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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Common Pleas Case No. 2013-CP-10-7413
Appellate Case No. 2015-001788

Affordable Concrete and Masonry Respondent,

v.

Roper Hanks, LLC.....Appellant.

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-7413

Affordable Concrete and Masonry,

Roper Hanks, LLC,

PLAINTIFF(S)

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The above matter came before the Court on Defendant's Motion to Dismiss, Transfer Venue, and Compel Arbitration. The Court hereby DENIES Defendant's Motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2151
Judge Code

3/2/15
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:

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

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

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
AFFORDABLE CONCRETE AND
MASONRY D/B/A RSS, LLC,

Plaintiff,

v.

ROPER HANKS, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-7413

FILED
2015 MAR -3 AM 9:11
JULIE J. AMES LIVING
CLERK OF COURT
BY _____

THIS MATTER CAME BEFORE THE COURT on December 18, 2014, on a Motion to Dismiss Action, Transfer Venue, and Compel Arbitration filed by the Defendant Roper Hanks, LLC. Based on the memoranda, pleadings, and oral arguments of Counsel presented at the hearing and for the reasons set forth below, the Defendant's Motion to Dismiss Action, Transfer Venue, and Compel Arbitration is hereby **DENIED**.

BACKGROUND FACTS

Defendant Roper Hanks ("Roper") requested subcontractor bids to remodel Haverty Furniture Companies, Inc. ("Haverty") in Charleston, South Carolina. Plaintiff Affordable Concrete and Masonry ("Affordable") submitted a bid to Roper for the contract price of Forty-Two Thousand Forty-Three and 83/100 (\$42,043.83) Dollars to provide labor and materials for the installation of concrete, pavers, and brick work. Roper accepted the bid and selected Affordable as the subcontractor on March 7, 2013.

Affordable is a small company owned by Steve Hughes that conducts most of its business in

Horry County, but performs some projects in other parts of South Carolina. Although a small business, its customers include Hobby Lobby, Pet Smart, O'Reilly Auto Parts, Verizon, Starbucks, Horry County, and the City of Conway. Roper Hanks is large corporation located in Georgia and conducts business all throughout the southeast. Roper Hanks supplied the form contract to Affordable. The contract was signed in South Carolina, the materials were purchased in South Carolina, and the entire content and matter of the case relates to South Carolina. The performance of the contract occurred in South Carolina and is related to the development of property in South Carolina.

Affordable began work within ten days and completed Phase I of the project. Affordable submitted its first application for payment on March 28, 2013. At that time Roper presented the Subcontractor Agreement to Affordable for signature. The contract was not signed by either party until April 5, 2013. Affordable signed the Agreement and proceeded to complete Phase II of the project. Affordable was further requested by Roper to perform additional work for Twelve Thousand Five Hundred Thirty and 30/100 (\$12,530.30) Dollars in change orders.

Plaintiff contends it is still owed Twenty Five Thousand Nine Hundred Sixteen and 62/100 (\$25,916.62) Dollars for the work performed. Plaintiff filed suit in December 2013. Defendant filed a Motion to Compel Arbitration in reliance on the Arbitration clause contained in paragraph X of the Subcontract Agreement and Transfer Venue.

LAW/ANALYSIS

Under the Federal Arbitration Act (FAA), "arbitration agreements . . . in contracts evidencing transactions involving commerce are valid, irrevocable and enforceable". 9 U.S.C. § 2 (1988). The FAA defines commerce as "commerce among the several states." 9 U.S.C. § 1 (1988).

Page 2 of 6
3/2/15

To determine whether a contract involves interstate commerce, the court must examine the agreement, the complaint, and surrounding facts. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001). "The development of land within South Carolina's border is the quintessential example of a purely intrastate activity."

Affordable was hired to do concrete work at a project in Charleston, South Carolina. Despite Defendant's incorporation in Georgia, the companies contracted to do business in South Carolina and signed the contract in South Carolina. The work was performed in South Carolina. Affordable was responsible under the contract to supply all labor, materials, lifts, and safety equipment. The materials were made or purchased within South Carolina. All of the laborers and potential witnesses are located in South Carolina. Defendant did not supply any evidence, other than the incorporation of Defendant in Georgia, that the specific contract for concrete services involved interstate commerce.

The Court hereby finds that the FAA does not apply to the case at hand and, therefore, South Carolina law is applied to the arbitration agreement. Under the South Carolina Uniform Arbitration Act, "[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters...on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration". S.C. Code § 15-48-10. The Subcontract Agreement in this case does not contain the requisite notice under South Carolina law and is therefore, unenforceable.

In addition to finding that the required notice renders the arbitration provision unenforceable, the Court finds that the arbitration provision is unconscionable. A starting point in determining whether a clause is unconscionable is to determine whether the contract was one of adhesion. Although adhesion contracts are not *per se* unconscionable, a finding by the Court that the

agreement constituted an adhesion contract is the beginning point of the analysis. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 27, 644 S.E.2d 663, 669 (2007). "[A]n adhesion contract is a standard form contract offered on a 'take-it-or-leave-it' basis with terms that are not negotiable." *Id.* at 26-27. In the instant case, the Subcontract agreement was a form document drafted and provided by Defendant. The document was presented to Plaintiff after it had performed a substantial amount of work on the project. Plaintiff was offered no meaningful opportunity to bargain for the terms; rather, the document was boiler plate terms with attached exhibits. If Plaintiff refused to sign Defendant's subcontract, Plaintiff risked not getting paid for the work previously done. These circumstances are indicative of an adhesion contract. After finding an adhesion contract, the Court must continue the analysis by examining the elements of unconscionability.

"In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id.* Factors to be considered when determining whether a party had a meaningful choice include "the relative disparity in the parties' bargaining power; the parties' relative sophistication; the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Id.* As established above, the Subcontract Agreement is an adhesion contract and Plaintiff had little to no bargaining power. Defendant is a large corporation that does business throughout the southeast United States, and Plaintiff is a local concrete and masonry company, owned by a single individual. The respective size, scope of business, and business experience demonstrates an imbalance in the parties' sophistication.

As the Subcontract Agreement was not given to Plaintiff until after it began work on the project further demonstrates a lack of meaningful choice as to the agreement's terms. Plaintiff began work within ten (10) days of being selected as the subcontractor on March 7, 2013. Defendant did not provide the contract to Plaintiff until March 21, 2013. Plaintiff had performed significant work on the project prior to this date. The contract was not signed until April 5, 2013, after Plaintiff had committed a significant amount of time and money on the project.

The agreement, specifically the arbitration clause, did have an element of surprise because of its inconspicuousness and the one-sided terms in the document. Similar to *Simpson*, the arbitration clause was entirely in standard small print and located in Paragraph "X" labeled "Claims and Disputes" in the sixteen (16) page agreement. The Arbitration Clause requires that Affordable agree to an arbitrator selected by Defendant. Further, it mandates that Affordable abide by Defendant's decision or commence arbitration proceedings within thirty (30) days. After thirty days, the Defendant's decision becomes final and binding. The clause also allows Defendant, at its "sole option," to consolidate arbitrations. If the subcontractor fails to abide by the final binding decision of the contractor, the contractor has the right to withhold sums due to the subcontractor. While Paragraph "X" contains many requirements for arbitration for the subcontractor, the contractor is excluded from these obligations as it relates to a dispute between contractor and subcontractor.

Due to Plaintiff's lack of bargaining power, lack of sophistication, the nature of the damages, the inconspicuous placement and form of the arbitration clause, and the timing of the contract, Plaintiff was not afforded a meaningful choice to agree to arbitration. Plaintiff's lack of meaningful choice, in conjunction with the one-sided and oppressive terms of the agreement, makes the arbitration agreement unconscionable, and therefore unenforceable.

Generally, under South Carolina choice of law principles, if the parties to a contract specify

3/2/15

the law under which the contract shall be governed, the court will honor this choice of law. But, if the resulting agreement is invalid as a matter of law or contrary to public policy in South Carolina, our courts will not enforce the agreement. *Id.*; *Stonhard, Inc. v. Carolina Flooring Specialists, Inc.*, 366 S.C. 156, 159, 621 S.E.2d 352, 353 (2005). The Court finds that the choice of law provision at issue is one-sided, oppressive, adhesive, and the contract was not provided to Plaintiff until after work had begun. Therefore, Plaintiff did not have a meaningful choice in signing the Venue Clause of the Subcontract Agreement. Further the costs of moving the venue to Georgia coupled with the relative size of the parties makes the clause further imbalanced. Therefore, the clause is unconscionable and invalid.

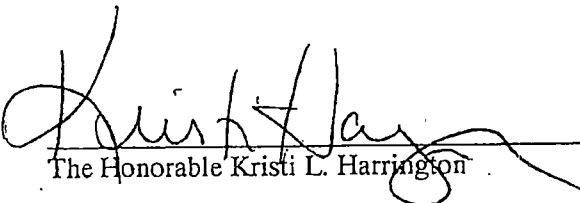
Additionally, South Carolina law applies because the loss occurred in South Carolina, the contract was signed in South Carolina and the entire content and matter of the case relates to South Carolina. Further, as the FAA does not apply, S.C. Code § 15-7-120 provides that even if a contract has a Venue Clause, the cause of action may, alternatively, be brought “in the manner provided in this title and the South Carolina Rules of Civil Procedure.” Here, the South Carolina Rules of Civil Procedure allow this cause of action to be brought in Charleston County, where venue is proper.

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss, Transfer Venue, and Compel Arbitration is hereby **DENIED**.

IT IS SO ORDERED!

Dated: March 2, 2015
Charles South Carolina


The Honorable Kristi L. Harrington

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-7413

Affordable Concrete and Masonry,

Roper Hanks, LLC,

2015 JUN 30 PM 2:23

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The above matter came before the Court on Defendant's Motion to Reconsider this Court's Order Denying Defendant's Motion to Dismiss, Transfer Venue, and Compel Arbitration. The Court hereby DENIES Defendant's Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2151

Judge Code

Date

6/30/2015

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:

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

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

SCRCP Form 4C (03/2013)

Page 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-CP-10-7413
	)	
AFFORDABLE CONCRETE AND	)	
MASONRY d/b/a RSS LLC,	)	
	)	PROPOSED ORDER GRANTING
Plaintiff,	)	DEFENDANT'S MOTION TO DISMISS
	)	ACTION, TRANSFER VENUE AND
	)	COMPEL ARBITRATION
vs.	)	
	)	
BILL HANKS, d/b/a ROPER HANKS	)	
CONSTRUCTION,	)	
	)	
Defendant.	)	

This Matter came before the under-signed pursuant to a Motion to Dismiss Action, Transfer Venue and Compel Arbitration ("Motion") filed on behalf of Defendant Bill Hanks d/b/a Roper Hanks Construction ("Defendant") on September 26, 2014 regarding the claims brought against Defendant by the Plaintiff Affordable Concrete and Masonry d/b/a RSS, LLC. Oral argument took place on December 18, 2014. Counsel for Plaintiff and Defendant both had a full opportunity to argue their respective positions. After review of the pleadings, contemplation and consideration of Defendant's Motion, Plaintiff's Memorandum in Opposition to Defendants Motion, and arguments presented by counsel for both sides on December 18, 2014, the Court hereby grants Defendant's Motion based on the following analysis and orders this matter to be transferred to Georgia for arbitration pursuant to the terms of the contract agreement between Plaintiff and Defendant.

Plaintiff, a South Carolina subcontractor, entered into a written contract with Defendant, a Georgia general contractor, on April 5, 2013 (hereinafter "the Contract") to provide labor and materials for the installation of concrete, pavers and brick work at a Haverty Furniture Companies, Inc. ("Haverty") store in Charleston, South Carolina. The construction project took

place in South Carolina, but many of the subcontractors and materials for the project were from other states. During the project, a conflict developed between the parties and Plaintiff ceased working on the project. Plaintiff subsequently brought this action against Defendant, seeking to recover payment that Plaintiff contends it is owed.

This Court finds that the Contract at issue is valid and enforceable. “[A] party may not ‘rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.’” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 295-96, 733 S.E.2d 597, 604 (Ct. App. 2012) (quoting *Jackson v. Iris.com*, 524 F.Supp.2d 742, 749 (E.D.Va.2007)). Both parties initialed all sixteen pages of the contract and signed the contract in two different places, agreeing to be bound by its terms. Plaintiff cannot seek to avoid the terms of the contract that it agreed to while simultaneously seeking the benefit of the Contract by bringing a breach of Contract claim against Defendant.

Despite Plaintiff’s arguments and assertions to the contrary, the Contract is a typical and balanced agreement between a general contractor and a subcontractor. Even if this Court were to find the Contract to be an adhesion contract, it would not be unconscionable. Generally, an adhesion contract is a standard form agreement offered on a “take-it or leave-it” basis with terms that are not negotiable. *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App.1998). Under state law, an adhesion contract is not *per se* unconscionable. *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996) (unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them); *Lackey v. Green Tree Fin. Corp.*, (fact that a contract is one of adhesion does not render it unconscionable); *see also Munoz v. Green Tree Fin. Corp.*,

343 S.C. 531, 542 S.E.2d 360 (2001). Further, a person who can read is bound to read an agreement before signing it. *Hood v. Life & Cas. Ins. Co. of Tennessee*, 173 S.C. 139, 175 S.E. 76 (1934).

The Contract provides for revisions and amendments to be adopted into the terms of the parties' agreement. The Contract also allows either party to initiate arbitration proceedings and to resolve disputes under the Contract at the expense of the losing party. With no evidence that Plaintiff was denied the right to revise unfavorable terms of the Contract, or evidence of terms that are themselves so oppressive and unfair that a reasonable person would not accept them, this Court finds that the Contract, including the arbitration clause, is not unconscionable or an adhesion contract.

This Court also finds that the provisions in the Contract are themselves valid and enforceable. "Choice of law provisions are generally honored in South Carolina." *Team IA, Inc. v. Lucas*, 395 S.C. 237, 248, 717 S.E.2d 103, 108-09 (Ct. App. 2011) (citing *Nucor Corp. v. Bell*, 482 F.Supp.2d 714, 728 (D.S.C.2007)). "Traditional choice of law rules apply only in the absence of an express provision regarding the applicable law to govern the contract." *Id.* at 249, 717 S.E.2d at 109. The first page of the Contract states in all capital, bold, and underlined type that the agreement is governed by the state of Georgia. This choice of law provision is reiterated in Article XIII of the agreement. Even though the Contract was signed in South Carolina, the parties clearly intended that Georgia law apply.

Under Georgia law, the arbitration provision in the Contract is enforceable and is not unconscionable. "Georgia courts are required to uphold valid arbitration provisions in contracts." *Saturna v. Bickley Const. Co.*, 252 Ga. App. 140, 141, 555 S.E.2d 825, 827 (2001) (citing *Bishop Contracting Co. v. Center Bros. Inc.*, 213 Ga. App. 804, 805(1), 445 S.E.2d 780 (1994)). "An

unconscionable contract is one abhorrent to good morals and conscience. It is one where one of the parties takes a fraudulent advantage of another. It is an agreement that no sane person not acting under a delusion would make and that no honest person would take advantage of.” *William J. Cooney, P.C. v. Rowland*, 240 Ga. App. 703, 704, 524 S.E.2d 730, 732 (1999) (citations omitted). Here, there is no evidence that Defendant took advantage of Plaintiff or acted fraudulently in any way. Plaintiff argues that there was a lack of bargaining power, lack of sophistication, and inconspicuous placement of the provision, all of which are factors in determining whether Plaintiff had a meaningful choice. The thrust of an unconscionability analysis does not rest on those factors alone, but on the oppressiveness of the terms themselves. Plaintiff has not shown that the terms of the arbitration provision are abhorrent, fraudulent, or oppressive. Plaintiff points to the cost of arbitration in Atlanta to argue that the terms are unconscionable. This argument is unavailing, as the arbitration provision allows for the losing party to pay the attorney’s fees and costs of the prevailing party, making arbitration equally accessible to both parties in resolving valid claims.

Finally, the Federal Arbitration Act (“FAA”) controls this dispute because the transaction affects interstate commerce. Pursuant to the FAA “a contract evidencing a transaction involving interstate commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable” 9 U.S.C. § 2. Georgia courts recognize that construction projects performed in one state can still affect interstate commerce under the FAA. *See McCormick-Morgan, Inc. v. Whitehead Elec. Co.*, 179 Ga. App. 10, 12, 345 S.E.2d 53, 55 (1986) (“Where one contractor is not from Georgia and the contract is to be performed in Georgia, and material incorporated in the contract work is from out of state, as in the instant case, the contract is one involving interstate commerce within the meaning of 9

U.S.C. § 1.”). Georgia law also recognizes that “most building materials pass in interstate commerce.” *Wise v. Tidal Const. Co.*, 261 Ga. App. 670, 673, 583 S.E.2d 466, 469 (2003). Here, as is typical of most large scale construction projects, the project contemplated the use of subcontractors from numerous states and materials from numerous states. The parties themselves are from different states. Because the Contract affected interstate commerce, the FAA controls.

THEREFORE, IT IS ORDERED JUDGED AND DECREED THAT:

Defendant’s Motion to Dismiss Action, Transfer Venue and Compel Arbitration is granted. It is hereby ordered that this case is dismissed and if Plaintiff intends to pursue this claim, it may file for Arbitration in Georgia.

AND IT IS SO ORDERED!

THE HONORABLE KRISTI L. HARRINGTON
Judge, Ninth Judicial Circuit

_____, South Carolina

December ____, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFORDABLE CONCRETE, ET AL.

Plaintiff(s)

vs.

HAVERY FURNITURE COMPANIES, ET AL.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP-10-7413

Submitted By: Natasha M. Hanna
Address: 4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577

SC Bar #: 70198
Telephone #: (843) 839-8002
Fax #: (843) 839-8011
Other:
E-mail: Natasha@nhannalaw.com

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

DOCKETING INFORMATION (Check all that apply)

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

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20____-CP-____- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☒ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: December 20, 2013

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.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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. (Medical malpractice mediation is mandatory statewide.)
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 CIRCUIT COURT

Affordable Concrete and Masonry d/b/a RSS
LLC

Plaintiff,

vs.

Haverty Furniture Companies, Inc.,

Defendant.

Civil Action No. 2013 CP 10 7 4 1 3

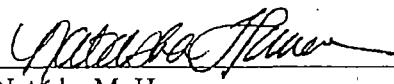
SUMMONS

FILED
2013 DEC 23 PM 3:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANT HEREIN NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint on the subscriber at her office at her office at 4717 Jenn Drive, Suite, Myrtle Beach, SC 29577, within thirty (30) days of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated December 20, 2013
Myrtle Beach, South Carolina


Natasha M. Hanna
4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577
(843) 839-8002
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT

Affordable Concrete and Masonry d/b/a RSS
LLC

Plaintiff,

vs.

Haverty Furniture Companies, Inc.,

Defendant.

Civil Action No. 2013 CP 10 7 4 1 3

COMPLAINT

FILED
2013 DEC 23 PM 3:58
JULIE J. ARMSTRONG
CLERK OF COURT

NOW COMES the Plaintiff, by and through counsel, for its complaint against Defendant and states as follows:

1. Plaintiff Affordable Concrete and Masonry d/b/a RSS, LLC., ("Affordable") is a South Carolina corporation engaged in the business of concrete services.

2. Defendant Haverty Furniture Companies, Inc. ("Haverty") is and at all times mentioned herein was, for purposes of venue, a resident of the County of Charleston, State of South Carolina.

AS A FIRST CAUSE OF ACTION
(Foreclosure of Mechanic's Lien against Haverty)

3. Affordable and Haverty entered into an Agreement for Affordable to provide labor and materials for the installation of concrete, pavers and brick work.

4. Pursuant to the Agreement between Absolute and Haverty, Affordable furnished labor and materials used in the project.

5. There is currently due and owing to plaintiff on account of such labor and materials the principal sum of Twenty Five Thousand Nine Hundred Sixteen Dollars and 62/100 (\$25,916.62) Dollars.

6. On August 7, 2013, Affordable filed with the Office of the Clerk of Court for Charleston County, and served upon Haverty, the owner of the real property, its Notice and

Certificate of Mechanic's Lien (the "Notice"). The Notice is filed in Mechanic's Lien Book 0351, Page 470.

7. The Notice was filed and served within ninety (90) days of the last day Affordable provided labor and materials to the project.

8. Affordable claims a mechanic's lien on the property owned by Haverty, for the satisfaction of the debt in the amount of Twenty Five Thousand Nine Hundred Sixteen Dollars and 62/100 (\$25,916.62) Dollars, pursuant to Sections 29-5-10, Code of Laws of South Carolina, 1976, as amended, together with attorney's fees, interest, and costs.

AS A SECOND CAUSE OF ACTION
(Breach of Contract Against Haverty)

9. Affordable reiterates the foregoing allegations as if fully set forth herein.

10. Affordable entered into the Contract with Haverty, under which Affordable agreed to furnish labor and materials to make certain repairs to the House.

11. Affordable has performed all of its obligations under the contract.

12. Affordable has demanded payment from Haverty, but Haverty has refused to pay Affordable.

13. Haverty's failure to pay constitutes a breach of contract.

14. As a proximate result of Haverty's breach of the contract, Affordable has incurred actual damages.

AS A THIRD CAUSE OF ACTION
(Quantum Meruit against Haverty)

15. Affordable reiterates the foregoing allegations as if fully set forth herein.

16. With the knowledge and authorization of Haverty, Affordable furnished labor and materials for the project.

17. Said labor and materials furnished by Affordable were accepted by Haverty.

18. By furnishing said labor and materials, Affordable conferred a benefit upon Haverty for which Affordable is entitled to be compensated.

19. Haverty has enjoyed and continues to enjoy the use and benefit of the labor and materials furnished by Affordable under the circumstances described above.

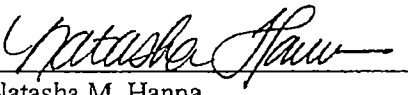
20. As a result of the foregoing, Haverty has been unjustly enriched.

21. Affordable is entitled to recover the reasonable value of said labor and materials from Haverty.

WHEREFORE, plaintiff prays this court issue an Order granting Affordable judgment for the following relief:

- a. Ascertaining the amount due Affordable for labor and materials, interest, costs, and attorney's fees;
- b. Foreclosing Affordable's mechanic's lien against the real property owned by defendant Haverty, ordering said property to be sold, and satisfying the debt from the proceeds of such sale;
- c. Actual damages against Haverty on Affordable's second and third causes of action, together with interest, costs and attorney's fees;
- d. Actual damages against Haverty on Affordable's third cause of action, together with interest, costs and attorney's fees;
- e. For such other and further relief as this Court deems appropriate.

Dated December 20, 2013
Myrtle Beach, South Carolina


Natasha M. Hanna
4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577
(843) 839-8002
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2013-CP-10-7413

Affordable Concrete and Masonry d/b/a RSS, LLC,)

Plaintiff,)

vs)

Haverty Furniture Companies, Inc.,)

Defendant.)

STIPULATION OF DISMISSAL
OF DEFENDANT HAVERTY
FURNITURE COMPANIES, INC.

WHEREAS, the Plaintiff and Defendant Haverty Furniture Companies, Inc. have settled and compromised their differences, Pursuant to Rule 41(a), the Plaintiff hereby dismisses and ends this action without prejudice as to all claims filed or which could have been filed arising out of the subject matter of this lawsuit as to Defendant Haverty Furniture Companies, Inc. This Defendant has now been substituted for Roper Hanks, LLC. This is with the consent of all parties who have appeared in this action.

FILED

SEP 05 2014

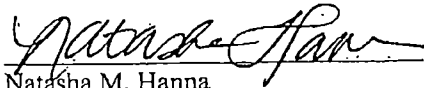
WE CONSENT:

JULIE J. ARMSTRONG
CLERK, C.R. & G.S.

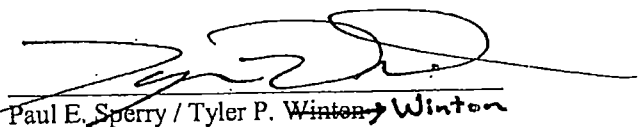
FILED
20 SEP 05 2014
PM 4:37
JULIE J. ARMSTRONG
CLERK OF COURT
Canceled

Law Office of Natasha M. Hanna, P.C.

Carlock, Copeland, & Stair



Natasha M. Hanna
Attorney for Affordable Concrete and Masonry



Paul E. Sperry / Tyler P. Winton
Attorney for Haverty Furniture Companies,
Inc., and Roper Hanks, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT

Affordable Concrete and Masonry d/b/a RSS
LLC

Plaintiff,

vs.

Roper Hanks, LLC

Defendant.

Civil Action No. 2013-CP-107413

AMENDED SUMMONS

2014 SEP -5 PM 4:17
FILED
JULIE A. STANON
CLERK OF COURT
Clocked in date canceled

2014 SEP 15 PM 3:55
FILED
JULIE A. STANON
CLERK OF COURT

TO THE DEFENDANT HEREIN NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint on the subscriber at her office at her office at 4717 Jenn Drive, Suite, Myrtle Beach, SC 29577, within thirty (30) days of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Natasha M. Hanna
Natasha M. Hanna
4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577
(843) 839-8002
Attorney for the Plaintiff

Dated 8-5-14

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT

Affordable Concrete and Masonry d/b/a RSS
LLC

Plaintiff,

vs.

Roper Hanks, LLC,

Defendant.

Civil Action No. 2013-CP-10-7413

AMENDED COMPLAINT

FILED
2014 SEP - 5 PM 4:55
JULIE J. ARMSTRONG
CLERK OF COURT
Clerk of Court
JULIE J. ARMSTRONG
CLERK OF COURT

NOW COMES the Plaintiff, by and through counsel, for its complaint against Defendant and states as follows:

1. Plaintiff Affordable Concrete and Masonry d/b/a RSS, LLC, ("Affordable") is a South Carolina corporation engaged in the business of concrete services.
2. Upon information and belief, Defendant Roper Hanks, LLC is a corporation existing under the laws of the State of Georgia and engaged in doing business in Charleston County, South Carolina.
3. The Plaintiff entered into an Agreement with the Defendant Roper Hanks, LLC for Affordable to provide labor and materials for the installation of concrete, pavers, and brick work on the property owned by Haverty Furniture Companies, Inc.
4. Pursuant to the Agreement between Plaintiff and Defendant Roper Hanks, LLC, Affordable furnished labor and materials used in the project.

5. There is currently due and owing to Plaintiff on account of such labor and materials the principal sum of Twenty Five Thousand Nine Hundred Sixteen Dollars and 62/100 (\$25,916.62) Dollars.

AS A FIRST CAUSE OF ACTION
(Breach of Contract)

6. Affordable reiterates the foregoing allegations as if fully set forth herein.
7. Affordable entered into the Contract with the Defendant Roper Hanks, LLC, under which Affordable agreed to furnish labor and materials to make certain repairs to the property owned by Haverty.
8. Affordable has performed all of its obligations under the contract.
9. Affordable has demanded payment from the Defendant, but the Defendant has refused to pay Affordable.
10. The Defendant's failure to pay constitutes a breach of contract.
11. As a proximate result of the Defendant's breach of the contract, Affordable has incurred actual damages.

AS A SECOND CAUSE OF ACTION
(Quantum Meruit)

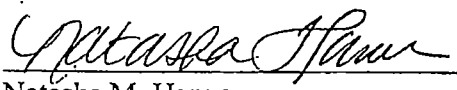
12. Affordable reiterates the foregoing allegations as if fully set forth herein.
13. With the knowledge and authorization of the Defendant, Affordable furnished labor and materials for the project.
14. Said labor and materials furnished by Affordable were accepted by the Defendant.

15. By furnishing said labor and materials, Affordable conferred a benefit upon the Defendant for which Affordable is entitled to be compensated.
16. The Defendant has enjoyed and continue to enjoy the use and benefit of the labor and materials furnished by Affordable under the circumstances described above.
17. As a result of the foregoing, the Defendant has been unjustly enriched.
18. Affordable is entitled to recover the reasonable value of said labor and materials from the Defendant.

WHEREFORE, Plaintiff prays this court issue an Order granting Plaintiff judgment for the following relief:

- a. Actual damages against the Defendant on Affordable's first and second causes of action, together with interest, costs and attorney's fees;
- b. For such other and further relief as this Court deems appropriate.

Dated 8-5-14
Myrtle Beach, South Carolina


Natasha M. Hanna
Law Office of Natasha M. Hanna, P.C.
4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577
(843) 839-8002
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
AFFORDABLE CONCRETE AND
MASONRY d/b/a RSS LLC,

Plaintiff,

vs.

ROPER HANKS, LLC

Defendant.

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-10-7413
)

**NOTICE OF MOTION AND MOTION TO
DISMISS ACTION, TRANSFER VENUE
AND COMPEL ARBITRATION**

FILED
2014 SEP 29 PM 12:36
JULIE J. ANASTROM
CLERK OF COURT
BY ES

TO: NATASHA M. HANNA, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Please take notice that the Defendant Roper Hanks, LLC (hereinafter, "Defendant") will move before the presiding judge of the Charleston County Court of Common Pleas, on such day and time as the Court may appoint, for an Order dismissing the action and compelling arbitration of all claims of Plaintiff, as required by the written contract governing their relations. Further, this Defendant hereby moves the Court pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure for an Order dismissing this action on the grounds that the Contract between the Plaintiff and Defendant (attached hereto as Exhibit A) contains a valid and binding forum selection clause designating Georgia as the only proper forum for the claims raised by Plaintiff in this case. The Defendant also makes this Motion pursuant to the Federal Arbitration Act on the following grounds:

- (1) The written agreement between Plaintiff and Defendant for all work performed by Plaintiff on the subject project provides that the dispute of a controversy arising under the Contract shall be settled by arbitration. (See Article X of the Contract attached hereto Exhibit A.) The agreement to arbitrate includes any dispute based on a

Subcontractor's timely appeal of a decision by the Contractor relative to the Subcontractor. Plaintiff's claims alleged in the Complaint are within the scope of the arbitration agreement.

- (2) Plaintiff has failed to timely avail himself of, or has simply refused to submit to arbitration as provided in the agreement.
- (3) The agreement out of which the controversy among the parties arises in this action involves interstate commerce, and is, therefore, subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16.
- (4) The written contract and included arbitration agreement is valid, irrevocable, and enforceable by the Court under the Federal Arbitration Act, 9 U.S. C. §§ 1 through 16.

Therefore, based upon the facts, exhibits, pleadings, motions, arguments and legal authorities set forth herein and in such supporting memorandum and affidavits as may be filed by Defendant, Defendant requests that the Court enter an Order compelling arbitration of every claim asserted by the Plaintiff, in accordance with the Contract and arbitration agreement, and otherwise dismissing the lawsuit and all claims pursuant to the Federal Arbitration Act.

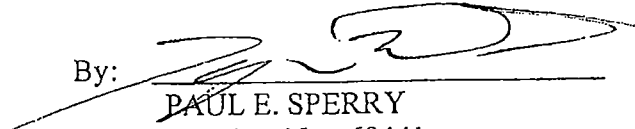
SIGNATURE PAGE TO FOLLOW

This ____ day of September, 2014.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:



PAUL E. SPERRY
State Bar No.: 68441

40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307

TYLER P. WINTON
State Bar No.: 77877

Attorneys for Defendant Roper Hanks, LLC

ROPER HANKS, LLC.

CONTRACT NO: 3000-3

DATE: March 16, 2013

SUBCONTRACT AGREEMENT

OWNER: Havertys Furniture Companies, Inc.
780 Johnson Ferry Rd NE
Atlanta, Georgia 30342

GENERAL CONTRACTOR: Roper Hanks, LLC.
3542 Kingsboro Rd NE
Atlanta, Georgia 30319

SUBCONTRACTOR: Affordable Concrete & Masonry
DBA RSS, LLC
6491 Highway 701 North
Conway, South Carolina 29526

DIVISION: 3000 / Concrete and Demolition

PROJECT: Havertys Furniture Store
1760 Sam Rittenberg Blvd
Charleston, South Carolina 29407

ARCHITECT: Wakefield Beasley & Associates
5155 Peachtree Parkway
Building 300 Suite 3220
Norcross, Georgia 30092

SUBCONTRACT AMOUNT: \$ 42,043.83

PERFORMANCE & PAYMENT BONDS: None Required

THIS AGREEMENT IS COVERED BY THE STATE OF GEORGIA

(The above terms are incorporated by reference and are more fully explained herein).

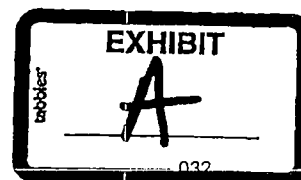
Exhibit "A": Subcontract Document
Exhibit "B": The Work
Exhibit "C": Drawings/Specifications
Exhibit "D": Sched Req - See Exh "B", Time

Exhibit "E": Applications for Payment
Exhibit "F": Interim Waiver and Release
Exhibit "G": Unconditional Waiver and Release

Page 1

INITIAL

[Handwritten initials]



Article I
SUBCONTRACT DOCUMENTS

The Subcontract Documents consist of this Subcontract Agreement, the Agreement between Owner and Contractor, the Conditions of the Contract between Owner and Contractor (General, Special, Supplementary, and other Conditions), the Project Plans and Specifications, and any revisions and addenda to any of the above, all as referenced in Exhibit "A", as well as any binding amendments thereto, including Contract Change Orders and/or Subcontract Modifications, whether issued before or after execution of this Agreement.

Any subsequent, additional or revised Contract Plans and/or Specifications and amendments shall become part of the Subcontract Documents. Subcontractor shall notify Contractor in writing within seven (7) days after receipt thereof of any objections to, or additional charges, for any changes/additions/deletions to the Subcontract Documents.

Subcontractor shall be bound to Contractor by the terms of the Contract between Owner and Contractor and this Subcontract, and assume toward Contractor all of the obligations and responsibilities that Contractor, per the Contract between Owner and Contractor, assumes toward Owner, as applicable to this Subcontract.

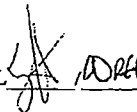
Article II
THE WORK

Subcontractor shall furnish and pay for all labor, material, taxes, tools, equipment, supervision, licenses and other goods and services necessary to perform and complete the work as further defined and described in Exhibit "B" attached hereto in strict accordance with the Subcontract Documents. Contractor shall determine and direct the schedule, sequence, timing and priority of the work activities and Subcontractor will comply with all such directions. Subcontractor warrants and represents that it has carefully examined the Subcontract Documents and has fully acquainted itself with all conditions relevant to the work called for by this Agreement, the site of the work, and its surroundings. Subcontractor agrees to assume the risk of such conditions and will, regardless of such conditions, or the expense or difficulty of performing the work, fully complete the work for the stated Subcontract Amount. Other than the Subcontract Documents themselves, any information furnished to Subcontractor by Contractor concerning the site, local conditions, or anything else regarding the work or the Project, is furnished for the Subcontractor's convenience only, and Contractor makes no guarantees or warrants as to their accuracy or completeness.

Article III
SCHEDULE REQUIREMENTS

Time is of the essence of this Agreement. Subcontractor agrees to commence and to complete the work as described in Exhibit "B" in accordance with the schedule requirements in Exhibit "C". In the event Contractor does not prepare a Project Schedule, Subcontractor will commence work at the times directed by Contractor and work in an efficient and continuous manner until the work is complete. Subcontractor shall cooperate with Contractor by providing scheduling information pertaining to Subcontractor's work when requested by Contractor.

1. No extension of the time allowed to perform this Subcontract Agreement will be recognized or effective without the written consent of the Contractor and Owner.
2. Subcontractor acknowledges that time is of the essence and performance according to the Project Schedule is a material requirement of this Agreement. The Schedule will be updated at the Project Schedule Meetings, and attendance of the Subcontractor's field foreman and/or project manager is mandatory. The most recently updated Construction Schedule will be the



basis for the performance of the Work and the establishment of intermediated and final completion dates. Subcontractor's representatives are to be empowered to make both time and cost commitments and shall be abreast of its current schedule and material delivery status. Subcontractor will replace any representative that Contractor determines to be unqualified, uncooperative, or unsuitable. Any Subcontractor requested to attend and not represented at the Meeting will be responsible for the expenses and damages caused by the Subcontractor's absence.

3. The initial Construction Schedule represents the required durations of activities. In the event job progress begins to improve on those activity completion dates for any reason such as better weather, material deliveries, performance by subcontractors, and or fewer design problems, both the intermediate and final completion dates may be adjusted by the amount of time gained, such gain as reflected in the Near Term Schedules. Unless Subcontractor provides reasonable written objection, its completion time will be established by these Schedules and Subcontractor will meet such Schedules even though such scheduled time for performance may be shorter than the original referenced completion dates. These Schedules, as modified during the job and as defined by the Contractor, provide the only dates for intermediate and final completion dates irrespective of anything else to the contrary. The revising of the Near Term Schedule by the Contractor to reflect the failure of Subcontractor to meet the previous schedule does not constitute an agreement by Contractor that Subcontractor is entitled to an extension of time, nor is Subcontractor relieved of liability for such failure. This Article III provision controls and modifies all other provisions in this Agreement which may be to the contrary.
4. If Subcontractor is behind schedule due to lack of proper performance on its part, Subcontractor shall either: (A) perform the work on an overtime basis, or (B) increase its manpower, equipment, materials, and other resources to a level such that the activities can be completed by the scheduled completion date, or (C) implement a combination of these methods, as directed by Contractor. Subcontractor will be assessed any damages that may be incurred by Contractor due to Subcontractor's lack of proper performance. Unless otherwise expressly noted on the Project Schedule or agreed upon in writing, Subcontractor is to furnish sufficient manpower, equipment, materials, and other resources to achieve its Near Term Schedule completion dates by working within normal working hours (established by Contractor for this Project), Monday through Friday. IN the event Subcontractor fails to do so and attempts to recoup lost time by abnormal increases of forces or by working at nights or on weekends, Subcontractor shall be liable for additional general condition costs and compensation for Contractor's personnel for after hours and/or weekend work. Subcontractor shall immediately notify Contractor in writing of any circumstances which would delay the completion of any activity beyond the completion date established in the Schedule; otherwise, Subcontractor will continue to be responsible for meeting all activity completion dates. If Subcontractor is responsible for any delays to, or resequencing of the Schedule, Subcontractor will pay Contractor for all loss and damages incurred by Contractor resulting from such delays or loss.

In the event Subcontractor is unable to work due to rain or inclement weather during the work week, Subcontractor agrees to make up those days on weekends.

5. In the event Subcontractor is prevented from performing its work in accordance with the original Schedule, or Subcontractor's work is delayed, accelerated, disrupted, impeded, resequenced or otherwise adversely impacted due to circumstances wholly beyond Subcontractor's control, Subcontractor shall be entitled to a time extension as its sole remedy, if and to the extent: (1) Subcontractor can demonstrate that such is warranted and (2) Contractor receives a time extension (due to delays which impacted Subcontractor's work) from the Owner. Subcontractor's right to a time extension in such circumstances shall be conditioned upon and limited to Contractor's ability to receive a time extension from the Owner. If Contractor receives no time extension from Owner, then Subcontractor shall be entitled to no time extension. In the event that the Project Schedule and/or events during

construction prohibit Subcontractor from executing its work on a continual basis or in the sequence it planned, Subcontractor accepts this condition and no claim is to be made for remobilization; however, Subcontractor shall maintain a continual flow of work to the full extent possible.

Article IV PROGRESS PAYMENTS

Contractor agrees to pay Subcontractor for the performance of its work the sum set forth as the Subcontract Amount, subject to any additions or deductions for changes which may be mutually agreed upon in writing, and to make monthly payments on account thereof.

1. Subcontractor's monthly application for payment must be prepared on the form which appears as Exhibit "E" and must be received in Contractor's main office by the 20th of each month in order to be included in the application for payment to be submitted to the Owner for that pay period; otherwise, no payment will be made until the following pay period. Only one (1) application for payment will be honored monthly unless noted herein. Applications for payment shall include a list of material suppliers and subcontractor, the current status of billings by and payments to each, and lien waivers from each vendor who has furnished goods/services for the project. These lien waivers must be prepared on the forms which appear as Exhibits "E" and "F".
2. Contractor shall make monthly progress payments to Subcontractor within fifteen (15) days or within five (5) days from contractor's receipt of payment from owner, whichever is later, unless otherwise provided in the Contract between Owner and Contractor or by law. Notwithstanding any other provision of this Agreement, receipt of payment from Owner is an express condition precedent to any obligation of Contractor to make payment to Subcontractor. In no event, and under no circumstances, is any payment due Subcontractor until Contractor has first received payment for the work in question from Owner. The amount of each such progress payment shall be that amount necessary to cause the cumulative payments to date to Subcontractor to equal the Subcontractor's percentage of completion as certified by the Contractor multiplied by the Subcontract Amount, less retainage as provided below.
3. Ten percent (10%) of Subcontractor's total cumulative earned billings shall be retained from payment and released as part of final payment in accordance with Article V. However, upon receipt of a written request from Subcontractor, Contractor may, in its sole discretion and without waiving any rights, release Subcontractor's retainage or a portion thereof prior to the occurrence of all of the conditions precedent to final payment set forth in Article V.
4. Subcontractor shall, before commencing work, and before any earlier date that may be specified by Contractor, submit to Contractor a schedule of values setting forth the values of the various parts of Subcontractor's work, with the aggregate amount of these values to equal the Subcontractor Amount, made out in such detail as Contractor or Owner may require, and supported by such evidence as to its correctness as Contractor or Owner may request. This schedule, when approved by Contractor and Owner, shall be used as a basis for Certificates for Payment, unless it is later found by Contractor or Owner to be in error. In addition Subcontractor shall submit a schedule of all of its subcontractors and suppliers, including each one's contract or purchase order amount, an itemization of the materials or services to be furnished by each one, and a contact name, address and telephone number for each one.
5. Subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this Subcontract Agreement, through the period covered by previous

payments received from Contractor, and, when requested by Contractor or Owner, furnishes satisfactory evidence to verify such payments.

Subcontractor agrees that monies received pursuant to this Subcontract Agreement shall be used solely for labor and materials incorporated into this Project and shall not be diverted to satisfy obligations of Subcontractor on other contracts or other projects.

6. Contractor hereby reserves the right to make any payment hereunder to Subcontractor via a check made payable to the joint order of Subcontractor and one or more of Subcontractor's workmen, materialmen, suppliers, subcontractors, or any of Subcontractor's creditors having potential lien rights with respect to Subcontractor's work on the Project. Before any joint checks will be issued, Owner may, at its option, require Subcontractor to deliver to Owner or Contractor Waivers of liens and releases of claims in the amount of any payment made.
7. Notwithstanding the amounts and times of payments set forth in the Subcontract, Contractor, at any time, may in its sole discretion make advance payments to Subcontractor if, in Contractor's opinion, such advances will aid Subcontractor in the performance of this Subcontract. Such advance payments may be made without notification to the surety on any bond furnished by or in behalf of Subcontractor and failure to give such notice will not deprive Owner of any claim, right or remedy under any such bond.

Article V PROJECT CLOSEOUT AND FINAL PAYMENT

Subcontractor's timely submission of all closeout documents/materials is a specific performance requirement of this Subcontract Agreement, in order to facilitate Contractor's closeout of the entire project in order to obtain prompt release of retainage to Contractor and Subcontractor's. Subcontractor shall submit all close out documents/materials, (including but not limited to As-Built Drawings, Operating and Maintenance Manuals, Product Data, Warranties, Guarantees, Consents of Surety, Final Unconditional Lien Waivers, spare parts/equipment and Attic Stock Materials) no later than the Project Substantial completion (as defined by the Subcontract Documents) or upon completion of Subcontractor's work, whichever occurs first. Subcontractor's final monthly Progress Pay Application (per Article IV) shall also be submitted, along with its separate billing for retainage, and payment therefore may be withheld by Owner until Subcontractor has submitted all close-out documents/materials acceptable to Contractor, Architect, and Owner. Subcontractor shall be liable for all damages and expenses resulting from its lack of timely closeout submittals including interest burden/foregone interest income on all retainage dollars withheld by Owner for the project at an interest rate no less than twelve (12%) per annum.

Final payment shall be due when all of the following have occurred: the work described in this Subcontract Agreement is fully completed and performed in accordance with the Subcontract Documents, Owner and Architect have accepted the Project, and Subcontractor has submitted all close-out documents/materials. Subcontractor shall submit evidence satisfactory to Contractor and Owner that all payrolls, material bills, and all known indebtedness connected with Subcontractor's work have been satisfied.

Article VI PERFORMANCE AND PAYMENT BONDS

In the event Owner requires bonds (as indicated on Page 1), Subcontractor shall furnish separate Payment and Performance Bonds in the form specified by Owner, each in the amount of One Hundred Percent (100%) of the Subcontract Amount.

All costs of these bonds shall be included in the Subcontract Amount. Subcontractor shall also pay, at its own expense, any additional bond premium resulting from changes to the Subcontract Amount. These

bonds shall be furnished by a company on the U.S. Treasury List and acceptable to Owner prior to the commencement of any work by Subcontractor, unless agreed otherwise in writing by Owner. Subcontractor shall submit to Owner the name, address and phone number of its bonding agent with said bonds. In the event Owner elects to Subcontractor's bond premiums directly to the bonding company, Subcontractor shall forward the bond premium invoice from its bonding company to Owner or Contractor, and any such payment by Owner shall be applied against the Subcontract Amount.

Article VII TEMPORARY SITE FACILITIES

Subcontractor shall be fully responsible for all of its materials and its vendors' materials stored on-site and shall protect them properly from weather, vandalism, and theft. Subcontractor shall maintain insurance covering such stored materials until such time as those materials are incorporated into the Work and accepted by Contractor and Owner. Subcontractor shall be fully responsible for 24 hours minimum advance notification to, and coordination with, Contractor's Project Superintendent for all such material deliveries and comply with Project Superintendent's directives regarding the placement and storage of said deliveries.

Subcontractor shall carefully protect the finished work of Subcontractor and of other trades, any existing improvements, any equipment, materials, and any property of others from any damage by Subcontractor or its subcontractors/vendors.

Article VIII INSURANCE

SUBCONTRACTOR'S INSURANCE

Before commencing the Subcontract work, and as a condition precedent to any payment, the Subcontractor shall purchase and maintain insurance in conformance with the provisions contained in this Exhibit. This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the Subcontractor's behalf.

Proof of this insurance shall be provided to the Contractor before the work commences, as set forth below. To the extent that the Subcontractor subcontracts with any other entity or individual to perform all or part of the Subcontractor's work, the Subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, the Subcontractor or the Sub-Subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor at the Subcontractor's or Sub-Subcontractor's expense.

MINIMUM LIMITS OF LIABILITY

The Subcontractor must maintain the required insurance with a carrier rated A- or better by A. M. Best. The Subcontractor shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance
\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage) \$2,000,000
General Aggregate
\$2,000,000 Ongoing & /Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance
\$1,000,000 combined single limit per accident

Workers' Compensation and Employers' Liability Insurance
\$100,000 Each Accident
\$100,000 Each Employee for Injury by Disease
\$500,000 Aggregate for Injury by Disease

Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverages)
\$1,000,000 occurrence/aggregate

Additional Insured Status and Certificate of Insurance

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Contractor and Owner, and this clause shall apply to the Contractor's and Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and an Additional Insured Endorsement (in a form acceptable to the Contractor) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Contractor for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Contractor upon request.

SD, *WPH*

NO LIMITATION ON LIABILITY

With regard to any and all claims against the additional insured by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

CANCELLATION, RENEWAL AND MODIFICATION

The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor until final completion and acceptance of the entirety of the Subcontract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of insurance showing required coverage to be in force must be delivered to the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling the Contractor, at its sole discretion, to purchase such equivalent coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

CONTINUATION OF COVERAGE

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

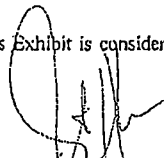
ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO THE SUBCONTRACTOR'S INSURANCE AGENT OR BROKER

The Subcontractor represents that it has provided a copy of the "Insurance Provisions" to his insurance agent and/or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this Exhibit is considered a material term of the Subcontract.


On Behalf of the Contractor

Date: 4-5-13


On Behalf of the Subcontractor

Date:

Article IX
ADDITIONAL PROVISIONS

In addition to the foregoing provisions, the parties also agree as follows:

That Subcontractor shall:

1. Clean-up - Keep the building and premises clean at all times of debris arising out of the performance of this Subcontract Agreement or Subcontractor's operations. Subcontractor shall daily remove all trash, rubbish, and debris caused by its work to Owner's dumpster or the location designated by Contractor. If Subcontractor does no clean up, as outlined above, on direction from Contractor or his representative, within a twenty-four (24) hour period, Contractor may perform this work and charge all costs incurred to Subcontractor. Charges associated with the clean-up of debris created by more than one subcontractor shall be assessed on a pro-rata basis according to Subcontractor's share of the general debris, as determined by Contractor.
2. Safety - Comply with all statutory, regulatory, contractual, and Project safety requirements applying to its work and/or initiated by Contractor, and shall immediately report to Contractor any injury to Subcontractor's employees at the site of the Project. The parties to this Subcontract Agreement agree to abide by the Construction Safety Act of 1969, the Occupational Safety and Health Act of 1970, Contractor's Safety Program, all applicable state and federal statutes, and any amendments thereto, and shall be responsible for the acts of their employees. Subcontractor to indemnify Contractor and Owner against any and all fines, costs and expense incurred by Contractor or Owner as a result of Subcontractor's failure to comply with any law, regulation or directive by any and all government entities.
 - A. Hazard Communication - Subcontractor is required to implement, and maintain at the jobsite, a written hazard communication program per OSHA Standard 1926.59.
 - B. MSDS - Subcontractor agrees to provide a list of all materials Subcontractor will utilize on site that are regulated by OSHA Standard 1926.59 and to provide Contractor with Material Safety Data Sheets (MSDS) for all such listed materials. Subcontractor will also require this of any sub-subcontractors.
 - C. Safety Rails - Subcontractor will immediately repair and or replace any safety railings or other safety provisions that Subcontractor has removed or altered.
 - D. Accident Notification - Subcontractor will full disclose, in writing, all facts and circumstances related to any accidents involving Subcontractor's work and/or Subcontractor's employees within twenty-four (24) hours of the occurrence of such an accident.
 - E. Hard Hats / Attire - Subcontractor will, at its expense, require all of its employees, including anyone directly or immediately employed by them, to wear hard hats, shirts, shoes, long pants, and all other required safety clothing or personal protective equipment at all times while on the Project site.
 - F. Safety Meetings - Subcontractor's employees will be required to attend Contractor's weekly safety meetings or attend weekly safety meetings conducted by the Subcontractor, in which case, the Subcontractor will provide to the Contractor a list of the meeting attendees and a copy of the minutes of the meeting.
 - G. Safety Enforcement - Should Subcontractor, or anyone for whom Subcontractor is responsible, fail to comply with any of these provisions, Contractor has the right to immediately suspend Subcontractor's work until such time as Subcontractor has come into full compliance. Such suspension will not entitle Subcontractor to a change order for additional costs or an extension of time. Contractor also reserves the right to immediately remove from the jobsite any individual whom Subcontractor is responsible that willfully or persistently violates any provisions herein.

3. Assignment / Sub-Subcontractors - Not assign this Subcontract Agreement or any amounts due or to become due hereunder without the prior written consent of Owner, nor subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of Owner. Owner's consent to any full or partial assignment shall not constitute a novation or release Subcontractor from any of its obligations under this Subcontract.
4. Guarantee - Guarantee its work against all defects of materials and/or workmanship as called for in the plans, specifications and addenda for such period of time as required thereby or by any other provision in the Subcontract Documents, or, if no other guarantee is called for, then for a period of one (1) year from the date of acceptance of the Project by Owner and Contractor.

Prior to the expiration of the one-year guarantee period, as referenced above, Owner reserves the right to carry out a detailed inspection of the project with regard to the work covered under the terms of the Subcontract Agreement and present findings and observations of such inspection to Subcontractor. Upon notice Subcontractor is required to immediately correct the work as a result of defective or unsatisfactory materials and/or workmanship as noted by such detailed inspection.

