a valid arbitration clause in initial and even subsequent court filings does not, in and of itself, nullify the existence of enforceability of the arbitration clause in these jurisdictions. Neither the South Carolina Uniform Arbitration Act nor the FAA requires arbitration to be plead as an affirmative defense or considers the right to arbitrate waived if the "defense" is not raised. In fact, the proper method of application for arbitration under these statutes is by way of motion, not affirmative defense. *See* S.C. Code §15-48-10, et al (2005); 9 U.S.C. §§ 1-16.

Finally, the well-reasoned opinions of other jurisdictions employing waiver standards similar to the South Carolina and 4th Circuit federal standards are instructive on this issue in the context of a default situation. For example, the case of *Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah 2004) applies the Utah standard of waiver of the right to arbitration. Utah shares the basic framework of South Carolina law and 4th Circuit federal

law for deciding whether a party has waived a contractual right to arbitration.

The *Cedar* Court framed the issue before it as whether defendants waived their contractual right to arbitration when they declined to participate in the underlying litigation and filed a motion to compel arbitration only after default judgement had been entered against them.

In the *Cedar* case, when the defendants failed to answer or file a responsive pleading to the complaint, the Court entered a default judgement against them. When the defendants also failed to respond to the Court's notice of a hearing to determine damages, the Court entered a judgment for damages in the amount of $381,370 against the defendants.

Following the entry of judgment for damages, the defendants made their first appearance in the case by filing a Rule 60(b) motion for relief from default judgment and a motion to compel arbitration based on the arbitration clause in the parties' contract. In analyzing the defendants' motion, the *Cedar* Court first stated the Utah standard for determining waiver.

The Court stated that under Utah law, "for a court to find that a party has waived its arbitration right, the party alleging waiver must demonstrate: (1) that the party seeking arbitration substantially participated in the underlying litigation to a point inconsistent with the intent to arbitrate; and (2) that this participation resulted in prejudice to the opposing party." *Cedar*, 96 P. 3d 911, 914.

Applying this standard to the facts of the case the *Cedar* Court stated that "[i]deally, the [defendants] would have raised the contractual arbitration clause in an answer to [plaintiff's] complaint and then brought a motion to compel arbitration, rather than simply ignoring the district court proceedings altogether. However, we do not find that such failure evidences an intent on the part of the [defendants] to waive their right to arbitration and pursue redress through litigation." *Id.*, 96 P 3d at 915.

Accordingly, the *Cedar* Court found that the defendants' failure to participate in the underlying litigation and the entry of default judgment resulting therefrom **did not** constitute a waiver of their right to arbitration. *Id.* The *Cedar* Court, therefore, held that the lower court did not abuse its discretion in setting aside the default judgment and compelling arbitration. *Id.*

Based on the applicable and well established standards discussed in this Return, the Court should reverse the Master's ruling, stay this action and compel the parties to mediate, and if necessary, arbitrate their dispute as agreed to in their written contract.

F. Good Cause Exists For Relief From The Entry Of Default

(1): Appellate Standard Of Review.

The decision whether to set aside an entry of default lies solely within the sound discretion of the circuit court. *Harbor Island Owners' Ass'n v. Preferred Island Props.*, 369 S.C. 540, 633 S.E. 2d 497, 499 (2006). The circuit court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E. 2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E. 2d 454, 459 (Ct. App. 1997).

(2): The Standard For Granting Relief From An Entry of Default Under Rule 55(c), SCRCP Is Mere Good Cause.

The standard for granting relief from an entry of default under Rule 55(c), is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). This standard requires a party seeking relief from an entry of default under Rule (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. *Id.* at 607-08, 681 S.E. 2d at 888.

The law does not favor defaults. Therefore, 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, 178, 463 S.E. 2d 636, 638 (Ct. App. 1995).

(3): <u>The Appellants' Rights To Mandatory Mediation/Arbitration Under The Contract Constitute Good Cause For Relief From The Entry Of Default.</u>

In the present case, the contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. *(Exhibit A)*. Pursuant to these provisions, and contemporaneously with the commencement of this action, the Respondent made and served upon Appellants a demand for mandatory mediation/arbitration in its Motion to Stay and Compel. By doing so, the Respondent informed Appellants that it had made a demand for mandatory mediation/arbitration of this dispute under the terms of the contract. Respondent's demand also triggered the requirements of the South Carolina Uniform Arbitration Act and/or Federal Arbitration Act mandating a stay of this action and compulsory mediation/arbitration. Respondent's demand was consistent with the parties' rights to arbitration under the contract and Appellants' reliance thereon was justified.

Within twenty four (24) hours of learning of Respondent's application for default and the entry of default against them, the Appellants immediately moved to be relieved from default asserting their rights to arbitration as a grounds for relief. Appellants filed their Motion to Lift Entry of Default within one and a half (1 ½) months of the entry of default. Also, Appellants formally joined in Respondent's motion and filed a separate Motion to Stay and Compel mandatory mediation/arbitration less than four (4) months after Respondent's commencement of suit.

The Court's good cause analysis must include the application of the proper legal standards to these contract provisions as well as the question of waiver/default of the arbitration rights thereunder. The proper legal standards are previously discussed in Sections C. through G of this Return. Applying any other standards would be an error of law and modify the long standing arbitration jurisprudence of South Carolina and the Fourth Circuit.

Applying the proper legal standard to the evidence on record establishes that the mandatory mediation/arbitration provisions apply to the Respondent's claims and that the Appellants have neither waived nor defaulted upon their rights to arbitration. *See Appellants' Return to Respondent's Motion to Dismiss, Sections C. – E.*

Since there has been no waiver or default upon Appellants' rights to mandatory mediation/arbitration, the Court is required to stay this litigation and submit the matter to mediation/arbitration. *Id.* Furthermore, by virtue of this requirement to stay the litigation and compel arbitration, the Court must divest itself of subject matter jurisdiction upon submission to mediation/arbitration. *See Appellants' Return to Respondent's Motion to Dismiss, Section G.*

Standing alone, these facts and the legal conclusions arising therefrom constitute good cause for lifting the entry of default, staying this action and compelling mandatory mediation/arbitration. *See Rule 55 (c). SCRCP; see also Appellants' Return to Respondent's Motion to Dismiss, Sections C. – F.*

The Master's failure to apply the proper legal standards governing the arbitration rights of the Appellants constitutes an error of law and abuse of discretion under Rule 55(c), SCRCP. Therefore, the Master's Orders of July 14, 2016 and October 28, 2016 should be reversed and the Appellants should be relieved from default.

(4): <u>The Appellants' Provided A Satisfactory Explanation For The Default And Vacation Of The Entry Of Default Will Serve The Interests Of Justice And Reverse The Error Of Law Regarding Appellants' Rights.</u>

The Appellants did not file a timely response to the complaint due to an intentional and good faith misunderstanding of the status of Appellants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Respondent's lawsuit thereto. *(Exhibit H).*

Hanover is the surety under the Payment Bond on the Project referenced by Respondent in its Complaint. *(Exhibit B).* Respondent references an indemnity agreement with Hanover in its Complaint and alleges that the Appellants must indemnify the surety and Respondent to the extent it is required to pay. *(Id.).* Respondent further alleges that, due to Appellants' failure to pay the contract balance due, claims have been made by other subcontractors upon the Payment Bond and as a consequence subcontractors are making claims against Respondent and its surety, Hanover. *(Id.).*

Based on these allegations in the Complaint, the Appellants did not understand that Respondent's lawsuit was separate and apart from the bond claims that they had been

working directly with Hanover to address. The Appellants are not attorneys, are unversed in the procedural rules of court and assumed the lawsuit was being handled as part and parcel of their arrangements with Hanover.

The Appellants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Respondent or delaying legal proceedings. Upon learning of their error, Appellants 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 v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636 (1995). The Appellants' short delay in appearing in and responding to Respondent's lawsuit constitutes no prejudice to Respondent. *See Appellants' Return to Respondent's Motion to Dismiss, Section F. 7.* Also, the Appellants have asserted various defenses to Respondent's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default. *See Appellants' Return to Respondent's Motion to Dismiss, Section 6.* Finally, the Appellants are entitled to mandatory mediation/arbitration and the Master's finding of a default or waiver of these rights due to the entry of default or waiver of affirmative defenses is an abuse of discretion under Rule 55(c) and, therefore, reversible error.

For these reasons, vacating the entry of default is proper and would serve the interests of justice and promote disposition of the case on the merits.

(5): <u>The Appellants Promptly And Timely Filed Their Motion Seeking Relief From The Entry Of Default.</u>

The Respondent filed a Motion to Refer to the Master-in-Equity and for Entry of Default on April 18, 2016. Thereafter, the Master entered default against the Appellants on April 21, 2016.

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. The Appellants were unaware of the default status of the case and the scheduling of the damages hearing until they received this Notice of Hearing on June 2, 2016.

Upon receipt of the Notice of Hearing, the Appellants immediately retained legal counsel on June 3, 2016. 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.

As established by the above timeline, the Appellants took immediate action upon learning of the default status and receipt of the Notice of Hearing for 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 Appellants satisfied the good cause timely motion filing requirement of Rule 55(c), SCRCP.

(6): <u>The Appellants Are Entitled To Mandatory Mediation/Arbitration Of This Matter And Have Meritorious Defenses To The Respondent's Lawsuit.</u>

The Appellants are entitled to mandatory mediation/arbitration of the claims in Respondent's lawsuit. *See Appellants' Return to Respondent's Motion to Dismiss, Sections C. - E.* In addition, the Appellants have asserted substantive defenses to Respondent's claims as raised in their Motion to Lift Entry of Default and set forth below:

(1): Respondent has been paid in full under the Subcontract Agreement, including an overpayment in excess of Fourteen Thousand ($14,000.00) Dollars.

(2): There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Respondent and Appellant Restoration 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).* Further, there is nothing in the subcontract agreement between the parties related to the project that allows for profit sharing. *(Exhibits A).*

(3): 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 B).* Appellants dispute the claims made by many of the subcontractors which have made claims against the Payment Bond.

(4): Appellant Restoration has not paid all subcontractors and vendors in full as the

Department of Veteran's Affairs is retaining funds due under the Contract.

(5): 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." *(Exhibit B).*

If Appellants prevail on any of the above-enumerated defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Appellants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

(7): <u>The Respondent Will Not Suffer Prejudice If Entry Of Default Is Set Aside.</u>

The Appellants responded to Respondent's lawsuit with the retention of counsel and filing of a Motion to Set Aside Entry of Default on June 3, 2016. The Appellants took these actions within 51 days of the date on which Appellant's answer to the 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 Appellants' brief delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no actual prejudice to Respondent such as loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, or undue expense or damage to the Respondent's legal position.

Respondent attempts to claim prejudice through its' counsels' statements in Palmetto Construction's Opposition To Defendants' Motion to Reconsider Alter Or Amend. *(Exhibit CC).* Specifically, Respondent's counsel states that "Palmetto would be severely prejudiced if the default were lifted as the passage of time pushes Palmetto closer to closing their doors, and further, Palmetto has taken actions, like withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of [Appellants] failure to timely answer." *(Id.).*

The claim related to Respondent "closing their doors" is a bald assertion of its counsel and is not supported by evidence in the record. Proof of prejudice cannot be speculative, nor based on conclusory allegations. *See Appellants' Return to Respondent's*

Motion to Dismiss, Sections C. – E. (and authorities cited therein).

Respondent's remaining claims of "prejudice" proffered by its' counsel allegations in the referenced legal memorandum refer to activities which are either not supported by the record or are nominal at best and insufficient to establish actual prejudice under applicable law. *See Appellants' Return to Respondent's Motion to Dismiss, Sections C. – E.*

Furthermore, the Respondent itself demanded mandatory mediation/arbitration of its claims at the time it filed its lawsuit. Certainly, it cannot now reverse its position and complain of any prejudice which would result from setting aside the default and submitting the claims to mediation/arbitration.

In fact, the corollary to the lack of prejudice to the Respondent is the extreme prejudice the Appellants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this circumstance, the Respondent will have received significant undue advantage in achieving a default based litigation result that is not based on the merits of the case. Moreover, this result will obtain in a case Respondent acknowledges is governed by contractually agreed upon mandatory mediation/arbitration and over which the court is mandated to cede jurisdiction to the arbitration forum. This extreme prejudice will be further magnified by the significant limitations and restrictions imposed upon Appellants' rights to defend against Respondent's claims in the damages hearing forum.

For these reasons, and as no actual prejudice will result to Respondent in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

G. The Mandatory Requirements To Stay This Action And Submit The Matter To Mediation/Arbitration Shall Divest The Court Of Subject Matter Jurisdiction

The contract giving rise to this action required mandatory mediation, and if necessary binding arbitration. The Respondent 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 Respondent made a formal demand for mandatory mediation/arbitration in its Motion to Stay and Compel filed with the court. Upon filing, mandatory requirements of the South Carolina Uniform Arbitration Act or the Federal

Arbitration Act were triggered requiring the court to stay this action and submit the matter to mediation/arbitration. These same mandatory requirements were invoked a second time upon the Appellants joinder in Respondent's motion as well as the filing of their own Motion to Stay and Compel.

By virtue of the mandatory mediation/arbitration provisions in the contract, the applications of all parties for mediation/arbitration and the triggering effect of those applications upon the mandatory requirements to stay and compel arbitration under the South Carolina Uniform Arbitration Act and/or Federal Arbitration Act the Court is required to stay this litigation and submit the matter to mediation/arbitration. *See* S.C. Code §15-48-10, et al; 9 U.S.C. §§1-16; *see also U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (D.S.C.); *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009).

Under both federal and South Carolina law, when a case is sent to arbitration, the court is divested of jurisdiction over the case. *Id.*; *see also Main Corp. 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 this matter.

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 Motion to Dismiss Appeal be denied.

[SIGNATURE ON FOLLOWING PAGE]

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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ATTORNEY FOR APPELLANTS

December 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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

EXHIBIT A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

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

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

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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification	Date

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

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

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

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

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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.

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2016 MAR -7 PM 12:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DOCKETING INFORMATION (*Check all that apply*)

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

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

NATURE OF ACTION (*Check One Box Below*)

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

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20___-NI-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

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

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

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

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

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

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

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

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

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

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

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

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

TO: THE DEFENDANTS NAMED ABOVE:

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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

DATED: February 12, 2016
Charleston, South Carolina

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

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

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

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

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

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

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

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

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

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

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

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

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

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

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

27. There are claims on the surety bond.

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

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

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

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

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

32. Palmetto restates each and every allegation above.

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

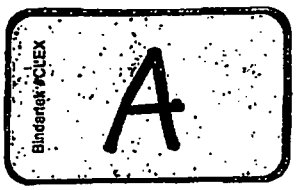
Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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



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(1114130519)

Init.

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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11 PROGRESS PAYMENTS

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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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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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§ 4.5 WARRANTY

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

§ 4.6 INDEMNIFICATION

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

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

§ 4.7 REMEDIES FOR NONPAYMENT

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

ARTICLE 5 CHANGES IN THE WORK

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

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

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

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User Notes:
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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification	Date

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

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

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(1114130519)
User Notes:

TEAMING AGREEMENT

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

ARTICLE 1 SUBMISSION OF PROPOSAL

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

ARTICLE 2 PERFORMANCE OF CONTRACTS

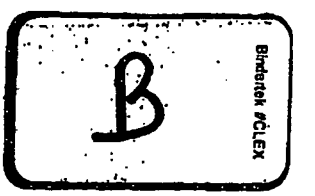
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG.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

ARTICLE 3 EXCLUSIVE AGREEMENT

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

ARTICLE 4 SCOPE OF AGREEMENT

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



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

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

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

ARTICLE 5 RELATIONSHIP

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

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

ARTICLE 7 TERMINATION

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

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

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

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

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

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

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

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

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

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

ARTICLE 9 DAMAGES

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

ARTICLE 10 ASSIGNMENT

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

ARTICLE 11 NOTICE

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

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

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

ARTICLE 12 ENTIRE AGREEMENT

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

RESTORATION SPECIALISTS LLC

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

PALMETTO CONSTRUCTION GROUP

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

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

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

AREAS OF RESPONSIBILITY

RS

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

PCG

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

SPS

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

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

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

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

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

OBLIGATION:

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

CONDITIONS:

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

WITNESS:

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

Binderlek #CLEK C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	
INDIVIDUAL SURETY(IES)				
SIGNATURE(S)	1. (Seal)	2. (Seal)		
NAME(S) *(Typed)*	1.	2.		
The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A — NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000	Corporate Seal
SURETY A — SIGNATURE(S)	1.	2.		
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY 1852 CORPORATE SEAL

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previous edition is usable

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

Bond No. 194089

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

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

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

OBLIGATION:

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

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

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

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

WITNESS:

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

Restoration Specialists, LLC — **PRINCIPAL**

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

INDIVIDUAL SURETY(IES)

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

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

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

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STANDARD FORM 25 (REV. 5-86)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

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

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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ATTORNEYS FOR PLAINTIFFS

On this 17 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

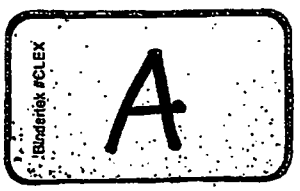
Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

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

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

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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification **Date**

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

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

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

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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

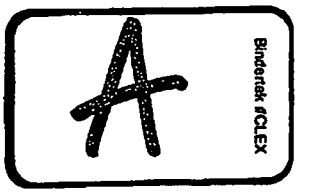
DATED: April 18, 2016
Charleston, South Carolina

EXHIBIT D

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

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

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



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

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

Andrew K. Epting

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

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

Notary Public for South Carolina

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

AFFIDAVIT OF SERVICE

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

Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

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

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

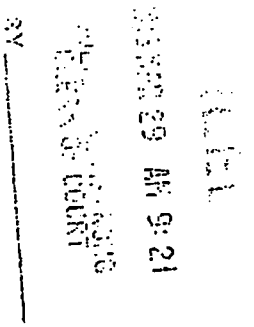
Age 40 Sex (M) F Race White Height 5'10" Weight 185 Hair Bald Glasses Y (N)

Bindertek #CLEX 1

RECEIVED
MAR 22 2016
By _____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

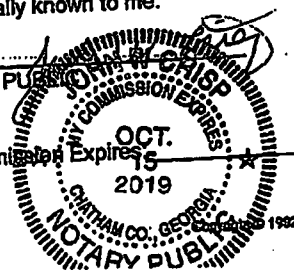
I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



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

NOTARY PUBLIC

My Commission Expires



PROCESS SERVER # _____
Appointed in accordance with State Statute

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

Our Job Serial Number: 2016000516

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AFFIDAVIT OF SERVICE

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

Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

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

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

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

COMMENTS: _____

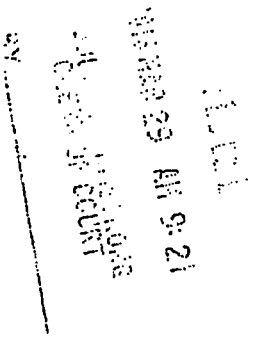
Age F Sex (M) F Race White Height 5'6" Weight 130 Hair Blond Glasses (Y) (N)

RECEIVED
MAR 22 2016
By_____

Binderlek #CLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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



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

NOTARY PUBLIC

My Commission Expires: OCT. 19 2019

CHATHAM CO. GEORGIA NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statutes

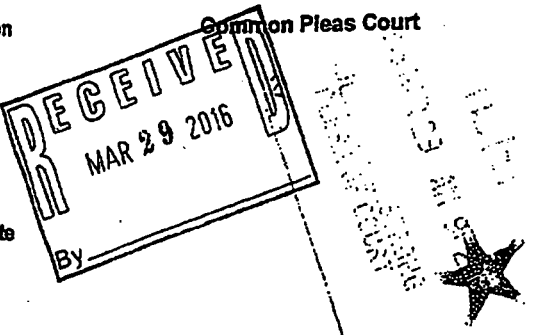
SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

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



Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

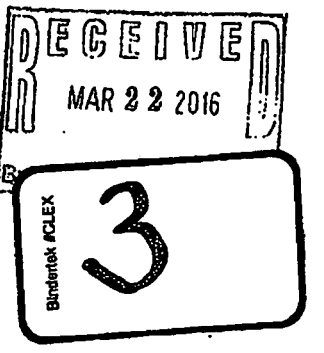
( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

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

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

COMMENTS: _____

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



AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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

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

NOTARY PUBLIC

My Commission Expires: OCT 15 2019

PROCESS SERVER # _____
Appointed in accordance with State Statutes

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

Our Job Serial Number: 2016000517

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

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

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

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

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

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

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

IT IS SO ORDERED.

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

On this 20th day of April 2016
Charleston, SC

EXHIBIT E

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

FILED
2016 JUN -6 AM 11:1
CLERK OF COURT
BY

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

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

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

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

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

Notary Public for the State of Georgia

My Commission Expires 04/4/2019

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

EXHIBIT F

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

PLEASE TAKE NOTICE that a default damages hearing is scheduled on Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Charleston County Court of Common Pleas located at 100 Broad Street, Charleston, SC 29401 pursuant to the enclosed Order of the Honorable Roger M. Young, Sr. dated April 20, 2016.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
465A Saint Street, Charleston, SC 29401
P: 843.377.1471
F: 843.377.1510
akepting@epting-law.com, mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

June [illegible], 2016
Charleston, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PALMETTO CONSTRUCTION GROUP, LLC)

Plaintiff,)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-10-1143

AFFIDAVIT OF REUBEN MARK WARD

FILED
2016 JUN -6 AM 11:15
CLERK OF COURT

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

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

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

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

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

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

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

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

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

EXHIBIT H

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

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

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

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

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

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

Notary Public for the State of Georgia

My Commission Expires 09/11/2019.