5. Progress Reports - Furnish periodic progress reports concerning the work including the progress of materials or equipment in the course of preparation or manufacture and permit Contractor to communicate directly with Subcontractor's equipment/material vendors regarding status.
6. As - Built Documents - Subcontractor will update on a weekly basis a record set of as-built drawings, and/or drawings as designated by the Contract Documents. These drawings will be kept on site for review at any time by Contractor, Architect, Engineer, and/or Owner. As-built drawings will accurately show dimensioned locations for all pipe, conduit, and equipment, including underground and concealed items. A record set of as-built drawings in quantities defined by Exhibit "B" or the Subcontract Documents whichever is greater, and shall be provided to Contractor and Owner upon completion of all work covered by this Subcontract Agreement.
7. Coordination - Cooperate and coordinate with Contractor and other subcontractors whose work might conflict or interfere with Subcontractor's work and to participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising Contractor of any such conflict or interference. Subcontractor shall carefully study the project plans and specifications, perform on-site surveys, review submittals furnished by all other trades that interface with subcontractors work and inform Contractor of any errors, inconsistencies or conflicts.
8. Scheduling & Submittals - Cooperate with Contractor in scheduling the work so as not to conflict or interfere with the work of others. To promptly submit shop drawings, submittals, and samples, as required in order to carry out said work efficiently and at a speed that will not cause delay to the progress of Contractor's work or other branches of the work carried on by other subcontractors. The approval of shop drawings, samples, submittals, catalog cuts, and or other submissions and information shall not relieve the Subcontractor of its responsibility for properly detailing the design, or for any errors, omissions, or discrepancies from the Subcontract Documents which may exist in the final work installed by Subcontractor. Subcontractor shall review and approve all shop drawings, samples, submittals, catalog cuts, and other submissions and information supplied by their subcontractors or suppliers prior to submission to Contractor.
9. Compliance with Laws - Comply with all Federal, State, and Local laws and ordinances applicable to the Project, give adequate notices relating to the work to all proper authorities, and secure, pay for, and comply with all licenses and permits necessary to carry out the work as described in the Subcontract Documents. Subcontractor shall also comply with Federal,

State, and Local tax laws, Social Security laws, Unemployment Compensation laws, and Workers Compensation laws, and pay all benefits and taxes as required by said laws.

10. Punch list/Correction of Work - Continually inspect and prepare punch lists concerning its own work to insure conformance with the Subcontract Documents. Subcontractor agrees to correct any deficiencies or deviations from the Subcontract Documents promptly upon discovery by any party. The correction of work as noted on previous punch lists does not relieve Subcontractor from correcting its work per subsequent punch lists. All such work shall be subject to the final acceptance of Contractor, Architect, Engineer, and Owner.
11. Labor - And does hereby agree to perform its work with labor compatible with that of other trades performing work at the jobsite or on any other building, structure, or other improvement which Contractor may then be erecting or altering.

Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

That Contractor shall:

12. Make available to Subcontractor for inspection, upon reasonable request, any Subcontract Documents which Subcontractor does not possess.
13. Promptly relay to Subcontractor any revisions or clarifications received from Owner, Architect, or Engineer with respect to the design of the work to be performed by subcontractor.
14. Promptly submit to the Owner, Architect, or Engineer any reasonable requests received from Subcontractor for design changes, clarifications, or information.

The Parties also agree:

15. Extra Work/Changes: Subcontractor shall make any and all changes, additions, and/or deviations from the original plans and specifications without nullifying the original Subcontract Agreement. Subcontractor, prior to the commencement of this revised work, shall submit promptly to Contractor written copies of the cost or credit proposal for such revised work in a manner consistent with the Subcontract Documents. Should Contractor and Subcontractor be unable to agree as to the value of Subcontractor's work to be changed, added, or omitted, Subcontractor shall have the duty to promptly proceed with the work under the written order of Contractor from which order the stated value of the work shall be omitted and the value of the work shall be determined as set forth herein.

In the case of omitted work, Owner or his representative (Contractor) shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in Contractor's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or the claim procedures. Subcontractor agrees to make all claims for which Owner is or may be liable in the manner provided in the Subcontract Documents for like claims by Contractor against Owner. Notice of such claims shall be given within the time allowed by the Contract between Owner and Contractor and no later than three days prior to the beginning of Subcontractor's work for which such claim is to be made, or immediately upon Subcontractor's knowledge of the claim, whichever shall occur first. Otherwise such claim shall be deemed waived.

There will be no payment for extra work unless authorized in writing by Construction Manager and Owner prior to the beginning of the actual work. Such authorization is to state an exact, or, if agreed by Owner and Contractor, approximate cost of the work. Thereupon, Subcontractor shall submit final charges for any extra work to Contractor within ten (10) calendar days. Contractor reserves the option to approve extra work to be

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performed on a time and material cost basis. In this event, Subcontractor must submit work tickets on a daily basis for Construction Manager's signature, including a detailed breakdown of labor hours and material invoices. Subcontractor agrees its failure to provide daily back-up will result in its waiving of any claim for additional payment.

Unless the Subcontract Documents specify otherwise, approved changes are to be paid for on the basis of Subcontractor's actual, documented direct costs as defined by the Subcontract Documents plus a maximum of ten percent (10%) total for overhead and profit. In the event overtime is authorized by Owner and Contractor in writing and in advance as constituting an extra (as opposed, for example, to overtime necessary to remedy Subcontractor's own delays), only the overtime premium portion paid by Subcontractor, without overhead and profit, shall be regarded as an extra. Subcontractor agrees that its execution of any Modification/Change Order will constitute Subcontractor's agreement that the compensation called for therein is full and complete payment for all costs and losses (direct and indirect) of whatsoever kind or nature associated with such changed work and that Subcontractor, by executing such change, waives all impact costs, delay damages, acceleration costs, loss of efficiency or productivity costs, and other costs and damages associated with such change.

16. **Payments Withheld** – Payments otherwise due may be withheld by Owner on account of defective work not remedied, claims filed against Subcontractor or against Owner or Contractor relating to Subcontractor's work, evidence indicating that the filing of such a claim is probable, failure of Subcontractor to make payments properly to its subcontractors or for material or labor, evidence or knowledge of Subcontractor's current/pending bankruptcy, or a reasonable doubt that this Subcontract Agreement can be completed for the Subcontract balance then unpaid. If the said causes are not removed, within forty eight hours (48) after written notice, Owner may rectify the same at Subcontractor's expense.
17. **Deductions from Payments; Set-off** – Owner or Contractor shall be entitled to deduct from or set-off against any progress payment and/or the final payment under this Subcontract Agreement or any amounts otherwise payable to Subcontractor under this Subcontract Agreement or any other contract between Owner and Subcontractor; (a) any sums expended by Owner or Contractor in performing any obligations under such contract that Subcontractor has failed to perform; (b) any damages, costs, or expenses incurred by Owner or Contractor as a result of Subcontractor's failure to perform any of its obligations under such contract; and (c) any other amount owing from Subcontractor to Owner or Contractor under any such contract or otherwise.
18. **Daily Reports** - Subcontractor's highest ranking on-site representative shall submit on a daily basis a written report to Contractor's highest ranking on-site representative detailing crew sizes and composition, materials received, work completed, the reasons for any delays or deviations from Project Schedule, and any other information that may be requested by Contractor or its highest ranking on-site representative.
19. **Licenses/Permits** - Subcontractor is responsible for its respective local and state business licenses, permits, Occupational License, State registration, vehicle registrations, and any other jurisdictional requirements to perform its work. Proof of compliance shall be submitted prior to the start of Subcontractor's work.
20. **Existing Substrates** – If Subcontractor is to build or apply its work upon that of Contractor's or another subcontractor, Subcontractor shall inspect the existing conditions and, if any deficiencies exist, notify Contractor of the need for corrective action. Otherwise, Subcontractor acknowledges the previous work as being acceptable and warrants the resultant quality and performance of the finished work.
21. **Supervision & Layout** – Subcontractor shall designate one individual from among its supervisory personnel located on-site as being in charge of all work performed by

Subcontractor and its subcontractors and to serve as Subcontractor's agent for purposes of communication with Contractor and his Project Superintendent. This person shall be on site at all times while Subcontractor is performing work and shall not be changed without the consent of Contractor unless he ceases to be in the employment of Subcontractor. Subcontractor shall provide all layout engineering and/or field dimensioning required for the performance of the work described herein. Errors in layout and installation of this Subcontractor's work causing additional work by others shall be the responsibility of Subcontractor, and the cost for same shall to be borne by Subcontractor.

22. Indemnification - Subcontractor shall indemnify and hold harmless Contractor, Owner, Architect, and Engineer, and their respective agents and employees, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of Subcontractor's work, provided that any such claim, damage, loss or expense (A) is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (B) is caused in whole or in part by any negligent act or omission of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is also caused in part by a party indemnified hereunder.

In any and all claims which may be asserted against Contractor, Owner, Architect, or Engineer, or any of their respective agents or employees, by any employee of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages recoverable, or the compensation or benefits payable, by or for Subcontractor or any of its subcontractors under Workers Compensation acts, disability benefit acts, or other employee benefits acts.

Article X Claims and Disputes

- A. Any claim, dispute, or controversy between Owner or Contractor, or Subcontractor, shall be conclusively resolved and settled as follows:

Subcontractor shall conclusively be bound by and abide by Owner or Contractor's decision, unless Subcontractor shall timely commence arbitration proceedings in strict accordance with the following provisions:

- i. If Subcontractor decides to appeal the decision of the Owner or Contractor, then the controversy shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Association prevailing at that time, and the arbitration decision shall be final and binding upon both parties; provided, however, that arbitration proceedings shall be commenced by Subcontractor not later than 30 days following Subcontractor's receipt of notice of Owner or Contractor's decision; otherwise, the Owner or Contractor's decision becomes final and binding. Venue for arbitration or any subsequent litigation whatsoever shall be in the city of the Owners office as shown on Page 1 of this Agreement.
- ii. Any arbitration arising out of relating to this Agreement or the breach thereof may, at Owner or Contractor's sole option and election, include by consolidation, joinder or any other manner, any other entities or persons whom Owner or Contractor believes to be substantially involved in a common question of fact or law. Without limiting the generality of the foregoing, this provision shall specifically entitle Owner or Contractor, at its sole option and election, to consolidate any arbitration proceeding between Owner or Contractor and Subcontractor with any other arbitration

proceeding(s) arising out of the same Project (unless and except to the extent Owner or Contractor is precluded from doing so by the terms of its arbitration agreement with the parties to the other arbitration proceeding(s)).

- iii. In the event Subcontractor fails to abide by a final binding decision of Owner or Contractor, or any arbitrator(s), Owner or Contractor shall have the right to enforce said decision by withholding appropriate sums from any payments that would otherwise be due Subcontractor, or, to the extent the Subcontract balance is insufficient to satisfy Subcontractor's obligation, by legal action, with all costs of such legal action, including Owner or Contractor's reasonable attorneys' fees to be borne by Subcontractor.

- B. In the event of any dispute between Owner and Contractor or Subcontractor relating to this Subcontract or a breach thereof, Subcontractor agrees to exhaust all remedies available through Contractor under Contractor's Contract with Owner prior to instituting any separate action or, in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, Subcontractor agrees to stay said action pending the exhaustion of all remedies against the Owner. Subcontractor also agrees to be bound to Construction to the same extent Contractor is bound to Owner by the final decision resulting from arbitration or of a court of competent jurisdiction, whether or not Subcontractor is a party to such proceeding. If such dispute is prosecuted or defended by Contractor against Owner under the terms of the Contractor's Contract with Owner or in any court action, arbitration, or other proceeding, Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights and shall have the duty to cooperate with Contractor. Subcontractor agrees to furnish to Contractor at no cost all documents, statements, witnesses and other information required by Contractor for such purpose, to fully cooperate with and assist Contractor with respect thereto, and to pay or reimburse Construction for all expenses and costs, if any, incurred by Contractor in connection therewith.

In any arbitration proceeding, Subcontractor agrees to the appointment of arbitrators as may be selected by Contractor and Owner pursuant to the requirements of the arbitration provision in the Contractor's Contract with Owner. It is expressly agreed and understood that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor, in connection with this Project, Contractor shall never be liable to Subcontractor to any greater extent that Owner is liable to Contractor for same.

- C. In the event of any claim by Subcontractor or dispute between Subcontractor and Contractor, Subcontractor and its sureties agree to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contractor's Contract with Owner and by any and all decisions or determinations made thereunder by the party or entity so authorized in Contractor's Contract with Owner.
- D. No claim, dispute or controversy shall interfere with the progress of construction, and Subcontractor shall proceed with its work without interruption, deficiency or delay irrespective of any claim, dispute, or controversy which may arise.
- E. Should either party to this Agreement demand arbitration or institute a lawsuit to enforce any of the provisions hereof, to protect its interest in any matter arising under the Subcontract, to collect damages for the breach of the Subcontract, or to recover on a surety bond given by a party to the Subcontract, the prevailing party shall be entitled to recover, and the losing party agrees to pay, all reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

Article XI
SUBCONTRACTOR DEFAULT/TERMINATION

Failure to Perform: Should Subcontractor at any time fail to supply a sufficient number of skilled workmen or sufficient equipment, tools, and materials of proper quality, or fail in any respect to prosecute the work covered by this Subcontract Agreement with promptness and diligence, or fail to perform work of the quality required by the Subcontract Documents, or fail in the performance of any of the agreements herein contained, or should any workmen performing work covered by this subcontract engage in a strike or other work stoppage, or cease to work due to picketing or other such activity, Owner or Contractor may, at its sole option, and without prejudice to any other rights it may have, after twenty-four (24) hours written notice to Subcontractor: (1) provide any such labor, equipment, tools, or (2) terminate the employment of Subcontractor for the work under this Subcontract, enter upon the premises and take possession, for the purpose of completing the work hereunder, of all Subcontractor's materials, tools and equipment thereon, finish the work either with its own employees or another subcontractor, or (3) both (1) and (2).

In case of any such termination of the Subcontractor's employment, Subcontractor shall not be entitled to receive any further payments under this Subcontract Agreement or otherwise except as provided herein, and shall be liable for any damages which Owner or Contractor incurs as a result of Subcontractor's failure to properly and timely perform this Agreement, including, but not limited to, any expenses Owner or Contractor incurs in completing Subcontractor's work in excess of the unpaid Subcontract balance. Such expenses include, but are not limited to, all supervision, labor, materials, tools, equipment, overhead costs, incurred by Owner or Contractor in completing the work plus ten percent (10%) profit applied to such costs and expenses, any liquidated or actual damages that may be assessed against and collected from Contractor as a result of Subcontractor's failure to perform its work properly and in a timely manner or as a result of the time lost in arranging for the completion of the work by others; and all attorney's fees and other damages Contractor may sustain by reason of Subcontractor's failure to properly and timely perform its work. Subcontractor shall pay any such excess completion costs to Owner or Contractor, along with any other damages incurred by Owner or Contractor as a result of Subcontractor's default. Owner shall have a lien upon all materials, tools, and appliances taken into Owner's or Contractor's possession to secure the payment thereof, and Subcontractor agrees to execute any assignments necessary to make available to Owner and Contractor the rights of Subcontractor. Subcontractor shall reimburse Owner or Contractor for all damages and excess completion costs incurred by Owner or Contractor due to Subcontractor's failure to properly and timely perform its Subcontract. If, upon completion of Subcontractor's work, the final acceptance of the work by Owner, and final payment to Contractor for said work, Contractor's total damages and completion costs are less than the remaining Subcontract balance, then Owner will pay the difference to Subcontractor.

The parties acknowledge that determinations as to the adequacy of a contractor's performance or a contractor's ability to complete the work are difficult to make and must be made under pressing circumstances; and agree that any determination by Owner or Contractor that the provisions of this Article should be invoked shall be deemed conclusive and binding upon the parties absent bad faith on the part of Owner or Contractor. Upon written request by Owner or Contractor, Subcontractor shall furnish to Owner or Contractor such evidence as Owner or Contractor may require relating to Subcontractor's ability to fully perform this Subcontract Agreement in the manner and within the time required by Contractor.

Termination Without Cause: Owner or Contractor shall have the right, by giving twenty-four (24) hours written notice to Subcontractor, to terminate this Subcontract, without cause and in the absence of any default or breach by Subcontractor, and to require Subcontractor to cease work hereunder, in which case, Owner shall pay Subcontractor for work properly in place and costs directly resulting from such cessation of work, except that Subcontractor shall not be entitled to anticipated profits on work unperformed or on materials, labor or equipment unfurnished. In the event Owner terminates its contract with Contractor, Subcontractor shall not be entitled to any greater recovery than Contractor receives on behalf of Subcontractor or related to the Subcontract. Any claim by Subcontractor arising from such a termination shall be subject to the requirements of Article X. Further, in the event Owner or Contractor terminates Subcontractor for default and it is later determined that the termination was not warranted or was wrongful, such termination shall be deemed a termination without cause, subject to the provisions of this paragraph.

Article XII MERGER

This Subcontract Agreement supersedes any and all proposals, negotiations and agreements prior to the date of this Agreement, and may be amended only by written instrument signed by both Owner or Contractor and Subcontractor. This Subcontract Agreement is solely for the benefit of the signatories hereto. No term or provision of this Subcontract Agreement may be waived by Owner or Contractor except in writing, signed by Owner or Contractor, or their duly authorized officer or agent; and Owner's or Contractor's waiver or, or failure to enforce, and term of this Agreement in one instance shall not constitute a waiver of that term with respect to any other instance or a waiver of any other terms of this Agreement.

If this Subcontract Agreement has not been signed and returned within fifteen (15) calendar days of date of this Subcontract Agreement, Subcontractor's failure to do so shall constitute acceptance of this Subcontract Agreement in full as issued. Subcontractor shall not be entitled to any payment until this Subcontract Agreement has been properly executed and all documents and information to be furnished by Subcontractor (including, but not limited to, any bonds and evidence of insurance required herein) have been supplied to Owner or Contractor.

Article XIII
GOVERNING LAW / PRECEDENCE / INVALID TERMS

This Subcontract Agreement shall be governed by, and construed in accordance with, the laws of the State noted on Page One (1) of this Agreement. In the event of any conflicts between the specific provisions contained in this Subcontract Agreement and any provisions or language contained in other parts of the Subcontract Documents which are incorporated herein by reference, the provisions contained in the Subcontract Agreement itself shall prevail. In the event any of the terms of this Subcontract Agreement (including the Subcontract Documents, incorporated herein by reference) are, or are deemed to be, invalid, void, or unenforceable, such shall not affect the applicability of the other provisions of this Agreement, which shall remain in full force and effect. Subcontractor expressly acknowledges that it has had an opportunity to fully review the complete contents of the Contract between Contractor and Owner and the full Subcontract Documents prior to the execution of this Subcontract Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Subcontract Agreement.

SUBCONTRACTOR

CONTRACTOR

BY:

BY:

NAME:

NAME:

TITLE:

TITLE:

DATE:

DATE:

SUBCONTRACTOR WITNESS

CONTRACTOR WITNESS

**HAVERTYS FURNITURE STORE
DIVISION 3000 / CONCRETE**

EXHIBIT "B"

THE WORK:

The Subcontractor shall provide all labor, materials, lifts, and safety equipment to furnish and install concrete as per the drawings and specifications in Exhibit "C" for a complete and finished system. The work includes demolition of concrete SOG and CMU block walls, saw cutting, pour, place and finish, reinforcing steel, paver removal and pour back, plumbing & electrical trench removal and pour back, entry slab, new sidewalks, curb and gutter, braced wall with footings and fix block around new CMU door openings. All materials shall be installed and meet all Federal, State and Local codes.

GENERAL:

1. Subcontractor shall provide all labor and materials for the lay-out of his work. Contractor shall provide a benchmark for beginning lay-out.
2. Subcontractor shall inspect his areas and areas adjacent to his work for any discrepancies and notify Contractor of such discrepancies prior to beginning work. Failure to notify Contractor of any discrepancies shall constitute Subcontractors acceptance of the conditions and any modification or repair as a result of such discrepancies shall be at a cost to the Subcontractor and shall not be considered a change in work to the Contractor or the Owner.
3. Subcontractor shall protect his work areas from damage by other trades. Subcontractor shall protect areas adjacent to his work while performing the duties of his work.
4. Subcontractor shall provide all labor and materials necessary to keep his work areas clean and in a broom swept condition on a daily basis. Contractor shall provide a dumpster for Subcontractor's use. Failure by the Subcontractor to keep his work picked up will result in a back-charge from the Contractor for all expenses incurred by the Contractor in cleaning up Subcontractor's work. Contractor shall provide one (1) written warning to Subcontractor prior to taking action against Subcontractor.
5. Subcontractor shall install his work in accordance with all Federal, State, or Local codes as they may apply.
6. Subcontractor shall provide sufficient manpower as to keep the work moving in accordance with the Contractor's schedule or direction.
7. Subcontractor shall give Contractor twenty-four hours notice prior to any materials being delivered to the project site. Subcontractor shall provide all labor, materials, and lifts necessary to load and un-load his materials.
8. Subcontractor shall warrant his work against defects for a period of not less than twelve (12) calendar months from date of Substantial Completion.

MATERIALS:

1. All materials shall be clean, new, and without defects.

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HAVERTYS FURNITURE STORE
DIVISION 3000 / CONCRETE

EXHIBIT "B"

2. All materials shall be accordance with the plans and specifications, and shall meet all requirements of all Federal, State, or Local building codes as they may apply.
3. All materials shall be approved by Contractor, Architect, and Engineer prior to their use.

MEETINGS / REPORTS:

1. Subcontractor shall attend all Subcontractor meetings as directed by Contractor. Subcontractor shall have his Project Manager and on-site Foreman in attendance at all meetings. Failure to attend any meetings may result in a \$100.00 fine at the Contractor's discretion.
2. Subcontractor shall provide a daily record to Contractor's foreman indicating all materials delivered, employees on-site, and work completed for each day's work. Reports shall be turned in with-in 24's hours of previous days work.

TIME: PHASED SCHEDULE COMPETION

1. Phase 1 – April 16, 2013
2. Phase 2 – May 16, 2013
3. Phase 3 – June 16, 2013

Above are the completion dates each phase will be turned over to Havertys. Please note these are NOT the dates your work shall be completed, but the date all trades will be complete. Subcontractor understands time is of the essence and will man the project accordingly to work within the contractor's timeframe completing his work so that other trades may complete their work by the dates listed above.

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

ARCHITECTURAL:

A0.0	Cover Page	02.13.13
A0.1	Responsibility Schedule	02.13.13
A0.2	Life Safety Plan	02.04.13
A0.3	Project Standards	02.04.13
A0.4	ComCheck	02.04.13
A0.5	Phasing Floor Plan	02.13.13
A0.6	Phasing Reflected Ceiling Plan	02.13.13
A1.1	Revised Floor Plan	02.13.13
A1.2	Revised Reflected Ceiling Plan	02.13.13
A1.3	Finish Plan	02.04.13
A1.4	Enlarged Exterior Plans & Plan Details	02.04.13
A1.5	Roof Plan	02.13.13
A2.1	Exterior Elevations	02.13.13
A2.2	Exterior Elevations	02.13.13
A3.1	Wall Sections & Details	02.13.13
A3.2	Wall Sections & Details	02.04.13
A3.3	Wall Sections & Details	02.13.13
A4.1	Enlarged Interior Floor Plans	02.13.13
A4.2	Enlarged Core Floor Plans	02.04.13
A4.3	Enlarged Reflected Ceiling Plan & Details	02.04.13
A6.1	Schedules	02.04.13
A6.2	Schedules	02.13.13
A7.1	Building Sections	02.04.13
A7.2	Interior Elevations	02.04.13
A7.3	Interior Elevations and Details	02.13.13
A8.1	Merchandising Plan (For Reference Only)	02.04.13
AD1.1	Phasing Demolition Plan	02.13.13
AD1.2	Phasing Demolition Reflected Ceiling Plan	02.04.13
AD1.3	Demolition Roof Plan	02.13.13
C0.0	Cover Sheet	
C1.0	Existing Conditions	
C2.0	Site Demolition Plan	
C3.0	Site Plan	
C4.0	Utility Plan	
C5.0	Erosion Control Plan	
C6.0	Construction Details	
C7.0	Construction Details	
C8.0	Construction Details	
C8.1	Construction Details	
C9.0	Construction Details	
E0.1	Fixture Schedule & Symbols	01.25.13

ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

E0.2	Electrical Details	01.25.13
E1.0	Electrical Power Plan	01.25.13
E1.1	Electrical Lighting Plan	01.25.13
E2.0	Electrical Roof Plan	01.25.13
E3.0	Electrical Enlarged Plans	01.25.13
E4.0	Panel Schedules	02.27.13
ED1.1	Electrical Demolition Plan	01.25.13
FP1.0	Fire Protection Criteria Sheet	01.25.13
M0.1	Mechanical Notes and Schedules	02.27.13
M0.2	Mechanical Details	01.25.13
M1.0	Mechanical HVAC Floor Plan	01.25.13
M2.0	Mechanical Roof Plan	01.25.13
MD1.0	Mechanical Demolition Plan	01.25.13
ME1.0	BMS Diagrams and Schedules	01.25.13
ME2.0	BMS Diagrams and Schedules	01.25.13
ME3.0	Building Management System Diagrams	01.25.13
P0.1	Plumbing Schedules, Legend & Notes	01.25.13
P0.2	Plumbing Details	01.25.13
P1.0	Plumbing Floor Plan	01.25.13
P1.1	Enlarged Plans and Riser Diagrams	01.25.13
PD1.0	Plumbing Demolition Plan	01.25.13
S0.1	General Notes	01.25.13
S1.1	Existing Roof Framing Plan	02.12.13
S2.1	Sections and Details	02.12.13
#1	Addendum A	02.09.13
#2	Addendum B	02.25.13
#3	Addendum C	02.27.13

SPECIFICATIONS: 01.20.12

DIVISION 0 CONDITIONS OF THE CONTRACT

Section 00600	Project Scope
Section 00810	General and Supplementary Conditions

DIVISION 1 GENERAL REQUIREMENTS

Section 01100	Summary
Section 01250	Contract Modifications Procedures
Section 01290	Payment Procedures
Section 01310	Project Management and Coordination
Section 01320	Construction Progress Documentation
Section 01330	Submittal Procedures
Section 01400	Quality Requirements
Section 01420	References
Section 01500	Temporary Facilities and Controls

ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 01524	Construction Waste Management
Section 01600	Product Requirements
Section 01700	Execution Requirements
Section 01732	Selective Demolition
Section 01770	Closeout Procedures
Section 01781	Project Record Documents
Section 01782	Operation and Maintenance Data
Section 01820	Demonstration and Training

DIVISION 2 SITEWORK

Section 02070	Selective Demolition
Section 02080	Utility Materials
Section 02221	Building Demolition
Section 02230	Site Clearing
Section 02300	Earthwork
Section 02510	Water Distribution
Section 02511	Hot-Mix Asphalt Paving
Section 02751	Portland Cement Concrete Pavement
Section 02764	Pavement Joint Sealants
Section 02821	Chain-Link Fences
Section 02920	Lawns and Grasses

DIVISION 3 CONCRETE

Section 03300	Cast-In-Place Concrete
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DIVISION 4 MASONRY

Section 04200	Unit Masonry
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DIVISION 5 METALS

Section 05120	Structural Steel
Section 05400	Cold-Formed Metal Framing
Section 05500	Metal Fabrications

DIVISION 6 WOOD AND PLASTIC

Section 06100	Rough Carpentry
Section 06202	Interior Finish Carpentry
Section 06402	Interior Architectural Woodwork

DIVISION 7 THERMAL & MOISTURE PROTECTION

Section 07210	Building Insulation
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ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 07241	Adhered Secondary Barrier System
Section 07543	Thermoplastic Polyolefin (TPO) Roofing
Section 07620	Flashing
Section 07720	Roof Accessories
Section 07920	Joint Sealants

DIVISION 8 DOORS AND WINDOWS

Section 08110	Steel Doors and Frames
Section 08211	Flush Wood Doors
Section 08311	Access Doors and Frames
Section 08411	Aluminum Framed Entrances and Storefronts
Section 08710	Door Hardware
Section 08800	Glazing
Section 08830	Mirrors

DIVISION 9 FINISHES

Section 09111	Non-Load-Bearing Steel Framing
Section 09250	Gypsum Board
Section 09310	Ceramic Tile
Section 09512	Acoustical Tile Ceilings
Section 09720	Wallcoverings
Section 09911	Exterior Painting
Section 09912	Interior Painting

DIVISION 10 SPECIALTIES

Section 10155	Toilet Compartments
Section 10523	Fire Extinguishers
Section 10801	Toilet and Bath Accessories

DIVISION 11 EQUIPMENT (NOT USED)

DIVISION 12 FURNISHINGS (NOT USED)

DIVISION 13 SPECIAL CONSTRUCTION (NOT USED)

DIVISION 14 CONVEYING SYSTEMS (NOT USED)

DIVISION 15 MECHANICAL

Section 15010	General Provisions
Section 15100	HVAC Piping, Valves and Accessories
Section 15170	Electrical Requirements for Mechanical Equip
Section 15250	Insulation

ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 15300	Fire Protection
Section 15400	Plumbing
Section 15610	Fans
Section 15700	Metal and Flexible Ductwork and Accessories
Section 15701	Grilles, Registers and Diffusers
Section 15703	Dampers and Louvers
Section 15736	Variable Refrigerant Flow Indoor Units
Section 15751	Rooftop Heating and Cooling Units
Section 15900	HVAC Testing, Adjusting and Balancing

DIVISION 16 ELECTRICAL

Section 16010	General Provisions
Section 16100	Basic Materials
Section 16101	Unitized Switchgear
Section 16110	Electrical Raceways
Section 16130	Conductors
Section 16131	Metal-Clad Cable
Section 16450	Grounding
Section 16500	Lighting
Section 16721	Fire Detection System
Section 16722	Cable and Systems Raceway
Section 16760	Telecommunications Cabling
Section 16999	Insulation Tests of Equipment and Cable

DIVISION 17 BUILDING MANAGEMENT SYSTEMS

Section 17000	Building Management System
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ROPER HANKS, LLC.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NUMBER: 2013-CP-10-7413

Affordable Concrete and Masonry d/b/a RSS, LLC,	)	
	)	
Plaintiff,	)	
	)	MEMORANDUM IN OPPOSITION TO
vs	)	DEFENDANT'S MOTION TO DISMISS
	)	ACTION, TRANSFER VENUE, AND
Roper Hanks, LLC.,	)	COMPEL ARBITRATION
	)	
Defendant.	)	
	)	

Plaintiff respectfully submits this memorandum in response to Defendant's Motion to Dismiss Action, Transfer Venue, and Compel Arbitration.

FACTS

The Plaintiff, Affordable Concrete and Masonry ("Affordable") entered into an Agreement to provide labor and materials for the installation of concrete, pavers and brick work at Haverty Furniture Companies, Inc. ("Haverty") in Charleston, South Carolina for the contract price of \$42,043.83 plus \$12,530.30 in change orders. Affordable is a small company owned by Steve Hughes. The company conducts most of its business in Horry County, but performs some projects in other parts of South Carolina. Affordable signed a contract to perform this work with Roper Hanks, LLC, the contractor on the project. Roper Hanks is large corporation located in Georgia and conducts business all throughout the South East. Roper Hanks supplied the form contract to Affordable. The contract was signed in South Carolina and the entire content and matter of the case relates to South Carolina. The performance of the contract occurred in South Carolina and related to the development of property in South Carolina.

During the project, a conflict developed between Mr. Hanks, the owner of Roper Hanks, LLC, and Mr. Hughes, the owner of Affordable. Affordable started work in March of 2013 and worked for approximately three months on the project. Affordable was paid only \$28,657.52 for this work. There is still \$25,916.62 due and owing to Affordable for the work performed on Haverty's property.

DISCUSSION

1. THE FEDERAL ARBITRATION ACT DOES NOT APPLY IN THIS CASE AND THEREFORE THE CLAUSE IS UNENFORCEABLE.

Under the Federal Arbitration Act (FAA), "arbitration agreements . . . in contracts *evidencing transactions involving commerce* are valid, irrevocable and enforceable".¹ The FAA defines commerce as "commerce among the several states."² To determine whether a contract involves interstate commerce, the court must examine the agreement, the complaint, and surrounding facts.³ "The development of land within South Carolina's border is the quintessential example of a purely intrastate activity."⁴ In Zabinski, Affidavits were submitted that supplied evidence that materials, subcontractors, and other supplies were from out of state.⁵

This case is about an agreement between a contractor and subcontractor. Affordable was hired to do concrete work in Charleston, South Carolina. Although the Defendant is incorporated in Georgia, they were doing business in South Carolina and the project that the contract is concerned with was in South Carolina. The contract was signed in South Carolina. The work was performed

¹ 9 U.S.C. § 2 (1988).

² 9 U.S.C. § 1 (1988).

³ Zabinski v. Bright Acres Assocs., 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001).

⁴ Id. at 595, 117-18.

⁵ Id.

in South Carolina. Affordable was responsible under the contract to supply all labor, materials, lifts, and safety equipment.⁶ The materials were made or purchased within South Carolina.⁷ The work was for the development of property in Charleston, South Carolina. The Defendant has supplied no evidence, other than the incorporation of the Defendant in Georgia, that the specific contract for concrete services involved interstate commerce.

As the FAA does not apply, South Carolina law is applied to the arbitration agreement. Under the South Carolina Uniform Arbitration Act, "Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters...on the first page of the contract and unless such notice is displayed thereon the contract *shall not* be subject to arbitration".⁸ While this notice requirement is preempted by the FAA in cases involving interstate commerce, this case involves purely intrastate commerce, and therefore, the FAA does not apply.

The Subcontractor Agreement does not mention arbitration anywhere on the first page of the contract. Therefore, the contract is not subject to arbitration.⁹

2. EVEN IF THE FAA APPLIES, THE DEFENDANT'S ARBITRATION CLAUSE IS UNCONSCIONABLE AND THEREFORE UNENFORCEABLE.

Plaintiff entered into and executed a sixteen (16) page agreement with Defendant. The Subcontract Agreement was a complex, fine print, very detailed document with an additional seven (7) pages of exhibits attached to it. The Subcontract Agreement contained an arbitration clause in

⁶ Exhibit A: Subcontract Agreement.

⁷ Exhibit B: Receipts for Materials and Supplies.

⁸ S.C. Code § 15-48-10 (emphasis added).

⁹ Exhibit A: Subcontract Agreement.

paragraph “X” on which Defendant relies to support its Motion to Dismiss and Compel Arbitration. This clause is unenforceable.

The Supreme Court in AT&T Mobility LLC v. Concepcion, states that “the provisions of the Federal Arbitration Act [FAA], stating that arbitration agreements . . . in contracts evidencing transactions involving commerce are valid, irrevocable and enforceable” and that “courts must place arbitration agreements on equal footing with other contracts and enforce them according to their terms.”¹⁰ The provision reflects not only the federal policy favoring arbitration but also the principle that an arbitration clause is a matter of contract law.¹¹

While the FAA states that arbitration clauses are enforceable, it also preserves the defenses of contract law. The Concepcion case is instructive of the methods by which arbitration agreements subject to the FAA may be *invalidated*:

“The final phrase of § 2, however, permits arbitration agreements to be declared unenforceable ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ This saving clause *permits agreements to arbitrate to be invalidated by ‘generally applicable contract defenses, such as fraud, duress, or unconscionability,’* but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.”¹²

While the court in Concepcion specifically limited unconscionability of *class* arbitration waivers, it also reiterated the potential for arbitration clauses to be unconscionable by continuing to hold them to the general contract law standards of unconscionability. A starting point in determining whether a clause is unconscionable is to determine whether the contract was one of adhesion.

¹⁰ AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1746, 179 L. Ed. 2d 742 (2011).

¹¹ *Id.* at 1745.

¹² AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 1746, 179 L. Ed. 2d 742 (2011) (emphasis added)

Adhesion contracts are not per se unconscionable,¹³ but finding an adhesion contract is the beginning point of the analysis.¹⁴ “[A]n adhesion contract is a standard form contract offered on a ‘take-it-or-leave-it’ basis with terms that are not negotiable.”¹⁵ In the instant case, the Subcontract agreement was a form document drafted and provided by Defendant, and Plaintiff had no opportunity to bargain for the terms; it was simply boiler plate terms with exhibits that explained the actual work to be performed. These facts show that it was an adhesion contract, and thus the door to unconscionability is opened. After a finding of an adhesion contract, one must continue the analysis by looking at the elements of unconscionability.

“In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.”¹⁶ The arbitration clause in question meets this description as discussed below.

In the instant case, Plaintiff did not have a meaningful choice with respect to the arbitration agreement. Factors to be considered when determining whether a party had a meaningful choice include “the relative disparity in the parties’ bargaining power; the parties’ relative sophistication; the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; whether there is an element of surprise in the inclusion of the challenged clause; and the

¹³ Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 27, 644 S.E.2d 663, 669 (2007).

¹⁴ Id.

¹⁵ Id. at 26-27

¹⁶ Id.

conspicuousness of the clause.”¹⁷ As established above, the Subcontract Agreement” that contains the arbitration clause is an adhesion contract, thus Plaintiff had no bargaining power. Defendant is a large corporation that does business throughout the South East United States, while Plaintiff is a local concrete and masonry company, owned by one individual. This created a significant imbalance in the parties’ sophistication. Plaintiff has suffered financial injury by not being paid what is owed for the work performed.

Perhaps most importantly, the clause did have an element of surprise because of its inconspicuousness and the one-sided terms in the document. Similar to Simpson, The arbitration clause was entirely in standard small print and located in paragraph ”X” labeled “Claims and Disputes” in the sixteen (16) page document with additional exhibits attached. Further, the document contained one-sided oppressive terms to which no reasonable person would agree. The Arbitration Clause mandates that the Plaintiff abide by the contractor’s decision or commence arbitration proceedings within thirty (30) days. After thirty days, the contractor’s decision becomes final and binding. The clause also allows the Contractor, at their “sole option”, to consolidate arbitrations. If the subcontractor fails to abide by the final binding decision of the contractor, the contractor has the right to withhold sums due to the subcontractor. The subcontractor is required to agree to an arbitrator selected by the contractor. While paragraph “X” contains many requirements for arbitration for the subcontractor, the contractor is excluded from these obligations as it relates to a dispute between contractor and subcontractor.

Therefore, because of Plaintiff’s lack of bargaining power, lack of sophistication, the nature of the damages, and the inconspicuous placement and form of the arbitration clause, Plaintiff did not

¹⁷ Id.

have a meaningful choice in agreeing to arbitrate.

Additionally, the cost prohibitive nature of arbitration coupled with the relative size of the parties makes the clause further imbalanced. A large corporation can more readily afford the high costs of arbitration than a local concrete company. For the foregoing reasons, the arbitration clause was one-sided, and the terms so oppressive that no reasonable person would make them and no fair and honest person would accept them.

Plaintiff's lack of meaningful choice, outlined above, in conjunction with the one-sided and oppressive terms of the agreement make the arbitration agreement unconscionable, and therefore Defendant's Motion to Compel Arbitration should be denied.

3. DEFENDANT'S CHOICE OF LAW PROVISION IS INVALID

Generally, under South Carolina choice of law principles, if the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law. But, if the resulting agreement is invalid as a matter of law or contrary to public policy in South Carolina, our courts will not enforce the agreement.¹⁸ Here, for the reasons discussed above regarding the unconscionability of the arbitration clause, this choice of law provision is also so one-sided, oppressive and adhesive that it cannot be a meaningful choice on the part of the Plaintiff. Further the costs of moving the venue to Georgia coupled with the relative size of the parties makes the clause further imbalanced. A change of venue to Georgia would in all likelihood deprive the Plaintiff of his day in Court. Therefore, the clause is unconscionable and invalid.

Additionally, South Carolina law applies because the loss occurred in South Carolina, the

¹⁸ Id.; Stonhard, Inc. v. Carolina Flooring Specialists, Inc., 366 S.C. 156, 159, 621 S.E.2d 352, 353 (2005).

contract was signed in South Carolina and the entire content and matter of the case relates to South Carolina.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Natasha M. Hanna".

Natasha M. Hanna, Esq., Attorney for the Plaintiff
Law Office of Natasha M. Hanna, P.C.
4717 Jenn Drive, Ste. 102
Myrtle Beach, SC 29577
Phone: [843] 839-8002
Fax: [843] 839-8011

December 16, 2014

Exhibit A

ROPER HANKS, LLC.

CONTRACT NO: 3000-3
DATE: March 16, 2013

SUBCONTRACT AGREEMENT

OWNER: Havertys Furniture Companies, Inc.
780 Johnson Ferry Rd NE
Atlanta, Georgia 30342

GENERAL CONTRACTOR: Roper Hanks, LLC.
3542 Kingsboro Rd NE
Atlanta, Georgia 30319

SUBCONTRACTOR: Affordable Concrete & Masonry
DBA RSS, LLC
6491 Highway 701 North
Conway, South Carolina 29526

DIVISION: 3000 / Concrete and Demolition

PROJECT: Havertys Furniture Store
1760 Sam Rittenberg Blvd
Charleston, South Carolina 29407

ARCHITECT: Wakefield Beasley & Associates
5155 Peachtree Parkway
Building 300 Suite 3220
Norcross, Georgia 30092

SUBCONTRACT AMOUNT: \$ 42,043.83

PERFORMANCE & PAYMENT BONDS: None Required

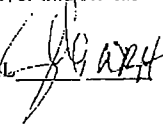
THIS AGREEMENT IS GOVERNED BY THE STATE OF GEORGIA

(The above terms are incorporated by reference and are more fully explained herein).

Exhibit "A": Subcontract Document
Exhibit "B": The Work
Exhibit "C": Drawings/Specifications
Exhibit "D": Sched Req - See Exh "B", Time

Exhibit "E": Applications for Payment
Exhibit "F": Interim Waiver and Release
Exhibit "G": Unconditional Waiver and Release

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Article I
SUBCONTRACT DOCUMENTS

The Subcontract Documents consist of this Subcontract Agreement, the Agreement between Owner and Contractor, the Conditions of the Contract between Owner and Contractor (General, Special, Supplementary, and other Conditions), the Project Plans and Specifications, and any revisions and addenda to any of the above, all as referenced in Exhibit "A", as well as any binding amendments thereto, including Contract Change Orders and/or Subcontract Modifications, whether issued before or after execution of this Agreement.

Any subsequent, additional or revised Contract Plans and/or Specifications and amendments shall become part of the Subcontract Documents. Subcontractor shall notify Contractor in writing within seven (7) days after receipt thereof of any objections to, or additional charges, for any changes/additions/deletions to the Subcontract Documents.

Subcontractor shall be bound to Contractor by the terms of the Contract between Owner and Contractor and this Subcontract, and assume toward Contractor all of the obligations and responsibilities that Contractor, per the Contract between Owner and Contractor, assumes toward Owner, as applicable to this Subcontract.

Article II
THE WORK

Subcontractor shall furnish and pay for all labor, material, taxes, tools, equipment, supervision, licenses and other goods and services necessary to perform and complete the work as further defined and described in Exhibit "B" attached hereto in strict accordance with the Subcontract Documents. Contractor shall determine and direct the schedule, sequence, timing and priority of the work activities and Subcontractor will comply with all such directions. Subcontractor warrants and represents that it has carefully examined the Subcontract Documents and has fully acquainted itself with all conditions relevant to the work called for by this Agreement, the site of the work, and its surroundings. Subcontractor agrees to assume the risk of such conditions and will, regardless of such conditions, or the expense or difficulty of performing the work, fully complete the work for the stated Subcontract Amount. Other than the Subcontract Documents themselves, any information furnished to Subcontractor by Contractor concerning the site, local conditions, or anything else regarding the work or the Project, is furnished for the Subcontractor's convenience only, and Contractor makes no guarantees or warrants as to their accuracy or completeness.

Article III
SCHEDULE REQUIREMENTS

Time is of the essence of this Agreement. Subcontractor agrees to commence and to complete the work as described in Exhibit "B" in accordance with the schedule requirements in Exhibit "C". In the event Contractor does not prepare a Project Schedule, Subcontractor will commence work at the times directed by Contractor and work in an efficient and continuous manner until the work is complete. Subcontractor shall cooperate with Contractor by providing scheduling information pertaining to Subcontractor's work when requested by Contractor.

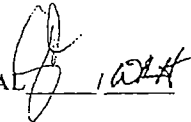
1. No extension of the time allowed to perform this Subcontract Agreement will be recognized or effective without the written consent of the Contractor and Owner.
2. Subcontractor acknowledges that time is of the essence and performance according to the Project Schedule is a material requirement of this Agreement. The Schedule will be updated at the Project Schedule Meetings, and attendance of the Subcontractor's field foreman and/or project manager is mandatory. The most recently updated Construction Schedule will be the

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basis for the performance of the Work and the establishment of intermediated and final completion dates. Subcontractor's representatives are to be empowered to make both time and cost commitments and shall be abreast of its current schedule and material delivery status. Subcontractor will replace any representative that Contractor determines to be unqualified, uncooperative, or unsuitable. Any Subcontractor requested to attend and not represented at the Meeting will be responsible for the expenses and damages caused by the Subcontractor's absence.

3. The initial Construction Schedule represents the required durations of activities. In the event job progress begins to improve on those activity completion dates for any reason such as better weather, material deliveries, performance by subcontractors, and or fewer design problems, both the intermediate and final completion dates may be adjusted by the amount of time gained, such gain as reflected in the Near Term Schedules. Unless Subcontractor provides reasonable written objection, its completion time will be established by these Schedules and Subcontractor will meet such Schedules even though such scheduled time for performance may be shorter than the original referenced completion dates. These Schedules, as modified during the job and as defined by the Contractor, provide the only dates for intermediate and final completion dates irrespective of anything else to the contrary. The revising of the Near Term Schedule by the Contractor to reflect the failure of Subcontractor to meet the previous schedule does not constitute an agreement by Contractor that Subcontractor is entitled to an extension of time, nor is Subcontractor relieved of liability for such failure. This Article III provision controls and modifies all other provisions in this Agreement which may be to the contrary.
4. If Subcontractor is behind schedule due to lack of proper performance on its part, Subcontractor shall either: (A) perform the work on an overtime basis, or (B) increase its manpower, equipment, materials, and other resources to a level such that the activities can be completed by the scheduled completion date, or (C) implement a combination of these methods, as directed by Contractor. Subcontractor will be assessed any damages that may be incurred by Contractor due to Subcontractor's lack of proper performance. Unless otherwise expressly noted on the Project Schedule or agreed upon in writing, Subcontractor is to furnish sufficient manpower, equipment, materials, and other resources to achieve its Near Term Schedule completion dates by working within normal working hours (established by Contractor for this Project), Monday through Friday. IN the event Subcontractor fails to do so and attempts to recoup lost time by abnormal increases of forces or by working at nights or on weekends, Subcontractor shall be liable for additional general condition costs and compensation for Contractor's personnel for after hours and/or weekend work. Subcontractor shall immediately notify Contractor in writing of any circumstances which would delay the completion of any activity beyond the completion date established in the Schedule; otherwise, Subcontractor will continue to be responsible for meeting all activity completion dates. If Subcontractor is responsible for any delays to, or resequencing of the Schedule, Subcontractor will pay Contractor for all loss and damages incurred by Contractor resulting from such delays or loss.

In the event Subcontractor is unable to work due to rain or inclement weather during the work week, Subcontractor agrees to make up those days on weekends.
5. In the event Subcontractor is prevented from performing its work in accordance with the original Schedule, or Subcontractor's work is delayed, accelerated, disrupted, impeded, resequenced or otherwise adversely impacted due to circumstances wholly beyond Subcontractor's control, Subcontractor shall be entitled to a time extension as its sole remedy, if and to the extent: (1) Subcontractor can demonstrate that such is warranted and (2) Contractor receives a time extension (due to delays which impacted Subcontractor's work) from the Owner. Subcontractor's right to a time extension in such circumstances shall be conditioned upon and limited to Contractor's ability to receive a time extension from the Owner. If Contractor receives no time extension from Owner, then Subcontractor shall be entitled to no time extension. In the event that the Project Schedule and/or events during

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construction prohibit Subcontractor from executing its work on a continual basis or in the sequence it planned, Subcontractor accepts this condition and no claim is to be made for remobilization; however, Subcontractor shall maintain a continual flow of work to the full extent possible.

Article IV PROGRESS PAYMENTS

Contractor agrees to pay Subcontractor for the performance of its work the sum set forth as the Subcontract Amount, subject to any additions or deductions for changes which may be mutually agreed upon in writing, and to make monthly payments on account thereof.

1. Subcontractor's monthly application for payment must be prepared on the form which appears as Exhibit "E" and must be received in Contractor's main office by the 20th of each month in order to be included in the application for payment to be submitted to the Owner for that pay period; otherwise, no payment will be made until the following pay period. Only one (1) application for payment will be honored monthly unless noted herein. Applications for payment shall include a list of material suppliers and subcontractor, the current status of billings by and payments to each, and lien waivers from each vendor who has furnished goods/services for the project. These lien waivers must be prepared on the forms which appear as Exhibits "E" and "F".
2. Contractor shall make monthly progress payments to Subcontractor within fifteen (15) days or within five (5) days from contractor's receipt of payment from owner, whichever is later, unless otherwise provided in the Contract between Owner and Contractor or by law. Notwithstanding any other provision of this Agreement, receipt of payment from Owner is an express condition precedent to any obligation of Contractor to make payment to Subcontractor. In no event, and under no circumstances, is any payment due Subcontractor until Contractor has first received payment for the work in question from Owner. The amount of each such progress payment shall be that amount necessary to cause the cumulative payments to date to Subcontractor to equal the Subcontractor's percentage of completion as certified by the Contractor multiplied by the Subcontract Amount, less retainage as provided below.
3. Ten percent (10%) of Subcontractor's total cumulative earned billings shall be retained from payment and released as part of final payment in accordance with Article V. However, upon receipt of a written request from Subcontractor, Contractor may, in its sole discretion and without waiving any rights, release Subcontractor's retainage or a portion thereof prior to the occurrence of all of the conditions precedent to final payment set forth in Article V.
4. Subcontractor shall, before commencing work, and before any earlier date that may be specified by Contractor, submit to Contractor a schedule of values setting forth the values of the various parts of Subcontractor's work, with the aggregate amount of these values to equal the Subcontract Amount, made out in such detail as Contractor or Owner may require, and supported by such evidence as to its correctness as Contractor or Owner may request. This schedule, when approved by Contractor and Owner, shall be used as a basis for Certificates for Payment, unless it is later found by Contractor or Owner to be in error. In addition Subcontractor shall submit a schedule of all of its subcontractors and suppliers, including each one's contract or purchase order amount, an itemization of the materials or services to be furnished by each one, and a contact name, address and telephone number for each one.
5. Subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this Subcontract Agreement, through the period covered by previous

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payments received from Contractor, and, when requested by Contractor or Owner, furnishes satisfactory evidence to verify such payments.

Subcontractor agrees that monies received pursuant to this Subcontract Agreement shall be used solely for labor and materials incorporated into this Project and shall not be diverted to satisfy obligations of Subcontractor on other contracts or other projects.

6. Contractor hereby reserves the right to make any payment hereunder to Subcontractor via a check made payable to the joint order of Subcontractor and one or more of Subcontractor's workmen, materialmen, suppliers, subcontractors, or any of Subcontractor's creditors having potential lien rights with respect to Subcontractor's work on the Project. Before any joint checks will be issued, Owner may, at its option, require Subcontractor to deliver to Owner or Contractor Waivers of liens and releases of claims in the amount of any payment made.
7. Notwithstanding the amounts and times of payments set forth in the Subcontract, Contractor, at any time, may in its sole discretion make advance payments to Subcontractor if, in Contractor's opinion, such advances will aid Subcontractor in the performance of this Subcontract. Such advance payments may be made without notification to the surety on any bond furnished by or in behalf of Subcontractor and failure to give such notice will not deprive Owner of any claim, right or remedy under any such bond.

Article V PROJECT CLOSEOUT AND FINAL PAYMENT

Subcontractor's timely submission of all closeout documents/materials is a specific performance requirement of this Subcontract Agreement, in order to facilitate Contractor's closeout of the entire project in order to obtain prompt release of retainage to Contractor and Subcontractor's. Subcontractor shall submit all close out documents/materials, (including but not limited to As-Built Drawings, Operating and Maintenance Manuals, Product Data, Warranties, Guarantees, Consents of Surety, Final Unconditional Lien Waivers, spare parts/equipment and Attic Stock Materials) no later than the Project Substantial completion (as defined by the Subcontract Documents) or upon completion of Subcontractor's work, whichever occurs first. Subcontractor's final monthly Progress Pay Application (per Article IV) shall also be submitted, along with its separate billing for retainage, and payment therefore may be withheld by Owner until Subcontractor has submitted all close-out documents/materials acceptable to Contractor, Architect, and Owner. Subcontractor shall be liable for all damages and expenses resulting from its lack of timely closeout submittals including interest burden/foregone interest income on all retainage dollars withheld by Owner for the project at an interest rate no less than twelve (12%) per annum.

Final payment shall be due when all of the following have occurred: the work described in this Subcontract Agreement is fully completed and performed in accordance with the Subcontract Documents, Owner and Architect have accepted the Project, and Subcontractor has submitted all close-out documents/materials. Subcontractor shall submit evidence satisfactory to Contractor and Owner that all payrolls, material bills, and all known indebtedness connected with Subcontractor's work have been satisfied.

Article VI PERFORMANCE AND PAYMENT BONDS

In the event Owner requires bonds (as indicated on Page 1), Subcontractor shall furnish separate Payment and Performance Bonds in the form specified by Owner, each in the amount of One Hundred Percent (100%) of the Subcontract Amount.

All costs of these bonds shall be included in the Subcontract Amount. Subcontractor shall also pay, at its own expense, any additional bond premium resulting from changes to the Subcontract Amount. These

bonds shall be furnished by a company on the U.S. Treasury List and acceptable to Owner prior to the commencement of any work by Subcontractor, unless agreed otherwise in writing by Owner. Subcontractor shall submit to Owner the name, address and phone number of its bonding agent with said bonds. In the event Owner elects to Subcontractor's bond premiums directly to the bonding company, Subcontractor shall forward the bond premium invoice from its bonding company to Owner or Contractor, and any such payment by Owner shall be applied against the Subcontract Amount.

Article VII TEMPORARY SITE FACILITIES

Subcontractor shall be fully responsible for all of its materials and its vendors' materials stored on-site and shall protect them properly from weather, vandalism, and theft. Subcontractor shall maintain insurance covering such stored materials until such time as those materials are incorporated into the Work and accepted by Contractor and Owner. Subcontractor shall be fully responsible for 24 hours minimum advance notification to, and coordination with, Contractor's Project Superintendent for all such material deliveries and comply with Project Superintendent's directives regarding the placement and storage of said deliveries.

Subcontractor shall carefully protect the finished work of Subcontractor and of other trades, any existing improvements, any equipment, materials, and any property of others from any damage by Subcontractor or its subcontractors/vendors.

Article VIII INSURANCE

SUBCONTRACTOR'S INSURANCE

Before commencing the Subcontract work, and as a condition precedent to any payment, the Subcontractor shall purchase and maintain insurance in conformance with the provisions contained in this Exhibit. This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the Subcontractor's behalf.

Proof of this insurance shall be provided to the Contractor before the work commences, as set forth below. To the extent that the Subcontractor subcontracts with any other entity or individual to perform all or part of the Subcontractor's work, the Subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, the Subcontractor or the Sub-Subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor at the Subcontractor's or Sub-Subcontractor's expense.

MINIMUM LIMITS OF LIABILITY

The Subcontractor must maintain the required insurance with a carrier rated A- or better by A. M. Best. The Subcontractor shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage) \$2,000,000

General Aggregate

\$2,000,000 Ongoing & /Completed Operations Aggregate

\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance

\$1,000,000 combined single limit per accident

Workers' Compensation and Employers' Liability Insurance

\$100,000 Each Accident

\$100,000 Each Employee for Injury by Disease

\$500,000 Aggregate for Injury by Disease

Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverages)

\$1,000,000 occurrence/aggregate

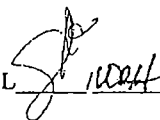
Additional Insured Status and Certificate of Insurance

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Contractor and Owner, and this clause shall apply to the Contractor's and Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and an Additional Insured Endorsement (in a form acceptable to the Contractor) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Contractor for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Contractor upon request.

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NO LIMITATION ON LIABILITY

With regard to any and all claims against the additional insured by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

CANCELLATION, RENEWAL AND MODIFICATION

The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor until final completion and acceptance of the entirety of the Subcontract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of insurance showing required coverage to be in force must be delivered to the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling the Contractor, at its sole discretion, to purchase such equivalent coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

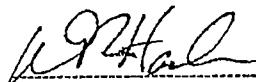
CONTINUATION OF COVERAGE

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO THE SUBCONTRACTOR'S INSURANCE AGENT OR BROKER

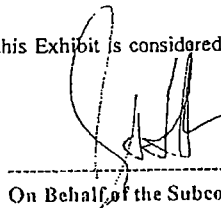
The Subcontractor represents that it has provided a copy of the "Insurance Provisions" to his insurance agent and/or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this Exhibit is considered a material term of the Subcontract.



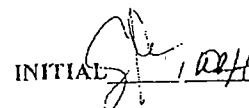
On Behalf of the Contractor

Date: 4.5.13



On Behalf of the Subcontractor

Date:

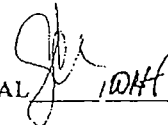
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Article IX
ADDITIONAL PROVISIONS

In addition to the foregoing provisions, the parties also agree as follows:

That Subcontractor shall:

1. Clean-up - Keep the building and premises clean at all times of debris arising out of the performance of this Subcontract Agreement or Subcontractor's operations. Subcontractor shall daily remove all trash, rubbish, and debris caused by its work to Owner's dumpster or the location designated by Contractor. If Subcontractor does no clean up, as outlined above, on direction from Contractor or his representative, within a twenty-four (24) hour period, Contractor may perform this work and charge all costs incurred to Subcontractor. Charges associated with the clean-up of debris created by more than one subcontractor shall be assessed on a pro-rata basis according to Subcontractor's share of the general debris, as determined by Contractor.
2. Safety - Comply with all statutory, regulatory, contractual, and Project safety requirements applying to its work and/or initiated by Contractor, and shall immediately report to Contractor any injury to Subcontractor's employees at the site of the Project. The parties to this Subcontract Agreement agree to abide by the Construction Safety Act of 1969, the Occupational Safety and Health Act of 1970, Contractor's Safety Program, all applicable state and federal statutes, and any amendments thereto, and shall be responsible for the acts of their employees. Subcontractor to indemnify Contractor and Owner against any and all fines, costs and expense incurred by Contractor or Owner as a result of Subcontractor's failure to comply with any law, regulation or directive by any and all government entities.
 - A. Hazard Communication - Subcontractor is required to implement, and maintain at the jobsite, a written hazard communication program per OSHA Standard 1926.59.
 - B. MSDS - Subcontractor agrees to provide a list of all materials Subcontractor will utilize on site that are regulated by OSHA Standard 1926.59 and to provide Contractor with Material Safety Data Sheets (MSDS) for all such listed materials. Subcontractor will also require this of any sub-subcontractors.
 - C. Safety Rails - Subcontractor will immediately repair and or replace any safety railings or other safety provisions that Subcontractor has removed or altered.
 - D. Accident Notification - Subcontractor will full disclose, in writing, all facts and circumstances related to any accidents involving Subcontractor's work and/or Subcontractor's employees within twenty-four (24) hours of the occurrence of such an accident.
 - E. Hard Hats / Attire - Subcontractor will, at its expense, require all of its employees, including anyone directly or immediately employed by them, to wear hard hats, shirts, shoes, long pants, and all other required safety clothing or personal protective equipment at all times while on the Project site.
 - F. Safety Meetings - Subcontractor's employees will be required to attend Contractor's weekly safety meetings or attend weekly safety meetings conducted by the Subcontractor, in which case, the Subcontractor will provide to the Contractor a list of the meeting attendees and a copy of the minutes of the meeting.
 - G. Safety Enforcement - Should Subcontractor, or anyone for whom Subcontractor is responsible, fail to comply with any of these provisions, Contractor has the right to immediately suspend Subcontractor's work until such time as Subcontractor has come into full compliance. Such suspension will not entitle Subcontractor to a change order for additional costs or an extension of time. Contractor also reserves the right to immediately remove from the jobsite any individual whom Subcontractor is responsible that willfully or persistently violates any provisions herein.

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3. Assignment / Sub-Subcontractors - Not assign this Subcontract Agreement or any amounts due or to become due hereunder without the prior written consent of Owner, nor subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of Owner. Owner's consent to any full or partial assignment shall not constitute a novation or release Subcontractor from any of its obligations under this Subcontract.
4. Guarantee - Guarantee its work against all defects of materials and/or workmanship as called for in the plans, specifications and addenda for such period of time as required thereby or by any other provision in the Subcontract Documents, or, if no other guarantee is called for, then for a period of one (1) year from the date of acceptance of the Project by Owner and Contractor.
- Prior to the expiration of the one-year guarantee period, as referenced above, Owner reserves the right to carry out a detailed inspection of the project with regard to the work covered under the terms of the Subcontract Agreement and present findings and observations of such inspection to Subcontractor. Upon notice Subcontractor is required to immediately correct the work as a result of defective or unsatisfactory materials and/or workmanship as noted by such detailed inspection.
5. Progress Reports - Furnish periodic progress reports concerning the work including the progress of materials or equipment in the course of preparation or manufacture and permit Contractor to communicate directly with Subcontractor's equipment/material vendors regarding status.
6. As - Built Documents - Subcontractor will update on a weekly basis a record set of as-built drawings, and/or drawings as designated by the Contract Documents. These drawings will be kept on site for review at any time by Contractor, Architect, Engineer, and/or Owner. As-built drawings will accurately show dimensioned locations for all pipe, conduit, and equipment, including underground and concealed items. A record set of as-built drawings in quantities defined by Exhibit "B" or the Subcontract Documents whichever is greater, and shall be provided to Contractor and Owner upon completion of all work covered by this Subcontract Agreement.
7. Coordination - Cooperate and coordinate with Contractor and other subcontractors whose work might conflict or interfere with Subcontractor's work and to participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising Contractor of any such conflict or interference. Subcontractor shall carefully study the project plans and specifications, perform on-site surveys, review submittals furnished by all other trades that interface with subcontractors work and inform Contractor of any errors, inconsistencies or conflicts.
8. Scheduling & Submittals - Cooperate with Contractor in scheduling the work so as not to conflict or interfere with the work of others. To promptly submit shop drawings, submittals, and samples, as required in order to carry out said work efficiently and at a speed that will not cause delay to the progress of Contractor's work or other branches of the work carried on by other subcontractors. The approval of shop drawings, samples, submittals, catalog cuts, and or other submissions and information shall not relieve the Subcontractor of its responsibility for properly detailing the design, or for any errors, omissions, or discrepancies from the Subcontract Documents which may exist in the final work installed by Subcontractor. Subcontractor shall review and approve all shop drawings, samples, submittals, catalog cuts, and other submissions and information supplied by their subcontractors or suppliers prior to submission to Contractor.
9. Compliance with Laws - Comply with all Federal, State, and Local laws and ordinances applicable to the Project, give adequate notices relating to the work to all proper authorities, and secure, pay for, and comply with all licenses and permits necessary to carry out the work as described in the Subcontract Documents. Subcontractor shall also comply with Federal,

State, and Local tax laws, Social Security laws, Unemployment Compensation laws, and Workers Compensation laws, and pay all benefits and taxes as required by said laws.

10. Punch list/Correction of Work - Continually inspect and prepare punch lists concerning its own work to insure conformance with the Subcontract Documents. Subcontractor agrees to correct any deficiencies or deviations from the Subcontract Documents promptly upon discovery by any party. The correction of work as noted on previous punch lists does not relieve Subcontractor from correcting its work per subsequent punch lists. All such work shall be subject to the final acceptance of Contractor, Architect, Engineer, and Owner.

11. Labor - And does hereby agree to perform its work with labor compatible with that of other trades performing work at the jobsite or on any other building, structure, or other improvement which Contractor may then be erecting or altering.

Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

That Contractor shall:

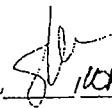
12. Make available to Subcontractor for inspection, upon reasonable request, any Subcontract Documents which Subcontractor does not possess.
13. Promptly relay to Subcontractor any revisions or clarifications received from Owner, Architect, or Engineer with respect to the design of the work to be performed by subcontractor.
14. Promptly submit to the Owner, Architect, or Engineer any reasonable requests received from Subcontractor for design changes, clarifications, or information.

The Parties also agree:

15. Extra Work/Changes: Subcontractor shall make any and all changes, additions, and/or deviations from the original plans and specifications without nullifying the original Subcontract Agreement. Subcontractor, prior to the commencement of this revised work, shall submit promptly to Contractor written copies of the cost or credit proposal for such revised work in a manner consistent with the Subcontract Documents. Should Contractor and Subcontractor be unable to agree as to the value of Subcontractor's work to be changed, added, or omitted, Subcontractor shall have the duty to promptly proceed with the work under the written order of Contractor from which order the stated value of the work shall be omitted and the value of the work shall be determined as set forth herein.

In the case of omitted work, Owner or his representative (Contractor) shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in Contractor's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or the claim procedures. Subcontractor agrees to make all claims for which Owner is or may be liable in the manner provided in the Subcontract Documents for like claims by Contractor against Owner. Notice of such claims shall be given within the time allowed by the Contract between Owner and Contractor and no later than three days prior to the beginning of Subcontractor's work for which such claim is to be made, or immediately upon Subcontractor's knowledge of the claim, whichever shall occur first. Otherwise such claim shall be deemed waived.

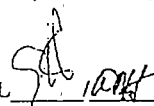
There will be no payment for extra work unless authorized in writing by Construction Manager and Owner prior to the beginning of the actual work. Such authorization is to state an exact, or, if agreed by Owner and Contractor, approximate cost of the work. Thereupon, Subcontractor shall submit final charges for any extra work to Contractor within ten (10) calendar days. Contractor reserves the option to approve extra work to be


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performed on a time and material cost basis. In this event, Subcontractor must submit work tickets on a daily basis for Construction Manager's signature, including a detailed breakdown of labor hours and material invoices. Subcontractor agrees its failure to provide daily back-up will result in its waiving of any claim for additional payment.

Unless the Subcontract Documents specify otherwise, approved changes are to be paid for on the basis of Subcontractor's actual, documented direct costs as defined by the Subcontract Documents plus a maximum of ten percent (10%) total for overhead and profit. In the event overtime is authorized by Owner and Contractor in writing and in advance as constituting an extra (as opposed, for example, to overtime necessary to remedy Subcontractor's own delays), only the overtime premium portion paid by Subcontractor, without overhead and profit, shall be regarded as an extra. Subcontractor agrees that its execution of any Modification/Change Order will constitute Subcontractor's agreement that the compensation called for therein is full and complete payment for all costs and losses (direct and indirect) of whatsoever kind or nature associated with such changed work and that Subcontractor, by executing such change, waives all impact costs, delay damages, acceleration costs, loss of efficiency or productivity costs, and other costs and damages associated with such change.

16. Payments Withheld – Payments otherwise due may be withheld by Owner on account of defective work not remedied, claims filed against Subcontractor or against Owner or Contractor relating to Subcontractor's work, evidence indicating that the filing of such a claim is probable, failure of Subcontractor to make payments properly to its subcontractors or for material or labor, evidence or knowledge of Subcontractor's current/pending bankruptcy, or a reasonable doubt that this Subcontract Agreement can be completed for the Subcontract balance then unpaid. If the said causes are not removed, within forty eight hours (48) after written notice, Owner may rectify the same at Subcontractor's expense.
17. Deductions from Payments; Set-off – Owner or Contractor shall be entitled to deduct from or set-off against any progress payment and/or the final payment under this Subcontract Agreement or any amounts otherwise payable to Subcontractor under this Subcontract Agreement or any other contract between Owner and Subcontractor; (a) any sums expended by Owner or Contractor in performing any obligations under such contract that Subcontractor has failed to perform; (b) any damages, costs, or expenses incurred by Owner or Contractor as a result of Subcontractor's failure to perform any of its obligations under such contract; and (c) any other amount owing from Subcontractor to Owner or Contractor under any such contract or otherwise.
18. Daily Reports - Subcontractor's highest ranking on-site representative shall submit on a daily basis a written report to Contractor's highest ranking on-site representative detailing crew sizes and composition, materials received, work completed, the reasons for any delays or deviations from Project Schedule, and any other information that may be requested by Contractor or its highest ranking on-site representative.
19. Licenses/Permits - Subcontractor is responsible for its respective local and state business licenses, permits, Occupational License, State registration, vehicle registrations, and any other jurisdictional requirements to perform its work. Proof of compliance shall be submitted prior to the start of Subcontractor's work.
20. Existing Substrates – If Subcontractor is to build or apply its work upon that of Contractor's or another subcontractor, Subcontractor shall inspect the existing conditions and, if any deficiencies exist, notify Contractor of the need for corrective action. Otherwise, Subcontractor acknowledges the previous work as being acceptable and warrants the resultant quality and performance of the finished work.
21. Supervision & Layout – Subcontractor shall designate one individual from among its supervisory personnel located on-site as being in charge of all work performed by

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Subcontractor and its subcontractors and to serve as Subcontractor's agent for purposes of communication with Contractor and his Project Superintendent. This person shall be on site at all times while Subcontractor is performing work and shall not be changed without the consent of Contractor unless he ceases to be in the employment of Subcontractor. Subcontractor shall provide all layout engineering and/or field dimensioning required for the performance of the work described herein. Errors in layout and installation of this Subcontractor's work causing additional work by others shall be the responsibility of Subcontractor, and the cost for same shall to be borne by Subcontractor.

22. **Indemnification** – Subcontractor shall indemnify and hold harmless Contractor, Owner, Architect, and Engineer, and their respective agents and employees, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of Subcontractor's work, provided that any such claim, damage, loss or expense (A) is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (B) is caused in whole or in part by any negligent act or omission of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is also caused in part by a party indemnified hereunder.

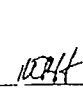
In any and all claims which may be asserted against Contractor, Owner, Architect, or Engineer, or any of their respective agents or employees, by any employee of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages recoverable, or the compensation or benefits payable, by or for Subcontractor or any of its subcontractors under Workers Compensation acts, disability benefit acts, or other employee benefits acts.

Article X Claims and Disputes

- A. Any claim, dispute, or controversy between Owner or Contractor, or Subcontractor, shall be conclusively resolved and settled as follows:

Subcontractor shall conclusively be bound by and abide by Owner or Contractor's decision, unless Subcontractor shall timely commence arbitration proceedings in strict accordance with the following provisions:

- i. If Subcontractor decides to appeal the decision of the Owner or Contractor, then the controversy shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Association prevailing at that time, and the arbitration decision shall be final and binding upon both parties: provided, however, that arbitration proceedings shall be commenced by Subcontractor not later than 30 days following Subcontractor's receipt of notice of Owner or Contractor's decision; otherwise, the Owner or Contractor's decision becomes final and binding. Venue for arbitration or any subsequent litigation whatsoever shall be in the city of the Owners office as shown on Page 1 of this Agreement.
- ii. Any arbitration arising out of relating to this Agreement or the breach thereof may, at Owner or Contractor's sole option and election, include by consolidation, joinder or any other manner, any other entities or persons whom Owner or Contractor believes to be substantially involved in a common question of fact or law. Without limiting the generality of the foregoing, this provision shall specifically entitle Owner or Contractor, at its sole option and election, to consolidate any arbitration proceeding between Owner or Contractor and Subcontractor with any other arbitration

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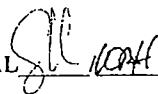
- proceeding(s) arising out of the same Project (unless and except to the extent Owner or Contractor is precluded from doing so by the terms of its arbitration agreement with the parties to the other arbitration proceeding(s)).
- iii. In the event Subcontractor fails to abide by a final binding decision of Owner or Contractor, or any arbitrator(s), Owner or Contractor shall have the right to enforce said decision by withholding appropriate sums from any payments that would otherwise be due Subcontractor, or, to the extent the Subcontract balance is insufficient to satisfy Subcontractor's obligation, by legal action, with all costs of such legal action, including Owner or Contractor's reasonable attorneys' fees to be borne by Subcontractor.

- B. In the event of any dispute between Owner and Contractor or Subcontractor relating to this Subcontract or a breach thereof, Subcontractor agrees to exhaust all remedies available through Contractor under Contractor's Contract with Owner prior to instituting any separate action or, in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, Subcontractor agrees to stay said action pending the exhaustion of all remedies against the Owner. Subcontractor also agrees to be bound to Construction to the same extent Contractor is bound to Owner by the final decision resulting from arbitration or of a court of competent jurisdiction, whether or not Subcontractor is a party to such proceeding. If such dispute is prosecuted or defended by Contractor against Owner under the terms of the Contractor's Contract with Owner or in any court action, arbitration, or other proceeding, Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights and shall have the duty to cooperate with Contractor. Subcontractor agrees to furnish to Contractor at no cost all documents, statements, witnesses and other information required by Contractor for such purpose, to fully cooperate with and assist Contractor with respect thereto, and to pay or reimburse Construction for all expenses and costs, if any, incurred by Contractor in connection therewith.

In any arbitration proceeding, Subcontractor agrees to the appointment of arbitrators as may be selected by Contractor and Owner pursuant to the requirements of the arbitration provision in the Contractor's Contract with Owner. It is expressly agreed and understood that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor, in connection with this Project, Contractor shall never be liable to Subcontractor to any greater extent that Owner is liable to Contractor for same.

- C. In the event of any claim by Subcontractor or dispute between Subcontractor and Contractor, Subcontractor and its sureties agree to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contractor's Contract with Owner and by any and all decisions or determinations made thereunder by the party or entity so authorized in Contractor's Contract with Owner.
- D. No claim, dispute or controversy shall interfere with the progress of construction, and Subcontractor shall proceed with its work without interruption, deficiency or delay irrespective of any claim, dispute, or controversy which may arise.
- E. Should either party to this Agreement demand arbitration or institute a lawsuit to enforce any of the provisions hereof, to protect its interest in any matter arising under the Subcontract, to collect damages for the breach of the Subcontract, or to recover on a surety bond given by a party to the Subcontract, the prevailing party shall be entitled to recover, and the losing party agrees to pay, all reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

Article XI
SUBCONTRACTOR DEFAULT/TERMINATION

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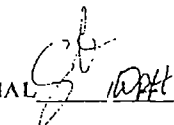
Failure to Perform: Should Subcontractor at any time fail to supply a sufficient number of skilled workmen or sufficient equipment, tools, and materials of proper quality, or fail in any respect to prosecute the work covered by this Subcontract Agreement with promptness and diligence, or fail to perform work of the quality required by the Subcontract Documents, or fail in the performance of any of the agreements herein contained, or should any workmen performing work covered by this subcontract engage in a strike or other work stoppage, or cease to work due to picketing or other such activity, Owner or Contractor may, at its sole option, and without prejudice to any other rights it may have, after twenty-four (24) hours written notice to Subcontractor: (1) provide any such labor, equipment, tools, or (2) terminate the employment of Subcontractor for the work under this Subcontract, enter upon the premises and take possession, for the purpose of completing the work hereunder, of all Subcontractor's materials, tools and equipment thereon, finish the work either with its own employees or another subcontractor, or (3) both (1) and (2).

In case of any such termination of the Subcontractor's employment, Subcontractor shall not be entitled to receive any further payments under this Subcontract Agreement or otherwise except as provided herein, and shall be liable for any damages which Owner or Contractor incurs as a result of Subcontractor's failure to properly and timely perform this Agreement, including, but not limited to, any expenses Owner or Contractor incurs in completing Subcontractor's work in excess of the unpaid Subcontract balance. Such expenses include, but are not limited to, all supervision, labor, materials, tools, equipment, overhead costs, incurred by Owner or Contractor in completing the work plus ten percent (10%) profit applied to such costs and expenses, any liquidated or actual damages that may be assessed against and collected from Contractor as a result of Subcontractor's failure to perform its work properly and in a timely manner or as a result of the time lost in arranging for the completion of the work by others; and all attorney's fees and other damages Contractor may sustain by reason of Subcontractor's failure to properly and timely perform its work. Subcontractor shall pay any such excess completion costs to Owner or Contractor, along with any other damages incurred by Owner or Contractor as a result of Subcontractor's default. Owner shall have a lien upon all materials, tools, and appliances taken into Owner's or Contractor's possession to secure the payment thereof; and Subcontractor agrees to execute any assignments necessary to make available to Owner and Contractor the rights of Subcontractor. Subcontractor shall reimburse Owner or Contractor for all damages and excess completion costs incurred by Owner or Contractor due to Subcontractor's failure to properly and timely perform its Subcontract. If, upon completion of Subcontractor's work, the final acceptance of the work by Owner, and final payment to Contractor for said work, Contractor's total damages and completion costs are less than the remaining Subcontract balance, then Owner will pay the difference to Subcontractor.

The parties acknowledge that determinations as to the adequacy of a contractor's performance or a contractor's ability to complete the work are difficult to make and must be made under pressing circumstances; and agree that any determination by Owner or Contractor that the provisions of this Article should be invoked shall be deemed conclusive and binding upon the parties absent bad faith on the part of Owner or Contractor. Upon written request by Owner or Contractor, Subcontractor shall furnish to Owner or Contractor such evidence as Owner or Contractor may require relating to Subcontractor's ability to fully perform this Subcontract Agreement in the manner and within the time required by Contractor.

Termination Without Cause: Owner or Contractor shall have the right, by giving twenty-four (24) hours written notice to Subcontractor, to terminate this Subcontract, without cause and in the absence of any default or breach by Subcontractor, and to require Subcontractor to cease work hereunder, in which case, Owner shall pay Subcontractor for work properly in place and costs directly resulting from such cessation of work, except that Subcontractor shall not be entitled to anticipated profits on work unperformed or on materials, labor or equipment unfurnished. In the event Owner terminates its contract with Contractor, Subcontractor shall not be entitled to any greater recovery than Contractor receives on behalf of Subcontractor or related to the Subcontract. Any claim by Subcontractor arising from such a termination shall be subject to the requirements of Article X. Further, in the event Owner or Contractor terminates Subcontractor for default and it is later determined that the termination was not warranted or was wrongful; such termination shall be deemed a termination without cause, subject to the provisions of this paragraph.

Article XII MERGER

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This Subcontract Agreement supersedes any and all proposals, negotiations and agreements prior to the date of this Agreement, and may be amended only by written instrument signed by both Owner or Contractor and Subcontractor. This Subcontract Agreement is solely for the benefit of the signatories hereto. No term or provision of this Subcontract Agreement may be waived by Owner or Contractor except in writing, signed by Owner or Contractor, or their duly authorized officer or agent; and Owner's or Contractor's waiver or, or failure to enforce, and term of this Agreement in one instance shall not constitute a waiver of that term with respect to any other instance or a waiver of any other terms of this Agreement.

If this Subcontract Agreement has not been signed and returned within fifteen (15) calendar days of date of this Subcontract Agreement, Subcontractor's failure to do so shall constitute acceptance of this Subcontract Agreement in full as issued. Subcontractor shall not be entitled to any payment until this Subcontract Agreement has been properly executed and all documents and information to be furnished by Subcontractor (including, but not limited to, any bonds and evidence of insurance required herein) have been supplied to Owner or Contractor.

Article XIII
GOVERNING LAW / PRECEDENCE / INVALID TERMS

This Subcontract Agreement shall be governed by, and construed in accordance with, the laws of the State noted on Page One (1) of this Agreement. In the event of any conflicts between the specific provisions contained in this Subcontract Agreement and any provisions or language contained in other parts of the Subcontract Documents which are incorporated herein by reference, the provisions contained in the Subcontract Agreement itself shall prevail. In the event any of the terms of this Subcontract Agreement (including the Subcontract Documents incorporated herein by reference) are, or are deemed to be, invalid, void, or unenforceable, such shall not affect the applicability of the other provisions of this Agreement, which shall remain in full force and effect. Subcontractor expressly acknowledges that it has had an opportunity to fully review the complete contents of the Contract between Contractor and Owner and the full Subcontract Documents prior to the execution of this Subcontract Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Subcontract Agreement.

SUBCONTRACTOR

CONTRACTOR

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

SUBCONTRACTOR WITNESS

CONTRACTOR WITNESS

HAVERTYS FURNITURE STORE
DIVISION 3000 / CONCRETE

EXHIBIT "B"

THE WORK:

The Subcontractor shall provide all labor, materials, lifts, and safety equipment to furnish and install concrete as per the drawings and specifications in Exhibit "C" for a complete and finished system. The work includes demolition of concrete SOG and CMU block walls, saw cutting, pour, place and finish, reinforcing steel, paver removal and pour back, plumbing & electrical trench removal and pour back, entry slab, new sidewalks, curb and gutter, braced wall with footings and fix block around new CMU door openings. All materials shall be installed and meet all Federal, State and Local codes.

GENERAL:

1. Subcontractor shall provide all labor and materials for the lay-out of his work. Contractor shall provide a benchmark for beginning lay-out.
2. Subcontractor shall inspect his areas and areas adjacent to his work for any discrepancies and notify Contractor of such discrepancies prior to beginning work. Failure to notify Contractor of any discrepancies shall constitute Subcontractors acceptance of the conditions and any modification or repair as a result of such discrepancies shall be at a cost to the Subcontractor and shall not be considered a change in work to the Contractor or the Owner.
3. Subcontractor shall protect his work areas from damage by other trades. Subcontractor shall protect areas adjacent to his work while performing the duties of his work.
4. Subcontractor shall provide all labor and materials necessary to keep his work areas clean and in a broom swept condition on a daily basis. Contractor shall provide a dumpster for Subcontractor's use. Failure by the Subcontractor to keep his work picked up will result in a back-charge from the Contractor for all expenses incurred by the Contractor in cleaning up Subcontractor's work. Contractor shall provide one (1) written warning to Subcontractor prior to taking action against Subcontractor.
5. Subcontractor shall install his work in accordance with all Federal, State, or Local codes as they may apply.
6. Subcontractor shall provide sufficient manpower as to keep the work moving in accordance with the Contractor's schedule or direction.
7. Subcontractor shall give Contractor twenty-fours notice prior to any materials being delivered to the project site. Subcontractor shall provide all labor, materials, and lifts necessary to load and un-load his materials.
8. Subcontractor shall warrant his work against defects for a period of not less than twelve (12) calendar months from date of Substantial Completion.

MATERIALS:

1. All materials shall be clean, new, and without defects.

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HAVERTYS FURNITURE STORE
DIVISION 3000 / CONCRETE

EXHIBIT "B"

2. All materials shall be accordance with the plans and specifications, and shall meet all requirements of all Federal, State, or Local building codes as they may apply.
3. All materials shall be approved by Contractor, Architect, and Engineer prior to their use.

MEETINGS / REPORTS:

1. Subcontractor shall attend all Subcontractor meetings as directed by Contractor. Subcontractor shall have his Project Manager and on-site Foreman in attendance at all meetings. Failure to attend any meetings may result in a \$100.00 fine at the Contractor's discretion.
2. Subcontractor shall provide a daily record to Contractor's foreman indicating all materials delivered, employees on-site, and work completed for each day's work. Reports shall be turned in with-in 24's hours of previous days work.

TIME: PHASED SCHEDULE COMPETION

1. Phase 1 – April 16, 2013
2. Phase 2 – May 16, 2013
3. Phase 3 – June 16, 2013

Above are the completion dates each phase will be turned over to Havertys. Please note these are NOT the dates your work shall be completed, but the date all trades will be complete. Subcontractor understands time is of the essence and will man the project accordingly to work within the contractor's timeframe completing his work so that other trades may complete their work by the dates listed above.

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

ARCHITECTURAL:

A0.0	Cover Page	02.13.13
A0.1	Responsibility Schedule	02.13.13
A0.2	Life Safety Plan	02.04.13
A0.3	Project Standards	02.04.13
A0.4	ComCheck	02.04.13
A0.5	Phasing Floor Plan	02.13.13
A0.6	Phasing Reflected Ceiling Plan	02.13.13
A1.1	Revised Floor Plan	02.13.13
A1.2	Revised Reflected Ceiling Plan	02.13.13
A1.3	Finish Plan	02.04.13
A1.4	Enlarged Exterior Plans & Plan Details	02.04.13
A1.5	Roof Plan	02.13.13
A2.1	Exterior Elevations	02.13.13
A2.2	Exterior Elevations	02.13.13
A3.1	Wall Sections & Details	02.13.13
A3.2	Wall Sections & Details	02.04.13
A3.3	Wall Sections & Details	02.13.13
A4.1	Enlarged Interior Floor Plans	02.13.13
A4.2	Enlarged Core Floor Plans	02.04.13
A4.3	Enlarged Reflected Ceiling Plan & Details	02.04.13
A6.1	Schedules	02.04.13
A6.2	Schedules	02.13.13
A7.1	Building Sections	02.04.13
A7.2	Interior Elevations	02.04.13
A7.3	Interior Elevations and Details	02.13.13
A8.1	Merchandising Plan (For Reference Only)	02.04.13
AD1.1	Phasing Demolition Plan	02.13.13
AD1.2	Phasing Demolition Reflected Ceiling Plan	02.04.13
AD1.3	Demolition Roof Plan	02.13.13
C0.0	Cover Sheet	
C1.0	Existing Conditions	
C2.0	Site Demolition Plan	
C3.0	Site Plan	
C4.0	Utility Plan	
C5.0	Erosion Control Plan	
C6.0	Construction Details	
C7.0	Construction Details	
C8.0	Construction Details	
C8.1	Construction Details	
C9.0	Construction Details	
E0.1	Fixture Schedule & Symbols	01.25.13

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

E0.2	Electrical Details	01.25.13
E1.0	Electrical Power Plan	01.25.13
E1.1	Electrical Lighting Plan	01.25.13
E2.0	Electrical Roof Plan	01.25.13
E3.0	Electrical Enlarged Plans	01.25.13
E4.0	Panel Schedules	02.27.13
ED1.1	Electrical Demolition Plan	01.25.13
FP1.0	Fire Protection Criteria Sheet	01.25.13
M0.1	Mechanical Notes and Schedules	02.27.13
M0.2	Mechanical Details	01.25.13
M1.0	Mechanical HVAC Floor Plan	01.25.13
M2.0	Mechanical Roof Plan	01.25.13
MD1.0	Mechanical Demolition Plan	01.25.13
ME1.0	BMS Diagrams and Schedules	01.25.13
ME2.0	BMS Diagrams and Schedules	01.25.13
ME3.0	Building Management System Diagrams	01.25.13
P0.1	Plumbing Schedules, Legend & Notes	01.25.13
P0.2	Plumbing Details	01.25.13
P1.0	Plumbing Floor Plan	01.25.13
P1.1	Enlarged Plans and Riser Diagrams	01.25.13
PD1.0	Plumbing Demolition Plan	01.25.13
S0.1	General Notes	01.25.13
S1.1	Existing Roof Framing Plan	02.12.13
S2.1	Sections and Details	02.12.13
#1	Addendum A	02.09.13
#2	Addendum B	02.25.13
#3	Addendum C	02.27.13

SPECIFICATIONS: 01.20.12

DIVISION 0 CONDITIONS OF THE CONTRACT

Section 00600	Project Scope
Section 00810	General and Supplementary Conditions

DIVISION 1 GENERAL REQUIREMENTS

Section 01100	Summary
Section 01250	Contract Modifications Procedures
Section 01290	Payment Procedures
Section 01310	Project Management and Coordination
Section 01320	Construction Progress Documentation
Section 01330	Submittal Procedures
Section 01400	Quality Requirements
Section 01420	References
Section 01500	Temporary Facilities and Controls

ROPER HANKS, LLC.

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[Handwritten Signature]

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 01524	Construction Waste Management
Section 01600	Product Requirements
Section 01700	Execution Requirements
Section 01732	Selective Demolition
Section 01770	Closeout Procedures
Section 01781	Project Record Documents
Section 01782	Operation and Maintenance Data
Section 01820	Demonstration and Training

DIVISION 2 SITEWORK

Section 02070	Selective Demolition
Section 02080	Utility Materials
Section 02221	Building Demolition
Section 02230	Site Clearing
Section 02300	Earthwork
Section 02510	Water Distribution
Section 02511	Hot-Mix Asphalt Paving
Section 02751	Portland Cement Concrete Pavement
Section 02764	Pavement Joint Sealants
Section 02821	Chain-Link Fences
Section 02920	Lawns and Grasses

DIVISION 3 CONCRETE

Section 03300	Cast-In-Place Concrete
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DIVISION 4 MASONRY

Section 04200	Unit Masonry
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DIVISION 5 METALS

Section 05120	Structural Steel
Section 05400	Cold-Formed Metal Framing
Section 05500	Metal Fabrications

DIVISION 6 WOOD AND PLASTIC

Section 06100	Rough Carpentry
Section 06202	Interior Finish Carpentry
Section 06402	Interior Architectural Woodwork

DIVISION 7 THERMAL & MOISTURE PROTECTION

Section 07210	Building Insulation
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ROPER HANKS, LLC.

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 07241	Adhered Secondary Barrier System
Section 07543	Thermoplastic Polyolefin (TPO) Roofing
Section 07620	Flashing
Section 07720	Roof Accessories
Section 07920	Joint Sealants

DIVISION 8 DOORS AND WINDOWS

Section 08110	Steel Doors and Frames
Section 08211	Flush Wood Doors
Section 08311	Access Doors and Frames
Section 08411	Aluminum Framed Entrances and Storefronts
Section 08710	Door Hardware
Section 08800	Glazing
Section 08830	Mirrors

DIVISION 9 FINISHES

Section 09111	Non-Load-Bearing Steel Framing
Section 09250	Gypsum Board
Section 09310	Ceramic Tile
Section 09512	Acoustical Tile Ceilings
Section 09720	Wallcoverings
Section 09911	Exterior Painting
Section 09912	Interior Painting

DIVISION 10 SPECIALTIES

Section 10155	Toilet Compartments
Section 10523	Fire Extinguishers
Section 10801	Toilet and Bath Accessories

DIVISION 11 EQUIPMENT (NOT USED)

DIVISION 12 FURNISHINGS (NOT USED)

DIVISION 13 SPECIAL CONSTRUCTION (NOT USED)

DIVISION 14 CONVEYING SYSTEMS (NOT USED)

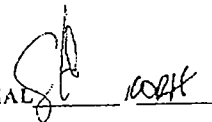
DIVISION 15 MECHANICAL

Section 15010	General Provisions
Section 15100	HVAC Piping, Valves and Accessories
Section 15170	Electrical Requirements for Mechanical Equip
Section 15250	Insulation

ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

Section 15300	Fire Protection
Section 15400	Plumbing
Section 15610	Fans
Section 15700	Metal and Flexible Ductwork and Accessories
Section 15701	Grilles, Registers and Diffusers
Section 15703	Dampers and Louvers
Section 15736	Variable Refrigerant Flow Indoor Units
Section 15751	Rooftop Heating and Cooling Units
Section 15900	HVAC Testing, Adjusting and Balancing

DIVISION 16 ELECTRICAL

Section 16010	General Provisions
Section 16100	Basic Materials
Section 16101	Unitized Switchgear
Section 16110	Electrical Raceways
Section 16130	Conductors
Section 16131	Metal-Clad Cable
Section 16450	Grounding
Section 16500	Lighting
Section 16721	Fire Detection System
Section 16722	Cable and Systems Raceway
Section 16760	Telecommunications Cabling
Section 16999	Insulation Tests of Equipment and Cable

DIVISION 17 BUILDING MANAGEMENT SYSTEMS

Section 17000	Building Management System
---------------	----------------------------

Exhibit "E"

APPLICATION FOR PAYMENT

TO: _____ JOB#: _____ SUBCONTRACT # _____

FROM: _____ CONST. MGR. APPROV.: _____

PROJECT: _____ OWNER APPROV: _____

PAY REQUEST NO. _____ PERIOD: _____, 20__ TO: _____, 20__

Original Contract Amount: \$ _____

Approved Modifications: \$ _____

Adjusted Contract Amount: \$ _____

1. Value of Work Complete to Date * \$ _____

2. Material Stored on Site * \$ _____

3. Total Complete and Stored to Date (Line 1 + Line 2) \$ _____

4. Less Retainage (Line 3 x _____ %) \$ _____

5. Total Less Retainage (Line 3 - Line 4) \$ _____

6. Total Previously Certified (Deduct) \$ _____

7. NET DUE THIS REQUEST (Line 5 - Line 6) \$ _____

* Schedule of Values / Cost Summary must be attached.

INTERIM WAIVER AND RELEASE UPON PAYMENT

THE UNDERSIGNED mechanic and/or materialmen has been employed by _____
to furnish _____ (describe
materials and/or labor) for the construction of improvements know as _____
(title of project) which is located in the City of _____ County of _____, and is
owned by _____ (name, of owner) and more particularly
described as follows: _____

Upon receipt of the sum of \$ _____ (Line 7 above), the mechanic and/or
materialmen waives and releases any and all liens or claims of lien it has upon the foregoing
described property through the date of _____
(date) and excepting those rights and liens that the mechanic and/or materialmen might have in any
retained amounts, on account of labor or materials, or both, furnished by the undersigned to or on
account of said Contractor for said building or premises.

AFFIDAVIT AND CERTIFICATION

THE UNDERSIGNED certifies that the work performed and the materials supplied to date, as
covered by this Application for Payment, has been completed in accordance with the Contract
Documents, and represents the actual value of the work under the terms of the Subcontract (and all
changes thereto) between the undersigned and Roper Hanks, LLC.

THE UNDERSIGNED (1) acknowledges the receipt of the amount set forth above as "Total Previously Certified", (2) certifies that the amount of payments received to the date of this Waiver are in accordance with the Subcontract, and (3) warrants that it has not and will not assign any claims for payment or right to perfect a lien against such land and improvements.

THE UNDERSIGNED further warrants that (1) all workmen, sub-subcontractors employed by it or its subcontractors upon the Project, all materialmen from whom the undersigned or its sub-subcontractors have purchased materials used in the Project have been fully paid to the date hereof (except as enumerated in Sub-subcontractor/Supplier Status below), (2) none such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above, (3) all Federal, State and Local tax laws including Social Security laws and Unemployment Compensation laws and Workers Compensation laws have been complied with insofar as applicable to the performance of the Subcontract, and (4) stipulates that he is an authorized officer with full power to execute this Waiver of Lien.

SUB-SUBCONTRACTOR/SUPPLIER STATUS

THE UNDERSIGNED further warrants the following is a complete listing of all sub-subcontractors and material suppliers that will be supplying labor and/or material to this project on subcontractor's behalf, the value of which is in excess of \$_____dollars. For each sub-subcontractor and material supplier listed is a separate lien waiver, properly executed to waive and release any claim it may have upon the land and improvements.

Sub-Subcontractor or Supplier	Subcontract or P. O. Amount	Value of Work Completed to Date	Amount Previously Paid	Amount Currently Due

(Attach additional sheets if necessary)

Waivers or releases from sub-subcontractors and suppliers in the amount shown above must be attached.

Date: _____

SUBCONTRACTOR

Subscribed and sworn before me this

BY: _____
AUTHORIZED SIGNATURE

_____ day of _____, 20____

TITLE: _____

Notary Public _____
My Commission Expires: _____

Exhibit "F"

INTERIM WAIVER AND RELEASE
UPON PAYMENT

(Subcontractor's, Suppliers and / or Vendors)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE UNDERSIGNED mechanic and/or materialman has been employed by _____
_____ (name of contractor) to furnish _____ (describe
Material and/or labor) for the construction of improvements known as _____
_____ (title of the project or building) which is located in the City of _____
_____, County of _____, and is owned by _____
_____ (name of owner) and more particularly described as follows:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING THE METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND
LOT NUMBER, OR STREET ADDRESS OF THE PROJECT).

The Undersigned acknowledges having been paid in full for all previous billings through
_____ (date) and receipt of previous payments in the amount of \$ _____.

Upon receipt of the sum of \$ _____, the mechanic and/or materialman waives and
releases any all liens or claims of liens it has upon the foregoing described property through the date of
_____ (date) and excepting those rights and liens that the mechanic
and/or materialman might have in any retained amounts, on account of labor or materials, or both,
furnished by the undersigned to or on account of said contractor for said building or premises.
Furthermore, save and except for the right to recover any unpaid amounts retained pursuant to the
subcontract by and between Contractor and Subcontractor, Subcontractor, for and in consideration of the
amount paid as set forth hereinabove, does herein waive, release and forever discharge any and all other
claims, demands, causes of action or other rights of recovery, if any, which Subcontractor has, or may have,
against Contractor or Owner arising out of, or relating to, the Subcontract, any Work performed pursuant to
same, or any Work or materials furnished to or for the Project.

Given under hand and seal this _____ day of _____, 20____

(Seal)

(Notary Signature)

(Signature of Owner)

(Witness)

Provided, however, that the failure to correctly complete any of the blank spaces in the above form shall
not invalidate said for so long as the subject manner of said release may reasonably be determined.

Exhibit "G"

FINAL WAIVER AND RELEASE
UPON FINAL PAYMENT

(Subcontractor's, Suppliers and/or Vendors)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE UNDERSIGNED mechanic and/or materialman has been employed by _____
_____ (name of contractor) to furnish _____ (describe
materials and/or labor) for the construction of improvements known as _____
_____ (title of the project or building) which is located in the City of _____
_____, County of _____, and is owned by _____
_____ (name of owner) and more particularly described as follows:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY
USING THE METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND
LOT NUMBER, OR STREET ADDRESS OF THE PROJECT).

Upon receipt of the sum of \$ _____, the mechanic and/or materialman waives and
releases unconditionally all liens or claims of liens it has upon the foregoing described property through the
date of _____ (date) and excepting those rights and liens that the
mechanic and/or materialman might have in any retained amounts, on account of labor or materials, or
both, furnished by the undersigned to or on account of said contractor for said building or premises.
Furthermore, save and except for the right to recover any unpaid amounts retained pursuant to the
subcontract by and between Contractor and Subcontractor, Subcontractor, for and in consideration of the
amount paid as set forth hereinabove, does herein waive, release and forever discharge any and all other
claims, demands, causes of action or other rights of recovery, if any, which Subcontractor has, or may have,
against Contractor or Owner arising out of, or relating to, the Subcontract, any Work performed pursuant to
same, or any Work or materials furnished to or for the Project.

Given under hand and seal this _____ day of _____, 20 _____

(Seal)

(Notary Signature)

(Signature of Owner)

(Witness)

Provided, however, that the failure to correctly complete any of the blank spaces in the above form shall
not invalidate said for so long as the subject manner of said release may reasonably be determined.

Exhibit B



SOLD BY:
CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

INVOICE	
1273017	
Invoice Date	Page
3/20/2013 15:56:25	1 of 2
ORDER NUMBER	
1279404	

Bill To:

MISCELLANEOUS CHARLESTON
CHARLESTON BRANCH
29418

Ship To:

CHARLESTON CC
4987 BANCO ROAD
NORTH CHARLESTON, SC 29418

Customer ID: 11244

Customer ID: 11244

PO Number		Terms Description	Net Due Date	Disc Due Date	Discount Amount		
Affordable Concrete		IMMEDIATE	3/20/2013	3/20/2013	0.00		
Order Date	Pick Ticket No	Primary Salesrep Name		Taker			
3/20/2013 15:51:40	1266157	CHARLESTON HOUSE ACCOUNT		ANDREW.MYERS			
Quantities					Pricing UOM	Unit Price	Extended Price
Ordered	Shipped	Remaining	UOM Unit Size	Disp.	Item ID Item Description	Unit Size	

Carrier: CPU

Tracking #:

4.0000	4.0000	0.0000	EA	1.0	14MAB 14IN METAL ABRASIVE BLADE 14IN METAL ABRASIVE BLADE \\ \\ \\	EA 1.0000	7.00000	28.00
1.0000	1.0000	0.0000	BDL	1.0	6BT 6IN REBAR LOOP TIES 5M/BDL	BDL 1.0000	41.00000	41.00

ORIGINAL



CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

Order Number 1279383	
Order Date 3/20/2013 14:17:31	Page 1 of 1

Bill To:

MISCELLANEOUS CHARLESTON
CHARLESTON BRANCH
29418

Ship To:

CHARLESTON CC
4987 BANCO ROAD
NORTH CHARLESTON, SC 29418

Customer ID: 11244

PO Number					Ship Route	Taker		
Affordable Concrete						ANDREW.MYERS		
Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size		
61.0000	61.0000	0.0000	EA		REBAR7	EA	17.50000	1,067.50
				1.0	#7 REBAR 7/8IN X 20FT GRADE 60 (GREEN)	1.0		
					#7 REBAR 7/8IN X 20FT GRADE 60 \ \ \			
50.0000	50.0000	0.0000	EA		REBAR5	EA	8.50000	425.00
				1.0	#5 REBAR 5/8IN X 20FT GRADE 60 (BLUE)	1.0		
30.0000	30.0000	0.0000	EA		REBAR4	EA	5.80000	174.00
				1.0	#4 REBAR 1/2IN X 20FT GRADE 60 (ORANGE)	1.0		
2.0000	2.0000	0.0000	BOX		3-2BAR	BOX	17.50000	35.00
				1.0	#2 - 2 BAR FOUNDATION CHAIR (100 /BOX)	1.0		
					3IN 2 REBAR CHAIR METAL 100/BOX \ \ \			
					\ \			
Total Lines: 4						SUB-TOTAL:		1,701.50
						TAX:		144.64
						AMOUNT TENDERED:		0.00
						AMOUNT DUE:		1,846.14
						U.S. Dollars		



[Handwritten signature]

NOT ALL
ELECTRONIC

SEE DISPL

DATE 03/20/2013 TIME 12:35:23pm
MER # 03041723 TERM # 001

NEW SOUTH CONSTRUCTION SUPPLY
180 RODEO DR
MYRTLE BEACH, SC 29579
603-235-6447

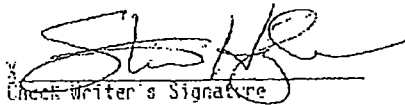
When you provide a check as payment, you authorize us to use information from your check to process a one-time Electronic Funds Transfer (EFT) or draft drawn from your account, or process the payment as a check transaction. You also authorize us to process credit adjustments, if applicable. If your payment is returned unpaid, you authorize us to collect your payment and the Return Fee amount below by EFT(s) or draft(s) from your account.

ELECTRONIC CHECK

** POWERED BY TELECHECK **
** A FIRST DATA COMPANY **

TOTAL SALE AMOUNT \$1,646.14
RETURN FEE AMOUNT \$30.00

TRANSACTION # 003
BATCH # 306
TRACE NUMBER 1400310000021136932700
CHECK NUMBER 03051
APPROVAL CODE 6679


Check Writer's Signature

ELECTRONICALLY DEPOSITED
ITS SAFE, ITS SECURE
ITS FROM TELECHECK
QUESTIONS? CALL 1-800-697-9263

MERCHANT COPY

For Charlotte

Pay to the Order of First South

One thousand eight hundred forty six and 14/100 Dollars

DATE 3/20/13

AMOUNT \$1,846.14

BRANCH BANKING AND TRUST COMPANY
1-800-BANK-BEST 887.0000

Business Value Checking

0053201607000522434318103051

RSS LLC
DBA AFFORDABLE CONCRETE AND MASONRY
BS, 843-241-0528
8491 HIGHWAY 701 N
CONWAY, SC 29526-5768

008180448 3051
01-160612



SOLD BY:
CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

INVOICE	
1273017	
Invoice Date	Page
3/20/2013 15:56:25	2 of 2
ORDER NUMBER	
1279404	

Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price
Ordered	Shipped	Remaining	UOM Unit Size	Disp.		Unit Size		

Name:
Account Number: 8901
Authorization Number: 554089
Authorization Amount: 74.87

X

I agree to pay above total amount
according to card issuer

Total Lines: 2

SUB-TOTAL: 69.00
SC STATE SALES TAX: 4.14
SC CHARLESTON CNTY TAX: 1.73
CC CHARLESTON: 74.87
AMOUNT DUE: 0.00

New! - If you would like to receive your invoices via e-mail, please
contact Suzanne Godwin - suzanne.godwin@newsouthsupply.com

U.S. Dollars

PLEASE REMIT TO: NEW SOUTH CONSTRUCTION SUPPLY, LLC
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209

* SPECIAL ORDER MATERIAL CAN NOT BE RETURNED
* A RESTOCKING FEE OF UP TO 25% WILL BE APPLIED TO ALL OTHER RETURNED MATERIAL,
ORIGINAL RECEIPT MUST ACCOMPANY ALL RETURNED MATERIALS.

1.5% FINANCE CHARGE PER MONTH ON ALL PAST DUE ACCOUNTS MAY APPLY

MSDS Available On Request

ORIGINAL



SOLD BY:
CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

INVOICE	
1273261	
Invoice Date	Page
3/22/2013 10:22:28	1 of 1
ORDER NUMBER	
1279659	

Bill To:

MISCELLANEOUS CHARLESTON
CHARLESTON BRANCH
29418

Ship To:

Affordable Concrete Work
1914 Aichele Drive
Douglas Waring 926-8798
North Charleston, SC 29406

Customer ID: 11244

Customer ID: 11244

PO Number		Terms Description	Net Due Date	Disc Due Date	Discount Amount			
hanleys		IMMEDIATE	3/22/2013	3/22/2013	0.00			
Order Date	Pick Ticket No	Primary Salesrep Name		Taker				
3/22/2013 09:59:34	1266401	CHARLESTON HOUSE ACCOUNT		CHRIS.KITCHENS				
Quantities					Pricing UOM	Unit Price	Extended Price	
Ordered	Shipped	Remaining	UOM Unit Size	Disp.	Item ID Item Description	Unit Size		
Carrier: CPU					Tracking #:			
2.0000	2.0000	0.0000	EA		SETPAC10	EA	16.50000	33.00
			1.0		SIMPSON 100Z EPOXY CARTIDGE	1.0000		
					SIMPSON 100Z EPOXY CARTIDGE			

Name:

Account Number: 8901

Authorization Number: 562627

Authorization Amount: 35.81

X

I agree to pay above total amount
according to card issuer

Total Lines: 1

SUB-TOTAL: 33.00

SC STATE SALES TAX: 1.98

SC CHARLESTON CNTY TAX: 0.83

CC CHARLESTON: 35.81

AMOUNT DUE: 0.00

U.S. Dollars

New! - If you would like to receive your invoices via e-mail, please
contact Suzanne Godwin - suzanne.godwin@newsouthsupply.com

PLEASE REMIT TO: NEW SOUTH CONSTRUCTION SUPPLY, LLC
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209

* SPECIAL ORDER MATERIAL CAN NOT BE RETURNED

* A RESTOCKING FEE OF UP TO 25% WILL BE APPLIED TO ALL OTHER RETURNED MATERIAL,
ORIGINAL RECEIPT MUST ACCOMPANY ALL RETURNED MATERIALS.