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

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
)	
vs.)	
)	
Restoration Specialists, LLC,)	
Reuben Mark Ward, and Lynnette)	
Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 PM 3:

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

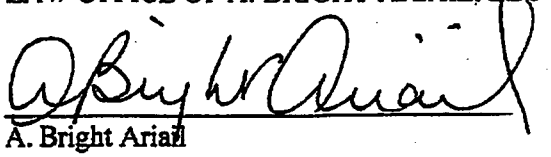
(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

EXHIBIT I

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
)	
vs.)	
)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 PM 3:32

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);

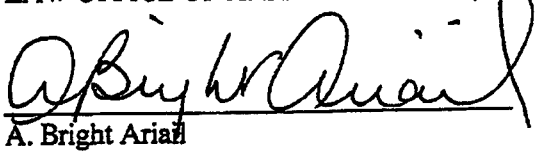
(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained 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

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
)	
vs.)	
)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 P 3:3

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order setting aside the Entry of Default for good cause, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendant have promptly and timely filed their Motion seeking relief from the Entry of Default;

(2): The Defendants delay in responding to the Plaintiff's lawsuit was not culpable;

(3): The Defendants have a meritorious defense to the Plaintiff's lawsuit; and

(4): The Plaintiff will not suffer prejudice if Entry of Default is set aside.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Set Aside Entry of Default which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

EXHIBIT J

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

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

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

Defendants.

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

COPY

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

EXHIBIT K

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

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

ATTORNEYS FOR THE DEFENDANT:

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

PROCEEDINGS

THE COURT: This matter is captioned Palmetto Construction Group, LLC versus Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. The case number is 2016-CP-10-1143.

The matter is set today as a default damages hearing, and the matter was referred to the Court on April 18th, and entry of default was entered on that same date. It appears that service process was performed on Reuben Ward on or about March 14th, the case having been filed on March 7th, and also on Lynnette Ward on that same date it appears.

I believe Mr. Ward was served as the agent for the corporation, Restoration Specialists, LLC. This Court set it for a hearing in April on damages. I did receive, and I don't know -- have you got that --

MR. FISHBURNE: That is it.

THE COURT: Late last week from the Law Office of A. Bright Ariail a Motion to Set Aside the Entry of Default and also for continuance. Have you-all been provided with that as well?

MS. ENDEMANN: Yes, Judge, we were served on Friday afternoon.

THE COURT: Do you want to be heard first on

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Ms. Ariail?

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

I know that he is eager to get this issue

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

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

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

MS. ARIAIL: Yes, sir.

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

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

THE COURT: I haven't seen any affidavits.

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

THE COURT: Sure.

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

THE COURT: Okay.

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

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

Ms. Endemann?

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

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

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

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

I think we noticed it on the 20th. She will be back on the 26th. We can certainly move it until when she gets back, but Your Honor, I would really, really request that we can get these documents produced and the bank account information produced in advance of her going on her trip.

THE COURT: Ms. Arial, is that possible?

MS. ARIAIL: Your Honor, I will speak to my client. I can't represent to you when I can do it. I know he's out of the state today. He's in Oklahoma. I'm not sure when he's coming back, but I will absolutely do my best to make that happen.

THE COURT: All right. Here's what I'm going to do. I'm going to see if -- you-all need to get on a short timetable to see if you-all can't get a little scheduling order worked out over the next 60 days. I'm going to bring you-all back in here. I'm going to hold both of these motions under -- I'm going to essentially grant your Motion to Continue the Matter. Okay? Your Motion for Relief from the Entry of Default I'm not going to rule on yet. There's not much I saw in that affidavit that would give me indication that I would grant that motion. I can tell you that right now. Okay?

I will give you-all some time to see what

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

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

MS. ARIAIL: Yes, sir.

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

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

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

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

MS. BECK: The 14th?

THE COURT: Yes.

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

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

MS. ENDEMANN: Thank you, Judge.

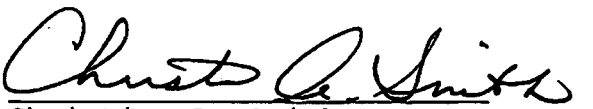
(The proceedings were concluded at 11:43 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

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

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

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



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**
)	
vs.)	
)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward)	
)	
Defendants.)	

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

(2): The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of

EXHIBIT L

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
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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

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

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Michelle N. Endemann, Esquire
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ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

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

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

Defendants.

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

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
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EXHIBIT M

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PROCEEDINGS

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

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

MS. ARIAIL: You did not.

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

the damages hearing.

THE COURT: Ms. Endemann?

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

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

MS. ENDEMANN: Thank you.

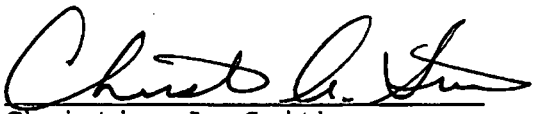
(The proceedings were concluded at 11:11 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

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

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

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



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUL 14 AM 11:21

Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). (*Exhibit A).* Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

EXHIBIT N

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following: (1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B).* There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C).* Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

If Defendants prevail on any of these defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Defendants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

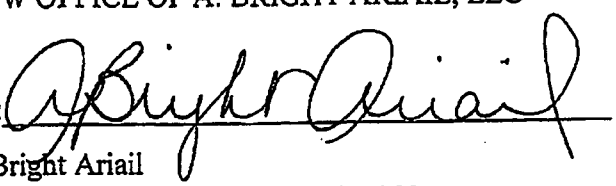
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

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

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

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

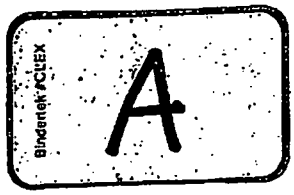
Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 SUBCONTRACTOR
§ 4.1 EXECUTION AND PROGRESS OF THE WORK
§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC
CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC
SUBCONTRACTOR *(Signature)*
Jay Hannegan - Vice President
(Printed name and title)

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TEAMING AGREEMENT

This Agreement is made and entered into as of the 28th day of November, 2011, by and between Restoration Specialists, LLC, a Georgia limited liability company (hereinafter called "RS"), and Palmetto Construction Group, LLC, a South Carolina limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for Solicitation Number VA-247-11-RP-0211 (hereinafter the "Services") to Department of Veteran Affairs (the "Customer") for the New SCIU Hospital Parking Deck Minor Project: 509-325 project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.:9000-0045 Expires: 11/30/2012

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA

SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	5	999	860	00
	CONTRACT DATE: March 13, 2012		CONTRACT NO.: VA247-C-0035	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Bindetek #CLEX

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A — NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000	Corporate Seal
SIGNATURE(S)	1.	2.		
NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY — 1852

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STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

BOND NO. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352. Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))* The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	**PENAL SUM OF BOND** MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000.00	
	SIGNATURE(S)	1.	2.		Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

EXHIBIT O

Law Office of A. Bright Ariail, LLC

July 19, 2016

2016 JUL 22 PM 2:2

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records related to the Order executed on July 14, 2016 in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT P

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Sent: Monday, July 18, 2016 8:42 AM
To: 'Michelle Endemann'; Bright Ariail; 'Andrew K. Epting'
Subject: Palmetto Construction Group v. Restoration Specialists et al.
Attachments: 201607180829.pdf

Dear All -

As to the last hearing in this matter, please see the attached order Judge Scarborough executed last week. I am forwarding it to the clerk right now for processing.

Best Regards,

Barnwell

--
J. Barnwell Fishburne, Jr., Esq.
Judicial Law Clerk to The Honorable Mikell R. Scarborough
100 Broad Street, Suite 266
Charleston, South Carolina
29401
Tel: 843-958-5053
jfishburne@charlestoncounty.org

Bright Ariail

From:	Barnwell Fishburne <JFishburne@charlestoncounty.org>
To:	Bright Ariail
Sent:	Monday, July 18, 2016 8:35 AM
Subject:	Read: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Your message

To:
Subject: Palmetto Construction Group c. Restoration Specialists, et al;
Sent: Monday, July 18, 2016 5:35:12 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, July 18, 2016 5:35:02 AM (UTC-08:00) Pacific Time (US & Canada).

Bright Ariail

From:	Microsoft Outlook
To:	Barnwell Fishburne
Sent:	Friday, July 15, 2016 12:32 PM
Subject:	Relayed: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Barnwell Fishburne (JFishburne@charlestoncounty.org)

Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Bright Ariail

From: Bright Ariail
Sent: Friday, July 15, 2016 12:32 PM
To: Barnwell Fishburne
Cc: Andrew K. Epting; 'Michelle Endemann'
Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

I have reviewed the proposed order and request that the Court also address its ruling/disposition of Plaintiff's Motion to Stay and Compel (filed on March 7, 2016) in the order when issued. Thanks for your assistance in this matter.

I have copied all counsel of record by this email.

VR. Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Michelle Endemann [mailto:mne@epting-law.com]
Sent: Thursday, July 14, 2016 12:10 PM
To: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Cc: Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

We have prepared a simple proposed order for today's hearing so that Judge Scarborough does not have to prepare a Form 4.

Please note I have copied Ms. Ariail.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: 843-877-1871

F: 843-377-1310
mnc@epting-law.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUL 27 P 12:30

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 the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

EXHIBIT Q

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion)*;

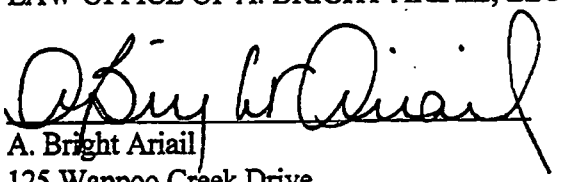
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 27, 2016
Charleston, SC 29412

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Roster Id	952
Roster Type	Motion Hearings	Roster Begin Date	10/11/2016	Roster End Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
1	10/11/2016	10:00 AM		Motion/Reconsider by plaintiff, crt/srv	Maria Kiehling Brees-PAT	07/25/2016	2012CP1006835 Joanne S Reed VS Christina Salters defendant, et al	Real Prop/Other 499	1880000169	Maria Kiehling Brees (843) 724-7707 D. Nathan Davis (843) 571-4042	Jestine Townsend Graham (843) 467-9492 Irene Townsend Hodge (843) 889-9513 Kelvin Maurice Huger (843) 573-0143 Althea Salters (843) 889-2450 Irma Townsend (843) 425-7226 Jessie Townsend Mary Alice Townsend Morrison Karen Waters	EXHIBIT R
2	10/11/2016	11:00 AM		Motion/Alter or Amend judgment by plaintiff, crt/srv		07/27/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
4	10/11/2016	11:00 AM		Motion/Alter or Amend judgment by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
5	10/11/2016	2:00 PM		Motion/Alter or Amend by plaintiff, crt/srv	Andrew K. Epting Jr.-PAT	07/29/2016	2016CP1001143 Palmetto Construction Group LLC VS Restoration Specialists LLC	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871 Andrew K. Epting Jr. (843) 377-1871	A. Bright Ariail (843) 814-8805	
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Ariail-DAT	07/27/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871	A. Bright Ariail (843) 814-8805	

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Roster Id	952
Roster Type	Motion Hearings	Roster Begin Date	10/11/2016	Roster End Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
							alle VS Restoration Shel al, et al			Andrew R Ehrig (843) 577-7700		
7	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006736 Municipal Tax Investment LLC VS Gilbert J White , defendant, et al	Real Prop/Other 499	4271600239	Scott Daniel Spivey (803) 225 -0463		
8	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006746 Municipal Tax Investment LLC VS Johnnie A Hall , defendant, et al	Real Prop/Other 499	4620600016	Scott Daniel Spivey (803) 225 -0463	George John Conklin (864) 282 -3200 Johnnie A Hall (Defendant) 2 Conklin Court Goldens Bridge, NY 10526	
9	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearings	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006755 Municipal Tax Investment LLC VS William T Simmons III , defendant, et al	Real Prop/Other 499	4640100054	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900 T. Parkin C. Hunter (803) 734 -6151 Brittany Lauren Kilpatrick (843) 696-3048 E.B. "Trey" McLeod III (803) 737-3043	
10	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley , defendant, et al	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
11	10/11/2016	3:00 PM		Master/Cross Claim Hearing	Municipal Tax Investment LLC-PLT	10/11/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
12	10/11/2016	3:00 PM		Master/QT after Tax Hearing	Municipal Tax Investment LLC-PLT	08/08/2016	2015CP1006757 Municipal Tax Investment LLC VS Johnny Mack , defendant, et al	Real Prop/Other 499	4691600143	Scott Daniel Spivey (803) 225 -0463	George John Conklin (864) 282 -3200	

Law Office of A. Bright Ariail, LLC

RECEIVED
SEP 09 2016
By_____

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

FILED
2016 SEP 13 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

EXHIBIT S

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Law Office of A. Bright Ariail, LLC

September 20, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2016 SEP 22 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records with attachments for filing in the above referenced action which are related to Defendants' request that two outstanding motions be heard by the Court prior to the damages hearing set for October 4, 2016 at 2:00 p.m.; specifically, Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016 and Plaintiff's Motion to Alter or Amend filed July 29, 2016. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT T

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 10:43 AM
To:	master@charlestoncounty.org
Cc:	Andrew K. Epting; Michelle Endemann
Subject:	Palmetto Constr. Group, LLC v. Restoration Specialists, LLC et al., 2016-CP-10-1143
Attachments:	Ltr Scarborough Motions Hearing.pdf

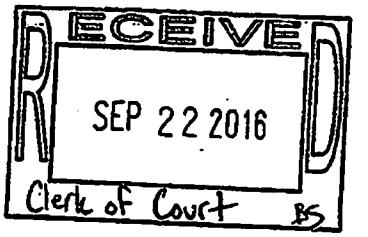
Judge Scarborough,

Please see my letter attached. Thanks for your consideration.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805



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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.

Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 11:55 AM
To:	Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc:	Barnwell Fishburne
Subject:	RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

CONFIDENTIALITY NOTICE
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: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Michelle Endemann <mne@epting-law.com>
Sent: Wednesday, September 7, 2016 12:45 PM
To: Laura Dukes Beck; Angela Gross; Andrew K. Epting; Bright Ariail
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Hello Laura,

Plaintiffs would prefer that the hearings go forward as originally scheduled. This way, all rulings can be reconsidered/appealed, if necessary, at one time rather than piecemeal. We will, of course, defer to the Judge's preference.

Best,

Michelle Endemann

From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 07, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; bright@brightariaillaw.com
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, September 12, 2016 2:02 PM
To: Bright Ariail; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

After further consideration, the Judge has decided to leave the hearings in the order that they were originally scheduled, with the Damages hearing to be held prior to the Motions to Alter or Amend. The previously sent roster publication emails and the published rosters have the date and time, or email me if you need more information.
Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Wednesday, September 07, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

CONFIDENTIALITY NOTICE
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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>

Cc: Barnwell Fishburne <BFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Law Office of A. Bright Ariail, LLC

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: *Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.*
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants and Plaintiff have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[1] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[2] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariallaw.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

2016 SEP 30 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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

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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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

FILED
2016 SEP 30 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

September 30, 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, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Julie:

Enclosed for filing is a Notice of Appeal, together with proof of service in the above referenced case. Please file the Notice of Appeal and proof of service and return a clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

By copy of this letter, I am providing a copy of the Notice of Appeal and proof of service to the Honorable Mikell R. Scarborough. We have previously served this Notice of Appeal on the attorneys of record for Palmetto Construction Group.

Sincerely,

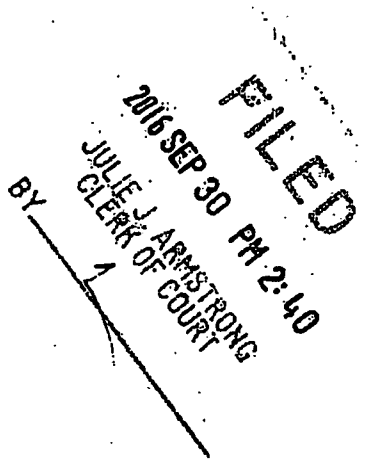
A. Bright Ariail

Enclosures
cc: (1): The Honorable Mikell R. Scarborough (Via Hand Delivery)

(2):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

EXHIBIT V

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,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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 2:40
JULIE J. ARMSTRONG
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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENTS' EMERGENCY MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review of this motion in order to attempt to mitigate its damages. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto

EXHIBIT W

responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants, but the Appellants failed to file an answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for a default damages hearing and for all other matters.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The motions were heard, and the Court, after considering affidavits and hearing argument, found in its discretion that there was no good cause shown such that the default should be lifted. The order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Respondents wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. After some consideration, the Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11. Appellants never timely noticed an appeal of the July 18, 2016 order, which is interlocutory, and the motion to reconsider is pending.

ARGUMENT

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct.

App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016, some seventy-four days after the order was received; therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP (requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.[1]

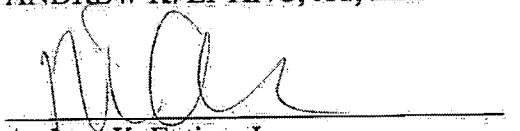
CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

[signature on following page]

[1] Palmetto's motion is truncated in an effort to mitigate its damages by filing this appeal in the hopes that it may be dismissed in advance of the damages hearing scheduled for October 4, 2016 so that it may proceed.

ANDREW K. EPTING, JR., LLC

BY: 

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 3rd day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

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).

PROOF OF SERVICE

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 3, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2016

Andrew K. Epting , Jr., Esq.
Michelle N. Endemann, Esq.
46 A State Street
Charleston, SC 29401

In Re: Palmetto Construction Group v. Restoration Specialists
Motion to Dismiss

Dear Counsel:

We have received your motion to dismiss for the above referenced matter. However, no notice of appeal has been filed under that name or lower court case number. Since no appeal is pending in this Court, we will not accept or take action on your motion to dismiss. We are returning your original documents to you, along with your filing fee, check #4184, in the amount of $50.00.

Very truly yours,

Clerk

cc:
A. Bright Ariail, Esq.

EXHIBIT X

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

EXHIBIT Y

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

(5) THE FILING FEE CHECK OF $100.00.

THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you.

DATE,TIME	10/05 16:52
FAX NO./NAME	18037341839
DURATION	00:01:42
PAGE(S)	12
RESULT	OK
MODE	STANDARD ECM

TRANSMISSION VERIFICATION REPORT

TIME	: 10/05/2016 16:54
NAME	: ARIAIL LAW FIRM
FAX	: 8432660538
TEL	: 8434067528
SER.#	: J0J512219

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)
(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
THE HONORABLE JENNY ABBOTT KITCHINGS	A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 5, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 12

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

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☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

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A. BRIGHT ARIAIL

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bright@brightariaillaw.com
A. Bright Ariail, Esquire
Telephone: (843) 814-8805
Facsimile: (843) 266-0538

October 5, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,

A. Bright Ariail
Attorney for Appellants

Enclosures
cc: 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

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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
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Attorney for Appellants

Other Counsel of Record:
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Michelle N. Endemann
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46A State Street
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(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

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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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
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(843) 814-8805
Attorney for Appellants

Formal Order

07-14-10

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10-1143 ORDER

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;
2) A damages hearing is set for October 4, 2016 at 2:00pm; and
3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:37 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
[illegible]

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

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Michelle Endemann, Esq.
Andrew K. Epting, Jr., LLC
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Ake@epting-law.com
Mne@epting-law.com

ATTORNEYS FOR THE DEFENDANT:

A. Bright Ariail, Esq.
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Bright@brightariaillaw.com

PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

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our Complaint and the Complaint went unanswered. We're here for a damages hearing. We served Mr. Ward with notice of that hearing pursuant to the Rules, and it was then that he had hired Ms. Ariail.

She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

From the documents that we have received it appears that the project was pretty profitable with all the subcontractors being paid, and then still some hundreds of thousands of dollars in profit. So we're left looking at records that show there should be a surplus of funds.

Instead we're faced with the surety coming to us and saying, Hey, you owe us over a million dollars. The other problem that my client has is they do a lot of bonded work. They have a surety that says, You owe us over a million dollars. Nobody wants to bond any projects. So time is really, really of the essence here because we can't get work. If we can't get work our business goes under, and all

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of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

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with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

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THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

MS. BECK: I didn't know if this might be something you might want to put on the trial term as a possibility. If not, we've got some time the first week in October.

THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

(The proceedings were concluded at 11:11 a.m.)

CASE NAME/CASE NUMBER: 228
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

(5) THE FILING FEE CHECK OF $100.00.

WE ARE REFILING THESE DOCUMENTS AS THE COURT REPORTER'S CERTIFICATION OF THE JULY 14, 2016 BENCH ORDER WAS INADVERTANTLY OMITTED FROM OUR OCTOBER 5, 2016 FILING WITH THE COURT OF APPEALS. THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,
A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you.

EXHIBIT Z

DATE,TIME 10/06 12:04
FAX NO./NAME 18037341839
DURATION 00:01:55
PAGE(S) 13
RESULT OK
MODE STANDARD ECM

TRANSMISSION VERIFICATION REPORT

TIME : 10/06/2016 12:06
NAME : ARIAIL LAW FIRM
FAX : 8432660538
TEL : 8434067528
SER.# : J0J5122219

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202

CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)

(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
THE HONORABLE JENNY ABBOTT KITCHINGS	A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 6, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 13

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

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(2) NOTICE OF APPEAL;

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(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

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WE ARE REFILING THESE DOCUMENTS AS THE COURT REPORTER'S CERTIFICATION OF THE JULY 14, 2016 BENCH ORDER WAS INADVERTANTLY OMITTED FROM OUR OCTOBER 5, 2016 FILING WITH THE COURT OF APPEALS. THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

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LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillasw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

October 6, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,

A. Bright Ariail
Attorney for Appellants

Enclosures
cc: 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

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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

Palmetto Construction Group, Respondent,

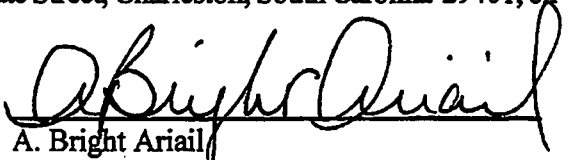
v.