1.5% FINANCE CHARGE PER MONTH ON ALL PAST DUE ACCOUNTS MAY APPLY

MSDS Available On Request

ORIGINAL



CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

Pick Ticket Number	
1266466	
Pick Date	Page
3/22/2013 15:09:19	1 of 1
Order Number	
1279716	

Bill To:

MISCELLANEOUS CHARLESTON
CHARLESTON BRANCH
29418

Ship To:

Affordable Concrete Work
1914 Aichele Drive
Douglas Waring 926-8798
North Charleston, SC 29406

Customer ID: 11244

*****Will Call*****

Order Date	PO Number	Route	Carrier	Taker
3/22/2013	havertys		CPU	CHRIS.KITCHENS
Quantities				UOM
Ordered	Allocated	To Pick	Disp.	Unit Size
4.0000	4.0000	4.0000		
WM1010S-20				SHT
6X6 10-10 WIRE MESH SHEETS 8'X20'				1.0

Ordered As: MESH

BIN: Y01A

Qty:

4.0000 SHT

Shipment Accepted By:

Total Lines: 1
Total Pieces: 4
Total Weight: 130.56

75.80
644
85.24

VERIFIED BY (NSCS ASSOCIATE): _____

CUSTOMER SIGNATURE _____

DATE _____

CUSTOMER PRINT _____

TIME _____

NSCS DRIVER _____

PCS _____

* Complete Order *



CHARLESTON, SC LOCATION
(T) 843-760-0780
(F) 843-760-6127

REMITTANCE ADDRESS:
DEPT 40027
P.O. BOX 740209
ATLANTA, GA 30374-0209
803-791-8700

Order Number 1281765	
Order Date 4/11/2013 13:43:48	Page 1 of 1

Bill To:

MISCELLANEOUS CHARLESTON
CHARLESTON BRANCH
29418

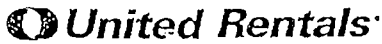
Ship To:

Affordable Concrete Work
1914 Aichele Drive
Douglas Waring 926-8798
North Charleston, SC 29406

Customer ID: 11244

PO Number				Ship Route	Taker			
AFFRORDABLE					CHRIS.KITCHENS			
Quantities					Item ID Item Description	Pricing UOM Unit Size	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Qty.				
4.0000	0.0000	4.0000	EA	B	WM1010S	EA	11.50000	46.00
				1.0	6X6-10'10 WIRE MESH SHLETS 3' X 12 1/2'	1.0		
1.0000	0.0000	0.0000	EACH	48	BROOM	EACH	22.00000	22.00
				1.0	48" CONCRETE BROOM	1.0		
Total Lines: 2						SUB-TOTAL:		68.00
						TAX:		5.78
						AMOUNT TENDERED:		73.78
						AMOUNT DUE:		0.00
						U.S. Dollars		





800-UR-RENTS (800-877-3687)
unitedrentals.com

LOCATION #F77
2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL QUOTE

109573812

Job Site

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

Office: 843-747-9002 Job: 843-747-9002

Customer Number : \$# 1006799602
Quote Date : 3/12/13
Estimated Out : 3/19/13 10:00 AM
Estimated In : 3/26/13 10:00 AM

Job Location: CPU
Job Number :
P.O. Number : N/A
Ordered By :
Written By : CSTOTZ
Salesperson :

Customer

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

RENTAL ITEMS:		Description	Minimum	Day	Week	4 Week	Estimated Amt.
Qty	Equipment						
1	1003185	*COMPRESSOR 175-195 CFM	88.00	117.00	336.00	699.00	336.00
4	110/2400	AIR HOSE 3/4 IN X 50 FT	8.00	11.00	24.00	25.00	96.00
1	1101550	AIR PAVEMENT BREAKER 30#	22.00	30.16	81.12	228.80	81.12
Rental Subtotal:							513.12
SALES/MISCELLANEOUS ITEMS:		Price	Unit of Measure	Extended Amt.			
Qty	Item						
1	ENVIRONMENTAL CHARGE	[ENV/MCI]	1.810	(EA) EACH	1.81		
Sales/Misc Subtotal:					1.81		
Agreement Subtotal:					514.93		
Tax:					41.19		
Estimated Total:					556.12		

Note: This proposal may be withdrawn if not accepted within 30 days.

THIS IS NOT A RENTAL AGREEMENT. THE RENTAL OF EQUIPMENT AND ANY OTHER ITEMS LISTED ABOVE IS SUBJECT TO AVAILABILITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF UNITED'S RENTAL AGREEMENT, WHICH MUST BE SIGNED PRIOR TO OR UPON DELIVERY OF THE EQUIPMENT AND OTHER ITEMS.

Page: 1



800-UR-RENTS (800-877-3687)
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2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL QUOTE

109573812

Customer Number : \$# 1006799602
Quote Date : 3/12/13
Estimated Out : 3/19/13 10:00 AM
Estimated In : 4/16/13 10:00 AM

Job Location: CPU
Job Number :
P.O. Number : N/A
Ordered By :
Written By : CSTOTZ
Salesperson :

Job Site

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

Office: 843-747-9002 Job: 843-747-9002

Customer

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

RENTAL ITEMS:							
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	1003185	*COMPRESSOR 175-195 CFM	88.00	117.00	336.00	699.00	699.00
4	110/2400	AIR HOSE 3/4 IN X 50 FT	8.00	11.00	24.00	25.00	100.00
1	1101550	AIR PAVEMENT BREAKER 30#	22.00	30.16	81.12	228.80	228.80
Rental Subtotal:							1,027.80
SALES/MISCELLANEOUS ITEMS:							
Qty	Item	Price	Unit of Measure	Extended Amt.			
1	ENVIRONMENTAL CHARGE	[ENV/MCI]	3.770	(EA) EACH	3.77		
Sales/Misc Subtotal:							3.77
Agreement Subtotal:							1,031.57
Tax:							82.52
Estimated Total:							1,114.09

Note: This proposal may be withdrawn if not accepted within 30 days.

THIS IS NOT A RENTAL AGREEMENT. THE RENTAL OF EQUIPMENT AND ANY OTHER ITEMS LISTED ABOVE IS SUBJECT TO AVAILABILITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF UNITED'S RENTAL AGREEMENT, WHICH MUST BE SIGNED PRIOR TO OR UPON DELIVERY OF THE EQUIPMENT AND OTHER ITEMS.



800-UR-RENTS (800-877-3687)
unitedrentals.com

LOCATION #F77
2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL QUOTE

109573812

Customer Number : \$# 1006799602
Quote Date : 3/12/13
Estimated Out : 3/19/13 10:00 AM
Estimated In : 4/02/13 10:00 AM

Job Location: CPU
Job Number :
P.O. Number : N/A
Ordered By :
Written By : CSTOTZ
Salesperson :

Job Site

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

Office: 843-747-9002 Job: 843-747-9002

Customer

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

RENTAL ITEMS:

Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	2311200	*FORKLIFT WHSE 5000# GAS/PROP	213.00	213.00	748.00	1447.00	1,447.00
Rental Subtotal:							1,447.00

SALES/MISCELLANEOUS ITEMS:

Qty	Item	Price	Unit of Measure	Extended Amt.
1	PROPERTY TAX SURCHARGE	[DRSURSC/MCI] 43.410	(EA) EACH	43.41
1	ENVIRONMENTAL CHARGE	[ENV/MCI] 7.810	(EA) EACH	7.81
Sales/Misc Subtotal:				51.22
Agreement Subtotal:				1,498.22
Tax:				116.38
Estimated Total:				1,614.60

Note: This proposal may be withdrawn if not accepted within 30 days.

THIS IS NOT A RENTAL AGREEMENT. THE RENTAL OF EQUIPMENT AND ANY OTHER ITEMS LISTED ABOVE IS SUBJECT TO AVAILABILITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF UNITED'S RENTAL AGREEMENT, WHICH MUST BE SIGNED PRIOR TO OR UPON DELIVERY OF THE EQUIPMENT AND OTHER ITEMS.

Date: 1



800-UR-RENTS (800-877-3687)
unitedrentals.com

LOCATION #F77
2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL QUOTE

109573812

Customer Number : \$# 1006799602
Quote Date : 3/12/13
Estimated Out : 3/19/13 10:00 AM
Estimated In : 3/26/13 10:00 AM

Job Location: CPU
Job Number :
P.O. Number : N/A
Ordered By :
Written By : CSTOTZ
Salesperson :

Job Site

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

Office: 843-747-9002 Job: 843-747-9002

Customer

CASH
2841 AZALEA DR
CHARLESTON, SC 29405

RENTAL ITEMS:								
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.	
1	2311200	*FORKLIFT WHSE 5000# GAS/PROP	213.00	213.00	748.00	1447.00	748.00	
						Rental Subtotal:	748.00	
SALES/MISCELLANEOUS ITEMS:								
Qty	Item		Price	Unit of Measure		Extended Amt.		
1	PROPERTY TAX SURCHARGE	[DRSURSC/MCI]	22.440	(EA) EACH		22.44		
1	ENVIRONMENTAL CHARGE	[ENV/MCI]	4.030	(EA) EACH		4.03		
						Sales/Misc Subtotal:	26.47	
						Agreement Subtotal:	774.47	
						Tax:	60.16	
						Estimated Total:	834.63	

Subtotal *Day* *Week* *Month*
~~266.00~~ 914.00
266.00

Note: This proposal may be withdrawn if not accepted within 30 days.

THIS IS NOT A RENTAL AGREEMENT. THE RENTAL OF EQUIPMENT AND ANY OTHER ITEMS LISTED ABOVE IS SUBJECT TO AVAILABILITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF UNITED'S RENTAL AGREEMENT, WHICH MUST BE SIGNED PRIOR TO OR UPON DELIVERY OF THE EQUIPMENT AND OTHER ITEMS.



800-UR-RENTS (800-877-3687)
unitedrentals.com

LOCATION #777
2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL AGREEMENT

109781331

Customer Number : \$# 1006223563
Agreement Date : 3/20/13
Rental Out : 3/20/13 5:00 PM
Scheduled In : 3/21/13 5:00 PM

Job Location: HAVERTY'S SAM RITTENBERG
Job Number :
P.O. Number :
Ordered By : STEVEN
Written By : KCOOK1
Salesperson : 8652

Job Site

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

Office: 843-241-0520 Job: 843-241-0520

Customer

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

RENTAL ITEMS:							
Qty	Equipment	Description	Minimum	Day	Week	4 Week	Estimated Amt.
1	802583RA	DEMO HAMMER 60# ELECTRIC Make: BOSCH Model: 11304K Serial: 990000115	61.00	81.00	201.00	513.00	81.00
Do not use more than 50' of grounded extension cord 12 gauge cord required.							

Rental Subtotal: 81.00

SALES/MISCELLANEOUS ITEMS:

Qty	Item	Price	Unit of Measure	Extended Amt.
1	CORD, EXTEN 100' 12/3 LIT YEL VN	[02589-00-02/COLEM]	80.660 (EA) EACH	80.66

PAYMENT HISTORY

DATE	TYPE	REF #	AUTH #	TRANS TYPE	AMOUNT	APPLIED
3/20/13	VISA	**8901	554372	CHARGED		174.59

Sales/Misc Subtotal: 80.66

Agreement Subtotal: 161.66

Tax: 12.93

Estimated Total: 174.59

Deposit: 174.59

COMMENTS/NOTES:

A CLEANING CHARGE WILL APPLY TO EQUIPMENT RETURNED WITH EXCESSIVE
DIRT, CONCRETE, AND/OR PAINT. CUSTOMER IS RESPONSIBLE FOR ALL
DAMAGE INCLUDING TIRES. THERE WILL BE AN ADDITIONAL CHARGE FOR
MISSING KEYS. A FUEL CHARGE WILL BE APPLIED TO ALL UNITS NOT
RETURNED FULL OF FUEL.

* ENVIRONMENTAL CHARGE: The items indicated above are subject to an environmental charge which is designed to recover United's direct and indirect expenses for the handling, managing and disposing of waste products, hazardous related administrative costs. This is not a government-mandated charge. FUEL: Fuel charges do not include federal, state, or local excise taxes.

OPTIONAL RENTAL PROTECTION PLAN

THE RENTAL PROTECTION PLAN IS NOT INSURANCE! Upon accepting the optional Rental Protection Plan, Customer agrees to pay a charge equal to 14% of the rental charges on Equipment. Customer wants covered by the Rental Protection Plan. In return, as set forth in Addendum 1 to the Rental Agreement, United agrees to waive certain claims for accidental damage to or theft of such covered Equipment occurring during normal and careful use. Customer remains liable for all other damages as set forth in the conditions found in Addendum 1 to the Rental Agreement.

NOTICE FOR RENTAL OF A MOTOR VEHICLE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A DAMAGE WAIVER TO LIMIT YOUR FINANCIAL RESPONSIBILITY FOR DAMAGE TO OR THEFT OF THE MOTOR VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN INSURANCE AFFORDS YOU COVERAGE. THE PURCHASE OF THIS DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED OR DECLINED.

BEFORE SIGNING: By signing below, Customer (x) Agrees to the terms and conditions contained in this rental agreement; (x) Agrees that the equipment is in the condition as stated on the condition report(s); (x) Agrees to the terms and conditions of the Optional Rental Protection Plan, if applicable; and (x) Authorizes United to charge Customer's credit card listed above or on file, if applicable. Customer also acknowledges that it is fully familiar with the operation and use of the equipment and has received (a) the equipment in good working order; (b) oil safety bulletin; (c) all operator manuals; and (d) all manufacturer's tabulated data for the for the protective system equipment listed above.

X

CUSTOMER SIGNATURE DATE CUSTOMER NAME PRINTED UNITED RENTALS REPRESENTATIVE/DELIVERED BY DATE

A LARGER FONT COPY OF THE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.



800-UR-RENTS (800-877-3687)
unitedrentals.com

2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL RETURN INVOICE

109781331-001

Customer Number : \$# 1006223563
Invoice Date : 3/21/13
Rental Out : 3/20/13 5:00 PM
Rental In : 3/21/13 5:00 PM

Job Location: HAVERTY'S SAM RITTENBERG
Job Number :
P.O. Number :
Ordered By : STEVEN
Written By : JHEDGES
Salesperson : 8652

Job Site

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

Office: 843-241-0520 Job: 843-241-0520

Customer

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

RENTAL ITEMS:		Description	Minimum	Day	Week	4 Week	Amount
Qty	Equipment						
1	802583RA	DEMO HAMMER 60# ELECTRIC Make: BOSCH Model: 11304K Serial: 990000115	61.00	81.00	201.00	513.00	81.00
Rental Subtotal:							81.00
SALES/MISCELLANEOUS ITEMS:			Price	Unit of Measure	Extended Amt.		
Qty	Item						
1	CORD, EXTEN 100' 12/3 LIT YEL VN	[02589-00-02/COLEM]	80.660	(EA) EACH		80.66	
PAYMENT HISTORY							
DATE	TYPE	REF #	AUTH #	TRANS TYPE	AMOUNT	APPLIED	
3/20/13	VISA	**8901	554372	CHARGED		174.59	
Sales/Misc Subtotal: 80.66							
Agreement Subtotal: 161.66							
Tax: 12.93							
Total: 174.59							
Deposit: 174.59							
Balance paid: 174.59							

THIS INVOICE IS ISSUED SUBJECT TO THE TERMS AND CONDITIONS OF THE RENTAL AGREEMENT, WHICH ARE INCORPORATED HEREIN BY REFERENCE.

A COPY OF THE RENTAL AGREEMENT IS AVAILABLE UPON REQUEST.

Page: 1

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800-UR-RENTS (800-877-3687)
unitedrentals.com

2041 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



RENTAL AGREEMENT

109831066

Customer Number : S# 1006223563
Agreement Date : 3/22/13
Rental Out : 3/22/13 1:07 PM
Scheduled In : 3/23/13 12:30 PM

Job Location: CPU-CHARLESTON
Job Number :
P.O. Number :
Ordered By : STEVEN
Written By : CSTOTZ
Salesperson : 8652

Job S-

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

Office: 843-241-0520 Job: 843-241-0520

Customer

STEVEN LAVON HUGHES
6491 HIGHWAY 701 N
CONWAY, SC 29526-5768

RENTAL ITEMS:		Description	Minimum	Day	Week	4 Week	Estimated Amt.
Qty	Equipment						
1	1190986	*BUGGY 15-19 CU FT POWER Make: MULTIQUIP Model: WBH-16EF Serial: 101242 Meter out: 1.00	85.00	85.00	285.00	824.00	85.00
						Rental Subtotal:	85.00
SALES/MISCELLANEOUS ITEMS:			Price	Unit of Measure	Extended Amt.		
Qty	Item						
1	ENVIRONMENTAL CHARGE	[ENV/MCI]	.450	(EA) EACH	.45		
PAYMENT HISTORY							
DATE	TYPE	REF #	AUTH #	TRANS TYPE	AMOUNT	APPLIED	
3/21/13	PAY ON RETURN						
3/22/13	VISA	**8901	563730	CHARGED	105.14		
						Sales/Misc Subtotal:	.45
						Agreement Subtotal:	85.45
						Rental Protection:	11.90
						Tax:	7.79
						Estimated Total:	105.14
						Deposit:	105.14
COMMENTS/NOTES:							
A CLEANING CHARGE WILL APPLY TO EQUIPMENT RETURNED WITH EXCESSIVE DIRT, CONCRETE, AND/OR PAINT. CUSTOMER IS RESPONSIBLE FOR ALL DAMAGE INCLUDING TIRES. THERE WILL BE AN ADDITIONAL CHARGE FOR MISSING KEYS. A FUEL CHARGE WILL BE APPLIED TO ALL UNITS NOT RETURNED FULL OF FUEL *****							
* ENVIRONMENTAL CHARGE: The items indicated above are subject to an environmental charge which is designed to recover United's direct and indirect expenses for the handling, managing and disposing of waste products, hazardous related administrative costs. This is not a government-mandated charge. FUEL: Fuel charges do not include federal, state, or local excise taxes.							
OPTIONAL RENTAL PROTECTION PLAN							
THE RENTAL PROTECTION PLAN IS NOT INSURANCE! Upon accepting the optional Rental Protection Plan, Customer agrees to pay a charge equal to 14% of the rental charges on Equipment Customer wants covered by the Rental Protection Plan. In return, as set forth in Addendum 1 to the Rental Agreement, United agrees to waive certain claims for accidental damage to or theft of such covered Equipment occurring during normal and careful use. Customer remains liable for all other damages as set forth in the conditions found in Addendum 1 to the Rental Agreement.							
NOTICE FOR RENTAL OF A MOTOR VEHICLE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A DAMAGE WAIVER TO LIMIT YOUR FINANCIAL RESPONSIBILITY FOR DAMAGE TO OR THEFT OF THE MOTOR VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN INSURANCE AFFORDS YOU COVERAGE. THE PURCHASE OF THIS DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED OR DECLINED.							
BEFORE SIGNING: By signing below, Customer (x) Agrees to the terms and conditions contained in this rental agreement; (x) Agrees that the equipment is in the condition as stated on the condition report(s); (x) Agrees to the terms and conditions of the Optional Rental Protection Plan, if applicable; and (x) Authorizes United to charge Customer a credit card listed above or on file, if applicable. Customer also acknowledges that it is fully familiar with the operation and use of the equipment and has received (a) the equipment in good working order; (b) all safety bulletins; (c) all operator manuals; and (d) all manufacturer's tabulated data for the for the protective system equipment listed above.							
X							
CUSTOMER SIGNATURE		DATE	CUSTOMER NAME PRINTED		UNITED RENTALS REPRESENTATIVE/DELIVERED BY DATE		

A LARGER FONT COPY OF THE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.

Page 1



800-UR-RENTS (800-877-3687)
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LOCATION #F77
2841 AZALEA DRIVE
CHARLESTON, SC 29405
843-747-9002 843-554-7029 FAX



SALE
AGREEMENT/INVOICE

110264066-001

Customer Number : SH 1006799602
Invoice Date : 4/11/13 8:27 AM

Job Location: SAME
Job Number :
P.O. Number :
Ordered By :
Written By : UR472JR
Salesperson : 3918

Job Site

UNITED RENTALS - F77
2841 AZALEA DR
CHARLESTON, SC 29405

Office: 843-747-9002 Job: 843-747-9002

Customer

UNITED RENTALS - F77
2841 AZALEA DR
CHARLESTON, SC 29405

Qty	Item number	Stock class	Unit	Price	Amount
1	FILTER KIT FOR TS420 605-531 UM: (EA) EACH	STEMS	EA	26.938	26.94
Sub-total:					26.94
Tax:					2.29
Total:					29.23

PAYMENT HISTORY

<u>DATE</u>	<u>TYPE</u>	<u>REF #</u>	<u>AUTH #</u>	<u>TRANS TYPE</u>	<u>AMOUNT</u>	<u>APPLIED</u>
4/11/13	CASH					29.23

READ BEFORE SIGNING:

BY SIGNING THIS AGREEMENT, CUSTOMER AGREES TO ALL TERMS AND CONDITIONS ON THE FRONT AND BACK OF THIS AGREEMENT (2) KNOWLEDGES RECEIPT OF THE ITEMS IN GOOD WORKING ORDER, AND (3) IS FULLY FAMILIAR WITH THE OPERATION AND USE OF THE ITEMS.

X

CUSTOMER SIGNATURE

DATE

CUSTOMER NAME PRINTED

UNITED RENTALS REPRESENTATIVE/DELIVERED BY DATE

A LARGER FONT COPY OF THE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.

Attn: Justin

(843)347-1026

COASTAL CONCRETE SOUTHEAST II, LLC
118 PIPEMAKERS CIRCLE
SUITE 100
POOLER, GA 31322
912-330-8990 EXT 22 or EXT 23
FAX: 912-330-8998

Invoice # : 317735

Invoice Date : Mar-22-2013

Page : 1

COD- AFFORDABLE CONCRETE

Customer # : CHA7
Order Code : 715
Project # :
Project Name :

Delivery Address: 1760 SAM RITTENBERG BLVD, @ HAVERTY'S

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
799164	10.00 cy	7	03/22	117	4000 PSI CONCRETE		92.00	920.00
799164	1.00 cy	7	03/22	FUELSUR	FUEL SURCHARGE		16.00	16.00
799165	10.00 cy	7	03/22	117	4000 PSI CONCRETE		92.00	920.00
799165	1.00 cy	7	03/22	FUELSUR	FUEL SURCHARGE		16.00	16.00
799168	8.00 cy	7	03/22	117	4000 PSI CONCRETE		92.00	736.00
799168	1.00 cy	7	03/22	FUELSUR	FUEL SURCHARGE		16.00	16.00

Handwritten signature

Handwritten: -199.64

*Handwritten: 2392.00
48.00*

*Handwritten: 2440.00
207.40*

*Handwritten: 8.5%
Total: 2647.40*

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:

28.00 cy

Handwritten: 26.00 Per Kevin

Sub-total : \$2,624.00

Total Tax : \$223.04

Invoice Total : \$2,847.04

PLANT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
118 PIPEMAKERS CIRCLE
SUITE 100
POOLER, GA 31322
912-330-8990 EXT 22 or EXT 23
FAX: 912-330-8998

Invoice # : 317845

Invoice Date : Mar-22-2013

Page : 1

COD- AFFORDABLE CONCRETE

Customer # : CHA7
Order Code : 716
Project # :
Project Name :

Delivery Address: 1760 SAM RITTENBERG BLVD, @ HAVERTY'S

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
799169	6.00 cy	7	03/22	140	3000 PSI CONCRETE (#89		96.00	576.00
799169	1.00 cy	7	03/22	FUELSUR	FUEL SURCHARGE		16.00	16.00

~~21847.04~~
~~642.32~~
~~31489.36~~

2647.40
642.32
3189.72

Paid
[Signature]

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity: 6.00 cy

Sub-total : \$592.00
Total Tax : \$50.32

Invoice Total : \$642.32

PLANT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
 118 PIPEMAKERS CIRCLE
 SUITE 100
 POOLER, GA 31322
 912-330-8990 EXT 22 or EXT 23
 FAX: 912-330-8998

Invoice # : 318826
 Invoice Date : Apr-03-2013

Page : 1

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
 6491 HWY 701 N
 CONWAY SC 29526

Customer # : 10083
 Order Code : 705
 Project # :
 Project Name :

Delivery Address: HAVERTY'S ON SAM RITTENBERG BLVD

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
799306	5.00	7	04/03	116	4000 PSI CONCRETE GRAN		92.00	460.00
799306	1.00	7	04/03	FUELSUR	FUEL SURCHARGE		16.00	16.00
799313	1.00	7	04/03	116	4000 PSI CONCRETE GRAN		92.00	92.00
799313	1.00	7	04/03	76	DELIVERY CHARGE		125.00	125.00
799313	1.00	7	04/03	FUELSUR	FUEL SURCHARGE		16.00	16.00

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:	6.00 cy	Sub-total :	\$709.00
		Total Tax :	\$60.27
		Invoice Total :	\$769.27

PAYMENT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
 6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
 11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
 118 PIPEMAKERS CIRCLE
 SUITE 100
 POOLER, GA 31322
 912-330-8990 EXT. 22 or EXT. 23

 MONTHLY STATEMENT

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
 6491 HWY 701 N
 CONWAY SC 29526

10083

Apr-04-2013

INVOICE #	DATE	DESCRIPTION	BALANCE
318350	IN 03-29-2013	1760 SAM RITTENBERG BLVD, @ HAVERTY'	466.55

Current	over 30	over 60	over 90	over 120	STATEMENT TOTAL	\$466.55
466.5	0.00	0.00	0.00	0.00		

 PAYMENT DUE UPON RECEIPT OF INVOICE

COASTAL CONCRETE SOUTHEAST II, LLC
 118 PIPEMAKERS CIRCLE
 SUITE 100
 POOLER, GA 31322
 912-330-8990 EXT 22 or EXT 23
 FAX: 912-330-8998

Invoice # : 318706
 Invoice Date : Apr-05-2013

Page : 1

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
 6491 HWY 701 N
 CONWAY SC 29526

Customer # : 10083
 Order Code : 707
 Project # :
 Project Name :

Delivery Address: HAVERTY'S ON SAM RITTENBERG BLVD

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
799352	6.00	7	04/05	116	4000 PSI CONCRETE GRAN		92.00	552.00
799352	1.00	7	04/05	76	DELIVERY CHARGE		125.00	125.00
799352	1.00	7	04/05	FUELSUR	FUEL SURCHARGE		16.00	16.00

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:	6.00 cy	Sub-total :	\$693.00
		Total Tax :	\$58.91
		Invoice Total :	\$751.91

NT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
 6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
 11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
118 PIPEMAKERS CIRCLE
SUITE 100
POOLER, GA 31322
912-330-8990 EXT 22 or EXT 23
FAX: 912-330-8998

Invoice # :319095
Invoice Date : Apr-11-2013

Page : 1

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
6491 HWY 701 N
CONWAY SC 29526

Customer # : 10083
Order Code : 719
Project # :
Project Name :

Delivery Address: HAVERTY'S ON SAM RITTENBERG BLVD

Ticket	Quantity	Plant Date	Item	Description	P.O. #	Unit Price	Extension
799492	10.00	7 04/11	116	4000 PSI CONCRETE GRAN		92.00	920.00
799492	1.00	7 04/11	FUELSUR	FUEL SURCHARGE		16.00	16.00

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:	10.00	cy	Sub-total :	\$936.00
			Total Tax :	\$79.56

Invoice Total : \$1,015.56

PLANT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
 118 PIPEMAKERS CIRCLE
 SUITE 100
 POOLER, GA 31322
 912-330-8990 EXT 22 or EXT 23
 FAX: 912-330-8998

Invoice # : 320660

Invoice Date : May-07-2013

Page : 1

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
 6491 HWY 701 N
 CONWAY SC 29526

Customer # : 10083
 Order Code : 700
 Project # :
 Project Name :

Delivery Address: HAVERTY'S ON SAM RITTENBERG BLVD

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
799856	10.00	7	05/07	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	920.00
799856	1.00	7	05/07	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00
799861	10.00	7	05/07	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	920.00
799861	1.00	7	05/07	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00
799870	10.00	7	05/07	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	920.00
799870	1.00	7	05/07	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00
799877	1.50	7	05/07	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	138.00
799877	1.00	7	05/07	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:	31.50 cy	Sub-total :	\$2,954.00
		Total Tax :	\$251.09
		Invoice Total :	\$3,205.09

F NT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
 6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
 11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
 118 PIPEMAKERS CIRCLE
 SUITE 100
 POOLER, GA 31322
 912-330-8990 EXT 22 or EXT 23
 FAX: 912-330-8998

Invoice # :321986
 Invoice Date : May-29-2013

Page : 1

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
 6491 HWY 701 N
 CONWAY SC 29526

Customer # : 10083
 Order Code : 704
 Project # :
 Project Name :

Delivery Address: HAVERTY'S ON SAM RITTENBERG BLVD

Ticket	Quantity	Plant	Date	Item	Description	P.O. #	Unit Price	Extension
700221	5.00	7	05/29	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	460.00
700221	1.00	7	05/29	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00
700224	1.50	7	05/29	116	4000 PSI CONCRETE GRANSIDEWALK		92.00	138.00
700224	1.00	7	05/29	FUELSUR	FUEL SURCHARGE SIDEWALK		14.00	14.00

PAYMENT DUE UPON RECEIPT OF INVOICE. A SIGNED TICKET WAS LEFT AT EACH JOB SITE.

Total Quantity:	6.50 cy	Sub-total :	\$626.00
		Total Tax :	\$53.21
		Invoice Total :	\$679.21

PLANT LEGEND: 1=BEAUFORT 2=COLUMBIA 3=LEXINGTON 4=SAVANNAH 5=JOHN'S ISLAND
 6=MYRTLE BEACH 7=N. CHARLESTON 8=BLUFFTON 9=GREENVILLE 10=JACKSONVILLE
 11=GASTON, SC 12=AUGUSTA 13=HINESVILLE 14=SAVANAH2 15=RICHMOND HILL

COASTAL CONCRETE SOUTHEAST II, LLC
118 PIPEMAKERS CIRCLE
SUITE 100
POOLER, GA 31322
912-330-8990 EXT. 22 or EXT. 23

MONTHLY STATEMENT

RSS, LLC DBA AFFORDABLE CONCRETE & MASON
6491 HWY 701 N
CONWAY SC 29526

10083

Jun-05-2013

INVOICE #	DATE	DESCRIPTION	BALANCE
321660	IN 05-22-2013	HAVERTY'S ON SAM RITTENBERG BLVD	414.47
321986	IN 05-29-2013	HAVERTY'S ON SAM RITTENBERG BLVD	679.21

Current	over 30	over 60	over 90	over 120		
1,093.6	0.00	0.00	0.00	0.00	STATEMENT TOTAL	\$1,093.68

PAYMENT DUE UPON RECEIPT OF INVOICE

1425.00
3482.00
225.00
102.50

RSS LLC
AFFORDABLE CONCRETE & MASONRY
6491 HIGHWAY 701 N
CONWAY, SC 29526

1056
67-674/532

DATE 07-23-10

PAY TO THE ORDER OF JIS Masonry \$ 1000.00

ONE THOUSAND & 00/100 DOLLARS

ANDERSON BROTHERS BANK
Lorin, S.C. 29369
www.abbank.com

MEMO CRS HANITY

MP

⑆053206741⑆ 790001457⑈ 1056

TRADITIONAL BLUE

[Handwritten signature]



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

- SALE -

IN: S0655LH1 1621915 TRANS#: 33819253 03-20-13

82080 DW 14" SEGMENTED RIM GP D 259.94
2 Q 129.97

SUBTOTAL: 259.94

TAX: 22.09

INVOICE 53509 TOTAL: 282.03

CASH: 300.00

CHANGE: 17.97

REF- 0655 TERMINAL: 53 03/20/13 18:43:03

IF ITEMS PURCHASED: 2

EXCLUDES FEES, SERVICES



THANK YOU FOR SHOPPING LOWE'S.

REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

YOUR OPINIONS COUNT!

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

YOUR ID # 53509 0655 079

NO PURCHASE NECESSARY TO ENTER OR WIN.

WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

IN: 0655 TERMINAL: 53 03/20/13 18:43:03



LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

- SALE -

SALES#: S0655S01 1742475 TRANS#: 41999745 04-03-13

354679 QUIKRETE FAST SET ANCHOR 17.94

52592 SDS SHANK 5/8" X 6" X 6" 15.97

31527 BOSCH 1" BULDOG ROTARY HH 199.00

28349 2X4X12 TOP CHOICE KD WHIT 5.09

SUBTOTAL: 230.00

TAX: 20.23

INVOICE 06621 TOTAL: 250.23

VISA: 250.23

VISA:XXXXXXXXXX8901 AMOUNT:250.23 AUTHCD:622354

KEYED REF ID:399830065506 04/03/13 10:37:10

CUSTOMER CODE: n



STORE: 0655 TERMINAL: 06 04/03/13 10:37:22

OF ITEMS PURCHASED: 4

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.

SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
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REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

YOUR ID # 06621 0655 093

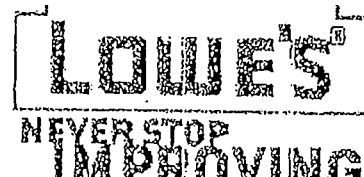
NO PURCHASE NECESSARY TO ENTER OR WIN.

WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 04/03/13 10:37:22

THE FOLLOWING ITEMS HAVE EXTENDED PROTECTION PLANS
AVAILABLE FOR PURCHASE. YOU HAVE 30 DAYS FROM THE DATE
OF THIS SALE TO PURCHASE A PLAN. TO MAKE A PURCHASE,
CONTACT A LOWE'S SALESPERSON.



LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

- SALE -

SALES#: S0655S02 1104899 TRANS#: 60920578 04-02-13

16064 20FIX10GRT CLEAN WALL 94 92.00

SUBTOTAL: 9.99

TAX: 1.11

INVOICE 12056 TOTAL: 106.33

VISA: 106.33

SA:XXXXXXXXXXXX8901 AMOUNT:250.23 AUTHCD:617821

KEYED REF ID:92066805512 04/02/13 12:37:48

CUSTOMER CODE: Charleston

STORE: 0655 TERMINAL: 12 04/02/13 12:37:55

OF ITEMS PURCHASED: 1

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.

SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
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SEE STORE FOR DETAILS.

YOUR OPINIONS COUNT!

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REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

YOUR ID # 12060 0655 092

NO PURCHASE NECESSARY TO ENTER OR WIN.

WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 12 04/02/13 12:37:55



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LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

— SALE —

SN: S0655KK1 936500 TRANSH: 67865915 03-21-13

104251 WHITE CANVAS GLOVE W/DOTS 7.92
4 8 1.98

SUBTOTAL: 7.92
TAX: 0.67
INVOICE 11105 TOTAL: 8.59
CASH: 10.00
CHANGE: 1.41

STORE: 0655 TERMINAL: 14 03/21/13 07:38:40

OF ITEMS PURCHASED: 4
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
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REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!
ENTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
YOUR ID # 14105 0655 010

NO PURCHASE NECESSARY TO ENTER OR WIN.
HERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

RE: 0655 TERMINAL: 14 03/21/13 07:38:40



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

— SALE —

SALESH: S06558S3 113599 TRANSH: 33966819 03-22-13

4853 5 GAL LOWE'S BUCKET-ENCOR 2.70

SUBTOTAL: 2.70
TAX: 0.24
INVOICE 53663 TOTAL: 3.02
DEBIT: 3.02

DEBIT:XXXXXXXXXX0134 AMOUNT:3.02 AUTHCD:013095

SHIPPED REFID:366852065553 03/22/13 11:40:52

TRACE:00797882

PURCHASE CASH BACK TOTAL DEBIT
3.02 0.00 3.02

STORE: 0655 TERMINAL: 53 03/22/13 11:40:54

OF ITEMS PURCHASED: 1
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

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REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!
ENTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
YOUR ID # 53663 0655 081

NO PURCHASE NECESSARY TO ENTER OR WIN.
VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

0655 TERMINAL: 53 03/22/13 11:40:54



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

— SALE —

SN: S0655AS2 1194609 TRANSH: 41367193 03-22-13

34686 DRP F NS F SV 3/4X1/2A860 1.32

SUBTOTAL: 1.32
TAX: 0.62
INVOICE 11105 TOTAL: 1.94
CASH: 20.00

STORE: 0655 TERMINAL: 06 03/22/13 04:34:45

OF ITEMS PURCHASED: 1
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

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REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

ENTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
YOUR ID # 41367 0655 086

NO PURCHASE NECESSARY TO ENTER OR WIN.
VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 03/22/13 04:34:45



LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALES# 0655AH1 250016 TRANS# 41407055 03-27-13

9001 JH GENERAL SAFETY GLASSES 5.96
3254 PS 12-INCH LEVEL 2.48
2080 DW 14" SEGMENTED RTH SP D 129.97

SUBTOTAL 138.41

TAX 156.41

XXXXXXXXXX (843) 852-9099 AUTH# 50755

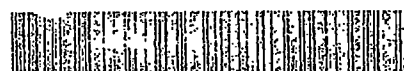
EVED REFID: 40715536506 03/27/13 13:59:15

CUSTOMER CODE: Charleston

IRE: 0655 TERMINAL: 06 03/27/13 13:59:27

F ITEMS PURCHASED: 3

UC ES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
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REGISTRE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

STER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
Y O U R I D # 06029 0655 086

NO PURCHASE NECESSARY TO ENTER OR WIN.
WHERE PROHIBITED, MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

0655 TERMINAL: 06 03/27/13 13:59:27



LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALES# 0655AH1 250016 TRANS# 41407055 03-27-13

27786 KOBALT 10A SLEDGE FG HAND 31.98
12214 19/32X1X8 SE OSB SHEATHIN 37.97
2 0 18.97
7453 DEER MARK 200Z BOTTLE WAT 1.39
395781 KAR'S SALTED PEANUT TUBE 0.98

SUBTOTAL 72.29

TAX 5.98

INVOICE 06349 TOTAL 70.27

DEBIT 70.27

DEBIT:XXXXXXXXXX0194 AMOUNT:70.27 AUTH# 012071

EVED REFID: 3954190653 03/21/13 15:50:19

PURCHASE CASH BALANCE TOTAL DEBIT
70.27 0.00 70.27

STORE: 0655 TERMINAL: 06 03/21/13 15:50:21

OF ITEMS PURCHASED: 5

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
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YOUR OPINIONS COUNT!

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!
REGISTRE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

STER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
Y O U R I D # 06349 0655 080

NO PURCHASE NECESSARY TO ENTER OR WIN.
WHERE PROHIBITED, MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

0655 TERMINAL: 06 03/21/13 15:50:21



LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALES# 0655AH1 1370790 TRANS# 41862440 03-21-13

229770 TRUE TEMPER LH DINGING 29.96
2 0 14.98
229777 TRUE TEMPER LH TRANSFER'S 3.00
2 0 14.98

SUBTOTAL 59.92

TAX 5.09

INVOICE 06153 TOTAL 65.01

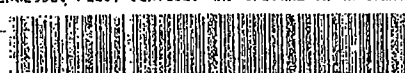
CASH 100.00

CHANGE 35.00

STORE: 0655 TERMINAL: 06 03/21/13 06:41:03

OF ITEMS PURCHASED: 4

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

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REGISTRE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey
Y O U R I D # 06163 0655 080

NO PURCHASE NECESSARY TO ENTER OR WIN.
WHERE PROHIBITED, MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

0655 TERMINAL: 06 03/21/13 06:41:03

OUTBACK

STEAKHOUSE

215 1 Table 201 # 13
 B SWK:130701
 4.75
 1.50
 14.99
 13.49
 21.99
 16.99
 0.00
 0.00
 1.96
 Total: 139.56
 14.99
 149.55

EYEWITNESS REWARDS!
 points toward exciting rewards,
 please ask server for Outback.
 Register online at
 www.MyOutback.com
 and enter the code

Best Deal 11am

expires 30 days from date above.
 see restrictions apply.

0262

Server: BAR 1 R Rec:117
 (03/26/13 20:31, Shipped 1: 103 Term: 4

Outback STEAKHOUSE 04113
 10000000000000000000
 (843) 662-2690
 MERCHANT #:

CARD TYPE ACCOUNT NUMBER
 VISA XXXXX XXXXXX0901
 (00 TRANSAC PROVED
 AUTHORIZED 134789
 Reference 10000262
 TRANS TYPE 10000000000000000000

CHECK: 134.62

TIP:

TOTAL:

X

Don't Copy

CARDHOLDER NAME: 134789
 AMOUNT PURSUANT TO CARDHOLDER AGREEMENT

AGRI SOUTH, INC
 1918 EAST PALMETTO STREET
 P. O. BOX 1627
 FLORENCE
 SC
 29503
 (843) 662-2690
 www.agri-supply.com

ITEM#	QTY	PRICE	EXTPRICE
25029	1.00	1.7900	1.79 SU
17004	3.00	3.4900	25.47 SU
14" PLASTER TROWEL			
SUBTOTAL			27.26
TAX 8.00%			2.18
TOTAL			29.44
CREDIT CARD			29.44
CHANGE			0.00

TRX#04nde1423145103/26/2013 09:24:46 AM

PLEASE SAVE THIS RECEIPT
 FOR REFUND OR EXCHANGE

Thank You for Shopping
 Agri Supply!
 Something for Everyone

PRINTED : PANILA

Items Ordered	AMOUNT
1 CHEZ CAESAR	9.79
1 PLAIN CHD. BUN	10.99
2 WATER	0.00

THANK YOU FOR CHOOSING MCDONALD'S
2050 SAVANNAH HWY
CHARLESTON
SC
29407

THANK YOU !!!
TEL# 843 556 1163 Store# 5052

WE WANT TO
SEE YOU TOMORROW
so tell us
how we did!!!

Take Applebee's
GUEST EXPERIENCE SURVEY

Go online to:
applebees.com/survey

Receive 10 chances to
WIN \$1,000 DAILY
Plus you can INSTANTLY WIN
other GREAT PRIZES
valued at \$1500 WEEKLY!

No purchase/entry required to enter
See website for complete rules,
eligibility, sweepstakes period, and
prizes. Winner(s) Sweepstakes sponsored
by Applebee's Inc., across multiple
locations. Winners drawn
from a combined pool, not from
Applebee's pool. Void where
prohibited. Must be of legal age
and be a U.S. resident. Subject to skills
of the participants.

* SERIAL NUMBER 000501201 *

SUBTOTAL	20.78
TAX	2.18
TOTAL DUE	22.96

KSH 2 : Mar. 27 '13 (Real) 13 34

PAY Order 96

BY ITEM
2 100 500 1 100 11A

Subtotal	21.00
Tax	0.21

Total Due Total	21.21
-----------------	-------

Cash tendered	100.00
Change	87.79

MCDONALD'S 5852

PANTRY EXPRESS 777

11/47 SC HWY. 34
NEWBERRY, S.C. 29180
803 276 6662
SHELL
126 & HIGHWAY 34 / R EX
NEWBERRY SC 29108

53 962 200050
S1R0665

Descr.	qty	amount
Prepay CA#03		15.00

Sub Total	15.00
Tax	0.00

TOTAL 15.00

CASH \$ 15.00

THANKS, COME AGAIN

REG# 0002 CSH# 01 DR# 01 TRANH 5575
03/16/13 10:33 ST# 777

AVOID Double. Total of \$22.96



Service is our best part.

REBATE FORM

REMIT YOUR REBATE ONLINE AT
 AdvanceAutoParts.com/rebateform
 OR
 BY COMPLETING FORM AND MAIL TO:

Reward Center
 PO Box 129331
 San Diego, CA 92112-9331

are prohibited. Valid in US, PR, VI

REBATE OFFER

Offer Code: AAP-1002B
 Event Code: 1016673

On rebate on Autolite Small Engine
 Copper Spark Plugs

Offer valid 03-28-13 to 05-01-13
 Limit 10 per household

It must be postmarked by 06/01/13

Minimum Purchase
 10 SPARK PLUGS OR EQUIV. 1 TO 8

STOMPED INFORMATION



Service is our best part.

Store # 05348

(843) 556-4214

1630 HIGHWAY 7

CHARLESTON

SC 29407

3/27/2013

14:26:39

REG 02

Cashier Theodore W.

ITEM	QTY	PRICE	TOTAL
SPARK PLUG 1 EA NGK		539236E	
7131	1	\$2.59	\$2.59
1 YEAR REPLACEMENT IF DEFECTIVE			
Sub Total			\$2.59
T1 Tax @		8.5000%	\$0.22
Total			\$2.81
Cash			\$3.00
CHANGE ****>			0.19

Scan to RETURN Items

22KRP1C48H1X5



Transaction #9497

Thank you for shopping at Advance Auto Parts

WARRANTY INFORMATION AVAILABLE AT STORE

Join Our Winning Team!

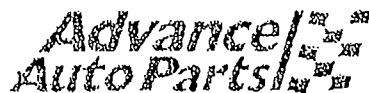
Go to AdvanceAutoParts.Jobs

OR

espanol.AdvanceAutoParts.Jobs

Choose the position and location you're
 interested in and follow the instructions
 apply!

CUSTOMER COPY



Service is our best part.

Store # 05348

(843) 556-4214

1630 HIGHWAY 7

CHARLESTON

SC 29407

3/27/2013

14:28:28

REG 02

Cashier Mark J.

ITEM	QTY	PRICE	TOTAL
SPARK PLUG 1 EA NGK		539236E	
7131	1	\$2.59	\$2.59
1 YEAR REPLACEMENT IF DEFECTIVE			
Sub Total			\$2.59
T1 Tax @		8.5000%	\$0.22
Total			\$2.81
Cash			\$3.00
CHANGE ****>			0.19

Scan to RETURN Items

22KRP1C48H1X5



Transaction #9462

Thank you for shopping at Advance Auto Parts

WARRANTY INFORMATION AVAILABLE AT STORE

Join Our Winning Team!

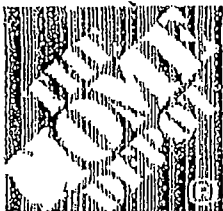
Go to AdvanceAutoParts.Jobs

OR

espanol.AdvanceAutoParts.Jobs

Choose the position and location you're
 interested in and follow the instruction
 apply!

CUSTOMER COPY



More saving.
More doing.™

610 HWY 17N N. MYRTLE BEACH, SC 29582
PHON. # (843)280-5908 MGR. BRAD GUSTAFSON

1121 02 45415 05/04/12 10:28 AM
CASHIER LONALD - EX55379

7530034410234 1X4X10 40.2 <A>
1X4-10, #12 COMPON BOARD
1005.98 59.80

SUBTOTAL 59.80
SALES TAX 4.78
TOTAL \$64.58
XXXXX000000009750 CEBIT 64.58
AUTH CODE 762913



1121 02 45415 05/04/2012 9632

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 08/02/2012

THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM.
CONVENIENT, EASY AND MOST ORDERS
READY IN LESS THAN 2 HOURS!



More saving.
More doing.™

2008 MAGWOOD ROAD
CHARLESTON, SC 29414 (843)556-2447

1118 00056 60154 03/20/13 12:08 PM
CASHIER SELF CHECK OUT - SCOT56

047034079213 GOGGLES <A> 2.59
SAFETY GOGGLES-VENTILATED SIDES
070826161353 DUST MASKS <A>
DUST MASK-5 PACK- HOST BUY
202.48 4.96

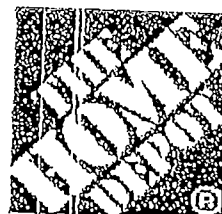
SUBTOTAL 7.55
SALES TAX 0.64
TOTAL \$8.19
CASH 10.00
CHANGE DUE 1.81



1118 56 60154 03/20/2013 4505

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 06/18/2013
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM.
CONVENIENT, EASY AND MOST ORDERS
READY IN LESS THAN 2 HOURS!



More saving.
More doing.™

2008 MAGWOOD ROAD
CHARLESTON, SC 29414 (843)556-2447

1118 00002 56255 03/20/13 09:41 AM
CASHIER KAREN - KRS634

098268623727 BRASS FTG <A> 7.32
3/4X1/2BRASS ADAPTER FGHX FIP SWIV LF

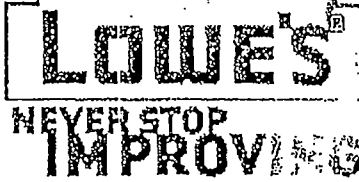
SUBTOTAL 7.32
SALES TAX 0.62
TOTAL \$7.94
CASH 20.00
CHANGE DUE 12.06



1118 02 56255 03/20/2013 5368

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 06/18/2013
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

BUY ONLINE PICK-UP IN STORE
AVAILABLE NOW ON HOMEDEPOT.COM.
CONVENIENT, EASY AND MOST ORDERS
READY IN LESS THAN 2 HOURS!



LOVE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

- SALE -

SALES#: S0655053 113599 TRANS#: 33607262 04-10-13

10379 12X8X16 BLOCK	102.80
40 @	2.57
10353 MASONRY CEMENT TYPE S	35.12
4 @	8.78

SUBTOTAL: 137.92

TAX: 11.72

INVOICE 53837 TOTAL: 149.64

N/C: 149.64

VC:XXXXXXXXXXXX10134 AMOUNT:149.64 AUTH#:412952

KEYED REFID:807663065553 04/10/13 11:27:43

Jason Hall

STORE: 0655 TERMINAL: 53 04/10/13 11:27:56

OF ITEMS PURCHASED: 44

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!

IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%
SEE STORE FOR DETAILS.

YOUR OPINIONS COUNT!

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY
WITHIN ONE WEEK AT: www.lowes.com/survey

YOUR ID # 536

NO PURCHASE NECESSARY TO ENTER.

VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.
OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 53 04/10/13 11:27:56



LOVE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

- SALE -

SALES#: S0655053 1378780 TRANS#: 41599770 04-10-13

657 2-1/2-IN FLYO HAS 5.67

SUBTOTAL: 5.67

TAX: 0.48

INVOICE 06570 TOTAL: 6.15

CASH: 6.25

CHANGE: 0.10

STORE: 0655 TERMINAL: 05 04/10/13 09:16:29

OF ITEMS PURCHASED: 1

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.
SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%
SEE STORE FOR DETAILS.

YOUR OPINIONS COUNT!

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S!

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

YOUR ID # 06570 0655 100

NO PURCHASE NECESSARY TO ENTER OR WIN.

VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 04/10/13 09:16:29



NEVER STOP
IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9039

- SALE -

SALES#: 50655853 113599 TRANS#: 33597894 04-10-13

82080 DW 14" SEGMENTED RIN GP D 129.97

SUBTOTAL: 129.97
TAX: 11.05
INVOICE 53811 TOTAL: 141.02
VISA: 141.02

VISA:XXXXXXXXXXXX0901 AMOUNT:141.02 AUTHCD:656271
KEYED REFID:598230065553 04/10/13 08:50:38
CUSTOMER CODE: no

Walter M. Hall
STORE: 0655 TERMINAL: 53 04/10/13 08:50:51

OF ITEMS PURCHASED: 1
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S
SEE REVERSE SIDE FOR RETURN POLICY
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

* YOUR OPINIONS COUNT! *
* REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD! *
* REGISTRESE PARA GANHAR UMA TARJETA DE REGALO LOWE'S! *
* *
* REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY *
* WITHIN ONE WEEK AT: www.loves.com/survey *
* YOUR ID # 53811 0655 100 *
* *
* NO PURCHASE NECESSARY TO ENTER OR WIN. *
* VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER. *
* OFFICIAL RULES & WINNERS AT: www.loves.com/survey *

STORE: 0655 TERMINAL: 53 04/10/13 08:50:51



NEVER STOP
IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9039

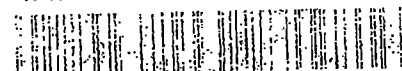
- SALE -

SALES#: 50655853 1370750 TRANS#: 41515501 04-10-13

9408 1X6X12 #2 140 RCO TREATED 249.70
10 2 24.97
121524 2X10X12 400 TYP CHOICE FR 71.86
4 2 17.97

SUBTOTAL: 324.50
TAX: 27.33
INVOICE 16687 TOTAL: 348.81
CASH: 350.00
CHANGE: 1.19

SALES#: 50655853 1370750 TRANS#: 41515501 04-10-13
OF ITEMS PURCHASED: 14
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS

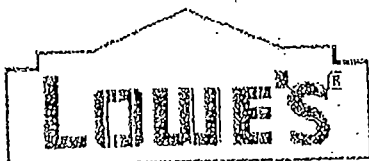


THANK YOU FOR SHOPPING LOWE'S
SEE REVERSE SIDE FOR RETURN POLICY
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.
SEE STORE FOR DETAILS.

* YOUR OPINIONS COUNT! *
* REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD! *
* REGISTRESE PARA GANHAR UMA TARJETA DE REGALO LOWE'S! *
* *
* REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY *
* WITHIN ONE WEEK AT: www.loves.com/survey *
* YOUR ID # 53811 0655 100 *
* *
* NO PURCHASE NECESSARY TO ENTER OR WIN. *
* VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER. *
* OFFICIAL RULES & WINNERS AT: www.loves.com/survey *

STORE: 0655 TERMINAL: 53 04/10/13 13:10:44



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALESM: S0655PM1 1376786 TRMNSH: 4144915 04-08-13

02020 DL 14 SEGMENTED WITH 02 D 129.3

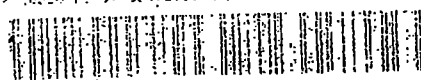
SUBTOTAL: 129.37
TAX: 7.07
INVOICE 06146 TOTAL: 136.44
VISA: 136.44

VISA:XXXXXXXXXX8901 AMOUNT:79.07 AUTHCD:672591
KEYED REFID:143213065506 04/07/13 15:06:59

STORE: 0655 TERMINAL: 06 04/08/13 15:27:07

OF ITEMS PURCHASED:

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



IF YOU FOR SHOPPING LOWE'S,
SEE REVERSE SIDE FOR RETURN POLICY.
STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%
SEE STORE FOR DETAILS.

***** YOUR OPINIONS COUNT! *****

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

Y O U R I D # 06146 0655 098

NO PURCHASE NECESSARY TO ENTER OR WIN.

VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 04/08/13 15:27:07



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALESM: S0655PM1 096410 TRMNSH: 41655468 04-13-13

10352 94-LB PORTLAND CEMENT TYPE 37.76

4 @ 9.44

10353 MASONRY CEMENT TYPE S 25.12

4 @ 6.28

SUBTOTAL: 72.88

TAX: 6.19

INVOICE 06407 TOTAL: 79.07

VISA: 79.07

VISA:XXXXXXXXXX8901 AMOUNT:79.07 AUTHCD:672591

KEYED REFID:355544065506 04/13/13 08:19:04

CUSTOMER CODE: 0

STORE: 0655 TERMINAL: 06 04/13/13 08:19:13

OF ITEMS PURCHASED:

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.

SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!

IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%

SEE STORE FOR DETAILS.

***** YOUR OPINIONS COUNT! *****

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

Y O U R I D # 06407 0655 103

NO PURCHASE NECESSARY TO ENTER OR WIN.

VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 04/13/13 08:19:13



NEVER STOP IMPROVING

LOWE'S HOME CENTERS, INC.
3125 GLENN MCCONNELL PKWY
CHARLESTON, SC 29414 (843) 852-9099

SALE

SALESM: S0655PM1 1378780 TRMNSH: 41655468 04-13-13

99889 JH STANLEY 3-BLAD 1.96

416771 LOWE'S CARPENTRY PL 5.25

13-2 1.25

416774 YELLOW LUMBER CRAYON 1.96

2 @ 0.98

SUBTOTAL: 9.19

TAX: 0.78

INVOICE 06176 TOTAL: 9.97

CASH: 10.00

CHANGE: 0.03

STORE: 0655 TERMINAL: 06 04/08/13 16:35

OF ITEMS PURCHASED:

EXCLUDES FEES, SERVICES AND SPECIAL ORDER IT



THANK YOU FOR SHOPPING LOWE'S.

SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: JASON HALL

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%
SEE STORE FOR DETAILS.

***** YOUR OPINIONS COUNT! *****

REGISTER TO WIN A \$5,000 LOWE'S GIFT CARD!

REGISTRESE PARA GANAR UNA TARJETA DE REGALO LOWE'S

REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

Y O U R I D # 06176 0655 098

NO PURCHASE NECESSARY TO ENTER OR WIN.

VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER

OFFICIAL RULES & WINNERS AT: www.lowes.com/survey

STORE: 0655 TERMINAL: 06 04/08/13 16:35

CVS/pharmacy

405 N. FRISER ST. GEORGETOWN, SC.
PHARMACY: 527-2017 STORE: 527-1803

REG#01 TRN#1002 C#PH1015800 STR#735

Helped by: MALLORIE J.

ExtraCare Card #: *****402

1 HALLS, CO HONEY LEM 80CT 4.97

SUBTOTAL 4.97
SC 6.0% TAX .28
TOTAL 5.25
CASH 5.00
CHANGE .25



2507 3593 0981 0020 15

URNS WITH RECEIPT THRU 06/07/20

APRIL 8, 2013 9:25 AM

Earn 2% back on almost everything
the store and on CVS.com when you
use your ExtraCare card.

THANK-YOU SHOP 24 HOURS AT CVS.COM

Advance/ Auto Parts

Service is our best part.

Store # 05348

(B43) 556-4214

1630 HIGHWAY 7

CHARLESTON SC 29407

4/11/2013 9:45:58 REG 01

Cashier: Dustin T.

ITEM	QTY	PRICE	TOTAL
MIR ROUND STICK ON 1 EA 6210880			
CD37	1	\$3.19	\$3.19
90 DAY REPLACEMENT IF DEFECTIVE			
Sub Total			\$3.19
TX Tax @		8.5000%	\$0.27
Total			\$3.46
Cash			\$3.51
CHANGE			0.05

Scan to RETURN items



Transaction #1618

Thank you for shopping at Advance Auto Pa

WARRANTY INFORMATION AVAILABLE AT STORE

Join Our Winning Team!

Go to AdvanceAutoParts.jobs

or

espanol.AdvanceAutoParts.jobs

Choose the position and location you're
interested in and follow the instructions
apply!

CUSTOMER COPY

Advance/ Auto Parts

Service is our best part.

Store # 05348

(B43) 556-4214

1630 HIGHWAY 7

CHARLESTON SC 29407

4/08/2013 14:55:51 REG 05

Cashier: Kathy R

ITEM	QTY	PRICE	TOT
SPARK PLUG-SML ENG 1 EA 5410770			
254	1	\$2.19	\$2
2 YEAR REPLACEMENT IF DEFECTIVE			
Sub Total			\$2
TX Tax @		8.5000%	\$0
Total			\$2
Cash			\$10
CHANGE			7

Scan to RETURN items



Transaction #17639

Thank you for shopping at Advance Auto

WARRANTY INFORMATION AVAILABLE AT STORE

Join Our Winning Team!

Go to AdvanceAutoParts.jobs

or

espanol.AdvanceAutoParts.jobs

Choose the position and location you
interested in and follow the instructions
apply!

CUSTOMER COPY

5054 DORCHESTER RD
N CHARLESTON SC 29418
Telephone: (843) 207-9022

HARBOR FREIGHT TOOLS

Proof of Purchase Required for Returns
Return/Exchange Within 90 Days of Purchase

HARBOR FREIGHT TOOLS #129
5054 DORCHESTER RD
N. CHARLESTON, SC 29418
843-207-9022

46754 SDS BIT SET 12LONG(5/16 T 35.98
2 @ \$ 17.99
69031 TAPE MEASURE 25'X1IN T 11.97
3 @ \$ 3.99
Saved \$ 6.00 off \$ 17.97
69038 WRECKING BAR 48IN GOOS T 19.99
Saved \$ 3.00 off \$ 22.99

Subtotal 67.94
SALES TAX 5.77
=====

Total Sale 73.71
DBT 73.71

Ticket# 515837 Cust# WALK-IN Mar 21 13
Usr PM Reg# 1 Drwr# 1 Time 10:59

THANK YOU FOR SHOPPING WITH
HARBOR FREIGHT TOOLS

↓ INDICATES DISCOUNTED PRICE

You Saved: \$ 9.00

SALE

69030 TAPE MEASURE 25'X1IN
4 x \$3.99 \$15.96
34637 1/2"SA11IN BLACK 5.99
Advertised Savings -2.00
Adjusted Price: \$3.19
99767 SAFETY GLASSES (CLEAR LENS
5 x \$1.59 \$7.95
46755 5PR. MASONRY BIT SET - 1/4" 21.99
Advertised Savings -2.00
Adjusted Price: \$19.99
69005 160Z FIBERGLASS RJP - WHITE
4 x \$3.99 \$15.96

Subtotal \$63.05
Sales Tax 8.50% \$5.39
Total \$68.44

You Saved \$30.80

Del. \$68.44

Card J. XXXXXXXXXXXX8901 (S)

Auth. No. 231448

Reference No. 000785

13/05/06 - 14:13

PURCHASE

APPROVED

Please Retain for Your Records

Store: 00129 Reg: 02 Tran: 008124
Date: 5/6/2013 2:19:46 PM Assoc: XXXXXX
Ticket: 028124

Item(s) Sold: 15

Item(s) Returned: 0

OCTIZIVIA served today.

Thank you for shopping at

CHARLESTON SC #00129

Proof of Purchase Required for Returns/
Exchanges Within 90 Days of Purchase

***** Even More Savings? *****

Then do one of the following:

• Call our 24 Hour Customer Care

• Any Harbor Freight Store

• Visit: Upda.HarborFreight.com

• Visit: www.HarborFreight.com

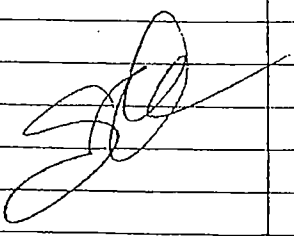


PANTRY EXPRESS 777
 11747 SC HWY. 34
 NEWBERRY, S.C. 29180
 803 276 6662
 SHELL 53 962 200050
 126 & HIGHWAY 34 / R EX S1R0665
 NEWBERRY SC 29108

Gas	qty	amount
Prepay CA#01		10.00
Sub Total		10.00
Tax		0.00
TOTAL		10.00
CASH \$		10.00

THANKS, COME AGAIN
 REG# 0002 CSH# 004 DR# 01 TRAN# 23760
 03/13/13 08:35:39 ST# 777

572960

CUSTOMER'S ORDER NO.		DATE		
		4/8/13		
NAME				
ADDRESS				
CITY, STATE, ZIP				
SOLD BY	CASH	C.O.D.		
CHARGE	ON ACCT.	MOSE. RETD.		
PAID OUT				
PAN.	DESCRIPTION	AMOUNT		
222	lb Clean Alum x 45	99.90		
				
SIGNED BY:				

3705 6240/46250 KEEP THIS SLIP FOR REFERENCE 01-11

Skymart, 3
 1828 Ashley River Rd
 Charleston, SC 29407

04/11/2013 11:13:26 AM
 Register: 2 Trans #: 3051 Op ID: 1960
 Your cashier: charlie

*** REPRINT *** REPRINT *** REPRINT ***

REGULAR CA PUMP#5
 29.770 GAL @ \$ 3.359/GAL \$100.00 99

Subtotal = \$100.00

Tax = \$0.00

Total = \$100.00

*** REPRINT *** REPRINT *** REPRINT ***

Change Due = \$0.00

Cash \$100.00

Thank you!
 Come again!

PANTRY EXPRESS 777
 11747 SC HWY. 34
 NEWBERRY, S.C. 29180
 803 276 6662
 SHELL 53 962 200050
 126 & HIGHWAY 34 / R EX S1R0665
 NEWBERRY SC 29108

Descr.	qty	amount
007023500157	4	1.96
CUSTOMER ID VERIFIED 06/02/54		
Prepay CA#01		20.00

Sub Total 21.96

Tax 0.00

TOTAL 21.96

CASH \$ 22.00

Change \$ -0.0

THANKS, COME AGAIN
 REG# 0002 CSH# 004 DR# 01 TRAN# 2689
 03/18/13 10:58:51 ST# 77

Skymart, 3
1828 Ashley River Rd
Charleston, SC 29407

04/11/2013 8:03:16 PM
Register: 1 Trans #: 8083
Your cashier: char

*** PREPAID RECEIPT ***

REGULAR CA	PUMP#2	\$40.00	99
Subtotal =		\$40.00	
Tax =		\$0.00	
Total =		\$40.00	
Change Due =		\$0	
Cash		\$40.00	

Thank you!
Come again!

CIRCLE K STORE 5121
1828 ASHLEY RIVER BLVD (FR)
CHARLESTON,
SOUTH CAROLINA
29407
Register ID: 57542559703

2013/04/05 13:56 205121
Pos: 01 Shift: 2

Product	Total Tx
Prepaid pump 04	\$40.00
S-Total	Taxes
40.00	0.00
Total	
\$40.00	
Tendered	\$40.00
CASH	\$40.00

Cashier: 2339 # 234625
Name: Isley
20130405

Thank you!

Follow us on Facebook and Twitter
www.1010akse.com

Skymart, 3
1828 Ashley River Rd
Charleston, SC 29407

04/10/2013 5:07:37 PM
Register: 2 Trans #: 2811 Op ID: 1960
Your cashier: charlie

REGULAR CA	PUMP#9	\$100.01	99
29.509 GAL @ \$ 3.389/GAL			
Subtotal =		\$100.01	
Tax =		\$0.00	
Total =		\$100.01	
Change Due =		\$0.00	
Cash		\$100.01	

Thank you!
Come again!

Skymart, 3
1828 Ashley River Rd
Charleston, SC 29407

04/10/2013 5:07:37 PM
Register: 2 Trans #: 2811 Op ID: 1960
Your cashier: charlie

REGULAR CA	PUMP#5	\$60.00	99
17.705 GAL @ \$ 3.389/GAL			
Subtotal =		\$60.00	
Tax =		\$0.00	
Total =		\$60.00	
Change Due =		\$0.00	
Cash		\$60.00	

Thank you!
Come again!

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate, 9 USCA § 2

United States Code Annotated
Title 9. Arbitration (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

9 U.S.C.A. § 2

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

Currentness

A written provision in any maritime transaction or 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 any contract.

CREDIT(S)

(July 30, 1947, c. 392, 61 Stat. 670.)

Notes of Decisions (2919)

9 U.S.C.A. § 2, 9 USCA § 2

Current through P.L. 113-185 approved 10-6-14

End of Document

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346 S.C. 580
Supreme Court of South Carolina.

Leo ZABINSKI and John Brainard, Appellants,
v.

BRIGHT ACRES ASSOCIATES, a South
Carolina General Partnership, Henry Massey,
and the Estate of John Leutwiler, deceased,
individually, and as General Partners.

and

Estate of John Leutwiler,
Respondents, Third-Party Plaintiff,

v.

John Martin Brainard, Michael Forsyth Brainard,
Joanne Foye Brainard, Melanie Brainard, David
McLeod Brainard, Allison Christie Brainard, LOM
Development, LLC, Wachovia Mortgage Co., HRM,
Inc., and Edward Bullard, Third-Party Defendants.

and

Bright Acres Associates, a South Carolina
Partnership Fourth-Party Plaintiff,

v.

J. Ray Westmoreland, Fourth-Party Defendant.

No. 25358. | Heard June 19,
2001. | Decided Sept. 4, 2001.
| Rehearing Denied Oct. 10, 2001.

Members of partnership brought action seeking arbitration of dispute over distribution of partnership assets. The Circuit Court, Beaufort County, Thomas Kemmerlin Jr., Master-in-Equity, denied arbitration and issued temporary restraining order (TRO). Partners appealed. The Supreme Court, Toal, C.J., held that: (1) equitable estoppel did not bar partner from opposing arbitration; (2) Federal Arbitration Act governed dispute; (3) partnership engaged in interstate commerce; (4) disputes regarding distribution of assets were arbitrable; (5) tort claims between partners related to partnership agreement were arbitrable; (6) malpractice claims against one of partner's attorney were not arbitrable; and (7) hearing was required on motion for TRO.

Affirmed in part, reversed in part, and arbitration compelled.

West Headnotes (28)

[1] Partnership



Arbitration

Estate of deceased partner was not equitably estopped from opposing arbitration of dispute over distribution of partnership assets, even though partner's attorney prepared partnership agreement with defective arbitration clause, where allegations of wrongdoing were against attorney, not deceased partner, there was no evidence of false representation or concealment by deceased partner, knowledge of all parties was equal and nothing was done by one to mislead others at time partners entered into partnership agreement, and partners seeking arbitration did not allege that they detrimentally changed their position in reliance on deceased partner's conduct. Code 1976, § 15-48-10(a).

5 Cases that cite this headnote

[2] Alternative Dispute Resolution



Formal

Requisites

The notice provision required by the South Carolina Arbitration Act must be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract; no other variation is acceptable. Code 1976, § 15-48-10(a).

6 Cases that cite this headnote

[3] Partnership



Arbitration

Federal Arbitration Act controlled arbitrability of dispute over distribution of partnership assets, despite inclusion of governing law provision in arbitration agreement stating that South Carolina law governed and fact that arbitration agreement was not enforceable under state law. 9 U.S.C.A. § 1 et seq.

			invalidates the parties' agreement to arbitrate. 9 U.S.C.A. § 1 et seq.	
	1 Cases that cite this headnote			
[4]	Alternative Dispute Resolution		5 Cases that cite this headnote	
		Constitutional	Alternative Dispute Resolution	
	and statutory provisions and rules of court			Preemption
	Federal Arbitration Act (FAA) does not reflect a congressional intent to occupy the entire field of arbitration. 9 U.S.C.A. § 1 et seq.		States	
				Particular
	2 Cases that cite this headnote		cases, preemption or supersession	
			Generic choice of law provisions cannot be used to incorporate into an arbitration agreement a state law which would be preempted by the	
[5]	Alternative Dispute Resolution		Performance. Federal Arbitration Act (FAA). 9 U.S.C.A. § 1 et seq.	
				
	Breach, Enforcement, and Contest			
	Federal Arbitration Act (FAA) requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms. 9 U.S.C.A. § 1 et seq.		3 Cases that cite this headnote	
	2 Cases that cite this headnote			
		[9]	Alternative Dispute Resolution	
				Constitutional
			and statutory provisions and rules of court	
			State procedural rules that do not undermine the enforceability of an otherwise valid contract to arbitrate may be deemed to have been incorporated into a contract through choice of law provisions.	
[6]	Alternative Dispute Resolution	Construction		
				
	States	Particular		
			Cases that cite this headnote	
	cases, preemption or supersession			
	Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the Federal Arbitration Act (FAA). 9 U.S.C.A. § 1 et seq.			
	1 Cases that cite this headnote			
		[10]	Commerce	
				Arbitration
			To ascertain whether a transaction involves commerce within the meaning of the Federal Arbitration Act (FAA), the court must examine the agreement, the complaint, and the surrounding facts. 9 U.S.C.A. § 1 et seq.	
[7]	Alternative Dispute Resolution	Preemption		
			8 Cases that cite this headnote	
	States			
		Particular		
	cases, preemption or supersession	[11]	Commerce	
				Arbitration
	While the parties may agree to enforce arbitration agreements under state rules rather than Federal Arbitration Act (FAA) rules, the FAA will preempt any state law that completely		Real estate development partnership was engaged in interstate commerce, and thus dispute over distribution of partnership assets was	

governed by Federal Arbitration Act, even though partnership and real estate were located in South Carolina, where partnership utilized out-of-state materials, contractors, and investors. 9 U.S.C.A. § 1 et seq.

Cases that cite this headnote

[12] Partnership



Dispute over distribution of partnership assets and tort claims between partners were subject to arbitration based on provision in partnership agreement stating that any controversy or claim arising out of partnership agreement should be settled by arbitration.

Cases that cite this headnote

[13] Alternative Dispute Resolution



of dispute

The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.

12 Cases that cite this headnote

[14] Alternative Dispute Resolution



of controversy

In deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims.

7 Cases that cite this headnote

[15] Alternative Dispute Resolution



or consensual basis

Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit.

5 Cases that cite this headnote

[16] Alternative Dispute Resolution



or consensual basis

Alternative Dispute Resolution



or submission as determinative

Arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement.

3 Cases that cite this headnote

[17] Alternative Dispute Resolution



of dispute

To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.

16 Cases that cite this headnote

[18] Alternative Dispute Resolution



in favor of arbitration

Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.

4 Cases that cite this headnote

[19] Alternative Dispute Resolution



in favor of arbitration

Unless a court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.

13 Cases that cite this headnote

Contractual

Agreement

Arbitration

Arbitrability

Arbitrability

Merits

Construction

Contractual

Construction

[20]	Alternative Dispute Resolution		in favor of arbitration	A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.	9 Cases that cite this headnote	Construction	purchase agreement was completely unrelated to partnership agreement.	Cases that cite this headnote	
[21]	Alternative Dispute Resolution		and Matters Arbitrable Under Agreement	A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained.	15 Cases that cite this headnote	Disputes	[24] Injunction	 Hearing was necessary on temporary restraining order (TRO) seeking to restrain partnership from making further distributions to partners, where factual basis for issuance of TRO was not fully developed. Rules of Evid., Rules 6(d), 65(b).	Partnerships
[22]	Partnership		Partner's malpractice claims against attorney for deceased partner arising out of attorney's failure to properly prepare partnership agreement and against other partner's attorney for breach of duty to partnership were not subject to arbitration under arbitration provision in partnership agreement, as claims concerned partnership only indirectly, malpractice claims would involve totally different set of facts than those surrounding winding up of partnership.	Cases that cite this headnote	Arbitration	[25] Appeal and Error	 Injunction	 nature of remedy	Injunction
								The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion.	Discretionary
								4 Cases that cite this headnote	
						[26] Appeal and Error	 of discretion	An abuse of discretion occurs where the trial court is controlled by an error of law or where the trial court's order is based on factual conclusions without evidentiary support.	Abuse
								8 Cases that cite this headnote	
[23]	Partnership		Dispute between partner and deceased partner's estate over sale of partnership interest was not subject to arbitration under arbitration clause in partnership agreement, as dispute over		Arbitration	[27] Injunction	 of status quo	Injunction	Preservation
							 harm		Irreparable

The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.

5 Cases that cite this headnote

[28] Appeal and Error



in procedure

Members of partnership were not prejudiced by fact that they did not have opportunity to demonstrate that allegations in motion for return of funds and deposit, as trial court did not rule on merits of motion, and receiver was never appointed.

Cases that cite this headnote

Attorneys and Law Firms

**112 *585 A. Parker Barnes, Jr., of Beaufort, for appellants Leo Zabinski and John Brainard.

Terry A. Finger, of Finger, Taylor & Andrews, of Hilton Head, for respondents Henry Massey and Bright Acres Associates.

J. Ray Westmoreland, of Hilton Head, for respondent Estate of John Leutwiler.

Susan Taylor Wall, and Mary Legare Hughes, both of Nexsen, Pruet, Jacobs, Pollard & Robinson, LLC, of Charleston, for third-party defendant Bullard.

Opinion

TOAL, Chief Justice:

In this partnership dispute, three partners appeal from an Order denying arbitration.

FACTUAL/PROCEDURAL BACKGROUND

Bright Acres Associates ("Bright Acres") was a partnership consisting of the following four equal partners: John Leutwiler *586 ("Leutwiler"), Henry Massey ("Massey"), John Brainard ("Brainard"), and Leo Zabinski ("Zabinski"). The partnership was created in 1980 in order to buy,

renovate, and sell thirty apartments and approximately twenty-six acres of land on Hilton Head Island. J. Ray Westmoreland ("Westmoreland"), attorney for Leutwiler's estate ("Respondent"), prepared the partnership agreement, which expressly provided for arbitration of all controversies **113 or claims arising out of the partnership agreement. However, the face of the partnership agreement was not stamped to that effect as required by the South Carolina Arbitration Act, S.C.Code Ann. § 15-48-10(a) (Supp.2000).

On October 20, 1998, after Leutwiler's death, Massey expressly agreed to purchase Leutwiler's 25% interest in the partnership. Westmoreland prepared the purchase agreement. Massey failed to make all payments required by the written purchase agreement. Massey and Respondent disagreed as to what percentage, if any, Massey acquired in Leutwiler's original 25% of the partnership. Because of this dispute, Massey and Westmoreland disagreed as to the amount of distributions that were to be made to each partner once the partnership dissolved.

On September 8, 1998, Zabinski and Brainard ("Appellants") commenced a pro se action seeking arbitration of the distribution and other partnership disputes. After Respondent moved to make Appellants' original Complaint more definite and certain, Appellants retained Attorney James M. Herring ("Herring") who amended the original Complaint on March 19, 1999. Herring moved to compel arbitration.

On April 21, 1999, Respondent answered the Amended Complaint, opposing arbitration on the ground the partnership agreement Westmoreland prepared failed to prominently display on its face that it was subject to arbitration. Furthermore, Respondent alleged: (1) the controversies were not subject to arbitration; (2) Massey and his attorney were using their position to deprive Respondent of his partnership interest; (3) the remaining partners failed to provide partnership information; (4) Leutwiler was prevented from exercising any management duties in the partnership; (5) remaining partners failed to account for various funds and assets of the partnership; *587 and (6) remaining partners threatened to withhold partnership benefits unless Leutwiler agreed to a settlement with Massey in regards to the case then on appeal with this Court. Respondent also sought damages against Appellants, Massey, and Massey's attorney.

On June 22, 1999, Respondent moved to have a receiver appointed. On August 12, 1999, Respondent filed and served

a Motion to Compel the Return of Funds and Deposit. No sworn testimony was filed in support of these motions.

On August 13, 1999, Judge Kemmerlin held a status conference on the case. Appellants asked the trial court not to rule on any motion other than the motion for arbitration without a hearing. On August 25, 1999, Judge Kemmerlin denied arbitration and issued a temporary restraining order ("TRO"), restraining the partnership from disbursing any more funds and suggesting that the trial court may appoint a receiver in the future.

On September 3, 1999, Appellants moved to alter or amend the trial court's order, and the trial court refused. On March 13, 2000, Judge Kemmerlin recused himself. On March 14, 2000, Appellants served a Notice of Appeal. The following issues are before this Court on appeal:

- I. Is Respondent equitably estopped from asserting Appellants are not entitled to arbitration, where Respondent's attorney prepared the partnership agreement and is now asserting the agreement fails to comply with the South Carolina Arbitration Act, S.C.Code Ann. § 15-48-10(a) (Supp.2000)?
- II. Did the trial court err in failing to order arbitration because the partnership was engaged in interstate commerce sufficient to invoke the Federal Arbitration Act ("FAA")?
- III. Did the trial court err in issuing the TRO without providing proper notice to Appellants?
- IV. Did the trial court err in issuing the TRO without any sworn testimony in support thereof?
- V. Were Appellants prejudiced because they had no opportunity to demonstrate the allegations contained in *588 the unsworn Motion for the Return of Funds and Deposit were false?

****114 LAW/ANALYSIS**

I. Equitable Estoppel

[1] Appellants argue Respondent is equitably estopped from opposing arbitration because Respondent's attorney, Westmoreland, prepared the partnership agreement with the defective arbitration clause. We disagree.

On December 22, 1980, Westmoreland prepared the partnership agreement for Bright Acres. The partnership agreement provided for arbitration of all claims and controversies arising from the agreement. Paragraph fourteen of the partnership agreement states:

If any controversy or claim arising out of this partnership agreement cannot be settled by the partners, the controversy shall be settled by arbitration in accordance with the rules of the American Arbitration Association then in effect, and judgment on the award may be entered in any court having jurisdiction.

Westmoreland failed to stamp the first page of the partnership agreement with the language required by the South Carolina Arbitration Act, S.C.Code Ann. § 15-48-10(a) (Supp.2000). Section 15-48-10(a) provides:

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. *Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.*

(emphasis added).

[2] We have strictly construed the notice requirement of section 15-48-10(a). In *Soil Remediation Co. v. Nu-Way Envtl. Inc.*, 323 S.C. 454, 476 S.E.2d 149 (1996), we held the terms of section 15-48-10(a) are clear, and those terms must *589 be applied according to their literal meaning. *Id.* at 457, 476 S.E.2d at 151. The notice provision in the *Soil Remediation* contract did not meet the statutory requirement because it was laser-printed and written in all capital letters on the first page of the contract. *Id.* The notice provision must be typed in underlined capital letters, or rubber-stamped

transaction involves interstate commerce for the FAA to apply. *Id.*; see also *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct.App.1999). In other words, the transaction must turn out, in fact, to have involved interstate commerce. See, e.g., *Roberson v. Money Tree of Alabama, Inc.*, 954 F.Supp. 1519 (M.D.Ala.1997) (finding transaction involved interstate commerce for purposes of the FAA where loan was negotiated in Alabama, loan was signed in Alabama, Money Tree was a Georgia Corporation, loans were approved and shipped from Georgia, and loan proceeds were wired from Georgia).

[4] [5] Despite this expansive interpretation of the FAA, the FAA does not reflect a congressional intent to occupy the entire field **116 of arbitration. *Volt Info. Scis. Inc. v. Board of Trs.*, 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989). In *Volt*, the United States Supreme Court found a California statute was not pre-empted by the FAA where the parties agreed their arbitration agreement would be governed by California law. *Id.* According to the United States Supreme Court, the FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who *592 do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement. *Id.* at 478, 109 S.Ct. at 1255. "[The FAA] simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Id.* (citations omitted).

[6] Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the FAA. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360 n. 2 (2001). If the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is consistent with the goals of the FAA, even if the result is that arbitration is stayed where the FAA would otherwise permit it to go forward. *Volt*, 489 U.S. at 479, 109 S.Ct. at 1256. See also *Ford v. NYLCare Health Plans*, 141 F.3d 243 (5th Cir.1998) (finding that parties may designate state law to govern the scope of an arbitration clause in an agreement otherwise covered by the FAA). According to the Supreme Court in *Volt*,

[I]t does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself. Indeed, such a result would be quite inimical to the FAA's

primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms. Arbitration under the Act is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit. Just as they may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which that arbitration will be conducted.

Volt, 489 U.S. at 479, 109 S.Ct. at 1256. (citations omitted).

[7] [8] [9] While the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate. See *Volt*, *supra*; *Munoz*, *supra* n.2. *Volt* involved an arbitration agreement that incorporated state procedural rules, one of which called for arbitration to be stayed pending the resolution of a related judicial proceeding. The state rule examined in *Volt* determined only the efficient order of proceedings; it did not affect the enforceability *593 of the arbitration agreement itself. *Doctor's Assoc. v. Casarotto*, 517 U.S. 681, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996). Generic choice of law provisions cannot be used to incorporate into an arbitration agreement a state law which would be preempted by the FAA. But, as in *Volt*, state procedural rules that do not undermine the enforceability of an otherwise valid contract to arbitrate may be deemed to have been incorporated into a contract through choice of law provisions.³

In *Casarotto*, the United States Supreme Court held the FAA preempted a Montana statute which conditioned the enforceability of an arbitration clause on compliance with special notice requirements. Interpreting a Montana statute similar to section 15-48-10(a), the United States Supreme Court found that courts may invalidate arbitration provisions on general contract defenses, such as fraud, duress, and unconscionability, but courts may not invalidate arbitration agreements under state laws applicable *only* to arbitration provisions. *Id.* According to the United States Supreme Court:

By enacting § 2, we have several times said, Congress precluded States from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed 'upon the same footing as other contracts.' Montana's § 27-5-114(4) **117 directly conflicts with

prominently, on the first page of the contract. No other variation is acceptable. *See also Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 434 S.E.2d 281 (1993) (holding formal requirements of section 15-48-10(a) must be met before the dispute can be subject to arbitration); *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) (affirming trial court's finding that section 15-48-10(a) had not been satisfied because the contract did not contain on its first page any mention of arbitration); *Circle S. Enters., Inc. v. Stanley Smith & Sons*, 288 S.C. 428, 343 S.E.2d 45 n. 1 (Ct.App.1986) (finding a provision of a contract requiring arbitration is not enforceable under state law because notice the contract is subject to arbitration does not appear on its first page as required by section 15-48-10(a)).

Appellants assert Respondent should be equitably estopped from opposing arbitration in this case because Westmoreland prepared the partnership agreement with the defective notice of arbitration. Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. *Ingram v. Kasey's Assoc.*, 340 S.C. 98, 531 S.E.2d 287 n. 2 (2000). Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. *Mayes v. Paxton*, 313 S.C. 109, 437 S.E.2d 66 (1993). "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 532 S.E.2d 876, 878 (2000).

According to Appellants, "The equitable estoppel is based upon the undisputed facts **115 that both the party [sic] opposing arbitration previously consented in writing to such, and that party's attorney who drafted the arbitration clause now asserts *590 after 19 years of silence that the document he drafted is defective. Equitable estoppel prohibits Respondent from taking that position because if [the partnership agreement] is defective, it is the fault of the Respondent who is now asserting it is defective."

Equitable estoppel does not apply to this case. First, Appellants' main problem is with Westmoreland's conduct, not with the conduct of Leutwiler or his estate. Second, Appellants present no evidence of false representation or concealment by Leutwiler. Third, the knowledge of all parties

was equal and nothing was done by one to mislead the other at the time the partners entered into the partnership agreement. Finally, Appellants do not allege they have detrimentally changed their position in reliance on Leutwiler's conduct. Although Westmoreland's conduct may be problematic, Leutwiler did not induce the other partners into entering a partnership agreement with a defective notice of arbitration.

II. Arbitration

[3] Appellants argue the trial court erred in failing to order arbitration because the partnership was engaged in interstate commerce sufficient to invoke the FAA, and the FAA does not contain a notice requirement similar to section 15-48-10(a). We agree. Although the arbitration provision does not meet the technical requirements of section 15-48-10(a), the inquiry does not end there. Inextricably linked with the question of the applicability of section 15-48-10(a), is the impact of the FAA on this dispute.

A. FAA

Beginning in the mid-1980's, the United States Supreme Court, interpreting the FAA, essentially "federalized" the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause.¹ The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements.² The basic *591 purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements. *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995).

The FAA, section 2, provides that a "written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* at 273, 115 S.Ct. at 839 (quoting 9 U.S.C. § 2 (1988)) (emphasis added). The United States Supreme Court has interpreted the words "involving commerce" broadly. According to the Supreme Court in *Dobson*, the words "involving commerce" are the functional equivalent of "affecting commerce," which typically indicates Congress' intent to exercise its commerce power in full. *Id.* at 274, 115 S.Ct. at 839. The Supreme Court utilizes a "commerce in fact" test to determine if the

§ 2 of the FAA because the State's law conditions the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally. The FAA thus displaces the Montana statute with respect to arbitration agreements subject to the Act.

Id. at 687, 116 S.Ct. at 1653.

Relying on *Casarotto*, this Court in *Soil Remediation* held that because section 15-48-10(a) singles out arbitration agreements, it directly conflicts with section 2 of the FAA. Therefore, the FAA preempts section 15-48-10(a). *Soil Remediation*, 323 S.C. at 459, 476 S.E.2d at 152. In *Munoz*, *supra*, we recently stated the result in *Soil Remediation* hinged on the *594 fact that application of state law would have rendered the arbitration agreement completely unenforceable under section 15-48-10(a). *Munoz*, 343 S.C. at 539, 542 S.E.2d at 363 n. 2. "State law was therefore preempted to the extent it would have invalidated the arbitration agreement. The parties to a contract are otherwise free to agree that our state Arbitration Act will apply and this agreement shall be enforceable even if interstate commerce is involved." *Id.* (emphasis in original).

Under the facts of the instant case, we find the FAA controls and compel arbitration. On its facts, the instant arbitration agreement is not enforceable under South Carolina law. Thus, a partner could opt out of his agreement to arbitrate by citing the lack of a notice provision under state law. Even though the partnership agreement contains an express provision which provides that the "partnership agreement shall be governed by, and construed and enforced in accordance with the laws of the State of South Carolina," this Court's holding in *Soil Remediation* prevents the partners from "opting out" of the FAA. Furthermore, this Court in *Osteen*, *supra*, held a governing law clause, similar to the one in the instant case, indicates the parties' intention to have the validity and construction of the contract determined by the arbitrators according to the substantive law identified in the agreement. In other words, despite the inclusion of a governing law provision in an arbitration agreement, such a provision does not necessarily require the application of state, rather than federal, arbitration law. *Id.* at 426, 434 S.E.2d at 284.

[10] [11] We also find the partnership was engaged in interstate commerce as contemplated by the FAA. To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts. *Towles*

v. United Healthcare Corp., 338 S.C. 29, 524 S.E.2d 839 (Cl.App.1999). Appellants attempt to establish interstate commerce through several affidavits. Both the United States Supreme Court and this Court have relied on affidavits when determining whether a transaction involves interstate commerce. *Circle S.*, *supra*.

In Zabinski's affidavit, he asserts the partnership was involved in interstate commerce because: (1) the land was purchased from a Minnesota based group of investors; (2) *595 Bright Acres financed the purchase through a mortgage with C & S Bank of Georgia and a second mortgage from Minnesota investors; (3) Bright Acres used several out-of-state sub-contractors and materials from other states; (4) the condominiums were advertised across state lines; (5) Bright Acres sold the second mortgage to First Oxford of Philadelphia, Pennsylvania; (6) extensive soil tests were conducted by a Georgia firm; (7) a land sale was financed by a Chicago bank which took a mortgage on the property; (8) Bright Acres attempted to enter into a sales contract with a Pennsylvania developer for a proposed golf course; and (9) Leutwiler spent his remaining years as a partner in Georgia. Zabinski's affidavit was disputed by affidavits given by Ann L. Stiber and Brian J. Leutwiler, which maintain there has never been partnership activities or business that directly relates to interstate commerce.

The heart of the transaction in this case is the sale and development of real property on Hilton Head Island. Bright Acres is a South Carolina partnership with its principal place of business on Hilton Head Island. The only property owned by the partnership is located on Hilton Head Island. The development of land within South Carolina's borders is the quintessential example of a purely intrastate **118 activity. However, the transaction involved interstate commerce as contemplated by the FAA because the partnership utilized out-of-state materials, contractors, and investors. *See generally Munoz*, *supra* (finding interstate commerce in an installment contract case where builder was domiciled in South Carolina but assigned rights to a Delaware Creditor, agreement was prepared in Minnesota, and proceeds were disbursed from Minnesota); *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 239 S.E.2d 647 (1977) (holding construction contract involved interstate commerce where materials, equipment, and supplies were produced and manufactured out-of-state); *Circle S.*, *supra* (finding construction contract involved interstate commerce where equipment, materials, and subcontractors were furnished from out-of-state). *See also Roberson*, *supra* (Alabama

district courts find transactions between lenders and borrowers are ones "involving commerce" within meaning of the FAA).

*596 Because of the FAA's expansive view of interstate commerce, we find the FAA covers the partnership agreement in the present case. Thus, the FAA provisions trump conflicting requirements of South Carolina law, and arbitration is required.

B. Matters Subject to Arbitration

[12] The four partners agreed in their partnership agreement that "any controversy or claim arising out of the partnership agreement" would be settled by arbitration if it could not be settled by the partnership. In their Motion to Compel Arbitration, Appellants moved the trial court to compel arbitration of any and all claims, controversies, or challenges Respondent has to the past, present, and future management plans of the partnership. Appellants also request review of all partnership actions taken in the last three years, approval of a business plan concept for the effective management of the partnership's remaining assets, payment of all appropriate expenses, and distribution of assets or proceeds to the partners. Essentially, Appellants are seeking to compel arbitration in order to wind up the partnership and to resolve all outstanding claims involving the partnership. We must, therefore, determine which claims are arbitrable.

[13] [14] The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise. *AT & T Techs., Inc. v. Communications Workers of America*, 475 U.S. 643, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986) (citations omitted); 4 Am.Jur.2d *Alternative Dispute Resolution* § 123 (1995). However, in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims. *AT & T Techs.*, 475 U.S. at 649, 106 S.Ct. at 1419.

[15] [16] 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 (Cl.App.2000). Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *Episcopal Hous., supra; Towles, supra*. Arbitration rests on the agreement of the parties, and *597 the range of issues that can be arbitrated is restricted by the terms of the agreement. *Simmons v. Lucas & Stubbs Assoc., Ltd.*, 283 S.C. 326, 322 S.E.2d 467 (Cl.App.1984).

[17] [18] [19] [20] To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. *Hinson v. Jusco Co.*, 868 F.Supp. 145 (D.S.C.1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles, supra*. Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. *Great W. Coal*, 312 S.C. at 564, 437 S.E.2d at 25. A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation **119 which would cover the asserted dispute. *Tritech, supra*.

The arbitration agreement in the instant cases states that "any controversy or claim arising out of the partnership agreement" should be settled by arbitration if it cannot be settled by the partnership. Therefore, any claim pursuant to the partnership agreement is arbitrable. Further, any tort claims between the partners that relate to the partnership agreement are arbitrable.⁴ Finally, the winding up of the partnership is covered by the arbitration agreement because it *598 concerns issues that are the direct result of the partnership agreement.

[21] A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a "significant relationship" exists between the asserted claims and the contract in which the arbitration clause is contained. *Long v. Silver*, 248 F.3d 309 (4th Cir.2001). Despite South Carolina's presumption in favor of arbitration, we find the remaining third party claims are not subject to arbitration because a significant relationship does not exist between the following claims and the partnership agreement: (1) any attorney malpractice action against Westmoreland; (2) any attorney malpractice action against Massey's attorney, Bullard; and (3) any action between Massey and Leutwiler concerning the purchase agreement entered into by Massey to buy Leutwiler's interest in the partnership.

[22] The facts underlying the attorney malpractice claims are not encompassed by the arbitration agreement. Appellants' malpractice claim against Westmoreland concerns his failure to stamp the partnership agreement

with the language mandated in section 15-48-10(a), and his many alleged conflicts of interest involving the partnership. Appellants' malpractice claims against Bullard concern his alleged loyalty to Massey over his loyalty to the partnership. These malpractice claims concern the partnership only indirectly, and cannot be considered claims "arising out of the partnership agreement." Furthermore, the winding up of the partnership will involve a totally different set of facts than the facts surrounding the attorney malpractice claims.

[23] Finally, the action between Leutwiler and Massey involves a dispute over the purchase agreement, which is completely unrelated to the partnership agreement. Leutwiler alleges Massey failed to make all payments required by a written purchase agreement. Massey and Leutwiler's estate disagree as to what percent, if any, Massey acquired in Leutwiler's original 25% of the partnership. The facts involved in this controversy are completely independent of any dispute arising out of the partnership agreement and are not arbitrable.

*599 In 1995, we issued a memorandum opinion which decided the controversy between Leutwiler and Massey. *Leutwiler v. Massey*, 95-MO-223 (filed July 19, 1995). For the sake of judicial economy and to prevent further litigation between the parties, we will state the effect of our 1995 opinion upon the determination of the respective percentages owned by Leutwiler and Massey in the partnership. In 1995, we found that upon default Massey would be entitled to a pro rata share of the partnership interest based on the payments he made pursuant to the purchase agreement. Once Massey defaulted, he was not compelled to make further payments. Massey is entitled to have the principal payments applied to the purchase of a pro rata share of Leutwiler's total partnership interest, **120 with that share passing to Massey, and Leutwiler retaining the portion of the partnership not paid for by Massey. Based on the purchase agreement and the amount of payments made by Massey, we find Massey owns a 36.45% interest in the partnership and Leutwiler owns a 13.55% interest in the partnership.⁵

*600 III. TRO

Appellants argue the trial court erred in issuing a TRO without providing proper notice. We agree.

[24] According to Appellants, on August 12, 1999, they received a faxed copy of Respondent's Motion to Compel the Return of Funds and Deposit which provided no notice

of a hearing on the motion. A status conference was held the following day at which time Appellants' attorney timely objected to the trial court ruling on any matter except arbitration, and requested the trial court not rule on any other motions without an opportunity to be heard. In his August 25, 1999, Order, Judge Kemmerlin issued a TRO, restraining the partnership from making further distributions to the partners and from paying attorney's fees until further order of the trial court. According to Appellants, their interests were prejudiced because they were not provided ten days notice. See *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (1992); Rule 6(d), SCRCP.

Pursuant to Rule 65(b), SCRCP, a trial judge can issue a temporary restraining order without providing notice where *601 "it clearly appears from specific facts shown by affidavit or by verified complaint that immediate or irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon."⁶

**121 [25] [26] [27] The granting of temporary injunctive relief is within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 531 S.E.2d 518 (2000). An abuse of discretion occurs where the trial court is controlled by an error of law or where the trial court's order is based on factual conclusions without evidentiary support. *Id.* The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 199 S.E.2d 60 (1973).

The Respondent asserted the partnership and other partners were "gutting the Partnership and making distributions improperly to themselves." Judge Kemmerlin expressed concern that if he did not restrain the partners, they may expend the remaining funds. Judge Kemmerlin had the following allegations before him when he issued the ex parte TRO: (1) Appellants allegedly paid all expenses and distributed all assets without waiting for the appointment of an arbitrator; (2) breach of fiduciary duty by Appellants; (3) partnership assets and information were being improperly withheld from Respondent; (4) Appellants refused to produce partnership records for examination by Respondent; (5) Appellants refused to obey a subpoena; (6) attorney conflict of interest; and (7) Appellants improperly distributed partnership assets.

*602 While Judge Kemmerlin had several allegations before him, the factual basis for the TRO was not fully developed. Therefore, a hearing on the matter was imperative. However, Rule 65(b), SCRPC states that an ex parte TRO will expire in ten days. Because more than ten days has elapsed, the TRO has expired as a matter of law and the remaining issues involving the TRO are moot.

IV. Motion for the Return of Funds and Deposit

[28] Appellants argue they were prejudiced because they did not have an opportunity to demonstrate the allegations in the Motion for the Return of Funds and Deposit were false. We disagree.

On August 12, 1999, Respondent moved for the return and deposit of all funds distributed to the various partners by Massey. Respondent also moved for the appointment of a receiver. In their briefs, Appellants argue the merits of Respondent's Motion for the Return of Funds and Deposit. Specifically, Appellants contest grounds 4 through 9, and argue they were prejudiced because they were not allowed to submit affidavits contesting these grounds.

Judge Kemmerlin's August 25, 1999, Order was a ruling on a number of motions, but it was not a ruling on the Motion to Compel Return of Funds and Deposit. He references the Motion and its allegations in his August 25, 1999, Order. However, he does not specifically rule on the merits of these allegations. He simply uses the allegations as a basis to issue a TRO. Judge Kemmerlin then directs the parties to appear before him on September 9, 1999, to show cause why the TRO should not become an injunction *pendente lite*, and to discuss the appointment of a receiver. Presumably, the parties would argue the merits of the Motion at the September 9, 1999, hearing. However, Judge Kemmerlin recused himself before the September 9, 1999, hearing. The merits of the Motion were never heard and a receiver was never appointed.

Appellants were not prejudiced because a trial judge never ruled upon the allegations presented in the Motion.⁷ The only way Appellants could be prejudiced is by Judge Kemmerlin's issuance of a TRO. We find no prejudice because, as we stated above, the TRO has expired.

CONCLUSION

Based on the foregoing, we hereby compel arbitration of the following issues: (1) the winding up of the partnership; (2) the partnership's selection of a managing partner; (3) any claim concerning the sale of a remaining piece of property located on Hilton Head Island, South Carolina; (4) any claim concerning the proceeds from the September 4, 1998 property sale together with all incidental issues involving the terms, conditions, and consequences of that sale and post-sale management and application of the funds to be received by the partnership in due course along with the partnership's plans for how to manage the asset if the purchaser's obligations are not timely met; and (5) any remaining claims concerning the management of the partnership. The arbitrator will distribute the remaining assets to the partners in the percentages outlined in this opinion. Therefore, we **AFFIRM** the trial court's Order denying arbitration of the attorney malpractice claims, and **REVERSE** the trial court's Order denying arbitration of the remaining claims concerning the partnership.

**AFFIRMED IN PART; REVERSED IN PART; AND
ARBITRATION COMPELLED.**

MOORE, WALLER, PLEICONES, JJ., and Acting Justice J.
ERNEST KINARD, Jr., concur.

Parallel Citations

553 S.E.2d 110

Footnotes

- 1 U.S. Const. art. I, § 8, cl. 3.
- 2 See Alan S. Kaplinsky & Mark J. Levin, *Anatomy of an Arbitration Clause: Drafting and Implementation Issues Which Should be Considered by a Consumer Lender*, 1113 PRACTICING LAW INST./CORPORATE LAW & PRACTICE COURSE HANDBOOK SERIES 655 (1999).
- 3 Michael A. Hanzman, *Arbitration Agreements: Analyzing Threshold Choice of Law and Arbitrability Questions: An Often Overlooked Task*, 70 FLA. B.J. 14 (Dec. 1996).
- 4 Other jurisdictions provide a test to determine whether a tort claim falls within the scope of an agreement to arbitrate. According to these courts, the focus should be on the factual allegations contained in the petition rather than on the legal causes of actions

asserted. The test is based on a determination of whether the particular tort claim is so interwoven with the contract that it could not stand alone. If the tort and contract claims are so interwoven, both are arbitrable. On the other hand, if the tort claim is completely independent of the contract and could be maintained without reference to the contract, the tort claim is not arbitrable. *See generally Vulero Energy Corp. v. Teco Pipeline Co.*, 2 S.W.3d 576 (Tex.Ct.App.1999); *PromoFone, Inc. v. PCC Mgmt.*, 224 A.D.2d 259, 637 N.Y.S.2d 405 (1996) (holding appellant was compelled to arbitrate with a nonsignatory when issues in overall dispute were inextricably interwoven with claims against nonsignatory, and nonsignatory was closely related to signatories and was alleged to have engaged in the same improper conduct).

- 5 These percentages are reflected in Massey's memorandum in support of his motion to determine his percentage interest in Bright Acres. Massey's memorandum is a correct calculation of the effect of our 1995 opinion. The percentages are based on the partnership agreement and the following calculations.

The partnership agreement stated Leutwiler agreed to sell his interest to Massey under the following terms: (1) Massey paid \$110,000 for Leutwiler's partnership interest; (2) Massey paid an initial cash payment of \$20,000; (3) Massey paid \$2,000 per month with no interest; and (4) Massey paid \$1,064.70 per month for 114 months with an interest rate of 10%, of which \$78,000 was to be principal and \$43,375.80 was to be interest. The purchase agreement contained a provision permitting Massey to cease making payments at any time and receive a pro rata share of the Leutwiler interest.

On October 20, 1993, Massey paid \$17,207.93 to the Clerk of Court. This amount represented a judgment of \$16,841.10 with the difference being for post-judgment interest and the Sheriff's collection fee. The sum deposited represented 13 payments of \$1,064.70 and \$3,000 in attorneys fees. On September 15, 1994, this sum deposited was reduced by one payment of \$1,064.70 pursuant to an order by the trial judge. Accordingly, Massey has paid toward the principal as follows: (1) \$20,000 initial cash payment; (2) \$12,000-6 payments of \$2000 with no interest; and (3) \$13,017.37-28 payments of \$1,064.70 at 10% interest. The total paid in principal was \$45,017.37.

The percentage of Leutwiler's interest purchased by Massey is computed as follows:

$$\frac{\$45,017.37}{\$110,000} = .40925 \times .25 = 10.23\%$$

The percentage of Leutwiler's interest retained by Leutwiler is computed as follows:

$$\frac{\$64,982.63}{\$110,000} = .59075 \times .25 = 14.77\%$$

Therefore, Massey has a 35.23% interest and Leutwiler has a 14.77% interest.

However, the partnership agreement provided that upon the failure of a partner to satisfy a call for capital, the partner paying such sum should be entitled to an adjustment in ownership interest from the share held by the delinquent partner. Leutwiler failed to make additional capital payments and his share was paid by Massey. The total of all additional paid in capital is \$36,371.66 of which Leutwiler should have paid 14.77% or \$5,372.09. The percentage adjustment is computed as follows:

Massey's payment	=	\$5,372.09	=	.08266 x .1477 = .0122
Leutwiler's share		\$64,988		

Thus, Massey's share = .3523 + .0122 = 36.45%

and Leutwiler's share = .1477 - .0122 = 13.55%

- 6 Judge Kemmerlin's TRO did not meet all of the following requirements of Rule 65(b), SCRPC:

"Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall be served, together with a summons and complaint in the event no summons and complaint have previously been served in the action, ... shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period."

- 7 Respondent alleges Appellants were not prejudiced because all the partnership assets have been distributed. Additionally, Respondent maintains Appellants consented to a continuation of the TRO.