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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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

Bench Order
(07-14-16)

1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:37 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box [illegible]
Charleston, South Carolina, 29407
(843) 958-[illegible]
[illegible]

2

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Andrew K. Epting, Jr., Esq.
Michelle Endemann, Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
(843) 377-1871
Ake@epting-law.com
Mne@epting-law.com

ATTORNEYS FOR THE DEFENDANT:

A. Bright Ariail, Esq.
Law Office of A. Bright Ariail, LLC
125-E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
(843) 814-8805
Bright@brightariaillaw.com

3

PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

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would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

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our Complaint and the Complaint went unanswered. We're here for a damages hearing. We served Mr. Ward with notice of that hearing pursuant to the Rules, and it was then that he had hired Ms. Ariail.

She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

From the documents that we have received it appears that the project was pretty profitable with all the subcontractors being paid, and then still some hundreds of thousands of dollars in profit. So we're left looking at records that show there should be a surplus of funds.

Instead we're faced with the surety coming to us and saying, Hey, you owe us over a million dollars. The other problem that my client has is they do a lot of bonded work. They have a surety that says, You owe us over a million dollars. Nobody wants to bond any projects. So time is really, really of the essence here because we can't get work. If we can't get work our business goes under, and all

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of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

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with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

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THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

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THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

(The proceedings were concluded at 11:11 a.m.)

State of South Carolina)
)
County of Charleston) CERTIFICATE

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

Formal Order
(07-14-16)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
[redacted]
A. Bright Ariail, Esquire
Telephone: (843) 814-8805
Facsimile: (843) 266-0538

FILED
2016 OCT -4 PM 2:45
JULIE J. ARMSTRONG
CLERK OF COURT

October 4, 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, 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 AA

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
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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

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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. Arial'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. Arial 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
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on October 4, 2016 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
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EXHIBIT BB

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PROCEEDINGS

THE COURT: We're back on the record. This is the case that is captioned Palmetto Construction Group versus Restoration Specialists, LLC, and Ruben and Lynette Ward. The case number is 2016-CP-10-1143.

The case is in a bit of an unusual posture, and that's really why I got you-all here today. We had it scheduled for a damages hearing. I know there's a motion outstanding for a Rule 59 Motion, I think it was, that Ms. Ariail had sent.

Then I was informed yesterday, I believe it was, that the case was on appeal. Ms. Ariail, let me start with you on the Defense side, and then I'll come to the Plaintiff's side and just figure out where we are. Okay?

MS. ARIAIL: Yes, sir, Your Honor. Bright Ariail for the Defendants. Quite frankly, based on the scheduling of the damages hearing and the hearing for the Motion to Alter or Amend, I filed a Notice of Appeal basically taking the position that the failure of the Court to rule on that motion prior to the damages hearing was essentially a denial. Case law supports that.

THE COURT: What case do you have for that?

MS. ARIAIL: There are so many issues, Your Honor. I have things everywhere.

THE COURT: Mainly we need to talk about the procedural aspect of where we are. Okay?

MS. ARIAIL: Okay.

THE COURT: Let me do this while you look for that case. Let me just sort of make sure I get -- I want to do the timeline down here. I think one of the questions is, where's jurisdiction? I fully understand that the filing of a Notice of Appeal is designed to divest the Court of jurisdiction. I'm just trying to figure out what is being appealed. So we had a hearing on the 6th of June, our first hearing. From that an order was issued on the 14th of July. Notice appears to have been sent and received on July 18th.

MS. ARIAIL: Yes, sir.

THE COURT: And that order set the damages hearing for today.

MS. ARIAIL: Yes, sir.

THE COURT: And then a 59(e) Motion appears to have been timely filed on July 27th. That's within ten days. That hearing was then scheduled by my office for a week from today, October 11th. Then we

went back and forth the week of September 7th. Defendant requests that the 59(e) come before the damages hearing.

Plaintiff's objected, and I kept the schedule the same, and then apparently an appeal was filed on September 30th, which would have been last Friday. Today is Tuesday, the 4th of October. I'm trying to figure out what it is you're appealing because clearly the order of July 14th is well past the 30 days.

I'm not familiar with any law which says that the failure to obtain a motion in a timely fashion would total the time to appeal, so that's what I'm trying to get at.

MS. ARIAIL: All right.

THE COURT: My initial reaction is that you're too late on the appeal, but you're not too late on a 59(e). The Court is not entertaining a 59(e). So we have the cart before the horse on one, and we have it after the fact.

MS. ARIAIL: The issue is this: There is a three-prong test whereby my clients can waive their right to arbitration. One of those includes proceeding with litigation, and this hearing, this damages hearing, is a potential item that may end up

waiving my client's rights for an arbitration.

THE COURT: Wouldn't default do that as well?

MS. ARIAIL: Your Honor --

THE COURT: Wouldn't that be the principal test? You have to demand it, and then you have to do it in a timely fashion.

MS. ARIAIL: The decision that the right for arbitration or the Motion for Arbitration was denied to stay the case and send it to arbitration was denied was based on -- according to your order, the Defendant's being in default, that is not one of the standards for not allowing arbitration to go forward. There are other prongs. There are other tests. It's the length of time between the initiation of the lawsuit and the Motion to Compel Arbitration which was very short in this case. It's whether or not there has been any litigation, anything has gone forward.

Our position is at this point, no, but I have to preserve my client's rights for arbitration, and that's why I'm concerned that they would be prejudiced if we went through with this -- went forward with this damages hearing. And the third one is whether or not the Plaintiff has been prejudiced because of some delay.

If this had been a lawsuit that had been answered and taking the normal course of litigation, we would just barely be in the discovery phase. So the point is that the wrong standard was used to deny the Motion to Compel Arbitration, and that by going forward today we are potentially -- we are in danger of waiving the Defendant's right.

THE COURT: But you still have your 59(e) outstanding. Doesn't that protect you?

MS. ARIAIL: If the 59(e) had been heard before this damages hearing, but potentially not. That's why I asked to have them switched.

THE COURT: All right. Let me hear from Ms. Endemann.

MS. ENDEMANN: Thank you, Judge. I think you've sort of hit the nail right on the head. Her objections are preserved under the 59(e) Motion. The Notice of Appeal is -- according to the Rules on its face defective, because it's supposed to include the order appealed from. There is no order subject to appeal at this point in the case.

As you indicated the first order -- first, Judge, it's interlocutory because it's denying a motion to lift the defaults and the associated affirmative defense that they tried to raise, which I

think Your Honor, it's clear in the transcript said you weren't really ruling on the merits of that. What you were saying is that they had to be out of default in order to bring it. So the order denies me from default. That is not immediately appealable until after final judgment and there is black letter South Carolina law on that point.

Number two, the 59(e) Motion that she's trying to appeal from remains outstanding before you. There is no order entered on that issue, and so this argument about waiver and arbitration -- there are cases, Your Honor, that I'm happy to provide the Court that state that arbitration is an affirmative defense, and if you're in default and you failed to raise that affirmative defense you can't bring it until you're in default just like you ruled.

There is no ruling. The point is there is no ruling yet to be appealed. This notice is defective on its face because it doesn't attach an order pursuant to the rule, and there's nothing to appeal from.

THE COURT: I'm just not sure it's final yet, Ms. Ariail. I understand your concern and your desire to preserve your clients' rights, and you seek arbitration. I fully understand that. I just don't

see where the -- other than the default I don't see where your clients have waived it. I don't see where you've waived it at all. We covered that back in June, as I recall, about the default and what happened there. I fully understand that. My recollection is that you acted timely. I'm not sure that your clients did, but I think you did. I think that's to your credit, but that doesn't get us to a final -- my opinion is it doesn't get us to a final order. Unless you can show me something that says that having a damages hearing before having a 59(e) hearing results in finality and no written order has been issued, I'm not sure I really fully understand.

I'm going to defer to the Rules because you have a Notice of an Intent to Appeal out there, but I need you all to sort of make a record because I think that's what you-all need to take up to the Appellate Court because they're not going to have an evidentiary hearing. Okay?

You-all need to be able to argue this by motion to the Appeals Court as to whether or not, in fact, there is jurisdiction or there's a technical violation of it or whatever if the order is not attached. All that stuff is within their purview. This notice was filed at 2:40 on Friday afternoon,

and like I said, I just got wind of it yesterday.

Ms. Ariail?

MS. ARIAIL: Your Honor, as I understand you're going to allow us to continue with the appeal at this point?

THE COURT: That's not within my purview. That's within the purview of the Court of Appeals.

MS. ARIAIL: And there will not be a damages hearing today?

THE COURT: What I'm going to do is I'm going to have them proffer what their damages are, and I'm going to have you proffer what you consider your 59(e) to be, and I'm going to let you-all take that up there. I'm just going to do it as a proffer. I'm not going to take testimony. They're going to tell me how much their damages are so it's in the record. You are going to tell me why I should overturn my underlying order, and then you-all can go forward from there. Okay?

MS. ARIAIL: Yes, sir.

THE COURT: And if they decide they don't have jurisdiction and they want to send it back to me, we'll have a full-blown hearing. If they decide it's proper for appeal then they can hear it. All right? I'm just making them a record because otherwise what

they're going to do is they're going to send it right back here, and we're going to do it again. All right?

So you went into your argument. Let me do that. You went into your argument about the 59(e). Go ahead and tell me why the 59(e) should be granted?

MS. ARIAIL: I have a memorandum prepared that I would like to pass up.

THE COURT: All right.

MS. ARIAIL: Your Honor, I have five different arguments to make on this point. Honestly the one that I mentioned prior is probably the most important which is the one that is actually listed as Item 5 in my memorandum, and that is that the wrong -- the test for whether or not this case should have gone to arbitration the wrong standard was applied. Specifically the Court applied a standard that -- because the Defendants were in default that they could not compel arbitration.

Case law gives you in South Carolina -- both the Federal the State Courts mirror each other somewhat. I mention the three standards. One is that a substantial length of time did not transpire between commencement of the action and commencement of the Motion to Compel Arbitration; two, the

Defendants did not engage in extensive discovery or litigation; three, the Plaintiff has not been prejudiced through an undue burden caused by any delays seeking arbitration.

So those are the three standards that the Court should have applied to determine whether or not arbitration was proper rather than the fact that the Defendants at that point were in default in this case.

THE COURT: Do any of the cases you've cited, Toler's Cove, Carlson, or General Equipment deal with default matters?

MS. ARIAIL: No, sir. Well, actually the case that I have that deals with the default matter is actually a case out of another jurisdiction.

THE COURT: Okay.

MS. ARIAIL: If you look on -- unfortunately my memo is not numbered, but if you look at the paragraph just before the conclusion, it's the Cedar Surgery Center versus Bonelli case out of Utah. Why that's important to us is they essentially have the same three-prong test, or their test is very similar to that test in South Carolina case law.

In that case, not only did the -- in our case an entry of default has been entered, but in that

case they actually went through the entry of default damages hearing all the way to default judgment, and when the Defendants filed a motion to send it to arbitration, the Court found that arbitration was proper even though they went through all of these steps.

THE COURT: Okay.

MS. ARIAL: Other arguments that I have --

THE COURT: So in that case, I don't know if you have a copy of that, but in that case what you're telling me is the Defendant was in default. They had the damages hearing. Instead of an order of default they had the damages hearing subsequent to that, and then the demand for arbitration was made?

MS. ARIAIL: Yes, sir. In fact, the Defendant didn't show up through any of the Court hearings.

THE COURT: Was a judgment issued prior to?

THE WITNESS: They had a judgment issued against them, and then after that judgment had been entered against them they filed an arbitration, and the Court held that it was proper.

THE COURT: And that was under Utah state law?

MS. ARIAIL: Yes, sir. And again, their test is very similar to our test.

THE COURT: Okay.

MS. ARIAIL: My other argument -- again, that's the -- in my opinion that's the most significant issue that's before us.

Also, I believe that we showed good cause that the entry of default should be lifted because we did assert our right to mandatory mediation and arbitration. It is a contract requirement. It's very specific in the contract. It's not, as it's been suggested, just a form contract. It's one where you actually have to check the box and select the dispute resolution procedures that you're going to use.

In addition to that, not only was arbitration -- mandatory mediation and arbitration selected, but the contract also calls for it to be -- any mediation, any alternative dispute resolution take place in the state where the project occurred which is the State of Georgia and not the State of South Carolina.

THE COURT: All right.

MS. ARIAIL: There is a question -- once a case has been submitted to an arbitrator or a mediator under both federal and state law, then the State Court no longer has jurisdiction over this proceeding.

Interestingly, not only did the Defendants in this case file a Motion to Compel Arbitration, but the Plaintiff actually filed it, contemporaneously with their Complaint. Now, in an earlier hearing Your Honor found that because the Clerk of Court basically -- once the entry of default was submitted or filed, that the Clerk of Court essentially just took that motion out of the case records, and it was never heard.

Obviously, by submitting that to the Court in the first place the Plaintiffs acknowledged that there was a requirement for mandatory mediation and arbitration, and it was something that was put before the Court. It's not something that the Clerk can just merely remove from the docket because an entry of default has been entered. I think the language that came out of the transcript was that the Clerk of Court closed it out.

THE COURT: Okay. I'm reviewing the June 6th transcript. Is it alternative mandatory mediation prior to arbitration, or are they both obligatory under the contract? Which are you telling me?

MS. ARIAIL: Let me pull it. The contract says -- this is Article 6 -- this is a standard AIA subcontract document, but there are certain things,

as I said, that you have go in and select for your particular contract. You have the name of the project, who the parties are, what have you.

In Article 6, the first paragraph addresses mediation. It says, Any claim arising out of or related to the subcontract except those waived in the subcontract shall be subject to mediation as a condition precedent to binding dispute resolution. Also, it basically says that they will use the AAA, be administered by AAA, and they will use the construction industry rules of AAA.

As I've mentioned before it says, Mediation shall be held in the place where the project is located unless another location is mutually agreed upon. The next paragraph is binding dispute resolution, and it says, For any claim subject to but not resolved by mediation pursuant to Section 6.1, the method of bonding dispute resolution shall be as follows. That's where it gives you various choices.

The first one is arbitration pursuant to Section 6.3 of this agreement. That's the one that was selected. The other two are litigation, and then it's got just an other, and it lets you fill in the blank. If you go to --

THE COURT: So the other was not filled out

either, so it's arbitration --

MS. ARIAIL: The only thing that's been checked -- and the subcontract is actually attached to the Complaint.

THE COURT: Okay.

MS. ARIAIL: The only thing that's been -- there's a big "X" in the block by arbitration pursuant to Section 6.3 of this agreement. 6.3 says, If the contractor and subcontractor have selected arbitration as a method of binding dispute resolution in Section 6.2, any claims subject to but not resolved by mediation shall be subject to arbitration which, unless the parties agree otherwise, shall be administered by AAA. It goes on and talks about the procedure itself.

THE COURT: The preceding paragraph said, Except as waived. Is there a definition of what waiver is constituted in there?

MS. ARIAIL: Say that again? I'm sorry.

THE COURT: The paragraph just prior to that, when you get into the -- it said, Except as waived. Is there a provision in the contact that talks about a waiver?

MS. ARIAIL: There is a paragraph that talks about Waiver of Subrogation.

THE COURT: Waiver of subrogation?

MS. ARIAIL: Yes, sir. So what the paragraph -- the site to waiver that you asked me about, when it says, Any claim arising out of or relating to the subcontract except as waived in the subcontract. So it's the Waiver of Subrogation. That appears in Paragraph 13.9 of the subcontract, and again, Article 6 is Mediation and Binding Dispute Resolution.

THE COURT: Take me back. Which paragraphs are you reading from?

MS. ARIAIL: Article 6, which appears on Page 8 of the subcontract as Attachment A to the Complaint.

THE COURT: I've got it.

MS. ARIAIL: Page 8, if you look at the top, it's Article 6, Mediation and Binding Dispute Resolution.

THE COURT: I've got it.

MS. ARIAIL: 6.1 addresses the mediation. 6.2 is where they determine which method of dispute resolution will be used after mediation. Then below is where it describes the arbitration process.

THE COURT: I've got you. And you said waiver was found in Section 13?

MS. ARIAIL: Waiver is -- yes, sir, 13.9 which is on Page 14.

THE COURT: Anything further on that?

MS. ARIAIL: Your Honor, I would like to clarify one thing while we're looking at the subcontract. On Page 1 it does say that Restoration Specialists is a South Carolina corporation. That is not correct. That is a typo. They do have a local field office, but they are actually a Georgia corporation.

THE COURT: Page 1 of the subcontract you said?

MS. ARIAIL: Sir?

THE COURT: Of the subcontract?

MS. ARIAIL: Yes, sir. The first page of the subcontract. I'm not sure -- why it reads that way, but the reality is that they are a Georgia corporation.

THE COURT: Okay.

MS. ARIAIL: I have a stack of cases that are cited in my memo, which I'm happy to share with all.

THE COURT: Very good.

MS. ARIAIL: I don't believe they're in the order that they appear in the memo, but the Cedar Surgery Center, which is the Utah case that I

mentioned that deals with the default, is on the top.

THE COURT: Thank you. That would be great.

All right. Ms. Endemann, let me hear from you. Let's first talk about where we are procedurally, and then we'll go into the damages question. Okay?

MS. ENDEMANN: Thank you, Your Honor. Let me just respond to Ms. Ariail. I apologize. I don't have a memorandum with me. We just received hers now, and I wasn't prepared to go forward on this today, so I'm happy to provide the cases to Your Honor in a reply memorandum if you would like.

I am not aware of the Utah case. I've just been handed a copy that Ms. Ariail is referring to, but there are cases in other jurisdictions -- I have found several -- that state that affirmative defenses are waived by default, and that arbitration is an affirmative defense. It's true that the Plaintiffs with their Complaint did, in fact, move to compel arbitration. That motion was withdrawn when no answer was received.

We served notice of everything including the arbitration demand. Obviously it was with the Complaint. Mr. Ward never made any appearance. Once no appearance was made default was entered. We asked

the Circuit Court, Judge Young, to send it here for a damages hearing and withdrew our Motion to Compel Arbitration.

Our position, Judge, without getting into the specific defenses is simply that, it's an affirmative defense. They can't raise it. They're in default. I think that's what your original order said. We don't even reach the merits of the arbitration argument. It's simply that they are in default. There was no good cause why the default should be lifted, which is what Your Honor found in your discretion in the first order, and that we never reached this question.

The motion is not properly brought. If they were going to answer, go into arbitration, we would have done that. We have been unduly prejudiced even under this test. A long substantial period of time has not eclipsed. We served discovery with the pleadings. We served our motion with the pleadings. We did everything we could because this is such a time sensitive case.

In this specific case though there wasn't a great lapse of time. The time that has lapsed has caused substantial harm to my client who was going to get ready to testify to that before Your Honor today.

So there has been prejudice even under the waiver test, not even considering the default question, But Your Honor, it's not properly before you. They're in default. It's been waived.

THE COURT: Thank you. So what I'll do is I'll give you -- what would you like? Ten days? Is ten days sufficient time to get me some sort of responsive memo?

MS. ENDEMANN: Yes, Your Honor.

THE COURT: Let's just do that. I'm worried about the courthouse closing at the end of this week, by the way, and we all may have to leave town, so maybe 14 or 15 days. Mr. Epting?

MR. EPTING: Judge, just a couple of practical observations. One of the nice things about having done this for now almost 40 years I feel comfortable standing up here and having a conversation with you and just saying, in essence, have you thought about this? In that category have you thought about this? We'd move to dismiss this appeal.

THE COURT: Has that already been filed up there?

MR. EPTING: Yes.

THE COURT: Okay.

MR. EPTING: And the probabilities are high,

Judge -- high, high, high -- that this is coming back to you. Number one, I'm hoping that what we do here today, if that is what happens, that in essence this Court can move forward and decide the merits of this damage hearing on the record that is before you.

Secondly, Judge, and I don't know if this works or not, but if of course, this notice is defective for failure to appeal from an order because that's what the Rule says, Judge. It has to be an order. The only order was an interlocutory one and the 30 days has run. If the notice is defective this Court has jurisdiction, and this Court could proceed, and this Court could rule.

Now, here's the piece, Judge that, I'm not able to conceptualize down the road, but if this Court were to enter an order that said, If I had jurisdiction then this would be my ruling. Maybe the whole thing could simply go and be decided in this one appeal, because I think, Judge, what you were trying to do is to make a record here so that hopefully this could be all done at one time somehow, some way. I'm simply observing to you without some sort of rule -- it won't be possible because there will have been no ruling by the lower Court for the Appellate Court to address the merits.

I don't know, Judge. In the back of my head something tells me that the contingency of a ruling perhaps doesn't work, but I may be confusing it with something else because if the Court does have jurisdiction, and you say if I was not divested of jurisdiction and having everything before me my ruling would be thus and so.

Then one of two things happens. Either they send it back and it's before you, or they can say, this is enough. We'll just go forward. I'm not making a legal argument, Judge. You've been doing this for quite a while yourself. It didn't occur to me until I was sitting here listening to other lawyers talk that that might be of some interest to the Court and for that reason I mention it.

THE COURT: Thank you, Mr. Epting.

MR. EPTING: Thank you, sir.

THE COURT: I'll tell you, the main reason I wanted to go forward today was because I'm well aware that the Appellate Courts are not going to have an evidentiary hearing. They're going to get it on whatever record there is. From my perspective it doesn't look like there's any kind of record, so that's the problem that we've got going forward here. They get to make that call. I've had them send me

stuff and say, Make me a record, and then it turns around and goes right back up there. I'm trying to avoid that. So to the extend you-all can get a transcript out of today's hearing when you go up there and argue that point, then at least you can have something to argue upon.

What I did, once I got notice of this yesterday, I just went back through the record and procedurally created my own timeline, which is where I started out in my production today. I sort of was scratching my head as to where we got on that particular matter.

So what I'll do is I'm going to give you-all a chance to read these, and give myself a chance to read these cases. I'm happy to read the one from Utah and see how it is, but just in going back through the record here, it looks like this case was filed March 7th, I think it was. Service of process was perfected some time in March, and then default was in April, and then it got sent over here, I believe, in early May.

The Motion to Refer was the 18th of April, and then we had our first hearing the 6th of June, and then July 11th was the date that the Motion to Stay and Compel Arbitration was filed. Then we had our

hearing on the 14th of July. That's what the order came from essentially was at that time and on that date. That's what's got us here. As I said before, it was timely. The 59(e) Motion was timely filed. I don't have any question about that. That issue came up this morning. This one was clearly timely filed.

That's sort of what I was waiting to see, and this one just sort of surprised me as to where we were and how it got on appeal as quickly as it did. I understand Ms. Ariail wanted to protect her client's interest in that regard.

The Motion to Compel Arbitration filed by the Plaintiff was withdrawn at the time the matter there was referred here; is that my understanding, Ms. Endemann?

MS. ENDEMANN: That's correct, Your Honor.

THE COURT: Very good. Let me hear about your damages. What do you-all contend your damages are first off? Give me a figure and how you calculated them. We can either take testimony or not. I want to get that figure. I'm not going to rule on that today. I just want you to know I'm not going to rule on any of this, but I'll take this under advisement for ten days or so.

MS. ENDEMANN: Yes, Your Honor. We've

prepared some Exhibit notebooks if you would like me to hand one up to you so you can have it in front of you. I'm happy to go over it. Our damages being claimed today -- our actual damages being claimed are $1.681 million. The figures are hard. They are comprised of three components. The first are receivables that are due to Palmetto Construction pursuant to the subcontract, so that includes actually a subcontract of theirs for some work that was performed and some costs that have not been reimbursed.

The figures match up to Mr. Ward's documents, so it doesn't appear that there will be any question there. The next, Your Honor, is the current due to Hanover. That's the surety that you recall has made demand upon all the indemnitors for all of these claims of subcontractors and suppliers that Restoration did not pay even though they were paid by the Federal government for the projects. So the demand that has been made is $1.4 million.

THE COURT: That's from the --

MS. ENDEMANN: The surety has made demand on the indemnitors for the full amount, $1.4 million. Yes, Your Honor, there are two open claims that total about $44,000, but the surety has actually

paid $1,186,501.71 in claims. In our Exhibit notebook we've got the check numbers that they used. That's money that's actually been paid. Then there are some outstanding claims actually paid which make up the $1.4 million, the difference. That demand was recently reiterated by the surety on the 30th of September.

THE COURT: Is that Hanover?

MS. ENDEMANN: Yes, that's Hanover. The final element of our damages, Your Honor, is the 50/50 profit split under the teaming agreement that was entered into between our clients. It was agreed that 50 percent of the proceeds would be split. There should have, under Mr. Ward's own documents, been a profit of $221,000. We have some dispute with that figure. There is some overhead and some inflated costs in there that we have adjusted somewhat.

Even under his own math we are owed a significant amount of money. We are actually claiming under the 50/50 profit split $221,730.46. Our total damages are made up of these three. We've got -- if you would like me to hand up the Exhibit notebook I'm happy to do so. Mr. Kindle (phonetic) is here and can provide some testimony if Your Honor would like.

THE COURT: Ms. Ariail?

MS. ARIAIL: Your Honor, I'm going to object to any of this information being put in the record. Again, this is essentially the damages hearing as going forward. I've essentially got Counsel for the Plaintiff testifying with no --

THE COURT: Well, I asked for a proffer and that's just what I got. That's what I was wanting. Okay? I want that to be on the record when you-all take that up there.

MS. ARIAIL: Well, I don't agree with anything that she said.

THE COURT: You don't have to.

MS. ARIAIL: I've got problems with a lot of the documents that are contained herein. Her representation that Mr. Ward has admitted -- they admitted that. I object to that. I object to the amount that she says is receivable due to PCG. I object to the profit sharing.

THE COURT: Is the teaming agreement the basis for the profit share? Is that what that is?

MS. ARIAIL: The teaming agreement expressly says there is no profit sharing. That is in dispute. There is no profit sharing. The teaming agreement specifically says --

THE COURT: That's all. You don't have to agree. And there's an indemnification agreement here as well?

MS. ARIAIL: Actually, the indemnification is with Hanover, who was the bonding company. There is a line in there that says that the parties can't even seek contribution against each other until they've satisfied the bonding company, so all of this is premature.

THE COURT: Is your client getting notices from the sureties as well?

MS. ARIAIL: No, Your Honor. He's gotten one Affidavit of Claim. He's gotten one. The majority of this has been negotiated by Palmetto. My client has not had the opportunity to review these claims. Some of them that -- Hanover has shared some information by e-mail with Mr. Ward, and he has disputed some of these claims. Regardless of his disputes with these amounts owed Hanover has gone ahead and made some of these payments as late as the summer. Restoration Specialists has been back on the project repairing work that was performed improperly by Palmetto. They've incurred expenses with that.

They've incurred a lot of expenses related to the elevator. They've had to actually hire another

company. They've had entrapments. I think that's a nightmare, some of the things that they've done trying to -- you know, they got a good report from the VA, so they have gone over and above to make sure that the VA's happy with his work, and it includes taking care of some defective work.

THE COURT: Is the project complete at this time or not?

MS. ARIAIL: Yes, sir. Yes, sir.

THE COURT: Give me the full amount of your damages again? I'm sorry, Ms. Endemann. $1.4 million or something?

MS. ENDEMANN: $1,681,000, Your Honor.

THE COURT: 681, okay. Thank you. That's the 1.186 -- the 221, was it?

MS. ENDEMANN: I'll give you the exact figures. The receivables due to the construction are $184,858.69. The profit share is $221,730.46, and due to Hanover is $1,230,888.71 for a total of $1,681,864.86.

THE COURT: Okay. I've got it.

MS. ENDEMANN: Thank you.

THE COURT: I'm just going to take that as the proffer, but again, just so you-all have it in the record and the Court understands what this case is

about. Okay? So what I'm going to do is I'm just going to take it under advisement. I'm going to ask that they give a responsive memorandum within ten days. Ms. Ariail, if you want to respond to that you can within five. Okay?

MS. ARIAIL: Yes, Your Honor.

THE COURT: I don't know when or how long they will take to make a decision on this thing. I would think it will be relatively quickly, and we may well be back here for this damages hearing. They're entitled to cross-examine the witness, and that's what they're going to do. I'm just trying to give them a picture because otherwise they won't have any idea what's going on.

The question as I see it is whether or not the question for the appeal is procedural, whether or not there's a final order from which you can appeal. I think that's number one. The second thing has to do with whether or not there's finality to that, and I don't think there's finality until a determination of damages has been held.

Ms. Ariail is concerned about waiver of the right to arbitration or mediation, and I understand that. Okay? I'm going to do that and we'll go from there.

MS. ARIAIL: Your Honor, one housekeeping thing. We do have a motion hearing next Tuesday. I'm assuming that that is not going forward?

THE COURT: We're to going to need to go forward on that one.

MS. ARIAIL: Thank you. I just wanted to confirm that.

THE COURT: Unless you-all get a remittor down here that quick, but I can't imagine that's going to happen.

MR. EPTING: And Judge, it probably will be six months. The Court of Appeals regrettably on these Motions to Dismiss, they're way backed up.

THE COURT: I understand. I understand. I'm concerned about that. I just think they will want something to look at. You will have a transcript, and you can go from there, so you can provide them with something, but my understanding is it's a motion practice at this point in time with the Appellate Court. I'm well aware of that. Okay?

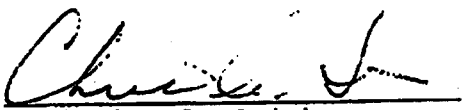
(The proceedings were concluded at 3:03 p.m.)

State of South Carolina)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of October, 2016 at Charleston, Charleston County, South Carolina.



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	COUNTY OF CHARLESTON
	)	FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION, GROUP LLC.,	)	CASE NO. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	
	)	**PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
RESTORATION SPECIALISTS, LLC REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,	)	
Defendants.	)	

FILED
2016 OCT 26 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT

A. BACKGROUND

This matter arises out of Palmetto's suit against Defendants alleging, *inter alia*, that the Defendants misappropriated funds from a government construction project, failed to pay the subcontractors and suppliers, defaulted on its agreements with Palmetto and the indemnity agreement with the surety, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Defendants on March 14, 2016, but the Defendants failed to answer. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to this Court.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Defendants and filed a motion to lift the default and compel arbitration. The motions were denied by Order dated July 14, 2016. The Order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

EXHIBIT CC

Defendants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Defendants wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. The Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11.

On September 30, 2016, Palmetto was served with a notice of appeal, and immediately filed a motion to dismiss. The parties appeared before this Court on October 4, and a record of the parties' positions was made as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending.

On October 5, Palmetto's counsel received a letter from the Court of Appeals returning its motion to dismiss on the grounds that the Court had no record of such an appeal. Also on October 5, Palmetto was served by facsimile with a copy of another notice of appeal, different than the one previously served, which attached the July 14, 2016 Order and portions of the transcript of hearing. On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. On October 17, 2016, Palmetto's counsel received a letter from the Court of Appeals stating that one of the notices of appeal was being returned to Ms. Arial together with the transcript as the transcript is not an order and is not properly included with a notice of appeal **(EXHIBIT A).**

Palmetto submits the following in opposition to Defendants' Rule 59 motion.

B. THE COURT PROPERLY DENIED DEFENDANTS' MOTION TO BE RELIEVED FROM DEFAULT

The South Carolina Rules of Civil Procedure provide: "For good cause shown the court may set aside an entry of default . . ." Rule 55(c), SCRCP. "The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court." *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). In the present case, the Court correctly concluded that the Defendants failed to show good cause for why the default should be lifted. Defendants submitted an affidavit by Mr. Ward, acknowledging service of the complaint but stating that he failed to answer because he believed this litigation was part and parcel of that filed by Hanover, the surety. However, the surety has not instituted legal proceedings. Further, the Defendants do not have a meritorious defense to Plaintiff's claims as Mr. Ward acknowledges that he has failed to pay his subcontractors and suppliers, despite being paid over $8 Million dollars by the Department of Veterans Affairs. Further, Palmetto would be severely prejudiced if the default were lifted as the passage of time pushes Palmetto closer to closing their doors, and further, Palmetto has taken actions, like the withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer.

C. PARTIES IN DEFAULT CANNOT ASSERT AFFIRMATIVE DEFENSES

As an initial matter, there are multiple Defendants named in this action and all are in default. Defendants have moved to compel arbitration, but arbitration is not a defense available to Mark Ward or Lynette Ward as they are not parties to the construction contract that contains the arbitration provision. *Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (Arbitration is a matter of contract, and only parties to the agreement can be compelled to arbitrate).

1. **Arbitration is an Affirmative Defense as Specifically Defined by the South Carolina of Civil Procedure**

Rule 8(c) SCRCP states in relevant part:

> Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality...and any other matter constituting an avoidance or affirmative defense.

Further, South Carolina courts have consistently held that arbitration is an affirmative defense. See, e.g., *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 452, 730 S.E.2d 312, 314 (2012) (where plaintiff "opposed the motion to compel arbitration on the ground Brentwood Homes waived the right to assert the affirmative defense due to its delay in responding"; *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 490, 689 S.E.2d 602, 603 (2010) ("Upstate Auto asserted three affirmative defenses in its Answer, including an arbitration agreement with Partain.").

2. **An Affirmative Defense is Waived if Not Plead**

An affirmative defense is waived if not pled. *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 272, 750 S.E.2d 615, 623 (Ct. App. 2013) (internal citations omitted), *Howard v. S. C. Dep't of Highways*, 343 S.C. 149, 152, 538 S.E.2d 291, 294 (Ct. App. 2000); see also *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182-83, 597 S.E.2d 152, 159 (Ct. App. 2004)(claims or defenses not presented in the pleadings are waived).

Specifically in the context of a party in default seeking to compel arbitration, courts in the fourth circuit have held that unless the movant is able to show good cause for its default, the defaulting party has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court. *See State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 168-69, 539 S.E.2d 106, 111-12 (2000) *citing American*

Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 96 (4th Cir. 1996) (affirmative defense of arbitration must be pled in answer); *McDonnell v. Dean Witter Reynolds*, Inc., 620 F. Supp. 152, 155-56 (D. Conn. 1985) ("the affirmative defense of arbitration must appear in the answer, and 'a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation.'") (internal citation omitted). *In State ex rel. Barden,* the West Virginia Supreme Court held that "[u]nexcused conduct that results in the entry of a default judgment is no less of an implicit waiver of a right to arbitration than any other procedural forfeiture".[1]

Defendants have cited one case in the context of a defaulting party moving for arbitration, the Supreme Court of Utah's opinion in *Cedar Surgery Center, LLC v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (2004). In Cedar Surgery, the Court suggests that the failure of the Bonellis to participate in the litigation evidenced their intent to enforce the parties' arbitration provision.[2] However, in this case, the Defendants failure to respond to the complaint and the accompanying motion to stay the litigation and compel arbitration evidences the opposite. Here, Palmetto served its own motion for arbitration with its complaint. If Restoration Specialists intended to enforce the arbitration provision, it could have simply answered and consented to arbitration. When the defendants chose to ignore

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[1] Facts in further support of the argument that Restoration Specialists waived its right to arbitration include the filing of an affidavit and motions with the Court unrelated to the arbitration issue as well as participating in discovery. The defendants answered written discovery on July 6, 2016 and then made three separate document productions on July 6, 11, and 13, 2016. It was only after their motion to lift the default was denied by this Court that Defendants moved to compel arbitration in search of a more favorable forum.

[2] "By declining to answer Cedar Surgery's complaint or otherwise respond to the litigation, the Bonellis were, in effect, refusing to acknowledge Cedar Surgery's efforts to circumvent the arbitration process with which it had contractually agreed to abide." *Cedar Surgery Ctr., LLC*, 96 P.3d 911, 915

the pleadings, Palmetto took steps in reliance on that inaction, including asking the circuit court to refer the case and withdrawing its own motion to compel arbitration. As the *Cedar Surgery Center* Court stated, Defendants should have "raised the contractual arbitration clause in an answer...and then brought a motion to compel arbitration, rather than simply ignoring" the litigation. *Id.* at 915. Defendants only sought to compel arbitration after they were unsuccessful before this Court in lifting the default. Defendants' motion to compel arbitration is more akin to forum shopping than preserving any contractual rights.

3. <u>The Federal Arbitration Act</u>

Where the contract documents "evidence transactions in commerce," the Federal Arbitration Act ("FAA"), enacted pursuant to the commerce clause, supersedes South Carolina law. *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977).

Ms. Arial represented that Restoration Specialists is a Georgia corporation, and the project was in fact constructed in Augusta Georgia. Therefore, there is interstate commerce and the FAA applies. The analysis under the FAA is the same as arbitration is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure. *See, e.g., McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152, 155-56 (D. Conn. 1985) (Holding that under Fed. R. Civ. P. 8(c), the affirmative defense of arbitration must appear in the answer, and "a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation." *citing Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495, 503 (2 Cir. 1985)). See also *Gen. Star Nat'l Ins. Co. v. Administratia Asigurarilor de Stat*, 289 F.3d 434, 438 (6th Cir. 2002) (finding waiver where a movant waited until after the entry of default judgment to compel arbitration).

D. CONCLUSION

Defendants' motion to reconsider should be denied as the Court properly found Defendants had not shown good cause to lift the default, and a party in default cannot assert the affirmative defense of arbitration.

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 18th day of October, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true
d correct copies of the pleading or paper to which
is certificate is affixed was served upon the party(s)
this action in accord with the applicable Court Rules
by electronic transmission or by hand delivery or by
regular U.S. Mail, postage prepaid, properly addressed
to the attorney(s) of record for such party(s).

Signed this 18 day of OCTOBER 2016 at
Charleston, South Carolina

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2016

RECEIVED
OCT 17 2016
By

Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive
Suite 202
Charleston SC 29412

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Bindertek #CLEX
A

cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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October 13, 2016

RECEIVED
OCT 17 2016
By

Carolyn Taylor
1220 Senate St., Suite 101
Columbia, S.C. 29201

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Ms. Taylor:

We received a duplicative notice of appeal in the above appeal. A. Bright Ariail, Esquire provided this office with a $100.00 notice of appeal filing fee in the form of a check (no. 1386) which was deposited on October 11, 2016, (receipt no. 81210). This second notice of appeal is being returned to Ms. Ariail.

Please refund the $100.00 filing fee to Ms. Ariail at the mailing address furnished below:

Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive, Suite 202
Charleston SC 29412

Thank you for your assistance in this matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

July 25, 2016

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

Re: *Palmetto Construction Group, LLC v. Restoration Specialist, LLC et al*
Case No.: 2016-CP-10-1143

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Palmetto Construction Group's Memorandum in Opposition to Defendants' Motion to Reconsider, Alter or Amend in the above-referenced matter.

I would greatly appreciate your filing the original Motion and returning the file-stamped copy to me in the self-addressed, stamped envelope provided. Thank you.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/*Angela*

Angela Gross
Legal Assistant to Andrew K. Epting, Jr.
and

/agg

Enclosures

cc: The Honorable Mikell R. Scarborough (w/enc.)
Bright Ariail, Esquire (w/enc.)

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann · mne@epting-law.com
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**REPLY TO PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 25 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider Alter or Amend.

FACTS/PROCEDURAL HISTORY

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia. ("the Norwood Parking Garage Project" or the "Project"). Prior to the contract award, the Plaintiff entered into a Teaming Agreement with Restoration in December 2011. The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project. *(Exhibit A)*.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balance due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward and Lynnette Pennington Ward ("Ward Defendants").

Plaintiff filed this lawsuit on March 7, 2016. *(Exhibit B)*. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. *(Exhibit C)*. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

EXHIBIT DD

Plaintiff simultaneously served all Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016. *(Exhibit D).*

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. *(Id.).* The Court entered default against the Defendants on April 21, 2016. *(Exhibit E).*

On the evening of June 2, 2016, the Defendants were served with a Notice of Hearing scheduling the default damages hearing for June 6, 2016. *(Exhibits F & G).* The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. *(Exhibit H).* Upon receipt of this Notice of Hearing, the Defendants immediately retained legal counsel on June 3, 2016. *(Id.).* Defendants' counsel immediately filed a Motion for Continuance of the damages hearing and a Motion to Set Aside Entry of Default on June 3, 2016. *(Exhibits I & J).*

At the hearing on June 6, 2016, the Master in Equity ("Master") granted Defendants' Motion for Continuance of the damages hearing and held the Motion to Set Aside Entry of Default in abeyance. *(Exhibit K).* The Master then directed the Defendants to provide the Plaintiff with financial information relative to the Project to see what could be resolved between the parties prior to reconvening the matter for a status conference on July 14, 2016. *(Id.).* Per the Master's direction, the Defendants provided certain documents and basic written discovery responses to Plaintiff.

On July 11, 206, the Defendants filed their own Motion to Stay and to Compel on the basis of the mandatory contractual mediation/arbitration provisions. *(Exhibit L).* In addition, the Defendants joined and consented to Plaintiff's Motion to Stay and to Compel, rendering that motion a joint Motion to Stay and to Compel mandatory mediation/arbitration ("Joint Motion"). *(Id.).* As such, Defendants' Motion to Stay and Compel and the Joint Motion to Stay and Compel were pending before the Master at this time.[1]

The parties reconvened before the Master on July 14, 2016. *(Exhibit M).* The Defendants also filed their Memorandum in Support of their Motion to Lift Entry of Default on July 14, 2016, including the continued assertion of their right to arbitration. *(Exhibit N).* During the reconvened hearing the Master stated that the Clerk of Court "closed out" the Plaintiff's Motion to Stay and Compel. *(Exhibit M.).* The Clerk's closure of the motion occurred despite Defendant's joinder in the motion. The Master issued a bench ruling finding that the Clerk's action constituted an adjudication of this motion. *(Id.).*

[1] While Plaintiff asserts that it withdrew its Motion to Stay and Compel, Defendants have not been provided a copy of

The Master further ruled from the bench finding Defendants in default, denying Defendants' Motion to Lift Entry of Default and scheduling a default damages hearing for October 4, 2016. *(Id.)*.

Upon completion of the reconvened hearing, the Master issued a formal order dated July 14, 2016. *(Exhibit O)*. The Master's formal order: (a): Denied Defendants' Motion to Lift Entry of Default for lack of good cause; (b): Denied Defendants' Motion to Stay and Compel on the basis of default; and (c): Set a damages hearing for October 4, 2016. *(Id.)*. Defendants received written notice of entry of these orders on July 18, 2016. *(Exhibit P)*.