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 48. Uniform Arbitration Act

Code 1976 § 15-48-10

§ 15-48-10. Validity of arbitration agreement; exceptions from operation of chapter.

Currentness

(a) 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. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:

(1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder;

(2) Arbitration agreements between employers and employees or between their respective representatives unless the agreement provides that this chapter shall apply; *provided*, however, that notwithstanding any other provision of law, employers and employees or their respective representatives may not agree that workmen's compensation claims, unemployment compensation claims and collective bargaining disputes shall be subject to the provisions of this chapter and any such provision so agreed upon shall be null and void. An agreement to apply this chapter shall not be made a condition of employment.

(3) A pre-agreement entered into when the relationship of the contracting parties is such that of lawyer-client or doctor-patient and the term "doctor" shall include all those persons licensed to practice medicine pursuant to Chapters 9, 15, 31, 37, 47, 51, 55, 67 and 69 of Title 40 of the 1976 Code.

(4) Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.

Credits

HISTORY: 1978 Act No. 492, § 1.

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Code 1976 § 15-48-10, SC ST § 15-48-10

: .Next

131 S.Ct. 1740

Briefs and Other Related Documents

Related Westlaw Journal Article

Supreme Court of the United States

AT&T MOBILITY LLC, Petitioner,

v.

Vincent CONCEPCION et ux.

No. 09-893. | Argued Nov. 9,
2010. | Decided April 27, 2011.

Synopsis

Background: Customers brought putative class action against telephone company, alleging that company's offer of a free phone to anyone who signed up for its cellphone service was fraudulent to the extent that the company charged the customer sales tax on the retail value of the free phone. The United States District Court for the Southern District of California, Dana M. Sabraw, J., 2008 WL 5216255, denied company's motion to compel arbitration. Company appealed. The United States Court of Appeals for the Ninth Circuit, Carlos T. Bea, Circuit Judge, 584 F.3d 849, affirmed. Certiorari was granted.

[Holding:] The Supreme Court, Justice Scalia, held that the Federal Arbitration Act preempts California's judicial rule regarding the unconscionability of class arbitration waivers in consumer contracts, abrogating *Discover Bank v. Superior Court*, 36 Cal.4th 148, 30 Cal.Rptr.3d 76, 113 P.3d 1100.

Reversed and remanded.

Justice Thomas filed a concurring opinion.

Justice Breyer filed a dissenting opinion, in which Justices Ginsburg, Sotomayor, and Kagan, joined.

West Headnotes (13)

[1] Alternative Dispute Resolution



Constitutional

and statutory provisions and rules of court

The provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, reflects both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract. 9 U.S.C.A. § 2.

408 Cases that cite this headnote

[2] Alternative Dispute Resolution



Constitutional

and statutory provisions and rules of court

In light of the liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract, which are reflected in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, courts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms. 9 U.S.C.A. § 2.

557 Cases that cite this headnote

[3] Alternative Dispute Resolution



Preemption

States



Particular

cases, preemption or supersession

The Federal Arbitration Act (FAA) preempts California's judicial rule stating that a class arbitration waiver is unconscionable under California law if it is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties

predictably involve small amounts of damages, and if it is alleged that the party with superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, because that rule stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the FAA, which include ensuring the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings; abrogating *Discover Bank v. Superior Court*, 36 Cal.4th 148, 30 Cal.Rptr.3d 76, 113 P.3d 1100, 9 U.S.C.A. § 2; West's Ann.Cal.Civ.Code §§ 1668, 1670.5(a).

100 Cases that cite this headnote

[4] **Alternative Dispute Resolution**



Alternative Dispute Resolution



of assent

Alternative Dispute Resolution



Under the saving clause in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, arbitration agreements may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue. 9 U.S.C.A. § 2.

585 Cases that cite this headnote

[5] **Contracts**



unconscionability

Contracts



unconscionability

Under California law, a finding that a contract is unconscionable requires a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results. West's Ann.Cal.Civ.Code §§ 1668, 1670.5(a).

32 Cases that cite this headnote

[6] **Alternative Dispute Resolution**



States



Validity

cases, preemption or supersession

Validity

When state law prohibits outright the arbitration of a particular type of claim, the conflicting state rule is displaced by the Federal Arbitration Act (FAA). 9 U.S.C.A. § 2.

84 Cases that cite this headnote

Unconscionability

[7] **Alternative Dispute Resolution**



States



cases, preemption or supersession

In light of the preemptive effect of the Federal Arbitration Act (FAA), a court may not rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what the state legislature cannot. 9 U.S.C.A. § 2.

124 Cases that cite this headnote

[8] **Alternative Dispute Resolution**



Procedural

and statutory provisions and rules of court

Substantive

Preemption

Particular

Preemption

Particular

Constitutional

While the saving clause, in the provision of the Federal Arbitration Act (FAA) stating that arbitration agreements in maritime transactions or contracts evidencing transactions involving commerce are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract, preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. 9 U.S.C.A. § 2.

166 Cases that cite this headnote

[9] States



intent

A federal statute's preemption saving clause cannot in reason be construed as allowing a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act; in other words, the act cannot be held to destroy itself.

5 Cases that cite this headnote

[10] Alternative Dispute Resolution



and statutory provisions and rules of court

The principal purpose of the Federal Arbitration Act (FAA) is to ensure that private arbitration agreements are enforced according to their terms. 9 U.S.C.A. §§ 2-4.

152 Cases that cite this headnote

[11] Alternative Dispute Resolution



purpose, and right to arbitration in general

In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to

choose expert adjudicators to resolve specialized disputes.

2 Cases that cite this headnote

[12] Judgment



Persons

represented by parties

For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class.

8 Cases that cite this headnote

Congressional

[13] Alternative Dispute Resolution



Contractual

or consensual basis

Alternative Dispute Resolution



Constitutional

and statutory provisions and rules of court

Arbitration is a matter of contract, and the Federal Arbitration Act (FAA) requires courts to honor parties' expectations. 9 U.S.C.A. § 1 et seq.

Constitutional 74 Cases that cite this headnote

1742 Syllabus

The cellular telephone contract between respondents (Concepcions) and petitioner (AT & T) provided for arbitration of all disputes, but did not permit classwide arbitration. After the Concepcions were charged sales tax on the retail value of phones provided free under their service contract, they sued AT & T in a California Federal District Court. Their suit was consolidated with a class action alleging, *inter alia*, that AT & T had engaged in false advertising and fraud by charging sales tax on "free" phones. The District Court denied AT & T's motion to compel arbitration under the Concepcions' contract. Relying on the California Supreme Court's *Discover Bank* decision, it found the arbitration provision unconscionable because it

disallowed classwide proceedings. The Ninth Circuit agreed that the provision was unconscionable under California law and held that the Federal Arbitration Act (FAA), which makes arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2, did not preempt its ruling.

Held: Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581. California's *Discover Bank* rule is preempted by the FAA. Pp. 1745 – 1753.

(a) Section 2 reflects a "liberal federal policy favoring arbitration," *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765, and the "fundamental principle that arbitration is a matter of contract," *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. —, —, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010). Thus, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443, 126 S.Ct. 1204, 163 L.Ed.2d 1038, and enforce them according to their terms, *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488. Section 2's saving clause permits agreements to be invalidated by "generally applicable contract defenses," but not by defenses that apply *1743 only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902. Pp. 1745 – 1746.

(b) In *Discover Bank*, the California Supreme Court held that class waivers in consumer arbitration agreements are unconscionable if the agreement is in an adhesion contract, disputes between the parties are likely to involve small amounts of damages, and the party with inferior bargaining power alleges a deliberate scheme to defraud. Pp. 1745 – 1747.

(c) The Concepcions claim that the *Discover Bank* rule is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA § 2. When state law prohibits outright the arbitration of a particular type of claim, the FAA displaces the conflicting rule. But the inquiry is more complex when a generally applicable doctrine is alleged to have been applied in a fashion that disfavors or interferes

with arbitration. Although § 2's saving clause preserves generally applicable contract defenses, it does not suggest an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. Cf. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872, 120 S.Ct. 1913, 146 L.Ed.2d 914. The FAA's overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings. Parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444, to arbitrate according to specific rules, *Volt*, *supra*, at 479, 109 S.Ct. 1248, and to limit with whom they will arbitrate, *Stolt-Nielsen*, *supra*, at —, Pp. 1746 – 1750.

(d) Class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, interferes with fundamental attributes of arbitration. The switch from bilateral to class arbitration sacrifices arbitration's informality and makes the process slower, more costly, and more likely to generate procedural morass than final judgment. And class arbitration greatly increases risks to defendants. The absence of multilayered review makes it more likely that errors will go uncorrected. That risk of error may become unacceptable when damages allegedly owed to thousands of claimants are aggregated and decided at once. Arbitration is poorly suited to these higher stakes. In litigation, a defendant may appeal a certification decision and a final judgment, but 9 U.S.C. § 10 limits the grounds on which courts can vacate arbitral awards. Pp. 1750 – 1753.

584 F.3d 849, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.

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Opinion

*1744 Justice SCALIA delivered the opinion of the Court.

Section 2 of the Federal Arbitration Act (FAA) makes agreements to arbitrate “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. We consider whether the FAA prohibits States from conditioning the enforceability of certain arbitration agreements on the availability of classwide arbitration procedures.

I

In February 2002, Vincent and Liza Concepcion entered into an agreement for the sale and servicing of cellular telephones with AT & T Mobility LCC (AT & T).¹ The contract provided for arbitration of all disputes between the parties, but required that claims be brought in the parties’ “individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.” App. to Pet. for Cert. 61a.² The agreement authorized AT & T to make unilateral amendments, which it did to the arbitration provision on several occasions. The version at issue in this case reflects revisions made in December 2006, which the parties agree are controlling.

The revised agreement provides that customers may initiate dispute proceedings by completing a one-page Notice of Dispute form available on AT & T’s Web site. AT & T may then offer to settle the claim; if it does not, or if the dispute is not resolved within 30 days, the customer may invoke arbitration by filing a separate Demand for Arbitration, also available on AT & T’s Web site. In the event the parties proceed to arbitration, the agreement specifies that AT & T must pay all costs for nonfrivolous claims; that arbitration must take place in the county in which the customer is billed; that, for claims of \$10,000 or less, the customer may choose whether the arbitration proceeds in person, by telephone, or based only on submissions; that either party may bring a claim in small claims court in lieu of arbitration; and that the arbitrator may award any form of individual relief, including injunctions and presumably punitive damages. The agreement, moreover, denies AT & T any ability to seek reimbursement of its attorney’s fees, and, in the event that a customer receives an arbitration award greater than AT & T’s last written settlement offer, requires AT & T to pay a \$7,500

minimum recovery and twice the amount of the claimant’s attorney’s fees.³

The Conceptions purchased AT & T service, which was advertised as including the provision of free phones; they were not charged for the phones, but they were charged \$30.22 in sales tax based on the phones’ retail value. In March 2006, the Conceptions filed a complaint against AT & T in the United States District Court for the Southern District of California. The complaint was later consolidated with a putative class action alleging, among other things, that AT & T had engaged in false advertising and fraud by charging sales tax on phones it advertised as free.

In March 2008, AT & T moved to compel arbitration under the terms of its contract *1745 with the Conceptions. The Conceptions opposed the motion, contending that the arbitration agreement was unconscionable and unlawfully exculpatory under California law because it disallowed classwide procedures. The District Court denied AT & T’s motion. It described AT & T’s arbitration agreement favorably, noting, for example, that the informal dispute-resolution process was “quick, easy to use” and likely to “prompt[ly] full or ... even excess payment to the customer *without* the need to arbitrate or litigate”; that the \$7,500 premium functioned as “a substantial inducement for the consumer to pursue the claim in arbitration” if a dispute was not resolved informally; and that consumers who were members of a class would likely be worse off. *Laster v. T-Mobile USA, Inc.*, 2008 WL 5216255, *11–*12 (S.D.Cal., Aug.11. 2008). Nevertheless, relying on the California Supreme Court’s decision in *Discover Bank v. Superior Court*, 36 Cal.4th 148, 30 Cal.Rptr.3d 76, 113 P.3d 1100 (2005), the court found that the arbitration provision was unconscionable because AT & T had not shown that bilateral arbitration adequately substituted for the deterrent effects of class actions. *Laster*, 2008 WL 5216255, *14.

The Ninth Circuit affirmed, also finding the provision unconscionable under California law as announced in *Discover Bank*. *Laster v. AT & T Mobility LLC*, 584 F.3d 849, 855 (2009). It also held that the *Discover Bank* rule was not preempted by the FAA because that rule was simply “a refinement of the unconscionability analysis applicable to contracts generally in California.” 584 F.3d, at 857. In response to AT & T’s argument that the Conceptions’ interpretation of California law discriminated against arbitration, the Ninth Circuit rejected the contention that “ ‘class proceedings will reduce the efficiency and

expeditiousness of arbitration' " and noted that " 'Discover Bank placed arbitration agreements with class action waivers on the exact same footing as contracts that bar class action litigation outside the context of arbitration.' " *Id.*, at 858 (quoting *Shroyer v. New Cingular Wireless Services, Inc.*, 498 F.3d 976, 990 (C.A.9 2007)).

We granted certiorari, 560 U.S. 923, 130 S.Ct. 3322, 176 L.Ed.2d 1218 (2010).

II

[1] [2] The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements. See *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008). Section 2, the "primary substantive provision of the Act," *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983), provides, in relevant part, as follows:

"A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

We have described this provision as reflecting both a "liberal federal policy favoring arbitration," *Moses H. Cone, supra*, at 24, 103 S.Ct. 927, and the "fundamental principle that arbitration is a matter of contract," *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. —, —, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010). In line with these principles, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006), and enforce them according to their terms, *Volt Information Sciences, Inc. v. *1746 Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989).

[3] [4] The final phrase of § 2, however, permits arbitration agreements to be declared unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." This saving clause permits agreements to arbitrate to be invalidated by "generally applicable contract defenses, such as fraud, duress, or unconscionability," but not by defenses that apply only to arbitration or that derive their meaning

from the fact that an agreement to arbitrate is at issue. *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996); see also *Perry v. Thomas*, 482 U.S. 483, 492–493, n. 9, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987). The question in this case is whether § 2 preempts California's rule classifying most collective-arbitration waivers in consumer contracts as unconscionable. We refer to this rule as the *Discover Bank* rule.

[5] Under California law, courts may refuse to enforce any contract found "to have been unconscionable at the time it was made," or may "limit the application of any unconscionable clause." Cal. Civ.Code Ann. § 1670.5(a) (West 1985). A finding of unconscionability requires "a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." *Armendariz v. Foundation Health Psychcare Servs., Inc.*, 24 Cal.4th 83, 114, 99 Cal.Rptr.2d 745, 6 P.3d 669, 690 (2000); accord, *Discover Bank*, 36 Cal.4th, at 159–161, 30 Cal.Rptr.3d 76, 113 P.3d. at 1108.

In *Discover Bank*, the California Supreme Court applied this framework to class-action waivers in arbitration agreements and held as follows:

"[W]hen the waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then ... the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another.' Under these circumstances, such waivers are unconscionable under California law and should not be enforced." *Id.*, at 162, 30 Cal.Rptr.3d 76, 113 P.3d. at 1110 (quoting Cal. Civ.Code Ann. § 1668).

California courts have frequently applied this rule to find arbitration agreements unconscionable. See, e.g., *Cohen v. DirecTV, Inc.*, 142 Cal.App.4th 1442, 1451–1453, 48 Cal.Rptr.3d 813, 819–821 (2006); *Klussman v. Cross Country Bank*, 134 Cal.App.4th 1283, 1297, 36 Cal.Rptr.3d 728, 738–739 (2005); *Aral v. EarthLink, Inc.*, 134 Cal.App.4th 544, 556–557, 36 Cal.Rptr.3d 229, 237–239 (2005).

III

A

The Concepcions argue that the *Discover Bank* rule, given its origins in California's unconscionability doctrine and California's policy against exculpation, is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA § 2. Moreover, they argue that even if we construe the *Discover Bank* rule as a prohibition on collective-action waivers rather than simply an application of unconscionability, the rule would still be applicable to all dispute-resolution contracts, since California prohibits waivers of class litigation as well. See *America Online, Inc. v. Superior* *1747 Ct., 90 Cal.App.4th 1. 17-18, 108 Cal.Rptr.2d 699, 711-713 (2001).

[6] [7] When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA. *Preston v. Ferrer*, 552 U.S. 346, 353, 128 S.Ct. 978, 169 L.Ed.2d 917 (2008). But the inquiry becomes more complex when a doctrine normally thought to be generally applicable, such as duress or, as relevant here, unconscionability, is alleged to have been applied in a fashion that disfavors arbitration. In *Perry v. Thomas*, 482 U.S. 483, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987), for example, we noted that the FAA's preemptive effect might extend even to grounds traditionally thought to exist "at law or in equity for the revocation of any contract." "Id., at 492, n. 9, 107 S.Ct. 2520 (emphasis deleted). We said that a court may not "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what ... the state legislature cannot." *Id.*, at 493, n. 9, 107 S.Ct. 2520.

An obvious illustration of this point would be a case finding unconscionable or unenforceable as against public policy consumer arbitration agreements that fail to provide for judicially monitored discovery. The rationalizations for such a holding are neither difficult to imagine nor different in kind from those articulated in *Discover Bank*. A court might reason that no consumer would knowingly waive his right to full discovery, as this would enable companies to hide their wrongdoing. Or the court might simply say that such agreements are exculpatory—restricting discovery would be of greater benefit to the company than the consumer, since the former is more likely to be sued than to sue. See *Discover*

Bank, *supra*, at 161, 30 Cal.Rptr.3d 76, 113 P.3d, at 1109 (arguing that class waivers are similarly one-sided). And, the reasoning would continue, because such a rule applies the general principle of unconscionability or public-policy disapproval of exculpatory agreements, it is applicable to "any" contract and thus preserved by § 2 of the FAA. In practice, of course, the rule would have a disproportionate impact on arbitration agreements; but it would presumably apply to contracts purporting to restrict discovery in litigation as well.

Other examples are easy to imagine. The same argument might apply to a rule classifying as unconscionable arbitration agreements that fail to abide by the Federal Rules of Evidence, or that disallow an ultimate disposition by a jury (perhaps termed "a panel of twelve lay arbitrators" to help avoid preemption). Such examples are not fanciful, since the judicial hostility towards arbitration that prompted the FAA had manifested itself in "a great variety" of "devices and formulas" declaring arbitration against public policy. *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 406 (C.A.2 1959). And although these statistics are not definitive, it is worth noting that California's courts have been more likely to hold contracts to arbitrate unconscionable than other contracts. Broome, *An Unconscionable Applicable of the Unconscionability Doctrine: How the California Courts are Circumventing the Federal Arbitration Act*, 3 Hastings Bus. L.J. 39, 54, 66 (2006); Randall, *Judicial Attitudes Toward Arbitration and the Resurgence of Unconscionability*, 52 Buffalo L.Rev. 185, 186-187 (2004).

The Concepcions suggest that all this is just a parade of horrors, and no genuine worry. "Rules aimed at destroying arbitration" or "demanding procedures incompatible with arbitration," they concede, *1748 "would be preempted by the FAA because they cannot sensibly be reconciled with Section 2." Brief for Respondents 32. The "grounds" available under § 2's saving clause, they admit, "should not be construed to include a State's mere preference for procedures that are incompatible with arbitration and 'would wholly eviscerate arbitration agreements.'" *Id.*, at 33 (quoting *Carter v. SSC Odin Operating Co., LLC*, 237 Ill.2d 30, 50, 340 Ill.Dec. 196, 927 N.E.2d 1207, 1220 (2010)).⁴

[8] [9] We largely agree. Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. Cf. *Geier v. American Honda Motor Co.*, 529 U.S. 861, 872,

120 S.Ct. 1913, 146 L.Ed.2d 914 (2000); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372–373, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000). As we have said, a federal statute's saving clause “ ‘cannot in reason be construed as [allowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.’ ” *American Telephone & Telegraph Co. v. Central Office Telephone, Inc.*, 524 U.S. 214, 227–228, 118 S.Ct. 1956, 141 L.Ed.2d 222 (1998) (quoting *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446, 27 S.Ct. 350, 51 L.Ed. 553 (1907)).

We differ with the *Concepcions* only in the application of this analysis to the matter before us. We do not agree that rules requiring judicially monitored discovery or adherence to the Federal Rules of Evidence are “a far cry from this case.” Brief for Respondents 32. The overarching purpose of the FAA, evident in the text of §§ 2, 3, and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings. Requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA.

B

[10] The “principal purpose” of the FAA is to “ensur[e] that private arbitration agreements are enforced according to their terms.” *Volt*, 489 U.S. at 478, 109 S.Ct. 1248; see also *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. —, —, 130 S.Ct. 1758, 1763, 176 L.Ed.2d 605 (2010). This purpose is readily apparent from the FAA’s text. Section 2 makes arbitration agreements “valid, irrevocable, and enforceable” as written (subject, of course, to the saving clause); § 3 requires courts to stay litigation of arbitral claims pending arbitration of those claims “in accordance with the terms of the agreement”; and § 4 requires courts to compel arbitration “in accordance with the terms of the agreement” upon the motion of either party to the agreement (assuming that the “making of the arbitration agreement or the failure ... to perform the same” is not at issue). In light of these provisions, we have held that parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985), *1749 to arbitrate according to specific rules, *Volt*, *supra*, at 479, 109 S.Ct. 1248, and to limit with whom a

party will arbitrate its disputes, *Stolt-Nielsen*, *supra*, at —, 130 S.Ct. at 1773.

The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute. It can be specified, for example, that the decisionmaker be a specialist in the relevant field, or that proceedings be kept confidential to protect trade secrets. And the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, —, 129 S.Ct. 1456, 1460, 173 L.Ed.2d 398 (2009); *Mitsubishi Motors Corp.*, *supra*, at 628, 105 S.Ct. 3346.

The dissent quotes *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985), as “ ‘reject[ing] the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims.’ ” *Post*, at 4 (opinion of BREYER, J.). That is greatly misleading. After saying (accurately enough) that “the overriding goal of the Arbitration Act was [not] to promote the expeditious resolution of claims,” but to “ensure judicial enforcement of privately made agreements to arbitrate,” 470 U.S. at 219, 105 S.Ct. 1238, *Dean Witter* went on to explain: “This is not to say that Congress was blind to the potential benefit of the legislation for expedited resolution of disputes. Far from it” *Id.*, at 220, 105 S.Ct. 1238. It then quotes a House Report saying that “the costliness and delays of litigation ... can be largely eliminated by agreements for arbitration.” *Ibid.* (quoting H.R.Rep. No. 96, 68th Cong., 1st Sess., 2 (1924)). The concluding paragraph of this part of its discussion begins as follows:

“We therefore are not persuaded by the argument that the conflict between two goals of the Arbitration Act—enforcement of private agreements and encouragement of efficient and speedy dispute resolution—must be resolved in favor of the latter in order to realize the intent of the drafters.” 470 U.S. at 221, 105 S.Ct. 1238.

In the present case, of course, those “two goals” do not conflict—and it is the dissent’s view that would frustrate *both* of them.

Contrary to the dissent’s view, our cases place it beyond dispute that the FAA was designed to promote arbitration. They have repeatedly described the Act as “embod[ying] [a] national policy favoring arbitration,” *Buckeye Check Cashing*, 546 U.S. at 443, 126 S.Ct. 1204, and “a

liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary," *Moses H. Cone*, 460 U.S., at 24, 103 S.Ct. 927; see also *Hall Street Assocs.*, 552 U.S., at 581, 128 S.Ct. 1396. Thus, in *Preston v. Ferrer*, holding preempted a state-law rule requiring exhaustion of administrative remedies before arbitration, we said: "A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results,' " which objective would be "frustrated" by requiring a dispute to be heard by an agency first. 552 U.S., at 357–358, 128 S.Ct. 978. That rule, we said, would "at the least, hinder speedy resolution of the controversy." *Id.*, at 358, 128 S.Ct. 978.⁵

*1750 California's *Discover Bank* rule similarly interferes with arbitration. Although the rule does not require classwide arbitration, it allows any party to a consumer contract to demand it *ex post*. The rule is limited to adhesion contracts, *Discover Bank*, 36 Cal.4th, at 162–163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110, but the times in which consumer contracts were anything other than adhesive are long past.⁶ *Carbajal v. H & R Block Tax Servs., Inc.*, 372 F.3d 903, 906 (7th Cir.2004); see also *Hill v. Gateway 2000, Inc.*, 105 F.3d 1147, 1149 (C.A.7 1997). The rule also requires that damages be predictably small, and that the consumer allege a scheme to cheat consumers. *Discover Bank*, *supra*, at 162–163. 30 Cal.Rptr.3d 76, 113 P.3d, at 1110. The former requirement, however, is toothless and malleable (the Ninth Circuit has held that damages of \$4,000 are sufficiently small, see *Oestreicher v. Alienware Corp.*, 322 Fed.Appx. 489, 492 (2009) (unpublished)), and the latter has no limiting effect, as all that is required is an allegation. Consumers remain free to bring and resolve their disputes on a bilateral basis under *Discover Bank*, and some may well do so; but there is little incentive for lawyers to arbitrate on behalf of individuals when they may do so for a class and reap far higher fees in the process. And faced with inevitable class arbitration, companies would have less incentive to continue resolving potentially duplicative claims on an individual basis.

Although we have had little occasion to examine classwide arbitration, our decision in *Stolt-Nielsen* is instructive. In that case we held that an arbitration panel exceeded its power under § 10(a)(4) of the FAA by imposing class procedures based on policy judgments rather than the arbitration agreement itself or some background principle of contract law that would affect its interpretation. 559 U.S., at —, 130 S.Ct. at 1773–1776. We then held that the agreement at issue, which was silent on the question of class procedures, could

not be interpreted to allow them because the "changes brought about by the shift from bilateral arbitration to class-action arbitration" are "fundamental." *Id.*, at —, 130 S.Ct. at 1776. This is obvious as a structural matter: Classwide arbitration includes absent parties, necessitating additional and different procedures and involving higher stakes. Confidentiality becomes more difficult. And while it is theoretically possible to select an arbitrator with some expertise relevant to the class-certification question, arbitrators are not generally knowledgeable in the often-dominant procedural aspects of certification, such as the protection of absent parties. The conclusion follows that *1751 class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, is inconsistent with the FAA.

[11] First, the switch from bilateral to class arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment. "In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." 559 U.S., at —, 130 S.Ct. at 1775. But before an arbitrator may decide the merits of a claim in classwide procedures, he must first decide, for example, whether the class itself may be certified, whether the named parties are sufficiently representative and typical, and how discovery for the class should be conducted. A cursory comparison of bilateral and class arbitration illustrates the difference. According to the American Arbitration Association (AAA), the average consumer arbitration between January and August 2007 resulted in a disposition on the merits in six months, four months if the arbitration was conducted by documents only. AAA, Analysis of the AAA's Consumer Arbitration Caseload, online at <http://www.adr.org/si.asp?id=5027> (all Internet materials as visited Apr. 25, 2011, and available in Clerk of Court's case file). As of September 2009, the AAA had opened 283 class arbitrations. Of those, 121 remained active, and 162 had been settled, withdrawn, or dismissed. Not a single one, however, had resulted in a final award on the merits. Brief for AAA as *Amicus Curiae* in *Stolt-Nielsen*, O.T.2009, No. 08–1198, pp. 22–24. For those cases that were no longer active, the median time from filing to settlement, withdrawal, or dismissal—not judgment on the merits—was 583 days, and the mean was 630 days. *Id.*, at 24.⁷

[12] Second, class arbitration *requires* procedural formality. The AAA's rules governing class arbitrations mimic the Federal Rules of Civil Procedure for class litigation. Compare AAA, Supplementary Rules for Class Arbitrations (effective Oct. 8, 2003), online at <http://www.adr.org/sp.asp?id=21936>, with Fed. Rule Civ. Proc. 23. And while parties can alter those procedures by contract, an alternative is not obvious. If procedures are too informal, absent class members would not be bound by the arbitration. For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). At least (this amount of process would presumably be required for absent parties to be bound by the results of arbitration.

We find it unlikely that in passing the FAA Congress meant to leave the disposition of these procedural requirements to an arbitrator. Indeed, class arbitration was not even envisioned by Congress when it passed the FAA in 1925; as the California Supreme Court admitted in *Discover Bank*, class arbitration is a "relatively recent development." 36 Cal.4th, at 163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110. And it *1752 is at the very least odd to think that an arbitrator would be entrusted with ensuring that third parties' due process rights are satisfied.

Third, class arbitration greatly increases risks to defendants. Informal procedures do of course have a cost: The absence of multilayered review makes it more likely that errors will go uncorrected. Defendants are willing to accept the costs of these errors in arbitration, since their impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts. But when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable. Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims. Other courts have noted the risk of "in terrorem" settlements that class actions entail, see, e.g., *Kohen v. Pacific Inv. Management Co. LLC*, 571 F.3d 672, 677-678 (C.A.7 2009), and class arbitration would be no different.

Arbitration is poorly suited to the higher stakes of class litigation. In litigation, a defendant may appeal a certification decision on an interlocutory basis and, if unsuccessful, may

appeal from a final judgment as well. Questions of law are reviewed *de novo* and questions of fact for clear error. In contrast, 9 U.S.C. § 10 allows a court to vacate an arbitral award *only* where the award "was procured by corruption, fraud, or undue means"; "there was evident partiality or corruption in the arbitrators"; "the arbitrators were guilty of misconduct in refusing to postpone the hearing ... or in refusing to hear evidence pertinent and material to the controversy[,] or of any other misbehavior by which the rights of any party have been prejudiced"; or if the "arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award ... was not made." The AAA rules do authorize judicial review of certification decisions, but this review is unlikely to have much effect given these limitations; review under § 10 focuses on misconduct rather than mistake. And parties may not contractually expand the grounds or nature of judicial review. *Hall Street Assocs.*, 552 U.S., at 578, 128 S.Ct. 1396. We find it hard to believe that defendants would bet the company with no effective means of review, and even harder to believe that Congress would have intended to allow state courts to force such a decision.⁸

[13] The Concepcions contend that because parties may and sometimes do agree to aggregation, class procedures are not necessarily incompatible with arbitration. But the same could be said about procedures that the Concepcions admit States may not superimpose on arbitration: Parties *could* agree to arbitrate pursuant to the Federal Rules of Civil Procedure, or pursuant to a discovery process rivaling that in litigation. Arbitration is a matter of contract, and the FAA requires courts to honor parties' expectations. *Rent-A-**1753 *Center, West*. 561 U.S., at —, 130 S.Ct. 2772, 2774. But what the parties in the aforementioned examples would have agreed to is not arbitration as envisioned by the FAA, lacks its benefits, and therefore may not be required by state law.

The dissent claims that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system. See *post*, at 9. But States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons. Moreover, the claim here was most unlikely to go unresolved. As noted earlier, the arbitration agreement provides that AT & T will pay claimants a minimum of \$7,500 and twice their attorney's fees if they obtain an arbitration award greater than AT & T's last settlement offer. The District Court found this scheme sufficient to provide incentive for the individual prosecution of meritorious claims that are not immediately settled, and

the Ninth Circuit admitted that aggrieved customers who filed claims would be "essentially guarantee[d]" to be made whole, 584 F.3d, at 856, n. 9. Indeed, the District Court concluded that the Concepcions were *better off* under their arbitration agreement with AT & T than they would have been as participants in a class action, which "could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery of a small percentage of a few dollars." *Luster*, 2008 WL 5216255, at *12.

* * *

Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941), California's *Discover Bank* rule is preempted by the FAA. The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, concurring.

Section 2 of the Federal Arbitration Act (FAA) provides that an arbitration provision "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The question here is whether California's *Discover Bank* rule, see *Discover Bank v. Superior Ct.*, 36 Cal.4th 148, 30 Cal.Rptr.3d 76, 113 P.3d 1100 (2005), is a "ground[d] ... for the revocation of any contract."

It would be absurd to suggest that § 2 requires only that a defense apply to "any contract." If § 2 means anything, it is that courts cannot refuse to enforce arbitration agreements because of a state public policy against arbitration, even if the policy nominally applies to "any contract." There must be some additional limit on the contract defenses permitted by § 2. Cf. *ante*, at 17 (opinion of the Court) (state law may not require procedures that are "not arbitration as envisioned by the FAA" and "lac[k] its benefits"); *post*, at 5 (BREYER, J., dissenting) (state law may require only procedures that are "consistent with the use of arbitration").

I write separately to explain how I would find that limit in the FAA's text. As I would read it, the FAA requires that an agreement to arbitrate be enforced unless a party successfully

challenges the formation of the arbitration agreement, such as by proving fraud or duress. 9 U.S.C. §§ 2, 4. Under this reading, I would reverse the Court of Appeals because a district court cannot follow both the FAA and the *Discover Bank* rule, which does not relate to defects in the making of an agreement.

*1754 This reading of the text, however, has not been fully developed by any party, cf. Brief for Petitioner 41, n. 12, and could benefit from briefing and argument in an appropriate case. Moreover, I think that the Court's test will often lead to the same outcome as my textual interpretation and that, when possible, it is important in interpreting statutes to give lower courts guidance from a majority of the Court. See *USAirways, Inc. v. Barnett*, 535 U.S. 391, 411, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002) (O'Connor, J., concurring). Therefore, although I adhere to my views on purposes-and-objectives pre-emption, see *Wyeth v. Levine*, 555 U.S. 555, —, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009) (opinion concurring in judgment), I reluctantly join the Court's opinion.

I

The FAA generally requires courts to enforce arbitration agreements as written. Section 2 provides that "[a] written provision in ... a contract ... to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Significantly, the statute does not parallel the words "valid, irrevocable, and enforceable" by referencing the grounds as exist for the "invalidation, revocation, or nonenforcement" of any contract. Nor does the statute use a different word or phrase entirely that might arguably encompass validity, revocability, and enforceability. The use of only "revocation" and the conspicuous omission of "invalidation" and "nonenforcement" suggest that the exception does not include all defenses applicable to any contract but rather some subset of those defenses. See *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute" (internal quotation marks omitted)).

Concededly, the difference between revocability, on the one hand, and validity and enforceability, on the other, is not obvious. The statute does not define the terms, and their ordinary meanings arguably overlap. Indeed, this Court and

others have referred to the concepts of revocability, validity, and enforceability interchangeably. But this ambiguity alone cannot justify ignoring Congress' clear decision in § 2 to repeat only one of the three concepts.

To clarify the meaning of § 2, it would be natural to look to other portions of the FAA. Statutory interpretation focuses on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme ... because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Examining the broader statutory scheme, § 4 can be read to clarify the scope of § 2's exception to the enforcement of arbitration agreements. When a party seeks to enforce an arbitration agreement in federal court, § 4 requires that "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue," the court must order arbitration "in accordance with the terms of the agreement."

Reading §§ 2 and 4 harmoniously, the "grounds ... for the revocation" preserved in § 2 would mean grounds related to the *1755 making of the agreement. This would require enforcement of an agreement to arbitrate unless a party successfully asserts a defense concerning the formation of the agreement to arbitrate, such as fraud, duress, or mutual mistake. See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-404, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) (interpreting § 4 to permit federal courts to adjudicate claims of "fraud in the inducement of the arbitration clause itself" because such claims "[g]o to the 'making' of the agreement to arbitrate"). Contract defenses unrelated to the making of the agreement—such as public policy—could not be the basis for declining to enforce an arbitration clause. *

II

Under this reading, the question here would be whether California's *Discover Bank* rule relates to the making of an agreement. I think it does not.

In *Discover Bank*, 36 Cal.4th 148, 30 Cal.Rptr.3d 76, 113 P.3d 1100, the California Supreme Court held that "class action waivers are, under certain circumstances, unconscionable as unlawfully exculpatory." *Id.*, at 65, 30 Cal.Rptr.3d 76, 113 P.3d, at 1112; see also *id.*, at 161, 30 Cal.Rptr.3d 76, 113 P.3d, at 1108 ("[C]lass action waivers [may be] substantively unconscionable inasmuch as they may operate effectively as exculpatory contract clauses that are contrary to public policy"). The court concluded that where a class-action waiver is found in an arbitration agreement in certain consumer contracts of adhesion, such waivers "should not be enforced." *Id.*, at 163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110. In practice, the court explained, such agreements "operate to insulate a party from liability that otherwise would be imposed under California law." *Id.*, at 161, 30 Cal.Rptr.3d 76, 113 P.3d, at 1108, 1109. The court did not conclude that a customer would sign such an agreement only if under *1756 the influence of fraud, duress, or delusion.

The court's analysis and conclusion that the arbitration agreement was exculpatory reveals that the *Discover Bank* rule does not concern the making of the arbitration agreement. Exculpatory contracts are a paradigmatic example of contracts that will not be enforced because of public policy. 15 G. Giesel, *Corbin on Contracts* §§ 85.1, 85.17, 85.18 (rev. ed.2003). Indeed, the court explained that it would not enforce the agreements because they are " 'against the policy of the law.' " 36 Cal.4th, at 161, 30 Cal.Rptr.3d 76, 113 P.3d, at 1108 (quoting Cal. Civ.Code Ann. § 1668); see also 36 Cal.4th, at 166, 30 Cal.Rptr.3d 76, 113 P.3d, at 1112 ("Agreements to arbitrate may not be used to harbor terms, conditions and practices that undermine public policy" (internal quotation marks omitted)). Refusal to enforce a contract for public-policy reasons does not concern whether the contract was properly made.

Accordingly, the *Discover Bank* rule is not a "groun[d] ... for the revocation of any contract" as I would read § 2 of the FAA in light of § 4. Under this reading, the FAA dictates that the arbitration agreement here be enforced and the *Discover Bank* rule is pre-empted.

Justice BREYER, with whom Justice GINSBURG, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.

The Federal Arbitration Act says that an arbitration agreement "shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract.*" 9 U.S.C. § 2 (emphasis added). California law sets forth certain circumstances in which "class action waivers"

in any contract are unenforceable. In my view, this rule of state law is consistent with the federal Act's language and primary objective. It does not "stan[d] as an obstacle" to the Act's "accomplishment and execution." *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941). And the Court is wrong to hold that the federal Act pre-empts the rule of state law.

I

The California law in question consists of an authoritative state-court interpretation of two provisions of the California Civil Code. The first provision makes unlawful all contracts "which have for their object, directly or in-directly, to exempt anyone from responsibility for his own ... violation of law." Cal. Civ.Code Ann. § 1668 (West 1985). The second provision authorizes courts to "limit the application of any unconscionable clause" in a contract so "as to avoid any unconscionable result." § 1670.5(a).

The specific rule of state law in question consists of the California Supreme Court's application of these principles to hold that "some" (but not "all") "class action waivers" in consumer contracts are exculpatory and unconscionable under California "law." *Discover Bank v. Superior Ct.*, 36 Cal.4th 148, 160, 162, 30 Cal.Rptr.3d 76, 113 P.3d 1100, 1108, 1110 (2005). In particular, in *Discover Bank* the California Supreme Court stated that, when a class-action waiver

"is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then ... the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury *1757 to the person or property of another.' " *Id.*, at 162–163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110.

In such a circumstance, the "waivers are unconscionable under California law and should not be enforced." *Id.*, at 163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110.

The *Discover Bank* rule does not create a "blanket policy in California against class action waivers in the consumer context." *Provencher v. Dell, Inc.*, 409 F.Supp.2d 1196, 1201 (C.D.Cal.2006). Instead, it represents the "application

of a more general [unconscionability] principle." *Gentry v. Superior Ct.*, 42 Cal.4th 443, 457, 64 Cal.Rptr.3d 773, 165 P.3d 556, 564 (2007). Courts applying California law have enforced class-action waivers where they satisfy general unconscionability standards. See, e.g., *Walnut Producers of Cal. v. Diamond Foods, Inc.*, 187 Cal.App.4th 634, 647–650, 114 Cal.Rptr.3d 449, 459–462 (2010); *Arguelles-Romero v. Superior Ct.*, 184 Cal.App.4th 825, 843–845, 109 Cal.Rptr.3d 289, 305–307 (2010); *Smith v. Americredit Financial Servs., Inc.*, No. 09cv1076, 2009 WL 4895280 (S.D.Cal., Dec.11, 2009); cf. *Provencher, supra*, at 1201 (considering *Discover Bank* in choice-of-law inquiry). And even when they fail, the parties remain free to devise other dispute mechanisms, including informal mechanisms, that, in context, will not prove unconscionable. See *Voli Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989).

II

A

The *Discover Bank* rule is consistent with the federal Act's language. It "applies equally to class action litigation waivers in contracts without arbitration agreements as it does to class arbitration waivers in contracts with such agreements." 36 Cal.4th, at 165–166, 30 Cal.Rptr.3d 76, 113 P.3d, at 1112. Linguistically speaking, it falls directly within the scope of the Act's exception permitting courts to refuse to enforce arbitration agreements on grounds that exist "for the revocation of any contract." 9 U.S.C. § 2 (emphasis added). The majority agrees. *Ante*, at 9.

B

The *Discover Bank* rule is also consistent with the basic "purpose behind" the Act. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985). We have described that purpose as one of "ensur[ing] judicial enforcement" of arbitration agreements. *Ibid.*; see also *Marine Transit Corp. v. Dreyfus*, 284 U.S. 263, 274, 11, 2, 52 S.Ct. 166, 76 L.Ed. 282 (1932) (" 'The purpose of this bill is to make valid and enforceable agreements for arbitration' " (quoting H.R.Rep. No. 96, 68th Cong., 1st Sess., 1 (1924); emphasis added)); 65 Cong. Rec.1931 (1924) ("It creates no new legislation, grants no new rights, except

a remedy to enforce an agreement in commercial contracts and in admiralty contracts"). As is well known, prior to the federal Act, many courts expressed hostility to arbitration, for example by refusing to order specific performance of agreements to arbitrate. See S.Rep. No. 536, 68th Cong., 1st Sess., 2 (1924). The Act sought to eliminate that hostility by placing agreements to arbitrate "upon the same footing as other contracts." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974) (quoting H.R.Rep. No. 96, at 2; emphasis added).

Congress was fully aware that arbitration could provide procedural and cost advantages. The House Report emphasized the "appropriate[ness]" of making arbitration *1758 agreements enforceable "at this time when there is so much agitation against the costliness and delays of litigation." *Id.*, at 2. And this Court has acknowledged that parties may enter into arbitration agreements in order to expedite the resolution of disputes. See *Preston v. Ferrer*, 552 U.S. 346, 357, 128 S.Ct. 978, 169 L.Ed.2d 917 (2008) (discussing "prime objective of an agreement to arbitrate"). See also *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985).

But we have also cautioned against thinking that Congress' primary objective was to guarantee these particular procedural advantages. Rather, that primary objective was to secure the "enforcement" of agreements to arbitrate. *Dean Witter*, 470 U.S. at 221, 105 S.Ct. 1238. See also *id.*, at 219, 105 S.Ct. 1238 (we "reject the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims"); *id.*, at 219, 217–218, 105 S.Ct. 1238 ("[T]he intent of Congress" requires us to apply the terms of the Act without regard to whether the result would be "possibly inefficient"); cf. *id.*, at 220, 105 S.Ct. 1238 (acknowledging that "expedited resolution of disputes" might lead parties to prefer arbitration). The relevant Senate Report points to the Act's basic purpose when it says that "[t]he purpose of the [Act] is clearly set forth in section 2," S.Rep. No. 536, at 2 (emphasis added), namely, the section that says that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2.

Thus, insofar as we seek to implement Congress' intent, we should think more than twice before invalidating a state law that does just what § 2 requires, namely, puts agreements to arbitrate and agreements to litigate "upon the same footing."

III

The majority's contrary view (that *Discover Bank* stands as an "obstacle" to the accomplishment of the federal law's objective, *ante*, at 9–18) rests primarily upon its claims that the *Discover Bank* rule increases the complexity of arbitration procedures, thereby discouraging parties from entering into arbitration agreements, and to that extent discriminating in practice against arbitration. These claims are not well founded.

For one thing, a state rule of law that would sometimes set aside as unconscionable a contract term that forbids class arbitration is not (as the majority claims) like a rule that would require "ultimate disposition by a jury" or "judicially monitored discovery" or use of "the Federal Rules of Evidence." *Ante*, at 8, 9. Unlike the majority's examples, class arbitration is consistent with the use of arbitration. It is a form of arbitration that is well known in California and followed elsewhere. See, e.g., *Keating v. Superior Ct.*, 109 Cal.App.3d 784, 167 Cal.Rptr. 481, 492 (1980) (officially depublished); American Arbitration Association (AAA), Supplementary Rules for Class Arbitrations (2003), <http://www.adr.org/sp.asp?id=21936> (as visited Apr. 25, 2011, and available in Clerk of Court's case file); JAMS, *The Resolution Experts*, Class Action Procedures (2009). Indeed, the AAA has told us that it has found class arbitration to be "a fair, balanced, and efficient means of resolving class disputes." Brief for AAA as *Amicus Curiae* in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, O.T.2009, No. 08–1198, p. 25 (hereinafter AAA *Amicus* Brief). And unlike the majority's examples, the *Discover Bank* rule imposes equivalent limitations on litigation; hence it cannot *1759 fairly be characterized as a targeted attack on arbitration.

Where does the majority get its contrary idea—that individual, rather than class, arbitration is a "fundamental attribut[e]" of arbitration? *Ante*, at 9. The majority does not explain. And it is unlikely to be able to trace its present view to the history of the arbitration statute itself.

When Congress enacted the Act, arbitration procedures had not yet been fully developed. Insofar as Congress considered detailed forms of arbitration at all, it may well have thought that arbitration would be used primarily where merchants sought to resolve disputes of fact, not law, under the customs of their industries, where the parties possessed roughly equivalent bargaining power. See *Mitsubishi Motors*, *supra*,

at 646, 105 S.Ct. 3346 (Stevens, J., dissenting); Joint Hearings on S. 1005 and H.R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 15 (1924); Hearing on S. 4213 and S. 4214 before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 9–10 (1923); Dept. of Commerce, Secretary Hoover Favors Arbitration—Press Release (Dec. 28, 1925), Herbert Hoover Papers—Articles, Addresses, and Public Statements File—No. 536, p. 2 (Herbert Hoover Presidential Library); Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L.Rev. 265, 281 (1926); AAA, Year Book on Commercial Arbitration in the United States (1927). This last mentioned feature of the history—roughly equivalent bargaining power—suggests, if anything, that California's statute is consistent with, and indeed may help to further, the objectives that Congress had in mind.

Regardless, if neither the history nor present practice suggests that class arbitration is fundamentally incompatible with arbitration itself, then on what basis can the majority hold California's law pre-empted?

For another thing, the majority's argument that the *Discover Bank* rule will discourage arbitration rests critically upon the wrong comparison. The majority compares the complexity of class arbitration with that of bilateral arbitration. See *ante*, at 14. And it finds the former more complex. See *ibid*. But, if incentives are at issue, the *relevant* comparison is not "arbitration with arbitration" but a comparison between class arbitration and judicial class actions. After all, in respect to the relevant set of contracts, the *Discover Bank* rule similarly and equally sets aside clauses that forbid class procedures—whether arbitration procedures or ordinary judicial procedures are at issue.

Why would a typical defendant (say, a business) prefer a judicial class action to class arbitration? AAA statistics "suggest that class arbitration proceedings take more time than the average commercial arbitration, but may take *less time* than the average class action in court." AAA *Amicus* Brief 24 (emphasis added). Data from California courts confirm that class arbitrations can take considerably less time than in-court proceedings in which class certification is sought. Compare *ante*, at 14 (providing statistics for class arbitration), with Judicial Council of California, Administrative Office of the Courts, Class Certification in California: Second Interim Report from the Study of California Class Action Litigation 18 (2010) (providing statistics for class-action litigation in California courts).

And a single class proceeding is surely more efficient than thousands of separate proceedings for identical claims. Thus, if speedy resolution of disputes were all that mattered, then the *Discover Bank* rule would reinforce, *1760 not obstruct, that objective of the Act.

The majority's related claim that the *Discover Bank* rule will discourage the use of arbitration because "[a]rbitration is poorly suited to ... higher stakes" lacks empirical support. *Ante*, at 16. Indeed, the majority provides no convincing reason to believe that parties are unwilling to submit high-stake disputes to arbitration. And there are numerous counterexamples. Loftus, Rivals Resolve Dispute Over Drug, Wall Street Journal, Apr. 16, 2011, p. B2 (discussing \$500 million settlement in dispute submitted to arbitration); Ziobro, Kraft Seeks Arbitration In Fight With Starbucks Over Distribution, Wall Street Journal, Nov. 30, 2010, p. B10 (describing initiation of an arbitration in which the payout "could be higher" than \$1.5 billion); Markoff, Software Arbitration Ruling Gives I.B.M. \$833 Million From Fujitsu, N.Y. Times, Nov. 30, 1988, p. A1 (describing both companies as "pleased with the ruling" resolving a licensing dispute).

Further, even though contract defenses, *e.g.*, duress and unconscionability, slow down the dispute resolution process, federal arbitration law normally leaves such matters to the States. *Ren-A-Center, West, Inc. v. Jackson*, 561 U.S. —, —, 130 S.Ct. 2772, 2775 (2010) (arbitration agreements "may be invalidated by 'generally applicable contract defenses'" (quoting *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996))). A provision in a contract of adhesion (for example, requiring a consumer to decide very quickly whether to pursue a claim) might increase the speed and efficiency of arbitrating a dispute, but the State can forbid it. See, *e.g.*, *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 67, 2009–Ohio–2054, ¶ 19, 908 N.E.2d 408, 412 ("Unconscionability is a ground for revocation of an arbitration agreement"); *In re Poly-America, L. P.*, 262 S.W.3d 337, 348 (Tex.2008) ("Unconscionable contracts, however—whether relating to arbitration or not—are unenforceable under Texas law"). The *Discover Bank* rule amounts to a variation on this theme. California is free to define unconscionability as it sees fit, and its common law is of no federal concern so long as the State does not adopt a special rule that disfavors arbitration. Cf. *Doctor's Associates, supra*, at 687. See also *ante*, at 4, n. (THOMAS, J., concurring) (suggesting that, under certain circumstances, California might remain free to apply its unconscionability doctrine).

Because California applies the same legal principles to address the unconscionability of class arbitration waivers as it does to address the unconscionability of any other contractual provision, the merits of class proceedings should not factor into our decision. If California had applied its law of duress to void an arbitration agreement, would it matter if the procedures in the coerced agreement were efficient?

Regardless, the majority highlights the disadvantages of class arbitrations, as it sees them. See *ante*, at 15–16 (referring to the “greatly increase[d] risks to defendants”; the “chance of a devastating loss” pressuring defendants “into settling questionable claims”). But class proceedings have countervailing advantages. In general agreements that forbid the consolidation of claims can lead small-dollar claimants to abandon their claims rather than to litigate. I suspect that it is true even here, for as the Court of Appeals recognized, AT & T can avoid the \$7,500 payout (the payout that supposedly makes the Concepcions’ arbitration worthwhile) simply by paying the claim’s face value, such that “the maximum gain to a customer for the hassle of arbitrating a \$30.22 dispute is still just \$30.22.” *Laster v. AT & T Mobility *1761 LLC*, 584 F.3d 849, 855, 856 (C.A.9 2009).

What rational lawyer would have signed on to represent the Concepcions in litigation for the possibility of fees stemming from a \$30.22 claim? See, e.g., *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 661 (C.A.7 2004) (“The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30”). In California’s perfectly rational view, nonclass arbitration over such sums will also sometimes have the effect of depriving claimants of their claims (say, for example, where claiming the \$30.22 were to involve filling out many forms that require technical legal knowledge or waiting at great length while a call is placed on hold). *Discover Bank* sets forth circumstances in which the California courts believe that the terms of consumer contracts can be manipulated to insulate an agreement’s author from liability for its own frauds by “deliberately cheat[ing] large numbers of consumers out of individually small sums of money.” 36 Cal.4th, at 162–163, 30 Cal.Rptr.3d 76, 113 P.3d, at 1110. Why is this kind of decision—weighing the pros and cons of all class proceedings alike—not California’s to make?

Finally, the majority can find no meaningful support for its views in this Court’s precedent. The federal Act has been in force for nearly a century. We have decided dozens of cases

about its requirements. We have reached results that authorize complex arbitration procedures. E.g., *Mitsubishi Motors*, 473 U.S., at 629, 105 S.Ct. 3346 (antitrust claims arising in international transaction are arbitrable). We have upheld nondiscriminatory state laws that slow down arbitration proceedings. E.g., *Volt Information Sciences*, 489 U.S., at 477–479, 109 S.Ct. 1248 (California law staying arbitration proceedings until completion of related litigation is not preempted). But we have not, to my knowledge, applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings. Cf. *Preston*, 552 U.S., at 355–356, 128 S.Ct. 978 (Act pre-empts state law that vests primary jurisdiction in state administrative board).