The Defendants filed a timely Motion to Reconsider and to Alter and Amend the Master's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. *(Exhibit Q)*. The Master scheduled the hearing on Defendants' Rule 59(e) motion to be held on October 11, 2016, seven days after the scheduled damages hearing on October 4, 2016. *(Exhibit R.)*.

On September 7, 2016 standing on their rights to mandatory mediation/arbitration, the Defendants requested in writing that the Master schedule the hearing on Defendants' Rule 59(e) motion prior to the October 4, 2016 damages hearing. *(Exhibit S)*.

On September 7, 2106, the Master replied to Defendants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. *(Exhibit T)*. The Master asked the parties to advise if this plan was acceptable. *(Id.)* The Appellants informed the Master that this plan was acceptable. *(Id.)*. The Respondent notified the Master that it would defer to the Master, but preferred the damages hearing to proceed on October 4, 2016 and the motions hearing to be held thereafter on October 11, 2016. *(Id.)*.

After further consideration, the Master then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would proceed on October 4, 2016 and the motions hearing would be held on October 11, 2016. *(Id.)*. The Defendants received written notice of the Master's decision on September 12, 2016. *(Id.)*.

The Master's decision to proceed with the damages hearing and not hear the Defendants' Rule 59(e) motion prior thereto effectively denied this motion as proceeding with the damages hearing under these circumstances would have severely prejudiced and potentially forced a waiver of Defendants' rights to arbitration and foreclosure of any appeal therefrom. Therefore, subject to, without waiving and in fully reserving their rights to arbitration, the Defendants commenced an appeal in this matter on

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documentation reflecting such withdrawal, and, there is likewise nothing in the record to Defendants' knowledge.

September 30, 2016.

LAW/ANALYSIS

A. Good Cause exists such that the entry of default should be lifted in this matter.

In the present case, the contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Pursuant to these provisions, and contemporaneously with the commencement of this action, the Plaintiff made and served upon Defendants a demand for mandatory mediation/arbitration in its Motion to Stay and Compel ("Plaintiff's motion"). The Defendants joined in Plaintiff's motion and filed its own Motion to Stay and Compel mandatory mediation/arbitration less than four (4) months after Plaintiff's commencement of suit.

Applying the proper legal standard regarding the waiver/ default of arbitration rights to the evidence on record establishes that the Defendants have neither waived nor defaulted upon their rights to arbitration. *Toler's Cove Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.E. 250, 586 S.E. 2d 581 (2003); *Carlson v. South State Plastering,* LLC, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001) (; *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC*, 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

Since there has been no waiver/default upon Defendants' rights to mandatory mediation/arbitration, the Court is required to stay this litigation and submit the matter to mediation/arbitration. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (DSC 2007); *Widener v. Fort Mill* Ford, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009). Furthermore, by virtue of this requirement to stay the litigation and compel arbitration, the Court is divested of subject matter jurisdiction. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (D.S.C. 2007); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E. 2d 300 (2004).

Standing alone, these facts and the legal conclusions arising therefrom constitute good cause for lifting the entry of default, staying this action and compelling mandatory mediation/arbitration. *Id.*, *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004).

In addition, numerous other factors in this case further establish good cause and the propriety of granting relief from the entry of default. These factors include:

(1): Defendants' reasonable and good faith explanation for the default;

(2): The brief delay in Defendants appearance in this action;

(3): The Defendants prompt and timely filing of their motion seeking relief from the entry of default;

(4): The existence of significant meritorious defenses to Plaintiff's claims;

(5): The lack of prejudice to the Plaintiff if the entry of default is set aside[2];

(6): The extreme prejudice to the Defendants if the entry of default is not lifted;

(7): The promotion of justice and disposition of the case on the merits which will both be served by vacation of the entry of default.

SCRCP 55(c); *see also, Memorandum in Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c); Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law.*

For these reasons, good cause exits to vacate the entry of default in this matter.

B. All Defendants, including the Ward Defendants, are entitled to mandatory mediation/arbitration in this matter.

The Plaintiff asserts that the Ward Defendants are not entitled to mediation/arbitration in this matter because they are not signatories to the contract that contains the arbitration provisions. The Plaintiff's argument lacks merit for a number of reasons.

First, the Plaintiff's Complaint, and the causes of action asserted against all Defendants, including the Ward Defendants, allegedly arise out of or are related to the contract containing the arbitration provisions. These provisions require all claims arising out of or related to the contract to be

[2] Plaintiff asserts that it would be severely prejudiced if the default were lifted "as the passage of time pushes [Plaintiff] closer to closing their doors and further, [Plaintiff] has taken actions, like withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer." However, the claim of potentially having to close its doors is a bare assertion not supported by evidence in the record. Proof of prejudice must be concrete, not merely speculative. Furthermore, the remaining claims of "prejudice" refer to activities which are either not supported by the record or are nominal at best. Such claims are not sufficient to establish prejudice in this matter.

mediated, and if not resolved by mediation, to be resolved by binding arbitration.

Second, the arbitration provisions of the contract expressly allow for the joinder of non-signatories to the arbitration. Specifically, § 6.3.4 of the contract states in relevant part:

> "Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law of fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder."

The Ward Defendants consented in writing to their joinder in the arbitration in their Motion to Stay and to Compel Pursuant to SCRCP 12(b)91) and Applicable Case Law. Specifically, the Ward Defendants stated in their motion:

> "The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. *The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of Plaintiff's claims to mediation and, if necessary, binding arbitration.*" (emphasis added).

Third, the Plaintiff is equitably estopped from denying the Ward Defendants' standing to enforce the arbitration provisions on the following grounds: (1): The Plaintiff's Motion to Stay and Compel demanded that all claims in this action, including Plaintiff's claims against the Ward Defendants, be stayed and compelled to arbitration; (2): The application of the principles of equitable estoppel espoused and enforced in *U.S. ex rel. Coast. Roofing v. P. Browne & Assoc.*, 585 F. Supp. 2d 708 (D.S.C. 2007).

C. The Plaintiff's Arguments That The Right To Arbitrate Is An Affirmative Defense Which Has Been Waived By Defendants Lack Merit.

The Plaintiff first claims that "arbitration" is an affirmative defense as specifically defined by Rule 8(c) SCRCP. However, the only arbitration related affirmative defense specified in Rule 8(c) is the defense of "arbitration and award." The defense of "arbitration and award" is an affirmative defense asserting that the subject matter of the action has already been settled in arbitration. *Black's Law Dictionary* 120 (9th ed. 2009). Thus, Rule 8(c) is limited to the situation where a dispute already has been arbitrated and an award has been obtained. *Id.*; *Lee v. Grandcor Medical Systems, Inc.*, 702 S.

Supp. 252 (D. Colo., 1988). Neither has occurred in this case and Plaintiff's reliance on Rule 8(c) is erroneous.

The Plaintiff next asserts that South Carolina courts have consistently held that arbitration is an affirmative defense. Plaintiff cites two South Carolina cases for this proposition; namely, *Bradley v. Brentwood Homes, Inc.,* 398 S.C. 447, 730 S.E. 2d 312 (2012) and *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E. 2d 602 (2010).

The Plaintiff's reliance on these cases for this proposition is misplaced. In *Bradley*, 730 S.E. 2d at 314, the Court, in reviewing the procedural history of the case, stated:

"At the hearing before the circuit court, [Plaintiff] initially opposed the motion to compel arbitration on the ground [Defendant] waived the right to assert the affirmative defense due to its delay in responding to discovery requests."

The court's reference to Plaintiff's objection to an affirmative defense in Defendant's motion to compel arbitration was a recitation of a portion of the case procedural history and the Plaintiff's characterization of the grounds for objection.

The actual legal issue before the *Bradley* Court was whether the transaction involved interstate commerce thus rendering the arbitration agreement enforceable under the Federal Arbitration Act. The Court ultimately held that the motion to stay the proceedings and compel arbitration must be denied due to a lack of sufficient evidence of interstate commerce. The Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

Likewise, in *Partain*, 689 S.E. 2d at 603, the Court was again reviewing the procedural history of the case and Defendant's characterization of its defenses when referencing that the Defendant had "asserted three affirmative defenses in it Answer, including an arbitration agreement with [Plaintiff]." The legal issue before the *Partain* Court was whether the Plaintiff's claims were within the scope of the arbitration agreement. Once again, the Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

The remainder of Plaintiff's Opposition to Defendants' Motion to Reconsider Alter or Amend asserts that the right to compel arbitration is an affirmative defense that is waived if not plead and that a party in default cannot assert this defense. A review of the remaining cases cited by Plaintiff establish that they are distinguishable and inapposite to the present case:

(1): *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E. 2d 615 (Ct. App. 2013) – This case does not involve an arbitration agreement and concerns the defenses of res judicata and collateral estoppel);

(2): *Howard v. S.C. Dep't of Highways*, 343 S.C. 149, 538 S.E. 2d 291 (Ct. App. 2000) – This case does not involve an arbitration agreement and concerns the defense of assumption of the risk;

(3): *RIM Assocs. V. Blackwell*, 359 S.C. 170, 597 S.E. 2d 152 (Ct. App. 2004) – This case does not involve an arbitration agreement and concerns the defense of res judicata;

(4): *State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 539 S.E. 2d 106 (2000) – This case is not a South Carolina case, does not apply South Carolina law and is not binding precedent in South Carolina. This is a West Virginia case with the opinion issued by the Supreme Court of Appeals of West Virginia. While acknowledging that other courts find the arbitration defense in Rule 8(c) pertains exclusively to completed arbitration proceedings, the Court specifically holds that arbitration is an affirmative defense under West Virginia law. While holding arbitration to be an affirmative defense, the court does not find that failure to assert the defense in an answer constitutes waiver of the defense as a matter of law. The court states that as an affirmative defense it must be asserted in the answer or *it may, under appropriate circumstances, be deemed waived* pursuant to W. Va. R. Civ. P. 8(c) (emphasis added). Finally, the court's review of West Virginia waiver law does not indicate a standard similar to South Carolina's arbitration waiver law.

(5): *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F. 3d (4th Cir. 1996) – This is a federal case with the opinion issued by the United States Court of Appeals, Fourth Circuit on appeal from the United States District Court for the Eastern District of Virginia. The court applies federal civil procedure law finding that arbitration is required to be raised as an affirmative defense in the answer under the Federal Rules of Civil Procedure. Obviously, the Federal Rules of Civil Procedure do not apply in the present case. Moreover, the court made it clear in citing *Maxum Foundations, Inc., v. Salus Corp.* 779 F.2d 974 (4th Cir. 1985) in support of its finding of no waiver, that failure to assert the right to arbitrate as an affirmative defense does not waive the defense as a matter of law. Instead, it takes additional delay, significant utilization of the litigation machinery and prejudice to the party opposing the stay to before waiver/default can be found. *See Maxum Foundations, Inc.*, 779 F.2d at 982-83 (holding that defendant had not waived its right to arbitrate when it did not raise arbitration as an affirmative defense in its answer, it delayed three months after the complaint to file a motion to dismiss because of arbitrability, and it filed the motion to dismiss after discovery had been initiated in the action).

(6): *McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152 (D. Conn. 1985) - This is a federal

court case with the opinion issued by the United States District Court for the District of Connecticut. Likewise, the court applies federal civil procedure and makes it clear that any failure to assert arbitration as an affirmative defense must be accompanied by significant delay, substantial involvement in litigation and sufficient prejudice to the opposing party to find waiver.

(6): *Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495 (2 Cir. 1985) – This is a federal case with the opinion issued by the United States Court of Appeals, Second Circuit on appeal from the United States District Court for the Southern District of New York. The case arises out of a book publishing dispute, applies federal procedural law and New York substantive law and involves the affirmative defense of waiver. The case does not in any way involve issues of arbitration.

(7): *General Star Nat'l Ins. Cp. V. Administratia Asigurarilor de Stat*, 289 F.3d 434 (6th Cir. 2002) – This case is a federal case with the opinion issued by the United States Court of Appeals, Sixth Circuit on appeal from the United States District Court for the Southern District of Ohio. The court applied federal law in finding that the Defendant waived its right to arbitrate due to its extreme delay in asserting the right to arbitrate and the prejudice incurred by the Plaintiff. Specifically, the Defendant did not assert its right to arbitration until 17 months after receiving notice of the lawsuit and 1 year after the entry of default judgment, during which time the Plaintiff incurred the costs of the action.

D. The Defendants Have Not Defaulted Upon Nor Waived Their Right To Mediation/Arbitration Under The Mandatory Alternative Dispute Resolution Provisions Of The Contract And Applicable Law.

The policy of the United States and South Carolina is to favor arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000).

In South Carolina, "[i]n order to establish waiver of the right to enforce an arbitration clause, a party must show prejudice through an undue burden caused by delay in demanding arbitration." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E. 2d 749, 753 (Ct. App. 1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.* (internal quotation marks omitted).

The Court of Appeals has recognized three factors to consider when determining whether a party has waived its right to compel arbitration:

(1) whether a substantial length of time transpired between the commencement of the action and the

commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.

Davis v. KB Home of S.C., Inc., 394 S.C. 116, 131, 713 S.E. 2d 799, 807 (Ct. App. 2011) (internal quotation marks omitted).

"To establish prejudice, the non-moving party must show something more than mere inconvenience." *Id.* (internal quotation marks omitted). In addition to the above factors, the Court of Appeals has also considered the extent to which the parties have availed themselves of the circuit court's assistance. *See id.* at 133, 713 S.E. 2d at 808.

Similarly, under federal law governing arbitration agreements subject to the Federal Arbitration Act, the party opposing arbitration bears a heavy burden of proving default or waiver. *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008). Default or waiver only arises when the party seeking arbitration "so substantially utilize[ed] the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay." *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *see also, Brown v. Green Tree Services, LLC,* 585 F.Supp. 2d 770 (D.S.C.); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003). Because of the strong federal policy favoring arbitration the federal courts do not lightly infer the circumstances constituting waiver. *Patten Grading*, 380 F. 3d 200.

In the present case, the Defendants moved to set aside the entry of default, one of the grounds for which included Defendants' right to arbitration, within 2 ½ months after commencement of this action and 1 ½ months after the entry of default. In addition, they formally moved to compel arbitration less than four (4) months after commencement of the action, within 2 ½ months after the entry of default and within 5 weeks of learning of the entry of default. No depositions have been taken in this action. The Defendants have not served and the Plaintiff has not responded to any interrogatories, requests for production or other written discovery. In fact, the only discovery engaged in is the Defendants answering of Plaintiff's basic First Set of Interrogatories and First Request for Production. Defendants answered Plaintiff's limited written discovery pursuant to the direction of the Court. The Court's assistance has been limited to two (2) brief motions hearings and one (1) brief proffering conference. Finally, the Plaintiff has not been prejudiced through an undue burden caused by any delay in the Defendants' demand for arbitration.

Applying the above standards to the facts in this case, it is clear that the Defendants have not defaulted upon nor waived their right to mandatory mediation/arbitration under either state or federal law. *See, Toler's Cover Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581; *Carlson v. South State Plastering, LLC*, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr.*, 344 S.C. 533, 544 S.E. 2d 643 (Ct. App. 2001); *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also*, *Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an order lifting the entry of default, staying this action and compelling mandatory mediation/arbitration of this matter.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Reconsider and to Alter or Amend Pursuant to Rule 59(e) and Applicable Law be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: _____

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

October 24, 2016
Charleston, SC

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

STATE OF SOUTH CAROLINA 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 **CERTIFICATE OF SERVICE**

FILED
2016 OCT 25 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 24th day of October, 2016, a true and correct copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter or Amend was delivered via US Mail and/or electronic transmission to the following:

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401

A. Bright Ariail

Charleston, South Carolina
October 24, 2016

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

EXHIBIT A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. **Note:** It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	**Limit of liability or bond amount ($1,000,000.00 per incident)**
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	**Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	**SUBCONTRACTOR** *(Signature)*
Mark Ward – Managing Member	Jay Hannigan - Vice President
(Printed name and title)	*(Printed name and title)*

Init. /

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

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

SC Bar #: SC Bar 01908 and 79894
Telephone #: 843-377-1871
Fax #: 843-377-1310
Other:
E-mail: ake@epting-law.com
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 filed out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
2016 MAR -7 PM 12:26
JULIE ARMSTRONG
CLERK OF COURT
BY

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)

EXHIBIT B

Submitting Party Signature: _____ **Date:** 02/12/2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **SUMMONS**

FILED
2016 MAR -7 PM 12:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-_114 3 **COMPLAINT**

FILED
2016 MAR -7 PM 12:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The above-named Plaintiff, subject to its simultaneously filed Motion to Stay and to Compel, states as follows:

1. Plaintiff Palmetto Construction Group, LLC ("Palmetto"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

2. Defendant Restoration Specialists, LLC ("Restoration"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant Reuben Mark Ward ("Mr. Ward") is an individual residing in the State of South Carolina at 1042-A East Montague Avenue, Charleston, SC 29405 and doing business in Charleston County, South Carolina as the Managing Member of Restoration.

4. Defendant Lynnette Pennington Ward ("Mrs. Ward") is an individual residing in the State of South Carolina and doing business in Charleston County, South Carolina.

5. Palmetto entered into a contract with Restoration on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

6. That venue is proper in this court and this court has jurisdiction over the parties.

7. Attached as Exhibit A is the contract between Palmetto and Restoration together with a Teaming Agreement, Exhibit B, dated November 28, 2011.

8. That Palmetto has performed its contract and has completed all of its work on the project aforesaid.

9. Restoration has failed to pay the contract balances due under the contract and furthermore has failed to account for the profit sharing funds. As a consequence, Restoration has defaulted under its agreements with Palmetto.

10. Palmetto, Restoration, and, individually, Mr. Ward and Mrs. Ward, all signed an indemnity agreement with a surety in relation to a Payment Bond for this project (Exhibit C). Accordingly, Restoration, Mr. Ward, and Mrs. Ward must indemnify the surety and Plaintiffs to the extent that they are required to pay.

11. Claims have been made by other subcontractors upon the Payment Bond and as a consequence subcontractors are making claims against Palmetto and its surety.

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

13. Restoration has received funds from the United States of America and has not paid those funds as required by its agreements with Palmetto as well as other subcontractors performing services for Restoration.

14. As a consequence of Restoration's default under its agreements with Palmetto and other subcontractors, Palmetto has been damaged in a sum to be determined.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

16. Mr. Ward represented that he would manage this project and that all monies from the project would be used to pay for material and work supplied to or performed on the project.

17. Mr. Ward has a pecuniary interest in the project.

18. The representations of Mr. Ward were material and were relied upon by Palmetto. Mr. Ward is personally liable for his own tortious conduct.

19. Palmetto's justifiable reliance upon Mr. Ward has resulted in damages in a sum to be determined.

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

21. Mr. Ward knew or should have known that his statements were material and would be relied upon by Palmetto.

22. Mr. Ward intended and induced Palmetto to rely upon his representations.

23. Palmetto's justifiable reliance has damaged Palmetto in a sum to be determined.

24. Palmetto, in addition to requesting actual damages, requests punitive damages.

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

26. All Defendants are contractually bound to pay funds if there are claims on the surety bond.

27. There are claims on the surety bond.

28. Plaintiff requests legal and equitable relief against the Defendants.

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

30. Palmetto requests that this court enter its order mandating that any funds held or to be received by Restoration be utilized to pay Palmetto the sums due.

31. Upon information and belief, given Restoration and Mr. Ward's financial viability, an award of monetary damages would not protect Palmetto from injury.

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

32. Palmetto restates each and every allegation above.

33. Because Palmetto does not know all funds Mr. Ward has received and what has been distributed Palmetto asks for an accounting.

WHEREFORE, Palmetto requests actual and punitive damages, injunctive relief, an accounting, and such other relief as is just and proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

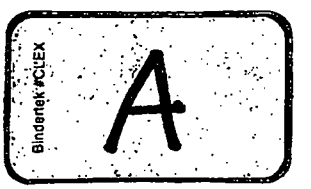
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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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

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE

§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	SUBCONTRACTOR *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

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TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

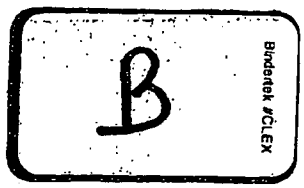
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**	Attention: **Jay Handegan**
Restoration Specialists, LLC	Palmetto Construction Group, LLC
PO Box 5352	2265 Clements Ferry Rd. Suite 204
Savannah, Ga. 31414	Charleston, SC 29492
(912) 659-4355	(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	PALMETTO CONSTRUCTION GROUP
By: _____	By: _____
(Authorized Signature)	(Authorized Signature)
Title: Managing Member	Title: Vice President
Date: 12-01-11	Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Binderlek #CLEX C

Restoration Specialists, LLC — PRINCIPAL

	1.	2.	3.	
SIGNATURE(S)	(Seal)	(Seal)	(Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

	1.	2.
SIGNATURE(S)	(Seal)	(Seal)
NAME(S) *(Typed)*	1.	2.

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.	

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STANDARD FORM 25A (REV. 10-98)
Prescribed by GSA-FAR (48 CFR) 53.228(c)

CORPORATE SURETY(IES) *(Continued)*					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 :tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 360 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil... Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra... with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — **PRINCIPAL**

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2.	(Seal)
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — **CORPORATE SURETY(IES)**

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000.00	
	SIGNATURE(S)	1.	2.		Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY 1852

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10- 1143 **MOTION TO STAY AND TO COMPEL**

FILED
2016 MAR -7 PM 12:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this court for an order staying this matter and compelling mediation and, if necessary, arbitration by the parties to proceed as contractually required by Article 6 of their Subcontract Agreement. In support thereof, Plaintiff states as follows:

1. Palmetto entered into a Subcontract Agreement (Exhibit A) with Restoration Specialists, LLC ("Restoration") on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

2. The Subcontract Agreement contains a provision (Section 6.1.1) requiring the submission of any claim arising out of or related to the agreement to mediation as a condition precedent to binding dispute resolution. Additionally, Section 6.1.2 sets out specifically that the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement.