At the same time, we have repeatedly referred to the Act’s basic objective as assuring that courts treat arbitration agreements “like all other contracts.” *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 447, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006). See also, e.g., *Vaden v. Discover Bank*, 556 U.S. 49, —, 129 S.Ct. 1262, 1273–1274, 173 L.Ed.2d 206 (2009); *Doctor’s Associates, supra*, at 687, 116 S.Ct. 1652; *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 483–484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989); *Perry v. Thomas*, 482 U.S. 483, 492–493, n. 9, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987); *Mitsubishi Motors, supra*, at 627, 105 S.Ct. 3346. And we have recognized that “[t]o immunize an arbitration agreement from judicial challenge” on grounds applicable to all other contracts “would be to elevate it over other forms of contract.” *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, n. 12, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967); see also *Marchant v. Mead-Morrison Mfg. Co.*, 252 N.Y. 284, 299, 169 N.E. 386, 391 (1929) (Cardozo, C.J.) (“Courts are not at liberty to shirk the process of [contractual] construction under the empire of a belief that arbitration is beneficent any more than they may shirk it if their belief happens to be the contrary”); *Cohen & Dayton*, 12 Va. L.Rev., at 276 (the Act “is no infringement upon the right of each State to decide for itself what *1762 contracts shall or shall not exist under its laws”).

These cases do not concern the merits and demerits of class actions; they concern equal treatment of arbitration contracts and other contracts. Since it is the latter question that is at issue here, I am not surprised that the majority can find no meaningful precedent supporting its decision.

IV

By using the words "save upon such grounds as exist at law or in equity for the revocation of any contract," Congress retained for the States an important role incident to agreements to arbitrate. 9 U.S.C. § 2. Through those words Congress reiterated a basic federal idea that has long informed the nature of this Nation's laws. We have often expressed this idea in opinions that set forth presumptions. See, e.g., *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) ("[B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action"). But federalism is as much a question of deeds as words. It often takes the form of a concrete decision by this Court that respects the legitimacy of a State's action in an individual case. Here, recognition of that federalist

ideal, embodied in specific language in this particular statute, should lead us to uphold California's law, not to strike it down. We do not honor federalist principles in their breach.

With respect, I dissent.

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Parallel Citations

179 L.Ed.2d 742, 79 USLW 4279, 161 Lab.Cas. P 10,368, 11 Cal. Daily Op. Serv. 4842, 2011 Daily Journal D.A.R. 5846, 52 Communications Reg. (P&F) 1179, 22 Fla. L. Weekly Fed. S 957

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.
- 1 The Conceptions' original contract was with Cingular Wireless. AT & T acquired Cingular in 2005 and renamed the company AT & T Mobility in 2007. *Luster v. AT & T Mobility LLC*, 584 F.3d 849, 852, n. 1 (C.A.9 2009).
- 2 That provision further states that "the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding." App. to Pet. for Cert. 61a.
- 3 The guaranteed minimum recovery was increased in 2009 to \$10,000. Brief for Petitioner 7.
- 4 The dissent seeks to fight off even this eminently reasonable concession. It says that to its knowledge "we have not ... applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings," *post*, at 10 (opinion of BREYER, J.), and that "we should think more than twice before invalidating a state law that ... puts agreements to arbitrate and agreements to litigate 'upon the same footing' " *post*, at 4–5.
- 5 Relying upon nothing more indicative of congressional understanding than statements of witnesses in committee hearings and a press release of Secretary of Commerce Herbert Hoover, the dissent suggests that Congress "thought that arbitration would be used primarily where merchants sought to resolve disputes of fact ... [and] possessed roughly equivalent bargaining power." *Post*, at 6. Such a limitation appears nowhere in the text of the FAA and has been explicitly rejected by our cases. "Relationships between securities dealers and investors, for example, may involve unequal bargaining power, but we [have] nevertheless held ... that agreements to arbitrate in that context are enforceable." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 33, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991); see also *id.*, at 32–33, 111 S.Ct. 1647 (allowing arbitration of claims arising under the Age Discrimination in Employment Act of 1967 despite allegations of unequal bargaining power between employers and employees). Of course the dissent's disquisition on legislative history fails to note that it contains nothing—not even the testimony of a stray witness in committee hearings—that contemplates the existence of class arbitration.
- 6 Of course States remain free to take steps addressing the concerns that attend contracts of adhesion—for example, requiring class-action-waiver provisions in adhesive arbitration agreements to be highlighted. Such steps cannot, however, conflict with the FAA or frustrate its purpose to ensure that private arbitration agreements are enforced according to their terms.
- 7 The dissent claims that class arbitration should be compared to class litigation, not bilateral arbitration. *Post*, at 6–7. Whether arbitrating a class is more desirable than litigating one, however, is not relevant. A State cannot defend a rule requiring arbitration-by-jury by saying that parties will still prefer it to trial-by-jury.
- 8 The dissent cites three large arbitration awards (none of which stems from classwide arbitration) as evidence that parties are willing to submit large claims before an arbitrator. *Post*, at 7–8. Those examples might be in point if it could be established that the size of the arbitral dispute was predictable when the arbitration agreement was entered. Otherwise, all the cases prove is that arbitrators can give huge awards—which we have never doubted. The point is that in class-action arbitration huge awards (with limited judicial review)

will be entirely predictable, thus rendering arbitration unattractive. It is not reasonably deniable that requiring consumer disputes to be arbitrated on a classwide basis will have a substantial deterrent effect on incentives to arbitrate.

- * The interpretation I suggest would be consistent with our precedent. Contract formation is based on the consent of the parties, and we have emphasized that “[a]rbitration under the Act is a matter of consent.” *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989).

The statement in *Perry v. Thomas*, 482 U.S. 433, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987), suggesting that § 2 preserves all state-law defenses that “arose to govern issues concerning the validity, revocability, and enforceability of contracts generally,” *id.*, at 493, n. 9, 107 S.Ct. 2520, is dicta. This statement is found in a footnote concerning a claim that the Court “decline[d] to address.” *Id.*, at 493, n. 9, 107 S.Ct. 2520. Similarly, to the extent that statements in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. —, — n. 1, 130 S.Ct. 2772, 2778 n. 1 (2010), can be read to suggest anything about the scope of state-law defenses under § 2, those statements are dicta, as well. This Court has never addressed the question whether the state-law “grounds” referred to in § 2 are narrower than those applicable to any contract.

Moreover, every specific contract defense that the Court has acknowledged is applicable under § 2 relates to contract formation. In *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996), this Court said that fraud, duress, and unconscionability “may be applied to invalidate arbitration agreements without contravening § 2.” All three defenses historically concern the making of an agreement. See *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527, 547, 128 S.Ct. 2733, 171 L.Ed.2d 607 (2008) (describing fraud and duress as “traditional grounds for the abrogation of [a] contract” that speak to “unfair dealing at the contract formation stage”); *Hume v. United States*, 132 U.S. 406, 411, 414, 10 S.Ct. 134, 33 L.Ed. 393 (1889) (describing an unconscionable contract as one “such as no man in his senses and not under delusion would make” and suggesting that there may be “contracts so extortionate and unconscionable on their face as to raise the presumption of fraud in their inception” (internal quotation marks omitted)).

373 S.C. 14
Supreme Court of South Carolina.

Sherry H. SIMPSON, Respondent,
v.

MSA OF MYRTLE BEACH, INC. d/b/a Addy's
Harbor Dodge, Daimler Chrysler Services
NA, LLC, and CrossCheck, Inc., Defendants,
of whom MSA of Myrtle Beach, Inc. d/b/
a Addy's Harbor Dodge, is the Appellant.

No. 26293. | Heard Nov. 1,
2006. | Decided March 26, 2007.
| Rehearing Denied May 23, 2007.

Synopsis

Background: Customer brought action against automobile dealership alleging that the dealership violated the South Carolina Unfair Trade Practices Act and the South Carolina Manufacturers, Distributors, and Dealers Act by misrepresenting the trade-in value of her vehicle, artificially increasing the purchase price on new vehicle, and failing to provide all rebates promised. Dealership moved to stay the action and to compel arbitration. The Circuit Court, Horry County, B. Hicks Harwell, Jr., J., ordered mediation, then subsequently denied dealership's motion. Dealership appealed, and the Court of Appeals certified the case to the Supreme Court.

Holdings: The Supreme Court, Toal, C.J., held that:

[1] the Circuit Court was the proper forum to decide the enforceability of the arbitration clause;

[2] customer lacked meaningful choice in agreeing to arbitration clause;

[3] limitations on statutory remedies imposed by arbitration clause were unconscionable and unenforceable;

[4] provision of arbitration clause that excepted from arbitration certain claims dealership might pursue against customer was unconscionable and unenforceable; and

[5] the unconscionable provisions in arbitration clause were not severable.

Affirmed.

West Headnotes (22)

[1] Alternative Dispute Resolution



Scope

and standards of review

Arbitrability determinations are subject to de novo review, but a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings.

2 Cases that cite this headnote

[2] Alternative Dispute Resolution



Existence

and validity of agreement

The circuit court, rather than an arbitrator, was the proper forum to decide the enforceability of the arbitration clause in automobile trade-in and sales contract between customer and automobile dealership, which contract was governed by the South Carolina Uniform Arbitration Act (UAA), even though the contract specifically stated that arbitration applied to issues involving the "validity and scope" of the contract; the customer challenged the arbitration clause on grounds of unconscionability, bringing into question whether an arbitration agreement even existed in the first place. Code 1976, § 15-48-20(a).

2 Cases that cite this headnote

[3] Alternative Dispute Resolution



Constitutional

and statutory provisions and rules of court

The Federal Arbitration Act (FAA) codifies federal policy on arbitration and arbitration agreements. 9 U.S.C.A. § 1 et seq.

Cases that cite this headnote

[4] Alternative Dispute Resolution  law governs Commerce  Federal Courts  dispute resolution Unless the parties have contracted otherwise, the Federal Arbitration Act (FAA) applies in federal and state courts to any arbitration agreement regarding a transaction that involves interstate commerce, regardless of whether the parties contemplated an interstate transaction. 9 U.S.C.A. § 1 et seq. 3 Cases that cite this headnote	What Arbitration [8] Alternative	There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes. 1 Cases that cite this headnote Alternative Dispute Resolution  Construction in favor of arbitration Unless a court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should generally be ordered. Cases that cite this headnote
[5] Alternative Dispute Resolution  law governs Even in cases where the Federal Arbitration Act (FAA) otherwise applies, general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause. 9 U.S.C.A. § 1 et seq. 4 Cases that cite this headnote	What	[9] Alternative Dispute Resolution  Contractual or consensual basis Alternative Dispute Resolution  Validity of assent Alternative Dispute Resolution  Unconscionabi Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate, and a party may seek revocation of the contract under such grounds as exist at law or in equity, including fraud, duress, and unconscionability. Code 1976, § 15-48-10(a).
[6] Alternative Dispute Resolution  and validity of agreement Rulings that a trial court should determine the threshold validity of an arbitration agreement under the South Carolina Uniform Arbitration Act (UAA) are based on the contractual nature of arbitration agreements. Code 1976, § 15-48-20(a). 2 Cases that cite this headnote	Existence	2 Cases that cite this headnote [10] Alternative Dispute Resolution  Construction General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.
[7] Alternative Dispute Resolution 	Evidence	3 Cases that cite this headnote Alternative Dispute Resolution



"Unconscionability," as pertains to a contractual arbitration clause, is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

26 Cases that cite this headnote

[12] Contracts



Contracts

For purposes of determining whether a contract is unconscionable, the absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue.

11 Cases that cite this headnote

[13] Contracts



Contracts

In determining whether a contract was tainted by an absence of meaningful choice so as to render it unconscionable, courts should take into account: (1) the nature of the injuries suffered by the plaintiff; (2) whether the plaintiff is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause.

13 Cases that cite this headnote

[14] Alternative Dispute Resolution



Customer lacked meaningful choice in agreeing to an arbitration clause contained in automobile trade-in and sales contract formed with automobile dealership, as could justify a finding that the clause was unconscionable; the contract

was a "take it or leave it" adhesion contract. In the contract, the contract was for the purchase of customer's primary vehicle, customer did not possess business sophistication, the contract was hastily presented for customer's signature, and the arbitration clause was inconspicuous in light of its consequences.

12 Cases that cite this headnote

[15] Contracts



contracts; standardized contracts

Unconscionable

An "adhesion contract" is a standard form contract offered on a take-it-or-leave-it basis with terms that are not negotiable.

6 Cases that cite this headnote

[16] Contracts



contracts; standardized contracts

Contracts

Unconscionable

Contracts

"Adhesion contracts" are not per se unconscionable, but the finding of an adhesion contract may mark the beginning point of an unconscionability analysis.

4 Cases that cite this headnote

[17] Alternative Dispute Resolution



Limitations on statutory remedies imposed by arbitration clause in automobile sales contract between customer and automobile dealership, which provided that an arbitrator was not authorized to award punitive, exemplary, double, or treble damages as to disputes arising under the contract, were oppressive and one-sided and violated statutory law and public policy, and thus, were unconscionable and unenforceable; customer asserted claims that dealership violated the South Carolina Uniform Trade Practices Act

Unconscionable

Adhesion

Adhesion

Unconscionable

Unconscionable

(SCUPTA) and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (Dealers Act), which required courts to impose awards of either double or treble damages for violations. Code 1976, §§ 39-5-140(a), 56-15-110(1), 56-15-130.

11 Cases that cite this headnote

[18] Alternative Dispute Resolution



Provision of arbitration clause in sales contract between customer and automobile dealership that excepted from arbitration certain claims which dealership might opt to pursue against customer, and which further stipulated that any judicial proceeding brought by dealership pursuant to the exception would not be stayed pending the outcome of arbitration, was oppressive and one-sided, and, in combination with customer's lack of meaningful choice as to the arbitration clause, was unconscionable and thus unenforceable; the provision allowed dealership to bring a judicial proceeding that completely disregarded any pending claims from customer requiring arbitration.

5 Cases that cite this headnote

[19] Alternative Dispute Resolution



rights and obligations

Antitrust and Trade Regulation



vehicles; "lemon" laws

Customer was not precluded from attacking arbitration clause in sales contract with automobile dealership as a violation of the Magnuson-Moss Warranty Act (MMWA), even though customer's underlying claims against dealership alleged no violation of the MMWA, and therefore, the inclusion of the MMWA in the scope of the arbitration clause was unenforceable as a matter of public policy, where the arbitration clause applied to "any and all disputes" including "automobile warranty" and

"any consumer protection statute." Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, § 101 et seq., 15 U.S.C.A. § 2301 et seq.; 16 C.F.R. § 703.5(j).

Cases that cite this headnote

[20] Contracts



of law in general

Unconscionability



of Statute

Contracts



Policy in General

The Court of Appeals will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution.

Cases that cite this headnote

[21] Alternative Dispute Resolution



Severability

Unconscionable provisions in arbitration clause in the adhesion contract between customer and automobile dealership were not severable, but rather, the entire clause was wholly unconscionable and unenforceable based on the cumulative effect of multiple oppressive and one-sided provisions; severing only the offending provisions would not achieve the intent of the parties, but would effectively "rewrite" the contract, and two of the offending provisions were grossly unconscionable such that public policy was best served by invalidating the entire clause.

4 Cases that cite this headnote

[22] Alternative Dispute Resolution



or hearing

Trial

Trial court's consideration of parties' memoranda on the unconscionability of an arbitration clause in sales contract between customer and automobile dealership, which consideration was conducted without a hearing, did not deprive dealership of a reasonable opportunity to present evidence as to the commercial setting, purpose, and effect of the arbitration clause, as statutorily required upon a claim of a contract's unconscionability, where the dealership had four months between customer's motion alleging unconscionability and the time dealership filed a response. Code 1976, § 36--2--302(2).

1 Cases that cite this headnote

Attorneys and Law Firms

****665** Joseph Gregory Studemeyer, of Columbia, for Appellant.

Lawrence Sidney Connor, IV, of Kelaher, Connell & Connor, of Surfside Beach, for Respondent.

Opinion

Chief Justice TOAL:

19** This case arises out of an arbitration clause in an automobile trade-in contract between an automobile dealership and a customer. The automobile dealership filed a motion for protective order and/or to stay and to compel arbitration in response to the customer's civil action. The trial court denied the dealership's motion on the grounds *666** that the arbitration clause was unconscionable. This appeal followed.

FACTUAL/PROCEDURAL BACKGROUND

Appellant MSA of Myrtle Beach, Inc d/b/a Addy's Harbor Dodge ("Addy"), a car dealership, and Respondent Sherry H. Simpson ("Simpson") entered into a contract whereby Simpson traded in her 2001 Toyota 4Runner for a new 2004 Dodge Caravan. Directly above the signature line on the first page of the contract, the signee was instructed in bold to "SEE ADDITIONAL TERMS AND CONDITIONS ON OPPOSITE PAGE." The additional terms and conditions contained an arbitration clause stating the following:

10. **ARBITRATION** Any and all disputes, claims or controversies between Dealer and Customer or between any ***20** officers, directors, agents, employees, or assignees of Dealer and Customer arising out of or relating to: (a) automobile warranty, workmanship, or repair; (b) the terms or enforceability of the sale, lease, or financing of any vehicle; (c) any claim of breach of contract, misrepresentation, conversion, fraud, or unfair and deceptive trade practices against Dealer or any officers, directors, agents, employees, or assignees of Dealer; (d) any and all claims under any consumer protection statute; and (e) the validity and scope of this contract, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties expressly waive all rights to trial by jury on such claims. **Provided, however, that nothing in this contract shall require Dealer to submit to arbitration any claims by Dealer against customer for claim and delivery, repossession, injunctive relief, or monies owed by customer in connection with the purchase or lease of any vehicle and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration. The filing fees for arbitration shall be paid by the party initiating arbitration. The arbitrator may allocate the other arbitration fees as he/she deems appropriate. In addition to any discovery permitted by the Commercial Arbitration rules, any party may take one disposition [sic] of an opposing party. The parties agree to exchange all exhibits to be used in arbitration 7 days before arbitration. The arbitrator shall determine the controversy in accordance with the terms of this contract between the parties and shall not consider any**

parole evidence which purports to alter, modify, vary, add to, or contradict such contract. The arbitrator shall give effect to all applicable statutes of limitation. Any arbitration under this agreement shall take place in Horry County, South Carolina and Customer agrees that the courts of Horry County, South Carolina shall have exclusive jurisdiction over enforcement of this contract and any award made by any arbitrator pursuant to this contract. In no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect) against either party. Unless otherwise agreed in writing, no claims *21 against Dealer shall be consolidated with other claims in the nature of a class action.

Six months later, Simpson filed a complaint in the Horry County court of common pleas alleging Addy violated the South Carolina Unfair Trade Practices Act and the South Carolina Manufacturers, Distributors, and Dealers Act by misrepresenting the trade-in value of the vehicle, artificially increasing the purchase price, and failing to provide all rebates promised. Simpson sought damages consistent with the maximum statutory remedies permitted for violations of these statutes.

Addy's answer denied Simpson's allegations and asserted that the contract between the parties contained an arbitration clause such that the matter should be stayed and that Simpson's only remedy was to file for arbitration. Addy contemporaneously filed a motion for protective order and/or to stay and compel arbitration. Thereafter, Simpson filed a memorandum in opposition to Addy's motion alleging that the arbitration clause was unconscionable and unenforceable.

At the motion hearing, the trial court ordered the parties to attempt mediation. After the parties notified the trial court that mediation failed, the trial court issued an order denying Addy's motion on the grounds **667 that the arbitration clause was unconscionable. Addy filed this appeal.

The case was certified to this Court from the court of appeals pursuant to Rule 204(b), SCACR, and Addy raises the following issues for review:

- I. Did the lower court err in ruling that the arbitration clause was unenforceable without first submitting the issue of enforceability to arbitration?
- II. Did the lower court err in denying Addy's motion to stay the civil litigation pending arbitration?
- III. Did the lower court err in failing to provide Addy a reasonable opportunity to present evidence as to the commercial setting, purpose, and effect of the arbitration clause in order to aid the court in making a determination on unconscionability?

*22 STANDARD OF REVIEW

[1] Arbitrability determinations are subject to *de novo* review. *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Cl.App.2005). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Cl.App.2003).

LAW/ANALYSIS

I. The appropriate forum for determining the validity of the arbitration clause.

[2] As a preliminary matter, Addy contends that the trial court erred in ruling on the arbitration clause's enforceability rather than first submitting that issue of enforceability to arbitration. We disagree.

[3] [4] [5] The South Carolina Uniform Arbitration Act (UAA) generally provides that where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. S.C.Code Ann. § 15-48-20(a)(2005). If no agreement is found to exist, the court must deny any application to arbitrate. ¹ *Id.*

*23 [6] Our precedents in this area echo the UAA's policy that the trial court should determine the threshold validity of the arbitration agreement. *See Zubinski*, 346 S.C.

at 596, 553 S.E.2d at 118 ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise."); *Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Cl.App.2003) ("The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties."). Such rulings are based on the contractual nature of arbitration agreements. *See Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Cl.App.1999) ("Arbitration is available only when the parties involved contractually agreed to arbitrate.").

This proposition finds support in other jurisprudence. The United States Supreme Court has noted that, in limited circumstances, a court should assume that the parties *668 intended the court to decide certain arbitration issues in the absence of "clear and unmistakable" evidence to the contrary. *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452, 123 S.Ct. 2402, 156 L.Ed.2d 414 (2003) (quoting *AT & T Techs., Inc. v. Communications Workers of America*, 475 U.S. 643, 649, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986)). These limited circumstances typically involve certain "gateway matters," such as whether the parties have a valid arbitration agreement at all, or whether an arbitration clause applies to a certain type of controversy. *Id.* Thus, the prevailing authority supports the notion that courts may have at least a limited role where an arbitration clause otherwise applies.

In this case, the trial court was the proper forum for determining the enforceability of the arbitration clause in the contract between Simpson and Addy. Although the clause specifically stated that arbitration applied to issues involving "the validity and scope of this contract," Simpson challenged the validity of the arbitration provision on grounds of unconscionability, bringing into question whether an arbitration agreement even existed in the first place. Under the UAA, *24 the question of this clause's validity was for the court to decide. *See* S.C.Code Ann. § 15-48-20(a) (2005).

Furthermore, because Simpson has challenged the validity of the entire arbitration clause on grounds of unconscionability, there can be no "clear and unmistakable" evidence that the parties actually agreed to arbitrate the gateway matter of the arbitration clause's validity. Accordingly, the trial court did not err in ruling on the issue of validity instead of submitting the issue itself to arbitration.

II. Denial of Addy's motion for protective order and/or to stay and compel arbitration.

Addy argues that the trial court erred in denying Addy's motion for protective order and/or to stay and compel arbitration. We disagree.

[7] [8] There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes. *Towles*, 338 S.C. at 34, 524 S.E.2d at 842. The South Carolina Uniform Arbitration Act (UAA) provides that in any contract evidencing a transaction involving commerce, a written provision to settle by arbitration shall be valid, irrevocable, and enforceable. S.C.Code Ann. § 15-48-10(a) (2005). Unless a court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should generally be ordered. *Zubinski*, 346 S.C. at 597, 553 S.E.2d at 118.

[9] Despite these clear rules, arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. *Towles*, 338 S.C. at 37, 524 S.E.2d at 843-44. Accordingly, a party may seek revocation of the contract under "such grounds as exist at law or in equity," including fraud, duress, and unconscionability. S.C.Code Ann. § 15-48-10(a). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C.Code Ann. § 15-48-20(a).

[10] [11] General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364. In South Carolina, *25 unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. S.C.Code Ann. § 36-2-302(1) (2003).

In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. *See Hooters *669 of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir.1999). It is under this general

rubric that we determine whether a contract provision is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms.

A. Absence of meaningful choice

Addy argues that the facts do not show that Simpson had no meaningful choice in agreeing to arbitrate. We disagree.

[12] [13] Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. See *Carlson v. General Motors Corp.*, 883 F.2d 287, 295 (4th Cir.1989). In determining whether a contract was "tainted by an absence of meaningful choice," *id.* at 295, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *Id.* at 293. See also *Holler v. Holler*, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005) ("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17A AM.JUR.2D *Contracts* § 279 (2004))).

*26 There are many cases in this jurisdiction and others involving the enforceability of arbitration clauses in adhesion contracts between commercial entities and consumers. Each transaction is analyzed on its own particular facts in conjunction with the federal and/or state policies favoring arbitration. We begin our inquiry with a focus on the decisions of courts in Ohio, which have heard numerous cases in the very recent past specifically addressing issues of unconscionability of arbitration clauses embedded in adhesion contracts between automobile retailers and consumers. See *Long v. N. Ill. Classic Auto Brokers*, 2006 WL 3783507 (Ohio Ct.App. 9th Dist.2006); *Felix v. Ganley Chevrolet, Inc.*, 2006 WL 2507469 (Ohio Ct.App. 8th Dist.2006); *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 809 N.E.2d 1161 (9th Dist.2004); *Battle v. Bill Swad Chevrolet, Inc.*, 140 Ohio App.3d 185, 746 N.E.2d 1167 (10th Dist.2000).

The Ohio courts characterize automobiles as a "necessity" and factor this characterization into a determination of whether a consumer had a "meaningful choice" in negotiating

the arbitration agreement. See, e.g., *Eagle*, 809 N.E.2d at 1175; Cf. *Hemmingsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69, 85 (1960) (invalidating auto manufacturer's standard-form disclaimers of implied warranties because such disclaimers frustrated consumer protection legislation given that in modern times, "automobiles are a common and necessary adjunct of daily life"). In this same context, the Ohio courts have adhered to the idea that sales agreements between consumers and retailers "are subject to considerable skepticism upon review, due to the disparity in bargaining positions of the parties." *Eagle*, 809 N.E.2d at 1179. Under the Ohio courts' rationale, "the presumption in favor of arbitration clauses is substantially weaker when there are strong indications that the contract at issue is an adhesion contract, and the arbitration clause itself appears to be adhesive in nature. In this situation there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration." *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 700 N.E.2d 859, 866 (1998).

[14] [15] [16] Turning to the instant case, we first note that under general principles of state contract law, an adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Neither party disputes that the contract entered into by Simpson and Addy was an adhesion contract as such contracts are standard in the automobile retail industry. Adhesion contracts, however, are not per se unconscionable. Therefore, finding an adhesion contract is merely the beginning point of the analysis. *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (Ct.App.1998).

*670 We agree with the rationale of the Ohio courts and proceed to analyze this contract between a consumer and automobile retailer with "considerable skepticism." Under this approach, we first observe that the contract between Simpson and Addy involved a vehicle intended for use as Simpson's primary transportation, which is critically important in modern day society. Applying the factors considered by the Fourth Circuit in analyzing arbitration clauses, we also acknowledge Simpson's claim that she did not possess the business judgment necessary to make her aware of the implications of the arbitration agreement, and that she did not have a lawyer present to provide any assistance in the matter. But see *Munoz*, 343 S.C. 531, 542 S.E.2d 360 (failing to factor in the weaker party's status as a consumer in analyzing an unconscionability claim in an

arbitration agreement between a consumer and a lender). Similarly, we note Simpson's allegation that the contract was "hastily" presented for her signature.

Moreover, regardless of the general legal presumptions that a party to a contract has read and understood the contract's terms,² we also find it necessary to consider the otherwise inconspicuous nature of the arbitration clause in light of its consequences. The loss of the right to a jury trial is an obvious result of arbitration. However, this particular arbitration clause also required Simpson to forego certain remedies that were otherwise required by statute.³ While certain *28 phrases within other provisions of the additional terms and conditions were printed in all capital letters,⁴ the arbitration clause in its entirety was written in the standard small print, and embedded in paragraph ten (10) of sixteen (16) total paragraphs included on the page. Although this Court acknowledges that parties are always free to contract away their rights, we cannot, under the circumstances, ignore the inconspicuous nature of a provision, which was drafted by the superior party, and which functioned to contract away certain significant rights and remedies otherwise available to Simpson by law. Furthermore, and contrary to Addy's argument, the present transaction may be distinguished from that in *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004), where both parties were sophisticated business interests in an arms-length negotiation.

Accordingly, we find that when considered as a whole and in the context of an adhesion contract for a vehicle trade-in, the circumstances reveal that Simpson had no meaningful choice in agreeing to arbitrate claims with Addy.

B. Oppressive and one-sided terms

I. Limitation on statutory remedies in an arbitration clause

[17] Addy contends that the arbitration clause's limitation on statutory remedies was not oppressive and one-sided. We disagree.

The arbitration clause in Simpson's contract with Addy provides that "[i]n no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect)

against either party." Simpson's underlying complaint filed in civil court alleged, among other things, that Addy violated the South Carolina Uniform Trade Practices Act (SCUPTA) and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (Dealers Act). The SCUPTA requires a *29 court to award treble damages for violations of the statute.⁵ Similarly, the Dealers Act requires a court to **671 award double damages for violations of the statute.⁶

In arguing that this provision was not oppressive and one-sided, Addy relies on *Carolina Care Plan*. In that case, this Court held that the issue of whether an arbitration clause prohibiting an arbitrator from awarding "punitive damages" violated the public policy of the SCUTPA was not ripe for review. 361 S.C. 544, 606 S.E.2d 752. The Court explained that "an arbitrator may or may not choose to award treble damages in accordance with the SCUTPA, depending upon whether an arbitrator finds the SCUPTA was violated and whether the arbitrator finds that statutory treble damages are punitive or compensatory damages." *Id.* at 557, 606 S.E.2d at 759 (discussing *PacificCare Health Systems v. Book*, 538 U.S. 401, 123 S.Ct. 1531, 155 L.Ed.2d 578 (2003)) (holding it was premature to conclude that meaningful relief for the plaintiff under RICO was unavailable in arbitration because the arbitrator may conclude that a restriction on "punitive damages" in an arbitration clause did not preclude the authorization of treble damages under RICO)).

Addy's comparison falls short. In fact, the present case requires the *Carolina Care Plan* analysis to be taken one step further because the arbitration clause at issue here goes beyond banning "punitive" damages generally and specifically prohibits an arbitrator from awarding statutorily required treble or double damages. Therefore, an arbitrator's ultimate classification of an award as "compensatory" or "punitive" is no longer relevant in an analysis of whether this particular clause is unconscionable: under this arbitration clause, treble and double damages—whether classified as compensatory or punitive—are prohibited outright.

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions *30 of the Constitution. *Carolina Care Plan*, 361 S.C. at 555, 606 S.E.2d at 758. In our opinion, this rule has two applications in the present case. First, this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA and Dealers Act claims. Second, unconditionally permitting

the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest.⁷ Therefore, under the general rule, this provision in the arbitration clause is unenforceable.

Accordingly, we find the provision prohibiting double and treble damages to be oppressive, one-sided, and not geared toward achieving an unbiased decision by a neutral decision-maker. In conjunction with Simpson's lack of meaningful choice in agreeing to arbitrate, this provision is an unconscionable waiver of statutory rights, and therefore, unenforceable.

*2. Dealer's remedies not stayed
pending outcome of arbitration*

[18] Addy argues that the arbitration clause's provision reserving certain judicial remedies to the dealer and authorizing the award of the dealer's remedies even if the consumer's arbitration proceedings have not concluded is not oppressive and one-sided. We disagree.

****672 *31** While stating that "all disputes, claims or controversies between Dealer and Customer" are to be settled in binding arbitration, the arbitration clause notes several exceptions. Specifically, the clause provides:

Nothing in this contract shall require the Dealer to submit to arbitration any claims by Dealer against Customer for claim and delivery, repossession, injunctive relief, or monies owed by Consumer in connection with the purchase or lease of any vehicle and any claims by Dealer for these remedies shall not be stayed pending the outcome of arbitration. [emphasis added].

Our courts have held that lack of mutuality of remedy in an arbitration agreement, on its own, does not make the arbitration agreement unconscionable. *See Munoz*, 343 S.C. at 542, 542 S.E.2d at 365 (holding that an arbitration agreement between a consumer and a lender was not unconscionable where it allowed the lender to seek foreclosure while requiring the consumer to arbitrate any counterclaim in the foreclosure action); *Lackey v. Green Tree Financial Corp.*,

330 S.C. at 402, 498 S.E.2d at 905 (same). The primary basis for this conclusion in *Munoz* and *Lackey* was that requiring one party to seek a remedy through arbitration rather than the judicial system did not deprive that party of a remedy altogether. *See Munoz*, 343 S.C. at 542, 542 S.E.2d at 365. The *Lackey* court additionally explained that the judicial remedies which the lender in that case had reserved for itself (*i.e.* replevin and foreclosure actions) provided specific procedures for protecting the collateral and the parties during the pendency of the arbitration proceedings. *Lackey*, 330 S.C. at 401, 498 S.E.2d at 905. Because these protections related to both parties and were facilitated by enforcement procedures specified by law, the court of appeals concluded that, regardless of the lack of mutuality of remedy, the arbitration clause bore "a reasonable relationship to the business risks" inherent in secured transactions. *Id.*

However, the essence of Simpson's unconscionability claim is not the general lack of mutuality of remedy, but rather the arbitration agreement's express stipulation that the dealer may bring a judicial proceeding that completely disregards any pending consumer claims that require arbitration. The clauses at issue in *Munoz* and *Lackey* contained no such directives. To this effect, we can easily envision a scenario in which a dealer's claim and delivery action is initiated in court, completed, and the vehicle sold prior to an arbitrator's determination of the consumer's rights in the same vehicle. As the arbitration agreement between Simpson and Addy is written, the dealer collects on a judgment awarded in a judicial proceeding regardless of any protections for the collateral afforded by law.

Addy's suggestion that there are procedural motions⁸ available to the consumer which offset any potentially inconsistent effects of this provision, in our opinion, shows an informal acknowledgement on the part of Addy that such a provision on its face is indeed one-sided. These procedural mechanisms only act to place an additional burden on the consumer to ensure that the vehicle in controversy is not disposed of in a court proceeding initiated by the dealer before the adjudication of the consumer's claims in arbitration.

We continue to abide by our previous holdings in *Munoz* and *Lackey* that lack of mutuality of remedy will not invalidate an arbitration agreement. However, we find that the provision in the arbitration clause dictating that the dealer's judicial remedies supersede the consumer's arbitral remedies is one-sided and oppressive and does not promote a neutral and unbiased arbitral forum. Accordingly, in light of Simpson's

lack of meaningful choice in agreeing to arbitrate, the provision is unconscionable and unenforceable.

3. Limitation on bringing warranty claims in a judicial forum

[19] Addy argues that Simpson may not attack the arbitration clause on the grounds that it violates the Magnuson-Moss Warranty Act (MMWA), **673 15 U.S.C.A § 2301 *et seq.* (1997), because Simpson's underlying claims alleged no violation of the MMWA. We disagree.

The arbitration clause in the contract between Simpson and Addy states that it applies to "any and all disputes" including "automobile warranty" and "any consumer protection statute" *33 —all of which implicate the MMWA. The provision further specifies that such matters are to be resolved only by "binding arbitration."

Rules promulgated by the Federal Trade Commission (FTC) state that informal dispute resolution procedures set forth in written warranties under the MMWA are not to be legally binding on any person. 16 C.F.R. § 703.5(j) (2006). *See also Richardson v. Palm Harbor Homes, Inc.*, 254 F.3d 1321 (11th Cir.2001). Moreover, the MMWA has been interpreted to supersede the FAA with respect to consumer claims for breach of written warranty. *See Boyd v. Homes of Legend, Inc.*, 981 F.Supp. 1423, 1437-38 (M.D.Ala.1997). Therefore, the federal government has made it clear that parties may not agree to arbitrate an MMWA claim as the arbitration clause between Simpson and Addy attempted to do here.

[20] This Court will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Carolina Care Plan*, 361 S.C. at 555, 606 S.E.2d at 758. The fact that Simpson did not bring a claim under the MMWA is irrelevant to our conclusion that the inclusion of the MMWA in the scope of the arbitration clause is unenforceable as a matter of public policy. Accordingly, we hold that this provision of the arbitration clause is an unconscionable and unenforceable violation of public policy.

C. Severability

In the alternative to its argument that the arbitration clause is not unconscionable, Addy suggests that any provision found by this Court to be unconscionable may be severed

from the clause and arbitration allowed to otherwise proceed. In fact, it seems as though the "Additional Terms and Conditions" section of the contract anticipated just such a scenario. Paragraph fifteen (15) articulates a severability clause providing that:

In the event any provision of this contract shall be held invalid, illegal, or unenforceable, the validity, legality, and *34 enforceability of the remaining provisions shall not be affected or impaired thereby.

We disagree.

In consideration of the federal and state policies favoring arbitration agreements, severability clauses have been used to remove the unenforceable provisions in an arbitration clause while saving the parties' overall agreement to arbitrate. *See Healthcomp Evaluation Servs. Corp. v. O'Donnell*, 817 So.2d 1095, 1098 (Fla.Ct.App.2d Dist.2002) (holding that an arbitration clause was divisible and therefore a severability provision acted to remove the unenforceable provision from the arbitration clause without affecting the intent of the parties); *Primerica Fin. Servs. v. Wise*, 217 Ga.App. 36, 456 S.E.2d 631, 635 (1995) (upholding the trial court's application of a severability clause to an arbitration agreement "in light of the liberal federal policy favoring arbitration agreements and the parties' intentions in entering into those agreements"). Additionally, legislation permits this Court to "refuse to enforce" any unconscionable clause in a contract or to "limit its application so as to avoid an unconscionable result." S.C.Code Ann. § 36-2-302(1) (2003).

At the same time, courts have acknowledged that severability is not always an appropriate remedy for an unconscionable provision in an arbitration clause. Although, "a critical consideration in assessing severability is giving effect to the intent of the contracting parties," the D.C. Circuit recently cautioned, "If illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties." *Booker v. Robert Half Int'l Inc.*, 413 F.3d 77, 84-85 (D.C.Cir.2005) (citations omitted). Similarly, the general principle in this State is that it is not the function of the court to rewrite contracts for parties. *Lewis v. Premium **674 Inv. Corp.*, 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002).

[21] In this case, we find the arbitration clause in the adhesion contract between Simpson and Addy wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions contained within the entire clause. While this Court does not ignore *35 South Carolina's policy favoring arbitration, we hold that the intent of the parties is best achieved by severing the arbitration clause in its entirety rather than "rewriting" the contract by severing multiple unenforceable provisions.⁹

*36 Additionally, we note that there is no specific set of factual circumstances establishing the line which must be crossed when evaluating an arbitration clause for unconscionability. Therefore, in holding today that the arbitration clause in the vehicle trade-in contract between Addy and Simpson is unconscionable due to a multitude of one-sided terms, we do not overrule our decision in *Munoz*, where we held that an adhesion contract between a consumer and a lender was not unconscionable because it lacked mutuality of remedy. Instead, we emphasize the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions.

Accordingly, we affirm the trial court's denial of the motion to compel arbitration.

III. Presentation of evidence to determine unconscionability

[22] Addy argues that the trial court erred in failing to provide Addy a reasonable opportunity to present evidence as to the commercial setting, purpose, and effect of the arbitration clause in order to aid the court in making a determination on unconscionability. We disagree.

S.C.Code Ann. § 36-2-302(2) (2003) provides:

*675 When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable

the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Simpson filed her memorandum in opposition to Addy's motion alleging the unconscionability of the arbitration clause on March 16. After a motion hearing that same day, the trial court ordered mediation. When mediation failed, the court ordered Addy to submit a memorandum in support of its motion, which it did on July 13. The court considered the arguments in both memoranda before issuing its order on August 12.

*37 In our opinion, the four months that passed between Simpson's memorandum and Addy's response was a "reasonable opportunity" for Addy to consider Simpson's arguments and respond with respect to the commercial setting, purpose, and effect of the arbitration clause. Accordingly, the trial court's consideration of the parties' memoranda without a hearing did not deny Addy a reasonable opportunity to present its evidence in order to aid the court's determination.

CONCLUSION

For the foregoing reasons, we find the arbitration clause between Simpson and Addy unconscionable and unenforceable in its entirety. Accordingly, we affirm the trial court's denial of Addy's motion to stay litigation pending arbitration.

MOORE, WALLER, BURNETT and PLECONES, JJ., concur.

Parallel Citations

644 S.E.2d 663, 62 UCC Rep.Serv.2d 217

Footnotes

- 1 The Federal Arbitration Act (FAA), 9 U.S.C.A. § 1 *et. seq.* (1999) codifies federal policy on arbitration and arbitration agreements. Unless the parties have contracted otherwise, the FAA applies in federal and state courts to any arbitration agreement regarding a transaction that involves interstate commerce, regardless of whether the parties contemplated an interstate transaction. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Although the vehicle trade-in contract at issue in the instant case involves interstate commerce, the contract contains a choice of law provision designating South Carolina law as governing law. Therefore, the UAA governs where, as here, the validity of the choice of law provision is not in issue. Additionally, FAA pre-emption

of the UAA is not an issue in this case because the state laws applicable to this case do not operate to completely invalidate the parties' agreement to arbitrate. See *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001).

This distinction is insignificant in the instant case because the UAA and FAA provisions that apply to the issues are nearly identical. See S.C.Code Ann. § 15-48-10(a) (2005) and 9 U.S.C.A. § 2 (1999). Therefore, the analysis under state law is ultimately the same as the analysis under federal law. Moreover, even in cases where the FAA otherwise applies, general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364.

2 See *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 ("[A] person who can read is bound to read an agreement before signing it."); *Towles*, 338 S.C. at 39, 524 S.E.2d at 845 ("[T]he law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents simply from reading the document.").

3 Specifically, the arbitration clause prohibited an arbitrator from awarding double or treble damages.

4 This included phrases in the "Disclaimer of Warranties" provision and the "Used Vehicle Disclosure." We note that S.C.Code Ann. § 36-2-316 (2003) requires disclaimers of implied warranties to be "conspicuous."

5 See S.C.Code Ann. § 39-5-140(a) (1976) (providing that a "court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper" [emphasis added]).

6 See S.C.Code Ann. § 56-15-110(1) (2006) (providing that an individual "shall recover double the actual damages by him sustained" [emphasis added]).

7 This Court has previously recognized the strong public policy notions behind the enactment of the SCUPTA and the Dealers Act. See *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 263, 536 S.E.2d 399, 404 (Cl.App.2000) ("It is a violation of the Dealers Act for any manufacturer or motor vehicle dealer 'to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public.' " (citing S.C.Code Ann. § 56-15-40(1) (1991))); *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Cl.App.1989) (defining an unfair trade practice as a practice which is "offensive to public policy or which is immoral, unethical, or oppressive"), *aff'd in part, rev'd in part, on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992) (per curiam). The Dealers Act also specifically provides that "any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable." S.C.Code Ann. § 56-15-130 (2006).

8 Specifically, Addy suggests that a motion for protective order or a motion to stay pending arbitration.

9 We acknowledge that in light of the state and federal policies favoring arbitration, many courts view severing the offending provision and otherwise proceeding with arbitration to be the preferred remedy for an unconscionable provision in an arbitration clause. However, we find the present case is distinguishable from those cases prescribing severability such that the invalidation of the arbitration clause in its entirety is the more appropriate remedy.

First, the arbitration clause in the contract between Simpson and Addy contained a total of three unconscionable provisions while arbitration clauses examined by courts prescribing severability generally contained only one offending provision. See *Kristian v. Comcast Corp.*, 446 F.3d 25 (1st Cir.2006) (severing a provision in an arbitration clause that prohibited the award of treble damages); *Safranek v. Copart, Inc.*, 379 F.Supp.2d 927 (D.Ill.2005) (severing a provision in an arbitration clause that violated Title VII by requiring each party to bear its own attorney's fees and costs); *Ex parte Celtic Life Ins. Co.*, 834 So.2d 766 (Ala.2002) (severing a provision in an arbitration clause that was void as a violation of public policy by prohibiting the award of punitive damages); *Healthcomp Evaluation Servs. Corp.*, 817 So.2d 1095 (severing a provision in an arbitration clause that violated state law by not permitting the parties to appeal or review an arbitration award). But see *Primerica Fin. Servs. v. Wise*, 217 Ga.App. 36, 456 S.E.2d 631 (severing two provisions governing the eligibility of arbitrators and the judicial review of an arbitration). Second, two of the provisions in this case were found unconscionable because the provisions contravened state and federal consumer protection law. The sheer magnitude of unconscionability present in a provision that prevents a party from vindicating the party's statutory rights, along with the fact that such a grossly unconscionable provision occurred not once, but twice, requires that we give significant consideration to a remedy in this situation that best serves the interests of public policy. See *Graham Oil Co. v. ARCO Prods. Co.*, 43 F.3d 1244, 1249 (9th Cir.1994) (noting that severance of illegal provisions is inappropriate when the entire arbitration clause represents an "integrated scheme to contravene public policy" (citations omitted)).

Accordingly, while this Court generally would encourage severability of an unconscionable provision, we do not view the arbitration agreement between Simpson and Addy to be a proper candidate for the application of this remedy. See *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir.2003); (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter"); *In re Cotton Yarn Antitrust Litig.*, 406 F.Supp.2d 585, 604 (M.D.N.C.2005) ("[W]here, as here, multiple provisions of the arbitration clauses are inconsistent with Plaintiffs' ability to effectively vindicate their statutory rights ..., the Court finds that the better course of action in this case is to excise the arbitration clauses altogether.").

Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14 (2007)
644 S.E.2d 663, 62 UCC Rep.Serv.2d 217

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Defendant.

DEFENDANT'S MOTION FOR RECONSIDERATION

FILED
2015 MAR 12 PM 4:06
JULIE J. ARMSTRONG
CLERK OF COURT
NO

4. The Court misinterpreted the arbitration provision in the subject contract in finding that it was unconscionable;

5. The Court failed to adequately consider the choice of law provision/forum selection clause contained in the subject contract; and,

6. The Court's finding that the agreement out of which the controversy amongst the parties in this action arises, does not involve interstate commerce is in error.

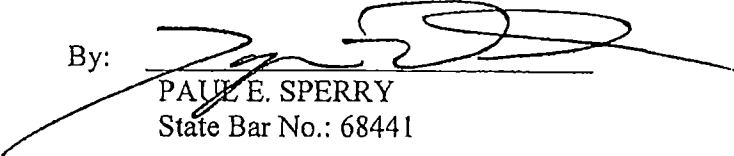
For the reasons set forth above, Defendant respectfully requests its Motion for Reconsideration be granted.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

40 Calhoun Street, Suite 400
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By:



PAUL E. SPERRY
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Attorneys for Defendant Roper Hanks, LLC

Defendant.

CERTIFICATE OF SERVICE

FILED
2015 MAR 12 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

182

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2013-CP-10-7413

Affordable Concrete and Masonry d/b/a RSS, LLC,)
Plaintiff,)
vs)
Roper Hanks, LLC.,)
Defendant.)

**MEMORANDUM IN RESPONSE TO
DEFENDANT'S MOTION TO
RECONSIDER**

FILED
2015 JUN -1 PM 3:08
JULIE J. ARISTRO
CLERK OF COURT

Plaintiff respectfully submits this Memorandum in response to Defendant's Motion to Reconsider Order Denying Defendant's Motion to Dismiss Action, Transfer Venue, and Compel Arbitration. Defendant's Motion to Reconsider should be denied for the following reasons:

1. Defendant failed to adhere to the procedural requirements of South Carolina Rule of Civil Procedure 59(g). Rule 59(g) requires a party filing a motion under the Rule to provide a copy to the judge within ten (10) days after the filing of the motion. Defendant sent a copy of the Motion to the Clerk of Court on March 12, 2015 but failed to provide a copy to the Judge as required. The Defendant failed to do so in this case and therefore, the Motion to Reconsider should be denied.
2. Further, the Court correctly applied South Carolina law in the case at hand. This case involved intrastate commerce. "The development of land within South Carolina is the quintessential example of purely intrastate activity." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 594, 553 S.E.2d 110, 117-18 (2001). Affordable was hired by Roper Hanks to do concrete work on a project in Charleston, South Carolina. The contract was signed in South Carolina. The work was performed in South Carolina. The materials were purchased within the state of South Carolina. As such, it

involves intrastate commerce. Therefore, the Federal Arbitration Act does not apply in this case.

Under the South Carolina Uniform Arbitration Act, the Arbitration clause in the contract at issue is unenforceable as there is no language in underlined, capital letters on the first page that indicates the contract is subject to arbitration. Further, the clause is unconscionable under South Carolina law.

Also, the choice of venue clause is against public policy as the Plaintiff did not have a meaningful choice in signing the contract and the cost of moving the case to Georgia would effectively deprive the Plaintiff of his day in Court. The contract was not presented to the Plaintiff until after the Plaintiff had completed considerable work on the project. Further, under South Carolina law a cause of action may be brought in the manner provided in the South Carolina Rules of Civil Procedure even if the contract has a venue clause. S.C. Code § 15-7-120.

The Court heard arguments from both counsel at the hearing of the Motion to Dismiss, Transfer Venue, and Compel Arbitration; considered the memorandums; and considered relevant case law. The Order here addressed the issues raised in Defendant's Motion and the Court properly decided the issues in this case. For the foregoing reasons and those that were argued at the initial hearing of the Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration, Plaintiff respectfully requests that Defendant's Motion to Reconsider the Court's Order be denied.

Respectfully Submitted,



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May 28, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER: 2013-CP-10-7413

Affordable Concrete and Masonry d/b/a RSS, LLC,)
Plaintiff,)
vs)
Roper Hanks, LLC.,)
Defendant.)

CERTIFICATE OF SERVICE

2015 JUN -1 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Mallary W. Hitchcock certifies that she is an employee of the Law Office of Natasha M. Hanna, P.C., attorneys for the Plaintiff, and that she deposited in the United States Mail, with adequate postage affixed thereto, a copy of a **Memorandum in Response to Defendant's Motion to Reconsider** in the above-captioned matter, addressed to the following on this 28th day of May, 2015.

Addressee:

Paul E. Sperry
Tyler P. Winton
Carlock, Sopeland, & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

Mallary W. Hitchcock
Mallary W. Hitchcock

SWORN to before me this 28 day
of May 2015

James J. Jordan
Notary Public for South Carolina
My Commission Expires: 2/6/17

) IN THE COURT OF COMMON PLEAS

) IN THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-10-7413

AFFORDABLE CONCRETE AND
MASONRY d/b/a RSS LLC,

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO RECONSIDER

Plaintiff,

VS.

ROPER HANKS, LLC

Defendant.

FILED
JUN -5 PM 3:16
CLERK OF COURT
J. ARMSTRONG

This Matter came before this Court pursuant to a Motion to Dismiss Action, Transfer Venue and Compel Arbitration (“Motion to Dismiss”) filed on behalf of Defendant Roper Hanks, LLC (“Defendant”) on September 26, 2014 regarding the claims brought against Defendant by the Plaintiff Affordable Concrete and Masonry d/b/a RSS, LLC. Oral argument took place on December 18, 2014. Counsel for Plaintiff and Defendant both had a full opportunity to argue their respective positions. After review of the pleadings, contemplation and consideration of Defendant’s Motion, Plaintiff’s Memorandum in Opposition to Defendants Motion, and arguments presented by counsel for both sides on December 18, 2014, the Court Denied Defendant’s Motion to Dismiss on March 2, 2015. On March 12, 2015, Defendant filed a Motion to Reconsider the Court’s denial of Defendant’s Motion to Dismiss and inadvertently neglected to deliver a copy of the Motion to Reconsider to the Judge’s chambers. Undersigned counsel for Defendant hereby respectfully submits this Memorandum in Support of Defendant’s Motion to Reconsider, as requested by the Court via email correspondence on May 26, 2015. Defendants Motion to Reconsider should be granted for the following reasons.

Plaintiff's first reason that Defendant's Motion to Reconsider should be denied is moot given the Court's expressed willingness to consider Defendant's Motion despite undersigned counsel's failure to provide the court with a copy of the timely filed motion pursuant to Rule 59(g), SCRPC. In *Tyler v. Uni-Health Post-Acute Care - Orangeburg, LLC*, No. 2011CP3801513, 2013 WL 8477965, at *2 (S.C.Com.Pl. Oct, 11, 2013), although the Court did not receive a copy of Defendants' Motion to Reconsider more than 10 days after the filing date, the Court found that it is was appropriate to hear the matter, despite Defendants' failure to comply with Rule 59(g). The Court's Order in *Tyler* granting Defendants Motion for Reconsideration is attached hereto as Exhibit 1. In *Tyler*, the Court recognized that the notes to Rule 59(g) state "that the Rule is 'intended to help insure that the judge is promptly notified that the motion has been filed,' which indicates that the judge has some discretion in determining what constitutes prompt notice." *Id.* (citing *Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002) (finding no error in the circuit court's decision to decide a motion for reconsideration despite the movant's failure to comply with Rule 59(g), SCRPC)).