EXHIBIT C

3. Section 6.1.2 of the Subcontract Agreement provides that a request for mediation may be made concurrently with the filing of binding dispute resolution proceedings. Under Section 6.2, any claim subject to but not resolved by mediation shall be resolved by binding arbitration pursuant to Section 6.3 of the agreement. Further, Section 6.3.1 provides that the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement.

4. Palmetto now alleges that a dispute has arisen out of and involving said Subcontract Agreement and that the Defendants are bound to mediate and arbitrate.

WHEREFORE, Palmetto prays that an order of this court be made directing that the claims asserted by Palmetto against the Defendants that arise out of the parties dealings be stayed, that mediation, and, if necessary, arbitration proceed in the manner provided for in said agreement, and for such other and further relief as to the court may seem proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

On this 17 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

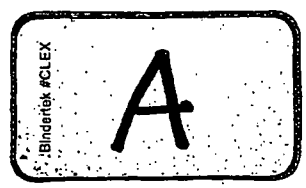
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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8 THE WORK OF THIS SUBCONTRACT

9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

10 SUBCONTRACT SUM

11 PROGRESS PAYMENTS

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15 MISCELLANEOUS PROVISIONS

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY

The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. **Note:** It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via. Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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User Notes: (1114130519)

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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User Notes:
(1114130519)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	**SUBCONTRACTOR** *(Signature)*
Mark Ward – Managing Member	Jay Hannegan - Vice President
(Printed name and title)	*(Printed name and title)*

Init.

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User Notes: (1114130519)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10-1143 **MOTION TO REFER TO THE MASTER IN EQUITY AND FOR ENTRY OF DEFAULT**

FILED
2016 APR 18 PM 3:2
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this Court for an order referring this case to the Master in Equity and for entry of default against the Defendants. As appears from the attached affidavit of default, Plaintiff served Defendants by way of process server with a copy of the summons and complaint and discovery requests on March 14, 2016. (See Exhibit A). Defendants have filed no pleading and have made no appearance in this case. Therefore, Plaintiff respectfully requests a default and that this matter be referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

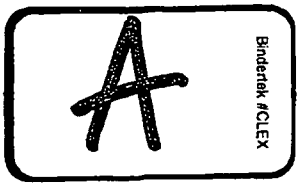
DATED: April 18, 2016
Charleston, South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **AFFIDAVIT OF DEFAULT**

PERSONALLY APPEARED before me, Andrew K. Epting, Jr., who, being duly sworn, alleges and says as follows:

1. I am the attorney for Palmetto Construction Group, LLC. in the above captioned matter, and I have personal knowledge of the facts relating to this action.
2. On March 7, 2016, Plaintiff filed a Summons and Complaint against Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, in the Charleston County Court of Common Pleas.
3. A copy of the Summons and Complaint was served on Defendant Restoration Specialists, LLC, by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, attached hereto as EXHIBIT 1.
4. A copy of the Summons and Complaint was served on Defendant Reuben Mark Ward by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, and attached hereto as EXHIBIT 2.
5. A copy of the Summons and Complaint was served on Defendant Lynnette Pennington Ward by personal service, as evidenced by the Affidavit of Service dated



March 14, 2016, and attached hereto as EXHIBIT 3.

6. More than thirty (30) days have elapsed since service of Plaintiff's Summons and Complaint. Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward have failed to answer or otherwise respond to the Complaint. Neither the Defendants nor counsel for Defendants have made an appearance or contacted Plaintiff or counsel for plaintiff.
7. Defendant Restoration Specialists, LLC is in default.
8. Defendant Rueben Mark Ward is in default.
9. Defendant Lynnette Pennington Ward is in default.
10. Defendant Reuben Mark Ward is not a minor, incompetent or in the military service.
11. Defendant Lynnette Pennington Ward is not a minor, incompetent or in the military service.

Andrew K. Epting

ANDREW K. EPTING, JR., ESQUIRE
Andrew K. Epting, Jr.
Michelle N. Endemann
Attorneys for Plaintiff
46A State Street
Charleston, SC 29401
Phone: (843) 722-6612
Fax: (843) 377-1310
ake@epting-law.com
mne@epting-law.com

SWORN TO BEFORE ME THIS
18 day of APRIL, 2016.

Notary Public for South Carolina

ANGELA GODDARD GROSS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Restoration Specialists, LLC, Reuben Mark Ward, Registered Agent, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:20pm., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Reuben Ward as Registered Agent a person authorized to accept service.

( ) GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

( ) NON SERVICE: Due to reasons detailed in Comments below.

COMMENTS: Served at: 7 Diamond Causeway, Savannah, GA 31406

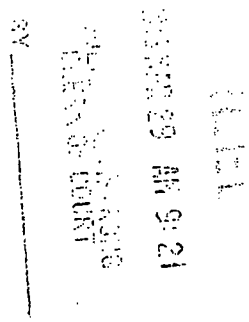
Age 40 Sex (M) F Race White Height 5'10" Weight 185 Hair Bald Glasses Y (N)

Bindertek #CLEX 1

RECEIVED
MAR 22 2016
By _____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



Subscribed and Sworn to before me on the 15 day of November, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires



PROCESS SERVER # _____
Appointed in accordance with State Statute

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000516

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Reuben Mark Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

( ) INDIVIDUAL SERVICE: Served personally to the within-named.

(X) SUBSTITUTE SERVICE: By delivering to: Lynnete Ward, as co-resident/spouse, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

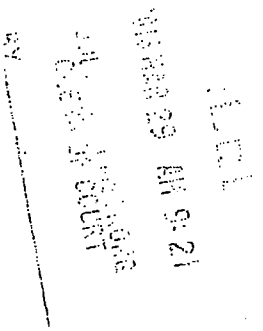
Age F Sex M (F) Race White Height 5'6" Weight 130 Hair Blond Glasses Y (N)

RECEIVED
IN MAR 22 2016
By_____

Bindertek #CLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: OCT. 15 2019

JOYCE M. CRISP NOTARY PUBLIC CHATHAM CO. GEORGIA MY COMMISSION EXPIRES

PROCESS SERVER # _____
Appointed in accordance with State Statutes

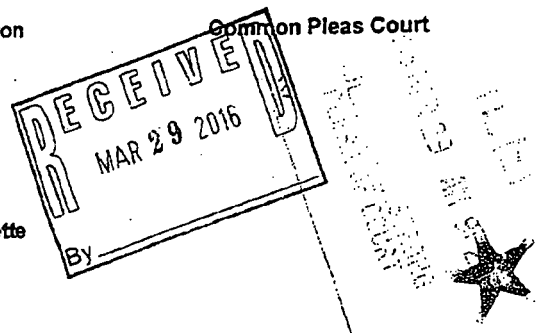
SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**



Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on Lynnete **Pennington Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 20 16 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served personally to the within-named.

( ) SUBSTITUTE SERVICE: By delivering to:_____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

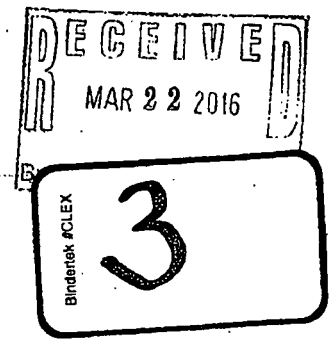
( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age 35 Sex M (F) Race White Height 5'6" Weight 130 Hair Blond Glasses (Y) (N)



AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: OCT 15 2019

JOSEPH E. CRISP NOTARY PUBLIC CHATHAM CO., GEORGIA MY COMMISSION EXPIRES

PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000517

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10[illegible]-1143 **ORDER**

FILED
2016 APR 21 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on the motion of Plaintiff seeking a referral to the Master in Equity and that the Defendants be declared in default.

WHEREAS an affidavit of default was filed on April 18, 2016;

WHEREAS from the affidavit of default, it appears that no pleading has been filed and no appearance on behalf of the Defendants made;

WHEREAS the Plaintiff seeks to have this matter referred to the Master in Equity and seeks a default against Defendants;

IT IS ORDERED that the Defendants are in default and this matter is referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

IT IS SO ORDERED.

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

On this 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**

FILED
2016 JUN -6 AM 11:1
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

I was served with the Notice of Hearing for the default damages hearing on June 2, 2016 at 6:30 p.m. by process server at my home located at 3 Bailey Reach, Savannah, Ga. 31411.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/4/2019.

REBECCA M MAZUR NOTARY PUBLIC CHATHAM COUNTY, GA

EXHIBIT F

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants	)	CASE NO. 2016-CP-10-1143 **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a default damages hearing is scheduled on Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Charleston County Court of Common Pleas located at 100 Broad Street, Charleston, SC 29401 pursuant to the enclosed Order of the Honorable Roger M. Young, Sr. dated April 20, 2016.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
45A State Street, Charleston, SC 29401
P: 843.577.1871
P: 843.577.1310
ake@eptinglaw.com; mne@eptinglaw.com
ATTORNEYS FOR PLAINTIFF

June ___, 2016.
Charleston, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, v. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143 **AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

2. On March 29, 2012, Restoration Specialists was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia (the "Project").

3. On April 23, 2012, pursuant to the terms of that contract, Restoration Specialists provided Payment Bond 1944091 (the "Bond"), which was issued by The Hanover Insurance Company ("Hanover"). The Bond is at issue in this action.

4. I received the Summons and Complaint in the above referenced action on or about March 14, 2016.

5. Prior to receipt of the Summons and Complaint, I was contacted by James E. Rudnik, Esq., the Director – Risk Mitigation|Surety for The Hanover Insurance Group regarding the Bond.

6. On or about March 10, 2016, Mr. Rudnik notified me of certain bond claims that had been made against the Bond.

7. Pursuant to my discussions with Mr. Rudnik, Restoration Specialists has made direct payment to several subcontractors deemed to have valid bond claims.

8. Further, Restoration Specialists continues to have discussions with Hanover regarding other bond claims made.

EXHIBIT H

9. When I received the Summons and Complaint for the instant action, I thought that it was related to my arrangements with Hanover.

10. I am not an attorney and did not understand that the above captioned action was separate and apart from the bond claims that I have been working directly with Mr. Rudnik and Hanover to address.

11. I have no record and no recollection of receiving 1) a notice of motion hearing related to the Motion to Stay and to Compel, 2) the Motion to Refer to the Master in Equity and for Entry of Default, or 3) the Order for Entry of Default and Referral to the Master in Equity.

12. Upon receipt of the Notice of Hearing for the default damages hearing, the defendants understood for the first time that this was a separate action and immediately notified their attorney.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/11/2019

REBECCA M MAZUR NOTARY PUBLIC Exp. Sept. 11, 2019 CHATHAM COUNTY, GA

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
)	
vs.)	
)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 PM 3:

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

EXHIBIT I

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUN -3 PM 3:3

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

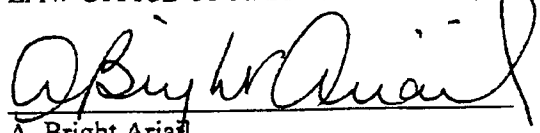
(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
)	
vs.)	
)	
Restoration Specialists, LLC,)	
Reuben Mark Ward, and Lynnette)	
Pennington Ward)	
)	
Defendants.)	

2016 JUN -3 P 3:30

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

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ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 11:29 a.m. on June 6, 2016 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

EXHIBIT K

APPEARANCES OF COUNSEL:

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PROCEEDINGS

THE COURT: This matter is captioned Palmetto Construction Group, LLC versus Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. The case number is 2016-CP-10-1143.

The matter is set today as a default damages hearing, and the matter was referred to the Court on April 18th, and entry of default was entered on that same date. It appears that service process was performed on Reuben Ward on or about March 14th, the case having been filed on March 7th, and also on Lynnette Ward on that same date it appears.

I believe Mr. Ward was served as the agent for the corporation, Restoration Specialists, LLC. This Court set it for a hearing in April on damages. I did receive, and I don't know -- have you got that --

MR. FISHBURNE: That is it.

THE COURT: Late last week from the Law Office of A. Bright Ariail a Motion to Set Aside the Entry of Default and also for continuance. Have you-all been provided with that as well?

MS. ENDEMANN: Yes, Judge, we were served on Friday afternoon.

THE COURT: Do you want to be heard first on

the motion before we get to the subset of the aspect of it, or where do we stand on that?

MS. ENDEMANN: Well, Judge, we were served late Friday, and we are amenable to try to come to some resolution of these motions. If I could give you a little bit of context and background for the case?

THE COURT: Sure.

MS. ENDEMANN: It's a case that arises out of a project for the VA. It was completing a hospital parking deck in Georgia. So Restoration Specialists was the general contractor on the project with the Department of Veteran's Affairs. My client, Palmetto Construction Group -- I have Mr. Kendle with me here today -- was approached by Restoration.

This was a large project for them. They needed some help getting a bond in place. In order to complete the job they needed help managing the project. They needed help completing the project. So they came to my client, Palmetto Construction Group, and asked for assistance.

A teaming agreement was entered into. So under this agreement Palmetto would manage the project, they would do other certain responsibilities, and Restoration would stay as the

general contractor. There would be a profit split as a result of this agreement. The project started -- seemingly it was going pretty well.

Towards the end of the project, we started to get some red flags. We started to get notices that some of the subcontractors, some of the suppliers, are not being paid by Restoration. Unfortunately, as part of this agreement with Restoration, Palmetto got their bonding company to write this bond. Palmetto is liable on the bond with Mr. Ward and Restoration and Ms. Ward. Mr. Kendle personally is liable on the bond. Mr. Handegan, another primary principal at Palmetto is obligated on the bond and so is his wife.

So when all of these claims start coming in from these subcontractors who say they're not getting paid from Restoration, it becomes our problem in a very large way. Hanover, the bonding company, turns to us and says, You need to pay for this. You're obligors on the bond. Now we have approximately $1.4 million dollars in claims on this bond for subcontractors and suppliers that have not been paid, and Hanover is looking to us to pay it.

It's impacting other jobs because obviously they have this issue with the bonding company, getting other bonds is becoming a problem. So

there's some real urgency on our clients' part to get this worked out as fast as we possibly can.

Mr. Ward had been making some overtures. Ms. Ariail was retained, and she filed the motions that you discussed earlier on Friday. If we could get some agreement, Judge? We need the file. We need the financials. We need the bank accounts. We need to get these documents in place, and we would like to ask him some questions about, where are these funds? You are receiving payments from the Federal Government. Where is the money going because Hanover is coming to us saying we need to pay it. We did our part but we're going to end up in a really tough spot here. So the urgency is really what we're impressing here.

We're amenable to trying to work something out on these motions, but we really need to have an agreement and exchange so that we can have these documents. We actually served the discovery with the Complaint, so it's already pretty well overdue. I actually today just served some deposition notices on Ms. Ariail. Of course she's just getting involved in the case.

We are looking to get these records as soon as possible. That's a little bit about potential

accounting that would be great. If that can't be done in the short term we would like the file. We would like the file anyway, but we would like that at least in the next seven or so days. If we can take a deposition in the next 14 days I think Ms. Ariail might have some issues with the date but as soon as possible, and maybe even get a hearing in front of Your Honor in case any other issues come up with the discovery or if we need to go to mediation. If there is any kind of order that we would like the Court's help with we could come back to you in order to work this out as quickly as we possibly can.

THE COURT: Ms. Ariail?

MS. ARIAIL: Your Honor, I learned of this matter Thursday night of last week. I have represented Restoration Specialists in other matters, so I am, unfortunately very new to this issue. I do understand from Mr. Ward, who is the managing member of Restoration Specialists, that he has been in contact with the attorney -- I guess it's an in-house attorney with the bonding company, and he has made some payments on some of these claims that are considered valid reaching back into the March timeframe of this year.

I know that he is eager to get this issue

resolved and behind him also. I've spoken to him after speaking with Palmetto's counsel on Friday, and he is willing to provide the documentation and absolutely would be willing to mediate this case. I believe there were -- per the contractors there was a mediation and then mandatory mediation as condition precedent to arbitration. So we would like to do that.

Unfortunately it's compounded by -- I'm actually leaving the country on Saturday for two weeks. I had not asked for an order of protection in this Court because I didn't have anything active in this Court. So that unfortunately is going to impact the time. I'm willing to do what I need to do to try to facilitate the exchange of information and move forward with this.

THE COURT: I think June 10th through the 24th were the dates you were requesting that you would be out?

MS. ARIAIL: Yes, sir.

THE COURT: Do you have information? Do you have documentation from your client based on your conversation you must have had last week with them? Have you gotten any of this stuff? Do you have it in hand I guess is my question?

MS. ARIAIL: I do not. The only thing I have are a couple of affidavits that are specific to the subject of the motions that I had filed.

THE COURT: I haven't seen any affidavits.

MS. ARIAIL: I just filed them this morning, Your Honor. He's out of state, so I had to have them overnighted to me on Saturday.

THE COURT: Sure.

MS. ARIAIL: I'll be happy to pass a copy up to you.

THE COURT: Okay.

MS. ARIAIL: Again, I had filed a Motion for Continuance and Protection. This is just dealing with this schedule to try to give me some time to figure out what's going on here and -- and then the Motion to Set Aside the Default. So there's two affidavits.

THE COURT: Okay. You have two affidavits from Mr. Ward: One explaining what was going on relative to the bond, and acknowledging receipt of the Summons and Complaint on or about March 14th; the other stating he's the managing member and just got notice of this hearing on June 2, which would have been last Thursday night at 6:30.

Ms. Endemann?

MS. ENDEMANN: Thank, you, Judge. I'm going to object to these just because I haven't seen them before now. One of the things I would like to point out -- we did serve Mr. Ward pursuant to the Rule last week with the notice of this hearing, and then ever since then there's sort of been a flurry of e-mail correspondence with the bonding company, and there have been some payments, but my understanding is that it's right near $20,000 on the $1.4 million that's outstanding.

So while he's making overtures, respectfully, we really need to push forward with the discovery because obviously that's not even putting a dent into what's owed. We're copied on most of this correspondence with the bonding company since they're coming to us weekly, if not daily, to get updates and try to get their money.

THE COURT: Are you-all already out the 1.4 or is that the amount of the claim.

MS. ENDEMANN: That's the amount of the claims. The bonding company has been making demand on this because they have been starting to pay these claims, and so our time is running very short. Then Ms. Ariail is going on vacation. I understand that. We can maybe work with her on the deposition dates.

I think we noticed it on the 20th. She will be back on the 26th. We can certainly move it until when she gets back, but Your Honor, I would really, really request that we can get these documents produced and the bank account information produced in advance of her going on her trip.

THE COURT: Ms. Arial, is that possible?

MS. ARIAIL: Your Honor, I will speak to my client. I can't represent to you when I can do it. I know he's out of the state today. He's in Oklahoma. I'm not sure when he's coming back, but I will absolutely do my best to make that happen.

THE COURT: All right. Here's what I'm going to do. I'm going to see if -- you-all need to get on a short timetable to see if you-all can't get a little scheduling order worked out over the next 60 days. I'm going to bring you-all back in here. I'm going to hold both of these motions under -- I'm going to essentially grant your Motion to Continue the Matter. Okay? Your Motion for Relief from the Entry of Default I'm not going to rule on yet. There's not much I saw in that affidavit that would give me indication that I would grant that motion. I can tell you that right now. Okay?

I will give you-all some time to see what

you-all can do to work out in the meanwhile, but it sounds like it needs to happen sooner than later. Okay? So I'll hold the Motion to Reopen the Entry of Default in abeyance.

As it stands now, the Defendants are in default. I'm going to give you some time because you are going on vacation, but it sounds to me like your client needs to come up with some information pretty darn quick. Okay? Let's see if you-all can't get this thing resolved. You indicated there was -- I think I read that in your correspondence. There was some sort of mandatory mediation prior to arbitration was you-all's contractual arrangement; is that what it was?

MS. ARIAIL: Yes, sir.

THE COURT: Well, we'll cross that bridge when we get to it. Okay? I would see if you-all can't set that up and get some information and get rolling with this. I'm going to bring you-all back in here. Let's get a date.

MS. BECK: We have some time July 14th.

THE COURT: Do you want to get a status about that time? July 14th? Does that give you enough time? You're going to be gone until the 24th, so back in the office -- that would be -- we ought to

find out where we're going at that time? Why don't you-all give me a response -- what does that day look like? Is it wide open?

MS. BECK: The 14th?

THE COURT: Yes.

MS. BECK: We have one at 11:00.

THE COURT: I'll put you-all down for 11:00 a.m. on the 14th of July. We'll reconvene at that time. See what you-all can resolve.

MS. ENDEMANN: Thank you, Judge.

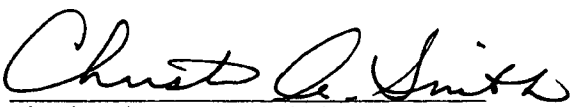
(The proceedings were concluded at 11:43 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2016-CP-10-1143
)	
Palmetto Construction Group)	
)	
Plaintiff,)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**
)	
vs.)	
)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward)	
)	
Defendants.)	

FILED
2016 JUL 11 AM 11:59
CHARLESTON COUNTY
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

(2): The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of

EXHIBIT L

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 11, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA 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**

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF

A. Bright Ariail, Esquire
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Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter
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EXHIBIT M

APPEARANCES OF COUNSEL:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

our Complaint and the Complaint went unanswered. We're here for a damages hearing. We served Mr. Ward with notice of that hearing pursuant to the Rules, and it was then that he had hired Ms. Ariail.

She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

From the documents that we have received it appears that the project was pretty profitable with all the subcontractors being paid, and then still some hundreds of thousands of dollars in profit. So we're left looking at records that show there should be a surplus of funds.

Instead we're faced with the surety coming to us and saying, Hey, you owe us over a million dollars. The other problem that my client has is they do a lot of bonded work. They have a surety that says, You owe us over a million dollars. Nobody wants to bond any projects. So time is really, really of the essence here because we can't get work. If we can't get work our business goes under, and all

of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

MS. BECK: I didn't know if this might be something you might want to put on the trial term as a possibility. If not, we've got some time the first week in October.

THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

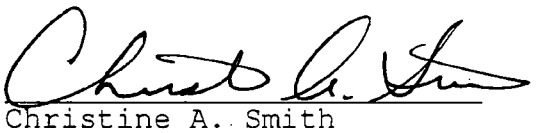
(The proceedings were concluded at 11:11 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.



Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**

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Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). *(Exhibit A)*. Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

EXHIBIT N

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following: (1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B).* There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C)*. Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

If Defendants prevail on any of these defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Defendants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

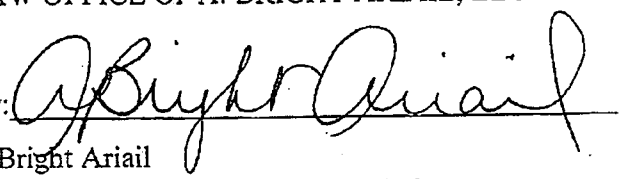
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

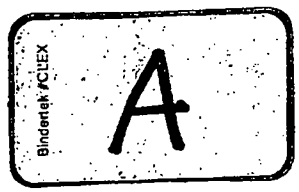
Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.



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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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User Notes:
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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*

Mark Ward – Managing Member

(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*

Jay Hannegan - Vice President

(Printed name and title)

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User Notes:
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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 5GXEI, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

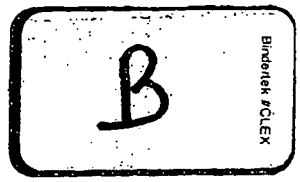
If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:



(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)
Title: Managing Member
Date: 12-07-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)
Title: Vice President
Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.:9000-0045 Expires: 11/30/2012
	April 23, 2012	

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA

SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	5	999	860	00
	CONTRACT DATE: March 13, 2012		CONTRACT NO.: VA247-C-0035	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Bindertek #CLEX C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) *(Typed)*	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000
	SIGNATURE(S)	1.	2.	Corporate Seal
	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 sed when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)* April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)*
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5 · THOUSAND(S): 999 · HUNDRED(S): 860 · CENTS: 00 CONTRACT DATE: March 13, 2012 · CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — PRINCIPAL

	1.	2.	3.	
SIGNATURE(S)	(Seal)	(Seal)	(Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

	1.	2.
SIGNATURE(S)	(Seal)	(Seal)
NAME(S) *(Typed)*	1.	2.

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A — NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000.00	
SURETY A — SIGNATURE(S)	1.	2.		Corporate Seal
SURETY A — NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY — WORCESTER, MASSACHUSETTS — 1852

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

EXHIBIT O

Law Office of A. Bright Ariail, LLC

July 19, 2016

FILED
2016 JUL 22 PM 2:2
CLERK OF COURT

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records related to the Order executed on July 14, 2016 in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT P

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Sent: Monday, July 18, 2016 8:42 AM
To: 'Michelle Endemann'; Bright Ariail; 'Andrew K. Epting'
Subject: Palmetto Construction Group v. Restoration Specialists et al.
Attachments: 201607180829.pdf

Dear All -

As to the last hearing in this matter, please see the attached order Judge Scarborough executed last week. I am forwarding it to the clerk right now for processing.

Best Regards,

Barnwell

--
J. Barnwell Fishburne, Jr., Esq.
Judicial Law Clerk to The Honorable Mikell R. Scarborough
100 Broad Street, Suite 266
Charleston, South Carolina
29401
Tel: 843-958-5053
jfishburne@charlestoncounty.org

Bright Ariail

From:	Barnwell Fishburne <JFishburne@charlestoncounty.org>
To:	Bright Ariail
Sent:	Monday, July 18, 2016 8:35 AM
Subject:	Read: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Your message

To:
Subject: Palmetto Construction Group c. Restoration Specialists, et al;
Sent: Monday, July 18, 2016 5:35:12 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, July 18, 2016 5:35:02 AM (UTC-08:00) Pacific Time (US & Canada).

Bright Ariail

From:	Microsoft Outlook
To:	Barnwell Fishburne
Sent:	Friday, July 15, 2016 12:32 PM
Subject:	Relayed: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Barnwell Fishburne (JFishburne@charlestoncounty.org)

Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Bright Ariail

From:	Bright Ariail
Sent:	Friday, July 15, 2016 12:32 PM
To:	Barnwell Fishburne
Cc:	Andrew K. Epting; 'Michelle Endemann'
Subject:	RE: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

I have reviewed the proposed order and request that the Court also address its ruling/disposition of Plaintiff's Motion to Stay and Compel (filed on March 7, 2016) in the order when issued. Thanks for your assistance in this matter.

I have copied all counsel of record by this email.

VR. Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Michelle Endemann [mailto:mne@epting-law.com]
Sent: Thursday, July 14, 2016 12:10 PM
To: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Cc: Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

We have prepared a simple proposed order for today's hearing so that Judge Scarborough does not have to prepare a Form 4.

Please note I have copied Ms. Ariail.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871

F: 843-377-1310
mnc@epting-law.com

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by or on behalf of a lawyer and is intended exclusively for the individual or entity to which it is addressed. This message may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this communication or any part of it. If you have received this communication in error, please delete all copies of this message and notify the sender immediately either by phone (843-377-1871) or by reply to this e-mail. Thank you.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 27 PM 12:39
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial Circuit at a time and place to be arranged by the Court and counsel involved for the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

EXHIBIT Q

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion)*;

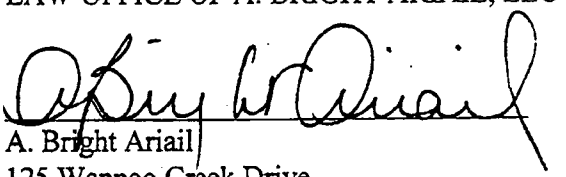
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 27, 2016
Charleston, SC 29412

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Room	952
Roster Name	Motion Hearings	Roster Date	10/11/2016	Print Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
1	10/11/2016	10:00 AM		Motion/Reconsider by plaintiff, crt/srv	Maria Kiehling Brees-PAT	07/25/2016	2012CP1006835 Joanne S Reed VS Christina Salters , defendant, et al	Real Prop/Other 499	1880000169	Maria Kiehling Brees (843) 724-7707 D. Nathan Davis (843) 571-4042	Jestine Townsend Graham (843) 467-9492 Irene Townsend Hodge (843) 889-9513 Kelvin Maurice Huger (843) 573-0143 Althea Salters (843) 889-2450 Irma Townsend (843) 425-7226 Jessie Townsend Mary Alice Townsend Morrison Karen Waters	EXHIBIT R
2	10/11/2016	10:00 AM		Motion/Alter or Amend by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
4	10/11/2016	11:00 AM		Motion/Alter or Amend by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
5	10/11/2016	2:00 PM		Motion/Alter or Amend by plaintiff, crt/srv	Andrew K. Epting Jr.-PAT	07/29/2016	2016CP1001143 Palmetto Construction Group LLC VS Restoration Specialists LLC	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871 Andrew K. Epting Jr. (843) 377-1871	A. Bright Ariail (843) 814-8805	
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Ariail-DAT	07/29/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871	A. Bright Ariail (843) 814-8805	

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Room	952
Roster Type	Motion Hearings	Roster Date	10/11/2016	Print Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
7	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006736 Municipal Tax Investment LLC VS Gilbert J White , defendant, et al	Real Prop/Other 499	4271600239	Scott Daniel Spivey (803) 225 -0463		
9	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearings	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006755 Municipal Tax Investment LLC VS William T Simmons III , defendant, et al	Real Prop/Other 499	4640100054	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900 T. Parkin C. Hunter (803) 734 -6151 Brittany Lauren Kilpatrick (843) 696-3048 E.B. "Trey" McLeod III (803) 737-3043	459
11	10/11/2016	3:00 PM		Master/Cross Claim Hearing	Municipal Tax Investment LLC-PLT	10/11/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	

Law Office of A. Bright Ariail, LLC

RECEIVED
SEP 09 2016
By

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

FILED
2016 SEP 13 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

EXHIBIT S

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Law Office of A. Bright Ariail, LLC

September 20, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2016 SEP 22 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records with attachments for filing in the above referenced action which are related to Defendants' request that two outstanding motions be heard by the Court prior to the damages hearing set for October 4, 2016 at 2:00 p.m.; specifically, Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016 and Plaintiff's Motion to Alter or Amend filed July 29, 2016. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT T

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 10:43 AM
To:	master@charlestoncounty.org
Cc:	Andrew K. Epting; Michelle Endemann
Subject:	Palmetto Constr. Group, LLC v. Restoration Specialists, LLC et al., 2016-CP-10-1143
Attachments:	Ltr Scarborough Motions Hearing.pdf

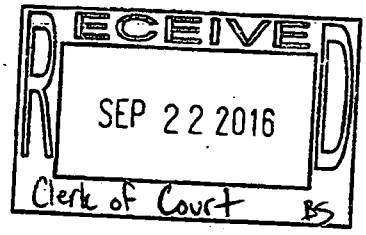
Judge Scarborough,

Please see my letter attached. Thanks for your consideration.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805



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Bright Ariail

From: Bright Ariail
Sent: Wednesday, September 7, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Michelle Endemann <mne@epting-law.com>
Sent: Wednesday, September 7, 2016 12:45 PM
To: Laura Dukes Beck; Angela Gross; Andrew K. Epting; Bright Ariail
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Hello Laura,

Plaintiffs would prefer that the hearings go forward as originally scheduled. This way, all rulings can be reconsidered/appealed, if necessary, at one time rather than piecemeal. We will, of course, defer to the Judge's preference.

Best,

Michelle Endemann

From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 07, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; bright@brightariaillaw.com
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From:	Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent:	Monday, September 12, 2016 2:02 PM
To:	Bright Ariail; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc:	Barnwell Fishburne
Subject:	RE: Palmetto Construction Group v Restoration Specialists 16-1143

After further consideration, the Judge has decided to leave the hearings in the order that they were originally scheduled, with the Damages hearing to be held prior to the Motions to Alter or Amend. The previously sent roster publication emails and the published rosters have the date and time, or email me if you need more information.
Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Wednesday, September 07, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>

Cc: Barnwell Fishburne <BFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Law Office of A. Bright Ariail, LLC

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: *Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.*
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants and Plaintiff have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[1] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[2] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Law Office of A. Bright Ariail, LLC

October 24, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter and Amend in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE.

By copy of this letter, I am servicing opposing counsel with same.

Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

81409

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
OCT 28 2016
SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

EXHIBIT EE

Palmetto personally served its complaint on the Appellants on March 14, 2016; Appellants failed to answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for all purposes, including a determination of damages.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The Court, after considering affidavits and hearing argument, found in its discretion that there was no good to lift the default and set a default damages hearing for October 4, 2016 at 2:00pm. The order served on all parties by the Court on July 18, 2016. Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Appellants requested that the motions be heard in advance of the damages hearing. The Court elected to keep the hearings as originally scheduled. Appellants have not timely noticed an appeal of the July 18, 2016 interlocutory order, and the motion to reconsider remains pending.

On September 30, 2016, the Respondent was served with a notice of appeal. (Exhibit A). Respondent immediately drafted, served, and filed a motion to dismiss the appeal and sought expedited review of the motion in order that the October 4 damages hearing proceed. (Exhibit B). The parties appeared before the lower court on October 4, though the damages hearing did not proceed. Instead, the Court asked that the parties make a record of their positions as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending. Briefs were filed by both sides with regard to Appellants' Rule 59 motion.

On October 5, Palmetto's counsel received a letter from this Court returning its motion to dismiss as the Court had no record of such an appeal. (Exhibit C). Also on October 5, Palmetto's counsel was served by facsimile with a copy of another notice of appeal, different than the one previously served. (Exhibit D). On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. (Exhibit E). On October 13, 2016, Palmetto received a copy of a letter from the Court of Appeals, which returned Appellants' October 6 notice of appeal together with the portions of the transcripts that Appellants attached to the notice as "transcripts are not part of a notice of appeal." (Exhibit F).

SUMMARY OF ARGUMENT

The appeal must be dismissed as it is: (1) defective on the face of the notice of appeal as there is no final appealable order attached to the notice; (2) untimely; (3) interlocutory; and (4) without merit and filed solely for the purpose of delay.

ARGUMENT

None of the three notices of appeal attach an order appealed from as required by Rule 203 SCRAP. As there is no appealable order, all three notices are defective and the appeal must be dismissed.

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016 (or maybe even as late as October 6, 2016), more than seventy-five days after the interlocutory order was received. Therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP

(requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.

CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter in order to mitigate its damages.

Respectfully Submitted by:

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 27th day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

CASE NO. 2016-CP-10-1143

RECEIVED
OCT 28 2016
SC Court of Appeals

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 Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 27, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

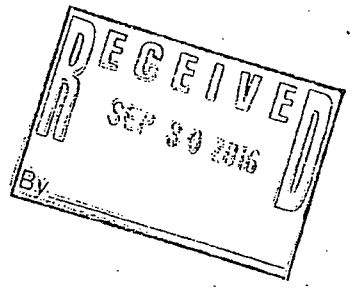
LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

September 30, 2016



VIA HAND DELIVERY
Andrew K. Epting, Jr.
Michelle N. Endemann
ANDREW K. EPTING, JR., LLC
46a State Street
Charleston, SC 29401

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

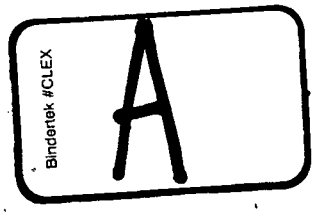
Dear Drew and Michelle:

Enclosed for service upon you please find a Notice of Appeal, together with proof of service, in the above-referenced case.

Sincerely,

A. Bright Ariail

Enclosure: (Notice of Appeal/Proof of Service)

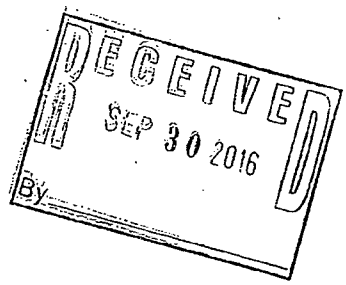


THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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

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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

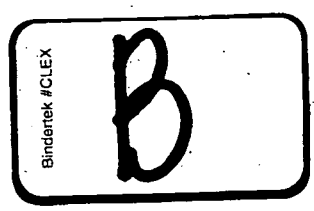
Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENTS' EMERGENCY MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review of this motion in order to attempt to mitigate its damages. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto



responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants, but the Appellants failed to file an answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for a default damages hearing and for all other matters.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The motions were heard, and the Court, after considering affidavits and hearing argument, found in its discretion that there was no good cause shown such that the default should be lifted. The order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Respondents wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. After some consideration, the Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11. Appellants never timely noticed an appeal of the July 18, 2016 order, which is interlocutory, and the motion to reconsider is pending.

ARGUMENT

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct.

App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016, some seventy-four days after the order was received; therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP (requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.[1]

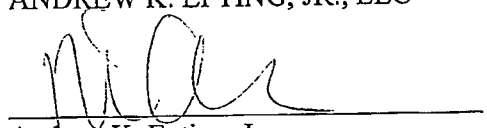
CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

[signature on following page]

[1] Palmetto's motion is truncated in an effort to mitigate its damages by filing this appeal in the hopes that it may be dismissed in advance of the damages hearing scheduled for October 4, 2016 so that it may proceed.

ANDREW K. EPTING, JR., LLC

BY: 

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 3rd day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

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).

PROOF OF SERVICE

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 3, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2016

Andrew K. Epting , Jr., Esq.
Michelle N. Endemann, Esq.
46 A State Street
Charleston, SC 29401

In Re: Palmetto Construction Group v. Restoration Specialists
Motion to Dismiss

Dear Counsel:

We have received your motion to dismiss for the above referenced matter. However, no notice of appeal has been filed under that name or lower court case number. Since no appeal is pending in this Court, we will not accept or take action on your motion to dismiss. We are returning your original documents to you, along with your filing fee, check #4184, in the amount of $50.00.

Very truly yours,

Clerk

cc:
A. Bright Ariail, Esq.

Bindertek #CLEX
C

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)
(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
THE HONORABLE JENNY ABBOTT KITCHINGS	A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 5, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 12

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

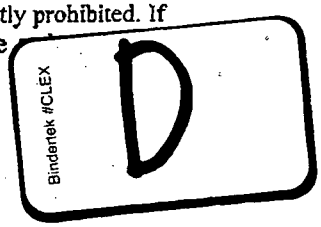
(5) THE FILING FEE CHECK OF $100.00.

THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return original message to us at the above address via the U. S. Postal Service. Thank you.



10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 01/11

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariailaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

October 5, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,

A. Bright Ariail
Attorney for Appellants

Enclosures
cc: 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

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 02/11

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,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

10/06/2016 13:24 8432668538 ARIAIL LAW FIRM PAGE 03/11

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

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 04/11

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,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

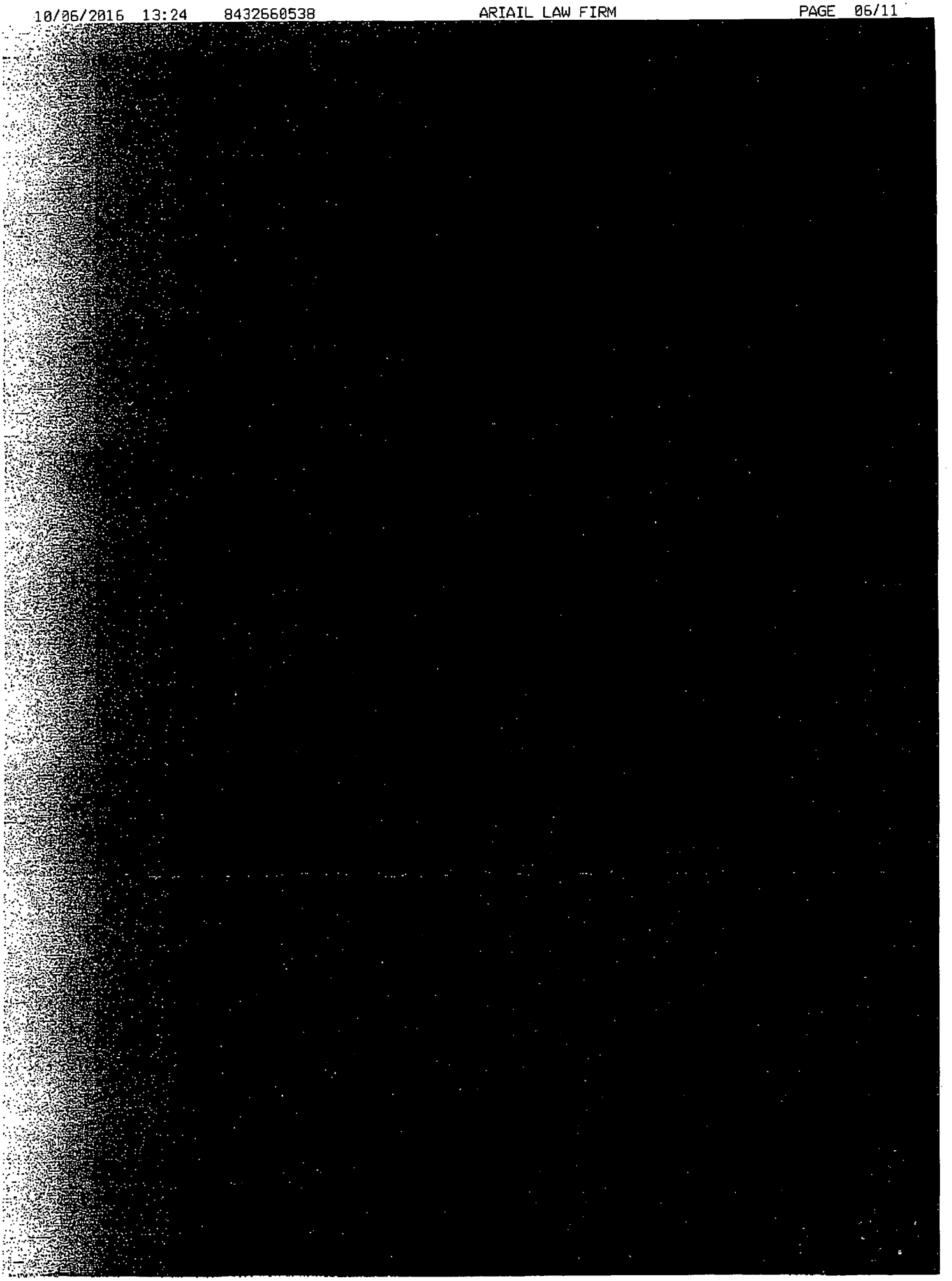
PROOF OF SERVICE

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 Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew 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
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Attorney for Appellants

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 05/11



STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

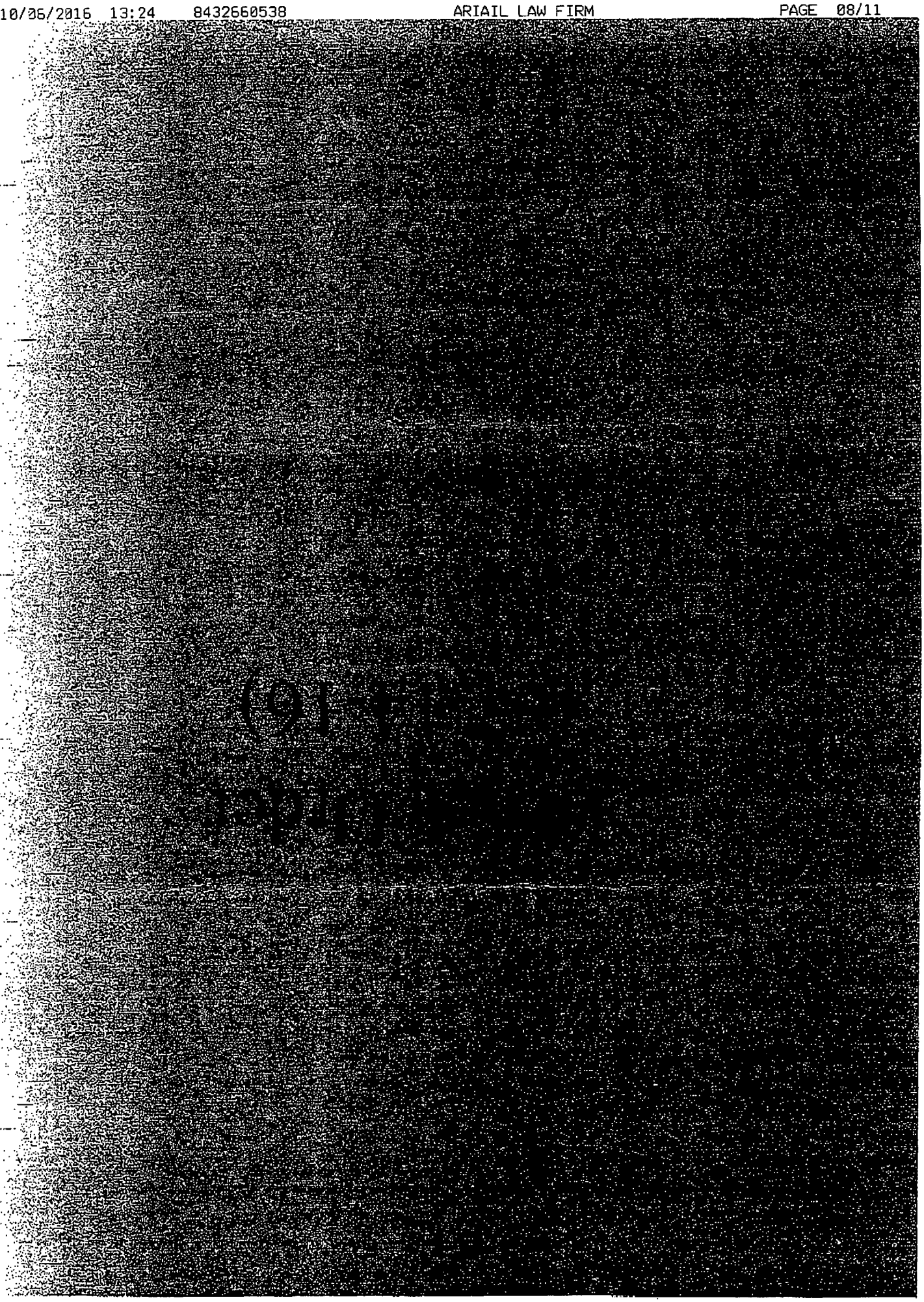
2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Notary Public
P.O. Box [illegible]
Charleston, South Carolina [illegible]
(843) [illegible]
[illegible]

2

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

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ATTORNEYS FOR THE DEFENDANT:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

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would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

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our Complaint and the Complaint went unanswered. We're here for a damages hearing. We served Mr. Ward with notice of that hearing pursuant to the Rules, and it was then that he had hired Ms. Ariail.

She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

From the documents that we have received it appears that the project was pretty profitable with all the subcontractors being paid, and then still some hundreds of thousands of dollars in profit. So we're left looking at records that show there should be a surplus of funds.

Instead we're faced with the surety coming to us and saying, Hey, you owe us over a million dollars. The other problem that my client has is they do a lot of bonded work. They have a surety that says, You owe us over a million dollars. Nobody wants to bond any projects. So time is really, really of the essence here because we can't get work. If we can't get work our business goes under, and all

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of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

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with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

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THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

MS. BECK: I didn't know if this might be something you might want to put on the trial term as a possibility. If not, we've got some time the first week in October.

THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

(The proceedings were concluded at 11:11 a.m.)

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)

(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
THE HONORABLE JENNY ABBOTT KITCHINGS	A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 6, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 13

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

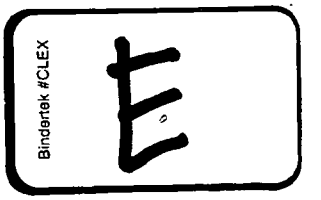
(5) THE FILING FEE CHECK OF $100.00.

WE ARE REFILING THESE DOCUMENTS AS THE COURT REPORTER'S CERTIFICATION OF THE JULY 14, 2016 BENCH ORDER WAS INADVERTANTLY OMITTED FROM OUR OCTOBER 5, 2016 FILING WITH THE COURT OF APPEALS. THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you.



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LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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Telephone: (843) 814-8805
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October 6, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

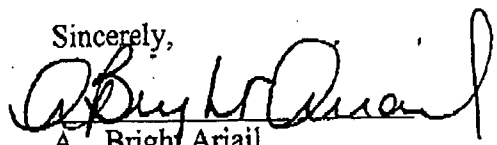
(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,



A. Bright Ariail
Attorney for Appellants

Enclosures
cc: 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

10/06/2016 13:38 8432660538 ARIAIL LAW FIRM PAGE 02/12

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,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

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.

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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

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Attorney for Appellants

Other Counsel of Record:
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Attorneys for Respondent

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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,

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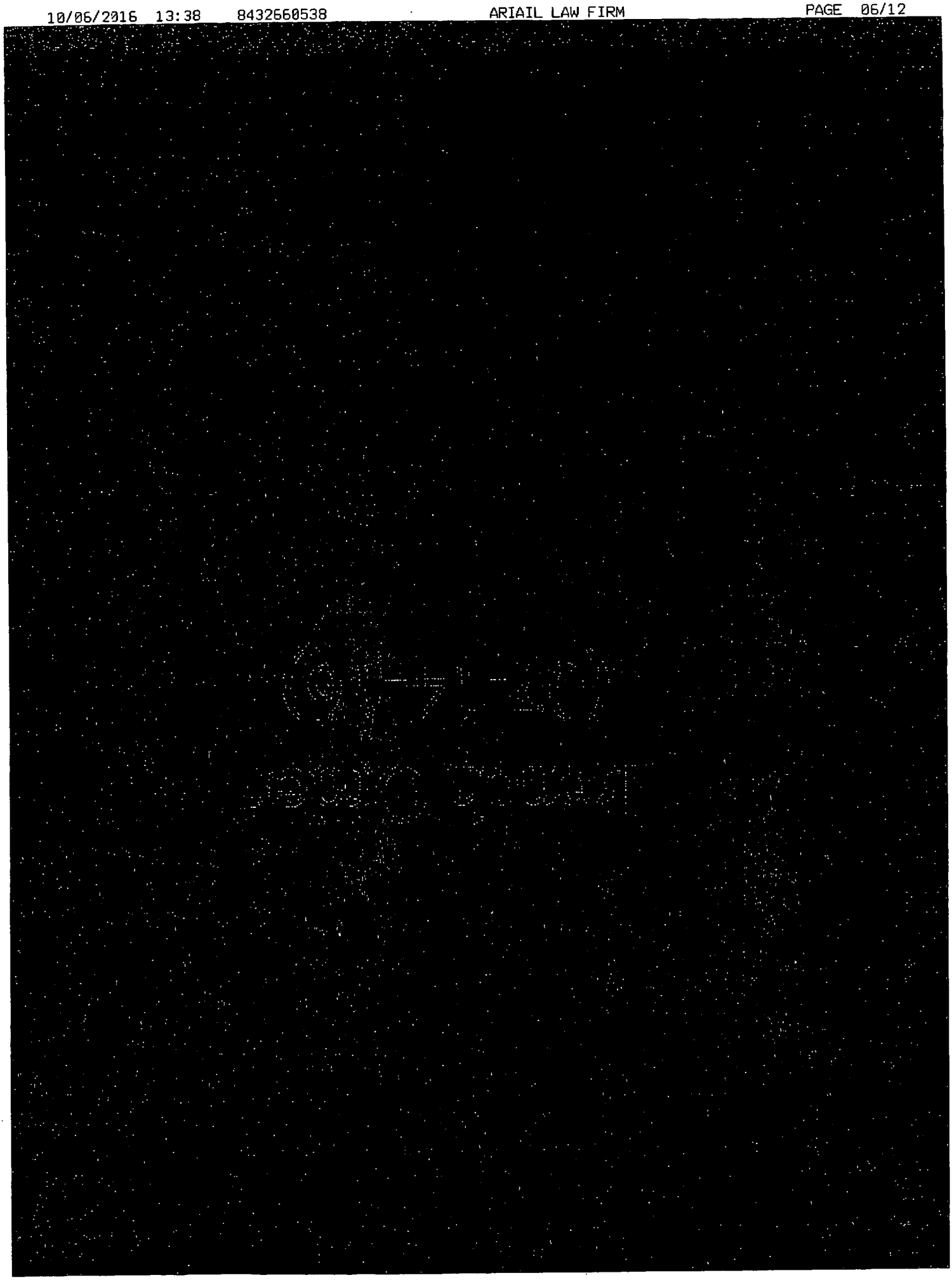
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September 30, 2016

A. Bright Ariail
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Attorney for Appellants

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1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
[illegible]

2

APPEARANCES OF COUNSEL:

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ATTORNEYS FOR THE DEFENDANT:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

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Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

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She came and actually had a vacation planned, so we kind of came to an agreement. She was able to get us some of the documents that were owed. The discovery is not complete. In particular we're missing some pretty important things like the payments from the V.A. to Mr. Ward and then where that money went.

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of our people don't have jobs, so we're really sort of in dire straits here.

THE COURT: Okay.

MS. ENDEMANN: We were served with this Motion to Compel Arbitration this week, and Your Honor has set it probably for expediency today. We don't think, Your Honor, that we can go forward on that motion. First, we don't think that he can bring the motion, period, because he's in default; and second, it's not properly before this Court as we only got notice of it a couple of days ago.

We think that the tapat here might be to try to get relief from default, get this motion heard, and get it appealed if Your Honor does not rule in their favor and ties this up for several years. If that happens, again, my client's out of business.

What we would like to see happen here today is have a damages hearing set because Mr. Ward is in default. He's not provided the Court with any reasonable explanation for being in default and is not entitled to make this Motion for Arbitration since he is in default. Thank you, Your Honor.

THE COURT: Ms. Ariail, let me hear from you on that one.

MS. ARIAIL: Your Honor, I don't totally agree

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with the facts, but I think the thing that disturbs me the most is the statement that we haven't provided payments from the V.A. We have provided documentation of the amount of payments that have been made.

When we were in front of you a month or so ago there was a -- and there still is a standing Motion for Compelling Arbitration by the Plaintiff. They actually filed that. The contract requires it, and there is a motion that has not been heard that was filed by the Plaintiff for compelling arbitration.

In the meantime, despite the requirement for mediation and arbitration, and based on direction from the Court at the last hearing, we have complied with discovery. We have answered discovery. We have been continuously providing documents as we've compiled them, and at my direction my client has concentrated on the financial records rather than the voluminous information that is compiled on a two-or-three-year construction project.

That being said, I think it's proper to hear the Motion to Compel Mediation and Arbitration today. We merely joined what the Plaintiff's have already filed. For that reason I would ask that you go ahead and hear that motion.

8

THE COURT: You want to get out of Default first, don't you? I didn't rule on that last time I don't think?

MS. ARIAIL: You did not.

THE COURT: You're right. Mr. Epting and Ms. Endemann, it looks like there was a motion filed back in March to Compel. Is it mediation or arbitration? Is it contract specific?

MS. ENDEMANN: Your Honor, it's a standard Form AIA contract, so there is a provision in there having to do with mediation and arbitration. We did file that motion assuming that we were going to get a responsive pleading and that we would send it to arbitration. That's not what happened in this case. Instead we set aside that motion and asked for an order referring this case to you for a damages hearing which was granted by the Circuit Court.

THE COURT: I've got it. This was filed March 7th. That motion was with those -- that was as a result of the matter to referral. Mr. Ward was served on the 14th of March. The Motion to Set Aside the Entry was there. I recall we had a quick meeting and then you-all did some discovery and I haven't been able to resolve anything. Basically, it's a Motion for a Continuance which we granted. And then

Mr. Ward's affidavit. All right. That rings a bell.

Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief. It does appear that the matter was referred over here. I think that took care of the -- the clerk closed out the Motion to Compel the Arbitration because of the fact that it was referred over here. So that based some adjudication on that motion is how the Court considers that.

I think what we were wrestling with last time was whether or not you-all could resolve it. That doesn't look like it's been done. I find that because it was not shown by Mr. Ward in his affidavits that that supported why he was in default I find the Defendant in default and I so order.

So this will be a question of a damages hearing to be set. How much time do you-all want?

MS. ENDEMANN: Your Honor, we probably need about an hour to two hours for the hearing, and we can hear it whenever the Court is available.

THE COURT: Okay.

MS. ARIAIL: Your Honor, I would ask since I have in good faith participated in discovery that I at least be allowed to serve some form of discovery related to damages so that I can prepare properly for

the damages hearing.

THE COURT: Ms. Endemann?

MS. ENDEMANN: I don't think we're in a position, Your Honor, to consent to that. Ms. Ariail can certainly Cross the Plaintiff on any damages that we present at the hearing as is allowed by the Rules, but she isn't allowed to present her own evidence in any event.

We're happy to try to -- most of the documents that we would use in support of our case are her clients and also Hanover's, which are the bond claims spreadsheets and everything, which Hanover is sending directly to her client and which we're happy to provide if that's not happening. I think she has everything that she would need. It would just be the testimony, and of course, she's entitled to Cross under the Rules.

THE COURT: All right. I think that's the case. All right? I'm assuming you've got what you've got. You're entitled to participate in a damages hearing. There's no doubt about that by Cross-Examination but not by putting forth in evidence.

MS. ARIAIL: Right, Your Honor, but to properly prepare to Cross-Examine their witnesses,

I've seen nothing they have. They have discussed an indemnity agreement in the Complaint. I don't have that. My client doesn't have that.

THE COURT: Well, it may expedite the matter to move forward so everybody's talking with the same thing. We don't have to read documents when we're here. I would ask that you-all share what you can in that regard. I'm not going to mandate it because I don't think that's proper. If we don't get it worked out we'll have a hearing in the next, what, 60 days or so?

MS. BECK: I didn't know if this might be something you might want to put on the trial term as a possibility. If not, we've got some time the first week in October.

THE COURT: I can bring you-all back -- I've got some trials coming up. I've been squeezing stuff in there. I've got a trial term in August and one in September. The last week of September?

MS. BECK: Yes, sir, or if they prefer a date certain we can do the first week of October.

MS. ARIAIL: Your Honor, I have a Court-ordered mediation the last week of September, so if we could move it to the first week of October that would be helpful.

THE COURT: Okay.

MS. BECK: The afternoon of the 5th, after those allocation hearings that you set, we can do the rest in the afternoon.

THE COURT: What's going on on the 4th?

MS. BECK: Nothing. That would be fine, too.

THE COURT: Why don't we set this for October 4th at 2:00 p.m. Let's just set it up. That's a Tuesday afternoon the first week of October. Okay?

MS. ENDEMANN: Thank you, Judge.

MR. EPTING: Thank you, Judge.

THE COURT: Very good. I'm just going to do a Form 4, and I'll put that in there. If you-all want to follow up with an order you can. 2:00 p.m.

MS. ENDEMANN: Thank you.

(The proceedings were concluded at 11:11 a.m.)

State of South Carolina)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021



STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

10/06/2016 13:38 8432660538 ARIAIL LAW FIRM PAGE 12/12

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2016



Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive
Suite 202
Charleston SC 29412

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

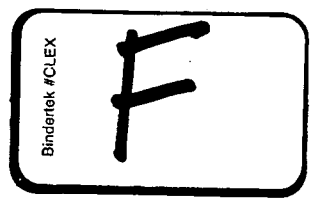
We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK



cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, Appellants.

Appellate Case No. 2016-002096

ORDER

Appellants have served and filed a notice of appeal from the master's "effective" denial of Appellants' Rule 59(e), SCACR motion. However, because the master discussed the Rule 59(e) motion during the hearing, accepted memoranda regarding the motion, and allowed the parties to proffer information relating to the motion, it appears the master intends to issue a final, written order on the Rule 59(e) motion. *See* Rule 58(a), SCRCP (stating no order is final until it is written and entered). Accordingly, this appeal is dismissed without prejudice. *See Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 342 (1986) (requiring dismissal without prejudice when there is a pending Rule 59(e) motion filed with the lower court and providing (1) any party can appeal within ten days after the order disposing of the post-trial motions and (2) a second filing fee will not be collected from a party who previously appealed). The remittitur will be sent as required by Rule 221, SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire
A. Bright Ariail, Esquire

FILED
November 10, 2016

EXHIBIT FF

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-1143

Palmetto Construction Group LLC

PLAINTIFF(S)

Restoration Specialists, LLC, et al.

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2016 NOV -2 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the court for argument on October 11, 2016 on Cross-Motions to Reconsider pursuant to Rule 59, SCRCP. After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) Defendants' Motion to Amend is respectfully DENIED, insomuch as Defendants have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Ar
or additional taxable costs not available at the time the form and final order are submitte
clerk. **Note: Title abstractors and researchers should refer to the official court order fi**

EXHIBIT GG

Circuit Court Judge

3062
Judge Code

10/28/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

RECEIVED
NOV 18 2016
SC Court of Appeals

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28, 2016.

The Order dated July 14, 2016 (Exhibit A): (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, 2105. Appellants received written notice of entry of this order on July 18, 2016. The parties timely filed cross-motions to reconsider the Court's July 14, 2016 Order pursuant to Rule 59, SCRCP.

The Order dated October 28, 2016 (Exhibit B), in response to the parties' cross-motions to reconsider pursuant to Rule 59, SCRCP: (a) Denied Defendants' Motion to Amend on the basis that Defendants have not shown good cause to lift the default, and (b) Denied Defendants' Motion to Stay and Compel filed July 11, 2016 on the basis that the affirmative defense of arbitration had been waived and therefore the motion was not properly made. Appellants received written notice of entry of this order on November 2, 2016.

EXHIBIT HH

November 14, 2016

A. Bright Ariail
SC Bar #69570
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:

Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, LLC
46A State Street
Charleston, SC 29401
(8430377-1871
Attorneys for Respondent

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

RECEIVED
NOV 18 2016
SC Court of Appeals

FILED
2016 JUL 20 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-1143

RECEIVED
NOV 18 2016
SC Court of Appeals

Palmetto Construction Group LLC

PLAINTIFF(S)

Restoration Specialists, LLC, et al.

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2016 NOV -2 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the court for argument on October 11, 2016 on Cross-Motions to Reconsider pursuant to Rule 59, SCRCP. After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) Defendants' Motion to Amend is respectfully DENIED, insomuch as Defendants have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amou or additional taxable costs not available at the time the form and final order are submitted to clerk. Note: Title abstractors and researchers should refer to the official court order for ju

Circuit Court Judge _____ 3062 Judge Code _____ 10/28/16 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

_____	_____
_____	_____
_____	_____
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	_____
	CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

RECEIVED
NOV 18 2016
SC Court of Appeals

Case No. 2016-CP-10-1143

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 November 14, 2016, addressed to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, 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 November 14, 2016.

November 14, 2016

A. Bright Ariail
SC Bar #69370
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
DEC 14 2016
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2016-002308

Palmetto Construction Group, Respondent

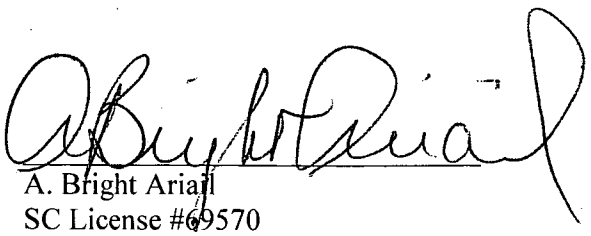
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of December, 2016, a true and correct copy of Appellants' Return to Respondent's Motion to Dismiss Appeal was delivered via US Mail to the following:

Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street
Charleston, SC 29401
Attorneys for Respondent



A. Bright Ariail
SC License #69570
Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412
843/814-8805
Attorney for Appellants

Law Office of A. Bright Ariail, LLC

December 12, 2016

RECEIVED
DEC 14 2016
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
Appellate Case No. 2016-002308

Dear Ms. Kitchings;

Enclosed, please find the original and seven copies of Appellants' Return to Respondent's Motion to Dismiss the Appeal referenced above which is hereby provided to you for filing. I'd request that you return a stamped copy to me in the enclosed SASE.

By copy of this letter, I am serving counsel for Respondents with same.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805