Plaintiff, a South Carolina subcontractor, knowingly and willingly entered into a written contract with Defendant, a Georgia general contractor, on April 5, 2013 (hereinafter "the Contract") to provide labor and materials for the installation of concrete, pavers and brick work at a Haverty Furniture Companies, Inc. store in Charleston. The construction project took place in South Carolina; however, many of the subcontractors and materials for the project were from states other than South Carolina. Simply put, the Contract at issue is valid and enforceable. "[A] party may not 'rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.'" *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 295-96, 733 S.E.2d 597, 604 (Ct. App. 2012) (quoting *Jackson v. Iris.com*, 524 F.Supp.2d 742, 749 (E.D.Va.2007)). Plaintiff

cannot seek to avoid the terms of the contract that it agreed to while simultaneously seeking the benefit of the Contract by bringing a breach of contract claim against Defendant. Despite Plaintiff's arguments and assertions to the contrary, the Contract is a typical and balanced agreement between a general contractor and a subcontractor.

With no evidence that Plaintiff was denied the right to revise unfavorable terms of the Contract, or evidence that the terms are themselves so oppressive and unfair that a reasonable person would not accept them, the Contract, including the arbitration clause, is not unconscionable or an adhesion contract. To the contrary, the provisions in the Contract are themselves valid and enforceable. "Choice of law provisions are generally honored in South Carolina." *Team IA, Inc. v. Lucas*, 395 S.C. 237, 248, 717 S.E.2d 103, 108-09 (Ct. App. 2011) (citing *Nucor Corp. v. Bell*, 482 F.Supp.2d 714, 728 (D.S.C.2007)). The first page of the Contract states in all capital, bold, and underlined type that the agreement is governed by the state of Georgia. This choice of law provision is reiterated in Article XIII of the agreement.

Even though the Contract was signed in South Carolina, the parties clearly intended that Georgia law apply. Due to the valid choice of law provision, Georgia law applies to the interpretation of the contract, not the South Carolina Uniform Arbitration Act, and the arbitration provision in the Contract is thus enforceable and not unconscionable. See *Saturna v. Bickley Const. Co.*, 252 Ga. App. 140, 141, 555 S.E.2d 825, 827 (2001) (citing *Bishop Contracting Co. v. Center Bros. Inc.*, 213 Ga. App. 804, 805(1), 445 S.E.2d 780 (1994)).

The Federal Arbitration Act ("FAA") controls this dispute because the transaction affects interstate commerce. Georgia courts recognize that construction projects performed in one state can still affect interstate commerce under the FAA. See *McCormick-Morgan, Inc. v. Whitehead Elec. Co.*, 179 Ga. App. 10, 12, 345 S.E.2d 53, 55 (1986). Georgia law also recognizes that

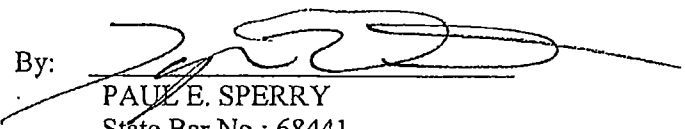
"most building materials pass in interstate commerce." *Wise v. Tidal Const. Co.*, 261 Ga. App. 670, 673, 583 S.E.2d 466, 469 (2003). Here, as is typical of most large scale construction projects, the project contemplated and did in fact utilize subcontractors and materials from numerous states other than South Carolina. As noted earlier, even the parties themselves are from different states. Because the Contract affected interstate commerce, the FAA controls.

Therefore, based on the foregoing reasons and those that were argued at the initial hearing of Defendant's Motion to Dismiss and the applicable pleadings filed with this Court, Defendant respectfully requests that Defendant's Motion to Reconsider be granted and that the case is dismissed.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307

By: 

PAUL E. SPERRY
State Bar No.: 68441

TYLER P. WINTON
State Bar No.: 77877

Attorneys for Defendant Roper Hanks, LLC

2013 WL 8477965 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina
First Judicial Circuit
Orangeburg County

Bertha TYLER, as Guardian of Henrietta Mayes, Plaintiff,
v.

UNI-HEALTH POST-ACUTE CARE - ORANGEBURG, LLC and Catherine Pavlick, Defendants.

No. 2011CP3801513.
October 11, 2013.

Order Granting Defendants' Motion for Reconsideration

Diane Schafer Goodstein, Judge.

*1 Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendants Uni-Health Post-Acute Care - Orangeburg, LLC and Catherine Pavlick ("Defendants") seek reconsideration of the Court's decision denying their Motion to Compel Arbitration. The Court has reviewed the papers submitted by the parties and has considered the arguments of counsel presented therein. For the following reasons, the Court GRANTS the Defendants' Motion for Reconsideration.

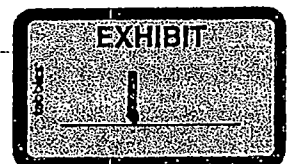
I. BACKGROUND

The factual background of the present motion, as set forth in this Court's earlier Order Denying Defendant's Motion to Compel Arbitration, is as follows: Henrietta Mayes had a history of severe strokes. Following these strokes, Ms. Mayes was bed-bound and unable to communicate. Ralph Williams was hired in January of 2010 as a certified nursing assistant (CNA) at the Uni-Health nursing home facility in Orangeburg, South Carolina. The Plaintiff has alleged that prior to his employment with Uni-Health, Mr. Williams had a criminal history in South Carolina, which included possession of crack cocaine, shoplifting and disorderly conduct. The Plaintiff further alleged that prior to his employment with Uni-Health, Mr. Williams was charged in Missouri with Third Degree Assault and repeated violations of the Adult Abuse Act, and had an indication in his criminal file that he was a suspect in an armed burglary involving the shooting of a victim. Despite this criminal history, Plaintiff alleges Mr. Williams was hired to work in the Uni-Health facility with frail and vulnerable adults like Henrietta Mayes. On June 21, 2010, Mr. Williams was working as a CNA at the Uni-Health facility. Plaintiff alleges that Mr. Williams was found sexually assaulting Ms. Mayes. Plaintiff's allegations in this case involve Defendants' negligence and gross negligence in the hiring, supervision, and retention of Ralph Williams.

On February 12, 2013, this Court issued its Order Denying Defendants' Motion to Compel Arbitration. Counsel for Defendants received notice of the Court's Order on February 26, 2013 pursuant to a copy of Plaintiff's letter to the Orangeburg County Clerk of Court requesting entry of the Order. On March 8, 2013, Defendants served Plaintiff with their Motion for Reconsideration and subsequently filed the Motion with the Orangeburg County Clerk of Court on March 11, 2013. On March 27, 2013, the Court received its copy of the Motion that Defendants mailed.

II. TIMELINESS OF DEFENDANTS' MOTION TO RECONSIDER

As an initial matter, the Court will address Plaintiff's argument that Defendants' Motion is untimely and should not be considered. Rule 59(g), SCRPC, states: "A party filing a written motion under this rule shall provide a copy of the motion to the judge



within ten (10) days after the filing of the motion.” Plaintiff argues that if Defendants did not serve the Court with a copy of their Motion within 10 days after filing as proscribed by Rule 59(g), then Defendants’ Motion is untimely and should not be considered. (Plaintiff’s Response to Defendants’ Motion to Reconsider fnl). The Court disagrees.

*2 Although the Court did not receive a copy of Defendants’ Motion until March 27, 2013, more than 10 days after the filing date of March 11, 2013, the Court finds that it is appropriate to hear the matter, despite Defendants’ failure to comply with Rule 59(g). The notes to Rule 59(g) state that the Rule is “intended to help insure that the judge is promptly notified that the motion has been filed,” which indicates that the judge has some discretion in determining what constitutes prompt notice. *See Gallagher v. Evert*, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002) (finding no error in the circuit court’s decision to decide a motion for reconsideration despite the movant’s failure to comply with Rule 59(g), SCRCP). Here, the Court finds that receiving notice within 16 days of the filing date was sufficiently prompt. Thus, the Court finds it proper to consider Defendants’ Motion for Reconsideration.

III. LEGAL STANDARD

Rule 59(e), SCRCP governs motions to alter or amend a judgment. The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 171, 420 S.E.2d 834, 842 (1992) (citing *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200 (1988)) (internal citations omitted). The South Carolina Supreme Court explains that a party can file a Rule 59(e) motion “when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S. Carolina Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Court in *Elam* goes on to emphasize how “there is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Id.* at 22, 779.

IV. DISCUSSION

Defendants move this Court to reconsider two issues ruled upon in the Order Denying Defendant’s Motion to Compel Arbitration. First, Defendants request that the Court reconsider its ruling that the Federal Arbitration Act does not apply because there is not sufficient evidence of the involvement of interstate commerce in this nursing home transaction. Secondly, Defendants ask the Court to conclude that the Plaintiff’s claims in this action fall within the scope of the Parties’ Arbitration Agreement. Based on the arguments of counsel and based upon the trend in several recent decisions handed down by the United States Supreme Court and the South Carolina Supreme Court, this Court finds that (1) there is sufficient evidence of interstate commerce and (2) Plaintiff’s claims fall within the scope of the Parties’ Arbitration Agreement.

A. Because the Nursing Home Transaction in This Case Involves Interstate Commerce, the Federal Arbitration Act Applies.

The Federal Arbitration Act (“FAA”) provides that a written provision in any contract involving interstate commerce that requires disputes be resolved by arbitration shall be “valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” *See* 9 U.S.C. § 2 (1988). If interstate commerce is affected, the FAA will preempt state laws that would otherwise render the arbitration agreement unenforceable. *Id.* The FAA applies in federal or state court to any arbitration agreement that “in fact” involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction. *Munoz v. Green Tire Fin. Corp.*, 343 S.C. 531 (2001) (citing *Allied-Bruce Terminix Co., Inc. v. Dobson*, 513 U.S. 265 (1995); *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454 (1996)). The South Carolina Court of Appeals has succinctly stated:

*3 The words “involving commerce” have been interpreted by the United States Supreme Court as being the functional equivalent of “affecting commerce”—words signaling “an intent to exercise Congress’ commerce power to the full.” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995); *see also Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 2040, 156 L.Ed.2d 46 (2003) (“We have interpreted the term ‘involving commerce’ in the FAA as the functional equivalent of the more familiar term affecting commerce—words of art that ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause power.”); *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct App.2002) (“The United States Supreme Court has held that the phrase ‘involving commerce’ is the same as ‘affecting commerce, which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent.’”). “Because the statute provides for the enforcement of arbitration agreements within the full reach of the Commerce Clause, it is perfectly clear that the FAA encompasses a wider range of transactions than those actually in commerce—that is, within the flow of interstate commerce.” *Citizens Bank*, 539 U.S. at 56, 123 S.Ct. at 2040 (internal quotation marks and citations omitted).

Thornton v. Trident Med. Ctr., L.L.C., 357 S.C. 91, 95, 592 S.E.2d 50, 52 (Ct. App. 2003)

This Court based its decision as to whether the FAA should apply in this case on *Timms v. Greene*, 310 S.C. 469 (1993). In their brief in support of the Motion for Reconsideration, defense counsel aptly points out that *Timms* was decided before the United States Supreme Court issued the *Allied-Bruce* decision which clarified—and consequently broadened—the reach of the FAA in areas of interstate commerce. After reviewing the South Carolina Supreme Court’s August 14, 2013 decision in *Cape Romain*, this Court is persuaded that it construed interstate commerce too narrowly when it determined that interstate commerce was absent in the nursing home contract.

In *Cape Romain*, the Supreme Court of South Carolina reversed the Circuit Court’s decision denying a motion to compel arbitration. *Cape Romain Contractors, Inc. v. WandoE, LLC*, 2011-197207, 2013 WL 4082353 (S.C. Aug. 14, 2013). The Circuit Court concluded that the parties’ transaction did not involve interstate commerce, and thus the FAA did not apply. *Id.* In reversing the Circuit Court’s decision, the Supreme Court explained:

In analyzing the interstate commerce question solely as whether the Contract on its face reflected a “substantial relation to interstate commerce” and in finding the FAA was not triggered, the trial court relied upon *Timms v. Greene* and *Mathews v. Fluor Corporation*. This was error, for the proper analysis involves consideration of all three broad categories of activity within the purview of Congress’s commerce power—use of the channels of interstate commerce; regulation of persons, things or instrumentalities in interstate commerce; and regulation of activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995). While the transaction’s effect on interstate commerce was by no means insubstantial, the parties’ transaction plainly falls within the purview of Congress’s commerce power as it extensively involves both the channels and the instrumentalities of interstate commerce. *Id.*

Because the Supreme Court in *Cape Romain* overruled *Timms* when it held that the FAA can apply to an arbitration agreement even if the agreement, on its face, fails to demonstrate that the parties contemplated an interstate transaction, this Court is convinced that it interpreted interstate commerce too narrowly. Therefore, the Court now concludes that the nursing home transaction between the parties does involve interstate commerce.

Here, the Defendants provided sufficient evidence that interstate commerce is involved in this case such that the FAA applies. The parties in the present case acknowledged that their transaction involved interstate commerce. *See* Arbitration Agreement, p. 4, Part III, ¶ A. Additionally, the Defendant showed that Uni-Health Post-Acute Care - Orangeburg, LLC is an out-of-state entity because it is a citizen of Georgia. *See General Technology Applications, Inc. v. Exro Ltda*, 388 F.3d 114, 120 (4th Cir. 2004) (an LLC is assigned the citizenship of each state in which its members are citizens). Furthermore, as evidenced in the Affidavit of Brenda Parris, the operation of the nursing home facility would not be possible were it not for supplies, material and services provided by various entities outside of the state of South Carolina. Finally, the patient, Ms. Mayes, received Medicare payments on her behalf that were paid to the nursing home, and this source of federal funding directly implicates the involvement of

interstate commerce. In sum, this Court is satisfied that the following facts demonstrate that the parties' transaction involve both the channels and instrumentalities of interstate commerce.

B. Plaintiff's Claims Fall within the Scope of the Parties' Arbitration Agreement

*4 The Court initially concluded that the claims asserted in the Plaintiff's Complaint are not within the reasonable expectations of the Parties because the alleged negligence could not have been foreseen at the time the arbitration clause was signed. Based on recent decisions by the South Carolina Supreme Court and the Court of Appeals, this Court now concludes that the Plaintiff's claims for negligence and negligence in hiring, maintaining, and supervising an employee fall within the scope of the parties' arbitration agreement.

In *Landers v. FDIC*, decided on February 27, 2013, the South Carolina Supreme Court found that the Plaintiff's tort claims for slander and intentional infliction of emotional stress arising from his employment with the defendant were encompassed by an arbitration clause in his employment contract that required arbitration for "any controversy or claim arising out of or relating to this contract, or the breach thereof." *Landers v. FDIC*, 402 S.C. 100, 109-13 739 S.E.2d 209; 214-15 (2013). The Court highlighted how "both the Fourth Circuit Court of Appeals and this Court have held that the sweeping language of broad arbitration clauses applies to disputes in which a *significant relationship* exists between the asserted claims and the contract in which the arbitration clause is contained." *Id.* at 109, 214, emphasis added (citing *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, SA*, 863 F.2d 315, 319 (4th Cir. 1988); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 598, 553 S.E.2d 110, 119 (2001)). Subsequent to the *Landers* decision, the South Carolina Court of Appeals has held in at least two decisions that arbitration should be compelled because the Plaintiff's claims fell within the scope of the parties' arbitration agreement. *See, e.g., Carlson v. S. Carolina State Plastering, LLC*, 404 S.C. 250, 262, 743 S.E.2d 868, 875 (Ct. App. 2013) (citing *Landers* and finding the arbitration clause in the purchase agreement was not intended to apply to claims arising in contract only and encompasses the Plaintiff's tort claims as well); *York v. Dodgeland of Columbia, Inc.*, 2011-199006, 2013 WL 4734569 (S.C. Ct. App. Sept. 4, 2013) (citing *Landers* and finding that broad language included in an arbitration agreement such as "any claim or dispute ... that arises out of or relates to your credit application, this Contract or any resulting transaction or relationship, including those with third parties" affords the clause an expansive reach.)

Combining these recent cases in South Carolina jurisprudence along with the United States Supreme Court's decision in *Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201 (2012), this Court finds that the Plaintiff's negligence claims fall within the scope of the arbitration agreement. In *Marmet Health Care Ctr., Inc. v. Brown*, the Supreme Court addressed the issue of arbitration in three nursing home neglect cases. *Id.* In each of those cases, a family member of a patient who had died sued the nursing home in state court alleging that negligence caused injuries or harm resulting in death. *Id.* The Supreme Court of Appeals of West Virginia held that "as a matter of public policy under West Virginia law, an arbitration clause in a nursing home admission agreement adopted prior to an occurrence of negligence that results in a personal injury or wrongful death, shall not be enforced to compel arbitration of a dispute concerning the negligence." *Id.* at 1203. The US Supreme Court overruled the West Virginia Court, explaining that the FAA does not include exceptions for personal-injury or wrongful-death claims and "requires courts to enforce the bargain of the parties to arbitrate." *Id.* (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217, 105 S.Ct. 1238 (1985)). Furthermore, the FAA "reflects an emphatic federal policy in favor of arbitral dispute resolution." *Id.* (quoting *KPMG LLP v. Cocchi*, 132 S. Ct. 23, 25, (2011) (per curiam) (internal citations omitted).

*5 Here, the parties' Arbitration Agreement contemplates the Plaintiff's negligence claims by covering:

Any acts or omissions in connection with such care or services, ..., whether arising out of State or Federal law, ..., and whether sounding in ... tort, or breach of statutory or regulatory duties (including, without limitation, ..., any claim based on negligence, any claims for damages resulting from death or injury to any person arising out of care or service rendered by [the Orangeburg nursing facility] ..., irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for Arbitration.

Arbitration Agreement, p. 1, Section L., A. 1.

The plain language of the Parties' Arbitration Agreement contemplates and covers all of Plaintiff's claims because such claims arise out of Ms. Mayes's rights as a resident at the Orangeburg nursing facility, and they directly relate to the duties, responsibilities, and obligations allegedly owed to Ms. Mayes by the Defendants as a result of the contractual relationship between her and the Orangeburg facility. Based on the recent *Landers* decision holding that a broad arbitration clause, such as the one cited above in this case, applies to disputes in which a *significant relationship* exists between the asserted claims and the contract in which the arbitration clause is contained, the Court finds that there is a significant relationship between the Plaintiff's negligence claims and the nursing home contract. Thus, the Court finds that the Plaintiff is bound by the Arbitration Agreement as to the claims asserted in the Complaint because they fall within the scope of the Arbitration Agreement.

V. CONCLUSION

For the reasons set forth herein, the Court grants Defendants' Motion to Reconsider and grants the Motion to Compel Arbitration in this case.

AND IT IS SO ORDERED.

October 11, 2013

<<signature>>

The Honorable Diane Schafer Goodstein

First Judicial Circuit

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2013 - 7413

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Common Pleas Case No. 2013-CP-10-7413

FILED
2015 AUG -4 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT

Roper Hanks, LLC.....Appellant,

v.

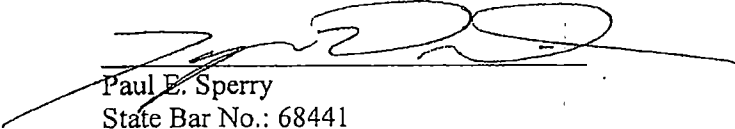
Affordable Concrete and Masonry d/b/a RSS, LLC..... Respondent.

NOTICE OF APPEAL

Roper Hanks, LLC appeals the Order of the Honorable Kristi Lea Harrington dated June 30, 2015. Appellant received written notice of entry of the Order on July 7, 2015.

The June 30, 2015, Order denied the Appellant's Motion for Reconsideration of the Order of the Honorable Kristi Lea Harrington dated March 3, 2015, which Order denied the Appellant's Motion to Dismiss, Transfer Venue, and Compel Arbitration.

Respectfully submitted,


Paul E. Sperry
State Bar No.: 68441
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Phone: (843) 727-0307

July 31st, 2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-10-7413

Affordable Concrete and Masonry,

Roper Hanks, LLC,

2015 JUN 30 PM 2:23

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The above matter came before the Court on Defendant's Motion to Reconsider this Court's Order Denying Defendant's Motion to Dismiss, Transfer Venue, and Compel Arbitration. The Court hereby DENIES Defendant's Motion to Reconsider.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2151

Judge Code

Date

6/30/2015

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:

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Lea Harrington, Circuit Court Judge

Common Pleas Case No. 2013-CP-10-7413

FILED
2016 AUG -4 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT

Roper Hanks, LLC.....Appellant,

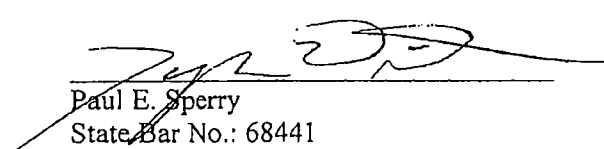
v.

Affordable Concrete and Masonry d/b/a RSS, LLC..... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal upon the parties below by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2015, addressed as follows:

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Paul E. Sperry
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Charleston, SC 29401
Phone: (843) 727-0307

48903
Appeal

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-07413

AFFORDABLE CONCRETE and)
MASONRY d/b/a RSS LLC.,)
PLAINTIFF,)
VS.)
ROPER HANKS, LLC.,)
DEFENDANT.)

MOTIONS HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Thursday, December 18, 2014, Commencing at 9:49 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

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 40 Calhoun Street, Suite 400
 Charleston, South Carolina 29401

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EXHIBITS

[None]

Affordable Concrete vs. Roper Hanks
Motions Hearing
December 18, 2014

PROCEEDINGS

THE COURT: Counsel, if you will state your name for the record and the party you represent.

MR. WINTON: Good morning, Your Honor.

My name is Tyler Winton, for Carlock Copeland here in town, and I represent Roper Hanks, the defendant in the case. W-I-N-T-O-N.

MS. HANNA: Good morning, Your Honor.

Natasha Hanna, from Myrtle Beach, and I represent the plaintiff in this action, Affordable Concrete and Masonry, d/b/a RSS, LLC.

THE COURT: So we're here on Mr. Winton's motion to dismiss, transfer venue, and compel arbitration?

MR. WINTON: Yes, Your Honor. That's correct.

If I may just give you a minute or two of background and the procedural posture of the case, if you agree to do that.

THE COURT: Hold on one second.

MR. WINTON: Sure.

THE COURT: Ms. Hanna, are you prepared to go forward on that motion?

MS. HANNA: Yes, Your Honor.

THE COURT: Are there any other matters pending before the Court here today?

MS. HANNA: No, Your Honor.

MIA PERRON, CVR-CM-M

-4-

Affordable Concrete vs. Roper Hanks
Motions Hearing
December 18, 2014

1 THE COURT: Now, Mr. Winton, I'll be happy to
2 hear from you on your motion.

3 MR. WINTON: Fair enough.

4 As I mentioned earlier, I represent Roper Hanks,
5 LLC. They're a general contracting entity out of
6 Atlanta, Georgia. They entered into an agreement with
7 Haverty's, also based out of Atlanta. My client
8 generally builds boxes for Haverty's that sells their
9 couches and other things in throughout the southeast.
10 They entered into an agreement with the plaintiff in
11 this case to perform some concrete work. Put in
12 sidewalks and curbs, I believe. And that was on Sam
13 Rittenburg Road. A payment dispute arose. The
14 plaintiff was terminated and it has resulted in,
15 amongst other things, the current complaint. It's a
16 very basic complaint. It's three pages long.

17 It alleges breach of contract and quantum
18 meriut, and that is it. As I mentioned earlier -- and
19 a payment is due relating to the contract. The
20 contract is only sixteen pages long. It was initialed
21 by both parties at the bottom of it. We believe it's
22 valid and enforceable. Both parties signed the
23 contract. And the contract --

24 If you don't have a copy in front of you -- it
25 was attached to my motion. I have an extra copy for

MIA PERRON, CVR-CM-M

-5-

Affordable Concrete vs. Roper Hanks
Motions Hearing
December 18, 2014

1 you, if you would like.

2 THE COURT: I have it.

3 MR. WINTON: Okay. On the first page, you'll
4 see the clear form selection: this agreement is
5 governed by the state of Georgia, in bold, in all
6 caps, and underlined. And then on the last page above
7 the signatures of both parties, you will see the
8 section entitled governing law and it relates back to
9 the first page saying: the subcontracting agreement
10 shall be governed by, construed in accordance with,
11 the laws of the state noted on page 1 of this
12 agreement. Signatures follow, and then initials
13 thereafter.

14 The claim disputes sections Article 10 on pages
15 13 and 14 with references to venue and arbitration,
16 which I'll talk about in a second.

17 I've heard no argument that the contract is
18 unenforceable or invalid or any of that. Because the
19 basis of the action against my client -- we believe
20 that the proper forum is in Georgia, as agreed to by
21 both parties.

22 I can go into it, if you would like me to, but
23 the choice of law clauses are generally honored in
24 South Carolina. There's been a new court case that's
25 482 F.Supp. 2d 714, as well as the Russell v. Wachovia

MIA PERRON, CVR-CM-M

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Affordable Concrete vs. Roper Hanks
Motions Hearing
December 18, 2014

1 Bank, N.A., 353 S.C. 208, which says, and I quote:
2 generally under South Carolina choice of law,
3 principals, if the parties to a contract specify the
4 law under which the contract shall be governed, the
5 Court will honor this choice of law.

6 And there's additional case law which I'll be
7 happy to point out to the Court, if you want it.

8 And then, additionally, I set forth in my motion
9 -- discussed the application of the FAA, the Federal
10 Arbitration Act. The arguments in the motion pretty
11 much speak for themselves. However, the reference to
12 interstate commerce is fairly clear. Generally, when
13 there are projects involving construction, there are
14 multiple materials that come from numerous states, as
15 well as in this case we have a general contractor and
16 an owner from outside of the state as well as other
17 subcontractors performing work at the Sam Rittenburg
18 location. And I don't even think you really need to
19 get into all the Federal Arbitration Acts now since
20 because of the choice of law provision.

21 My client has generally entered in this contract
22 with the plaintiff in the case and wishes this simply
23 to go to arbitration in Georgia, as both parties
24 agreed to, and for them to sort out this payment
25 that's due.

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Affordable Concrete vs. Roper Hanks
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1 Prior to the hearing, Ms. Hanna handed me about
2 an inch worth of documents -- it's her unfiled
3 memorandum in opposition to this motion -- that I
4 obviously just received for the first time. I haven't
5 had a chance to go all the way through it. Today if
6 she brings up arguments that the Court would like me
7 to respond to later on, I'll be happy to do so.

8 And with that, I'll let Ms. Hanna take over.

9 THE COURT: Ms. Hanna?

10 MS. HANNA: Thank you, Your Honor.

11 While I agree with Mr. Winton on certain things,
12 I certainly agree that this is a simple case. It's a
13 simple breach of contract case. My client was hired
14 to do work and wasn't paid for it. However, I
15 disagree on the simplicity of the arguments that he
16 has raised today. I think the arguments he has raised
17 are very complicated and very complex and require an
18 analysis by the Court.

19 Your Honor, by way of background, my client was
20 hired -- put a bid in for this project here at
21 Haverty's and was selected on March 7th, 2013, for
22 this job. He presented a proposal, and I believe that
23 proposal was accepted. Within approximately ten days,
24 he began work at the construction site, was working
25 laying, putting the concrete in. Everything looks

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1 beautiful, and still looks beautiful to this day, and
2 it's the same work that my client did on that day or
3 during that period of time. The post important part
4 here is that my client had finished phase one, over
5 half of the project, before they were presented with
6 the contract that the defendant claims controls the
7 situation.

8 And the first argument that I would say, Your
9 Honor, there is a lot of things that go into that:
10 adhesion contract, the unconscionable that the FAA
11 applied, because this contract wasn't even presented
12 to my client until after the work was done and was not
13 signed. He was notified that he was selected for the
14 job on March 7, 2013. This contract was signed on
15 April 5th, 2013. So almost thirty days later and
16 after phase one was already completed and after --

17 Another important part, my client had already
18 done so much work, he had submitted his first
19 application for payment on March 28, 2013. Why is
20 this important? Well, because of the issue that he
21 raised in his memo -- or his motion to defend, the FAA
22 absolutely applies. And first of all, the FAA -- he's
23 claiming the FAA applies. It doesn't apply here. In
24 order for the FAA to apply, there has to be interstate
25 commerce. There is no interstate commerce here, Your

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1 Honor. The project was in South Carolina, right near
2 Charleston, the property is in Charleston, the
3 contract was signed in Charleston, my client did work
4 in Charleston, he purchased the materials, he did the
5 waiver, all of his workers are in South Carolina. To
6 do what the defendant is asking is beyond
7 unconscionable and it's exactly what this law was
8 meant to prohibit from happening. It prevents an out-
9 of-state company coming into South Carolina, having a
10 long sixteen-page contract for a little simple
11 concrete-work job and then saying, hey, builder, pay
12 sub, if I do you wrong, you've got to bring all your
13 people in Charleston, your plumbers, your concrete
14 drivers, your pourers, you've got to load everybody up
15 in the car, get them to Atlanta, Georgia, you've got
16 to hire an expensive lawyer in Atlanta, Georgia, and
17 that's the only way you can touch me and sue me if I
18 did anything wrong to you. That is the epitome of
19 unconscionability. And you add that to the fact that
20 they didn't even present this contract to him before
21 he put shovel to dirt? That's wrong, Your Honor, and
22 that's why we're here today. And I'm not just saying
23 it's wrong in my opinion. I've got the law to back it
24 up.

25 Let me talk to you about the law. The FAA says

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1 in order for the Federal Arbitration Act to kick in,
2 like the defendant is asking, first of all you have to
3 have interstate commerce. We don't. We don't. It's
4 all in South Carolina. The only thing related to any
5 other state is the contractor himself, and I think
6 they said that Haverty's home base, which is a
7 nationwide company -- home base is in Georgia but
8 everybody else, the property, everything, is in South
9 Carolina. So our position is the FAA does not apply.

10 Even if I were to concede that point, Your
11 Honor, and say that the FAA does apply, then the
12 Court, under federal case law, AT&T Mobility vs.
13 Concepcion -- if you've ever had anybody argue about
14 the arbitration clause, it's not about that. It's the
15 Concepcion case that we raise. In that case it
16 essentially says even if the FAA applies, there is
17 still a savings clause contained within that Federal
18 Arbitration Act. And what it says is, yeah, yeah,
19 usually we do enforce arbitration clauses unless the
20 contract is unconscionable or it's an adhesion
21 contract.

22 And in this case, again, and for the reasons I
23 just mentioned, Your Honor, it's an adhesion contract.
24 When you've got a concrete man out there, he's got
25 fifty percent of a 50,000-dollar contract done, what's

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1 he going to do? Is he going to walk off the job and
2 not get paid for the first 28,000 or is he going to
3 sign the contract and hope and pray that everything
4 goes well? It's an adhesion contract.

5 Additionally, Your Honor, under Concepcion, they
6 said the Court has to analyze the contract to say is
7 it unconscionable. And it is unconscionable. One
8 look at page 13 of the contract shows that under
9 the -- the contractor gets to pick the arbitrator,
10 then it's binding. So they -- even get to arbitrate
11 the decision and you've got to stick with the decision
12 and you can't do anything else about it. Those terms
13 right there are unconscionable.

14 And if you look at the contract, it's a lengthy
15 contract. It's a sub must do this, sub must do that,
16 sub must do everything. It doesn't say anything about
17 what the owner should do. It doesn't say that the
18 owner can't come marching in the Charleston County
19 courthouse and sue the sub, I don't believe. It also
20 doesn't say that the owner is -- or the general
21 contractor is required to do certain things. It's all
22 about the sub. So it's one-sided, it's oppressive.
23 It's all the things that Concepcion, the federal case,
24 talks about.

25 And then if you take it one step further, if you

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1 find -- if the Court finds that the FAA does not
2 apply, then you look at South Carolina law. And the
3 South Carolina law requirements say, hey, if you're
4 going to do arbitration, you've got to have in big,
5 bold letters on the front, subject to arbitration. It
6 doesn't have that anywhere. It's buried on like page
7 16. And, interestingly, the way this contract is
8 written, you've got to have a magnifying glass or my
9 over-forty eyeglasses to even read it. It's in fine
10 print. It starts on page 8, and then it's got eight
11 more pages of attachments to it. It's buried within
12 Article 10, Article S, Article 10, where this
13 arbitration provision comes up. That doesn't comply
14 with our law, either, Your Honor.

15 As to making it simple, oh, Georgia law applies,
16 for all the reasons I've stated, Your Honor, that's an
17 argument for a different day when we come into court.

18 They say venue is in Georgia. I respectfully
19 disagree because of the reasons that that's the very
20 thing that our South Carolina law is meant to
21 prohibit, is making twenty people -- the property is
22 here, the people that did the work is here, making
23 them load up in the car and drive all the way to
24 Georgia just because the contractor says so.

25 And I would say that -- Your Honor, that it's an

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1 adhesion contract. He didn't have any choice. He had
2 one foot in the project and if he was going to get
3 paid, he had no other choice but to sign this
4 contract. The contract speaks for itself.

5 And I do have a memo, Your Honor. I did not
6 receive one from the plaintiff. I wish I could have
7 gotten this done ten days ago but unfortunately I was
8 preparing it yesterday and last night. And I do have
9 it, along with the attached case law, if Your Honor
10 would like to see it. And I sincerely apologize to
11 him that I didn't get it to him sooner.

12 But that is my argument, Your Honor. And we do
13 have the contract with all the terms set forth in it.
14 Thank you.

15 THE COURT: I'll be happy to take your memo
16 since you worked so hard on it, Ms. Hanna. Thank you.

17 MS. HANNA: Thank you.

18 And that's the documents that he's referenced,
19 as well as all the receipts that show that all the
20 materials were applied. And it looks worse than it
21 is. But this is the memo, Your Honor. And then
22 that's just the case law that I referenced.

23 [Whereupon, Ms. Hanna proffers documents to the
24 Court]

25 THE COURT: Thank you.

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1 MS. HANNA: Thank you.

2 THE COURT: Brief response, Mr. Winton?

3 MR. WINTON: Yes, Your Honor.

4 Under the law that -- the primary cause of
5 action is a breach of contract and today, for the
6 first time, I'm hearing that they don't like this
7 contract. However, what I haven't heard, despite all
8 the arguments against the application of the FAA and
9 the dispute of whether or not it is interstate
10 commerce, what I've not heard is why the choice of law
11 provision is invalid in this case and why the clearly-
12 stated choice of law in Georgia on the contract should
13 not be the law that governs and preempts our
14 discussion of FAA and their rejections to that. And
15 so that echos my request that the law would apply, we
16 would go there and arbitrate this case in Georgia
17 where the folks in Georgia would determine whether or
18 not the arbitration provisions are valid.

19 I think the plaintiff in this case has managed
20 to sue my client -- my clients five times within the
21 last year, three of which cases were dismissed. He's
22 certainly savvy enough to read and review a contract
23 to know his legal rights because he's been able to
24 find matters to develop a recourse for such. And I
25 just said that as an aside to the extent that I heard

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Affordable Concrete vs. Roper Hanks
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1 that he wasn't able to understand the contract because
2 it was too complex or something. I don't believe
3 that's the case here at all.

4 Anyway, if Your Honor would like additional
5 arguments or briefing or response to Ms. Hanna, I
6 would be happy to provide the Court with such.

7 THE COURT: Take the matter under advisement.

8 I will allow you to submit proposed orders.
9 It's not necessary but if you wish to submit a
10 proposed order, I will accept them until December 23rd
11 at 5:00 p.m.

12 Good luck to you both. Thank you.

13 MS. HANNA: Thank you, Your Honor.

14 MR. WINTON: Thank you, Your Honor.

15 [HEARING CONCLUDES AT 10:03 A.M.]
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25

Affordable Concrete vs. Roper Hanks, LLC
Certificate of Court Reporter

C E R T I F I C A T E

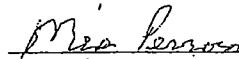
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable Kristi L. Harrington, on December 18, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 31st day of October, 2015.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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Muller, Megan

From: Harrington, Kristi L. Law Clerk (Ramsey S. Easley) <kharringtonlc@sccourts.org>
Sent: Tuesday, May 26, 2015 1:50 PM
To: Winton, Tyler P.
Cc: Eversole Amy R.; 'Natasha@nhannalaw.com'; 'mallary@nhannalaw.com'
Subject: RE: Hughes v. Hanks. Civil Action No.: 2013-CP-10-7413 (Re: Status of hearing on Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration)

Counsel,

We just received a notification that a Motion to Reconsider had been filed in this case on March 12, 2015. Our office was never served with a copy of the Motion as required by SCRCP Rule 59(g). Judge Harrington requests that the parties submit memoranda in support or in opposition to the Motion within ten (10) days. The deadline for submission of memoranda will be Friday, June 5, 2015. Please do not hesitate to contact me should you have any questions or if I may be of further assistance in any way.

Many thanks,

Ramsey Watson

From: Harrington, Kristi L. Law Clerk (Ramsey S. Easley)
Sent: Tuesday, March 03, 2015 9:10 AM
To: 'Winton, Tyler P.'
Cc: Eversole Amy R.; 'Natasha@nhannalaw.com'; 'mallary@nhannalaw.com'
Subject: RE: Hughes v. Hanks. Civil Action No.: 2013-CP-10-7413 (Re: Status of hearing on Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration)

Counsel,

Thank you very much for your email. An Order was filed with the Clerk's Office yesterday afternoon. Please do not hesitate to contact me should you have any questions or if I may be of any further assistance.

Many thanks,

Ramsey Watson

From: Winton, Tyler P. [mailto:twinton@carlockcopeland.com]
Sent: Monday, March 02, 2015 3:51 PM
To: Harrington, Kristi L. Law Clerk (Ramsey S. Easley)
Cc: Eversole Amy R.; 'Natasha@nhannalaw.com'; 'mallary@nhannalaw.com'
Subject: Hughes v. Hanks. Civil Action No.: 2013-CP-10-7413 (Re: Status of hearing on Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration)

Dear Judge Harrington,

Natasha Hanna and I appeared before you on December 18th on the Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration in the above-referenced case. Pursuant to your request, we submitted proposed Orders on December 23rd. The Motion and Proposed Orders are attached for your convenience.

Ms. Hanna and I respectfully request whether there is any additional information that you need from us in order to issue a ruling on the Motion. Thank you for your consideration of this matter.

Respectfully,

Tyler Winton
Counsel for Defendant Roper Hanks, LLC

website<[\[Tyler P. Winton, Carlock Copeland & Stair, \(843\) 266-8237\]<\[Confidentiality Note: This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.\]\(https://urldefense.proofpoint.com/v2/url?u=http-3A__www.carlockcopeland.com_&d=AwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=1bFqfHRKgKaMGBNpUzpi4qm2MD4XrZFBeyE5THOPUCo&m=QI9yQQTlpfd-d3B95M6aAxIRgVzqmickLfOUSdvwzgM&s=QUMQL0IrVaTI0Vlo47zlnHv9b1ySwCsAtUHUUpZkBi1M&e=>Paralegal: Amy Eversole \(843-266-8211\)
Secretary: Fay Schroeder \(843-266-8221\) Administrative Assistant: Erica Boyd \(843-266-8350\)</p></div><div data-bbox=\)](https://urldefense.proofpoint.com/v2/url?u=http-3A__maps.google.com_maps-3Fq-3D40-2BCalhoun-2BStreet-2C-2BCharleston-2C-2BSouth-2BCarolina-2B29401-26hl-3Den-26Il-3D32.789006-2C-2D79.929013-26spn-3D0.030161-2C0.038581-26sll-3D28.576333-2C-2D81.394281-26sspn-3D0.126027-2C0.154324-26hnear-3D40-2BCalhoun-2BSt-2C-2BCharleston-2C-2BSouth-2BCarolina-2B29401-26t-3Dm-26z-3D15&d=AwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=1bFqfHRKgKaMGBNpUzpi4qm2MD4XrZFBeyE5THOPUCo&m=QI9yQQTlpfd-d3B95M6aAxIRgVzqmickLfOUSdvwzgM&s=nemWFd0eaneB0ZrGQE3O9csXgpd-xOLJZOZPcrPbUHA&e=></p></div><div data-bbox=)

Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent.

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## Muller, Megan

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**From:** Eversole Amy R.  
**Sent:** Friday, June 05, 2015 3:40 PM  
**To:** 'Mallary Hitchcock'; 'Harrington, Kristi L. Law Clerk (Ramsey S. Easley)'  
**Cc:** Natasha@nhannalaw.com; Winton, Tyler P.; Sperry, Paul E.  
**Subject:** Hughes v. Hanks. Civil Action No.: 2013-CP-10-7413 (Re: Status of hearing on Defendant's Motion to Dismiss, Transfer Venue and Compel Arbitration)  
**Attachments:** MIS of Mtn to Recon.pdf

Judge Harrington and Ms. Watson –

Good afternoon. Attached please find Defendant's Memorandum in Support of Motion to Reconsider. Copies follow to you and Natasha Hanna via US Mail. Please let me know if you have any questions or any problems with the attachment. Thank you.

Amy

[siglogo-compressed]<<http://carlockcopeland.com/>>

Amy Eversole  
Paralegal  
Carlock, Copeland & Stair LLP

843.266.8211 | f: 843.727.2995 | [aeversole@carlockcopeland.com](mailto:aeversole@carlockcopeland.com)<<mailto:aeversole@carlockcopeland.com>>  
40 Calhoun Street, Suite 400, Charleston, South Carolina 29401

ROPER HANKS, LLC.

CONTRACT NO: 3000-3

DATE: March 16, 2013

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**SUBCONTRACT AGREEMENT**

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**OWNER:** Havertys Furniture Companies, Inc.  
780 Johnson Ferry Rd NE  
Atlanta, Georgia 30342

**GENERAL CONTRACTOR:** Roper Hanks, LLC.  
3542 Kingsboro Rd NE  
Atlanta, Georgia 30319

**SUBCONTRACTOR:** Affordable Concrete & Masonry  
DBA RSS, LLC  
6491 Highway 701 North  
Conway, South Carolina 29526

**DIVISION:** 3000 / Concrete and Demolition

**PROJECT:** Havertys Furniture Store  
1760 Sam Rittenberg Blvd  
Charleston, South Carolina 29407

**ARCHITECT:** Wakefield Beasley & Associates  
5155 Peachtree Parkway  
Building 300 Suite 3220  
Norcross, Georgia 30092

**SUBCONTRACT AMOUNT:** \$ 42,043.83

**PERFORMANCE & PAYMENT BONDS:** None Required

**THIS AGREEMENT IS GOVERNED BY THE STATE OF GEORGIA**

(The above terms are incorporated by reference and are more fully explained herein).

Exhibit "A": Subcontract Document  
Exhibit "B": The Work  
Exhibit "C": Drawings/Specifications  
Exhibit "D": Sched Req - See Exh "B", Time

Exhibit "E": Applications for Payment  
Exhibit "F": Interim Waiver and Release  
Exhibit "G": Unconditional Waiver and Release

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INITIAL

Article I  
SUBCONTRACT DOCUMENTS

The Subcontract Documents consist of this Subcontract Agreement, the Agreement between Owner and Contractor, the Conditions of the Contract between Owner and Contractor (General, Special, Supplementary, and other Conditions), the Project Plans and Specifications, and any revisions and addenda to any of the above, all as referenced in Exhibit "A", as well as any binding amendments thereto, including Contract Change Orders and/or Subcontract Modifications, whether issued before or after execution of this Agreement.

Any subsequent, additional or revised Contract Plans and/or Specifications and amendments shall become part of the Subcontract Documents. Subcontractor shall notify Contractor in writing within seven (7) days after receipt thereof of any objections to, or additional charges, for any changes/additions/deletions to the Subcontract Documents.

Subcontractor shall be bound to Contractor by the terms of the Contract between Owner and Contractor and this Subcontract, and assume toward Contractor all of the obligations and responsibilities that Contractor, per the Contract between Owner and Contractor, assumes toward Owner, as applicable to this Subcontract.

Article II  
THE WORK

Subcontractor shall furnish and pay for all labor, material, taxes, tools, equipment, supervision, licenses and other goods and services necessary to perform and complete the work as further defined and described in Exhibit "B" attached hereto in strict accordance with the Subcontract Documents. Contractor shall determine and direct the schedule, sequence, timing and priority of the work activities and Subcontractor will comply with all such directions. Subcontractor warrants and represents that it has carefully examined the Subcontract Documents and has fully acquainted itself with all conditions relevant to the work called for by this Agreement, the site of the work, and its surroundings. Subcontractor agrees to assume the risk of such conditions and will, regardless of such conditions, or the expense or difficulty of performing the work, fully complete the work for the stated Subcontract Amount. Other than the Subcontract Documents themselves, any information furnished to Subcontractor by Contractor concerning the site, local conditions, or anything else regarding the work or the Project, is furnished for the Subcontractor's convenience only, and Contractor makes no guarantees or warrants as to their accuracy or completeness.

Article III  
SCHEDULE REQUIREMENTS

Time is of the essence of this Agreement. Subcontractor agrees to commence and to complete the work as described in Exhibit "B" in accordance with the schedule requirements in Exhibit "C". In the event Contractor does not prepare a Project Schedule, Subcontractor will commence work at the times directed by Contractor and work in an efficient and continuous manner until the work is complete. Subcontractor shall cooperate with Contractor by providing scheduling information pertaining to Subcontractor's work when requested by Contractor.

1. No extension of the time allowed to perform this Subcontract Agreement will be recognized or effective without the written consent of the Contractor and Owner.
2. Subcontractor acknowledges that time is of the essence and performance according to the Project Schedule is a material requirement of this Agreement. The Schedule will be updated at the Project Schedule Meetings, and attendance of the Subcontractor's field foreman and/or project manager is mandatory. The most recently updated Construction Schedule will be the

basis for the performance of the Work and the establishment of intermediated and final completion dates. Subcontractor's representatives are to be empowered to make both time and cost commitments and shall be abreast of its current schedule and material delivery status. Subcontractor will replace any representative that Contractor determines to be unqualified, uncooperative, or unsuitable. Any Subcontractor requested to attend and not represented at the Meeting will be responsible for the expenses and damages caused by the Subcontractor's absence.

3. The initial Construction Schedule represents the required durations of activities. In the event job progress begins to improve on those activity completion dates for any reason such as better weather, material deliveries, performance by subcontractors, and or fewer design problems, both the intermediate and final completion dates may be adjusted by the amount of time gained, such gain as reflected in the Near Term Schedules. Unless Subcontractor provides reasonable written objection, its completion time will be established by these Schedules and Subcontractor will meet such Schedules even though such scheduled time for performance may be shorter than the original referenced completion dates. These Schedules, as modified during the job and as defined by the Contractor, provide the only dates for intermediate and final completion dates irrespective of anything else to the contrary. The revising of the Near Term Schedule by the Contractor to reflect the failure of Subcontractor to meet the previous schedule does not constitute an agreement by Contractor that Subcontractor is entitled to an extension of time, nor is Subcontractor relieved of liability for such failure. This Article III provision controls and modifies all other provisions in this Agreement which may be to the contrary.
4. If Subcontractor is behind schedule due to lack of proper performance on its part, Subcontractor shall either: (A) perform the work on an overtime basis, or (B) increase its manpower, equipment, materials, and other resources to a level such that the activities can be completed by the scheduled completion date, or (C) implement a combination of these methods, as directed by Contractor. Subcontractor will be assessed any damages that may be incurred by Contractor due to Subcontractor's lack of proper performance. Unless otherwise expressly noted on the Project Schedule or agreed upon in writing, Subcontractor is to furnish sufficient manpower, equipment, materials, and other resources to achieve its Near Term Schedule completion dates by working within normal working hours (established by Contractor for this Project), Monday through Friday. IN the event Subcontractor fails to do so and attempts to recoup lost time by abnormal increases of forces or by working at nights or on weekends, Subcontractor shall be liable for additional general condition costs and compensation for Contractor's personnel for after hours and/or weekend work. Subcontractor shall immediately notify Contractor in writing of any circumstances which would delay the completion of any activity beyond the completion date established in the Schedule; otherwise, Subcontractor will continue to be responsible for meeting all activity completion dates. If Subcontractor is responsible for any delays to, or resequencing of the Schedule, Subcontractor will pay Contractor for all loss and damages incurred by Contractor resulting from such delays or loss.

In the event Subcontractor is unable to work due to rain or inclement weather during the work week, Subcontractor agrees to make up those days on weekends.

5. In the event Subcontractor is prevented from performing its work in accordance with the original Schedule, or Subcontractor's work is delayed, accelerated, disrupted, impeded, resequenced or otherwise adversely impacted due to circumstances wholly beyond Subcontractor's control, Subcontractor shall be entitled to a time extension as its sole remedy, if and to the extent: (1) Subcontractor can demonstrate that such is warranted and (2) Contractor receives a time extension (due to delays which impacted Subcontractor's work) from the Owner. Subcontractor's right to a time extension in such circumstances shall be conditioned upon and limited to Contractor's ability to receive a time extension from the Owner. If Contractor receives no time extension from Owner, then Subcontractor shall be entitled to no time extension. In the event that the Project Schedule and/or events during

construction prohibit Subcontractor from executing its work on a continual basis or in the sequence it planned, Subcontractor accepts this condition and no claim is to be made for remobilization; however, Subcontractor shall maintain a continual flow of work to the full extent possible.

#### Article IV PROGRESS PAYMENTS

Contractor agrees to pay Subcontractor for the performance of its work the sum set forth as the Subcontract Amount, subject to any additions or deductions for changes which may be mutually agreed upon in writing, and to make monthly payments on account thereof.

1. Subcontractor's monthly application for payment must be prepared on the form which appears as Exhibit "E" and must be received in Contractor's main office by the 20<sup>th</sup> of each month in order to be included in the application for payment to be submitted to the Owner for that pay period; otherwise, no payment will be made until the following pay period. Only one (1) application for payment will be honored monthly unless noted herein. Applications for payment shall include a list of material suppliers and subcontractor, the current status of billings by and payments to each, and lien waivers from each vendor who has furnished goods/services for the project. These lien waivers must be prepared on the forms which appear as Exhibits "E" and "F".
2. Contractor shall make monthly progress payments to Subcontractor within fifteen (15) days or within five (5) days from contractor's receipt of payment from owner, whichever is later, unless otherwise provided in the Contract between Owner and Contractor or by law. Notwithstanding any other provision of this Agreement, receipt of payment from Owner is an express condition precedent to any obligation of Contractor to make payment to Subcontractor. In no event, and under no circumstances, is any payment due Subcontractor until Contractor has first received payment for the work in question from Owner. The amount of each such progress payment shall be that amount necessary to cause the cumulative payments to date to Subcontractor to equal the Subcontractor's percentage of completion as certified by the Contractor multiplied by the Subcontract Amount, less retainage as provided below.
3. Ten percent (10%) of Subcontractor's total cumulative earned billings shall be retained from payment and released as part of final payment in accordance with Article V. However, upon receipt of a written request from Subcontractor, Contractor may, in its sole discretion and without waiving any rights, release Subcontractor's retainage or a portion thereof prior to the occurrence of all of the conditions precedent to final payment set forth in Article V.
4. Subcontractor shall, before commencing work, and before any earlier date that may be specified by Contractor, submit to Contractor a schedule of values setting forth the values of the various parts of Subcontractor's work, with the aggregate amount of these values to equal the Subcontractor Amount, made out in such detail as Contractor or Owner may require, and supported by such evidence as to its correctness as Contractor or Owner may request. This schedule, when approved by Contractor and Owner, shall be used as a basis for Certificates for Payment, unless it is later found by Contractor or Owner to be in error. In addition Subcontractor shall submit a schedule of all of its subcontractors and suppliers, including each one's contract or purchase order amount, an itemization of the materials or services to be furnished by each one, and a contact name, address and telephone number for each one.
5. Subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this Subcontract Agreement, through the period covered by previous

payments received from Contractor, and, when requested by Contractor or Owner, furnishes satisfactory evidence to verify such payments.

Subcontractor agrees that monies received pursuant to this Subcontract Agreement shall be used solely for labor and materials incorporated into this Project and shall not be diverted to satisfy obligations of Subcontractor on other contracts or other projects.

6. Contractor hereby reserves the right to make any payment hereunder to Subcontractor via a check made payable to the joint order of Subcontractor and one or more of Subcontractor's workmen, materialmen, suppliers, subcontractors, or any of Subcontractor's creditors having potential lien rights with respect to Subcontractor's work on the Project. Before any joint checks will be issued, Owner may, at its option, require Subcontractor to deliver to Owner or Contractor Waivers of liens and releases of claims in the amount of any payment made.
7. Notwithstanding the amounts and times of payments set forth in the Subcontract, Contractor, at any time, may in its sole discretion make advance payments to Subcontractor if, in Contractor's opinion, such advances will aid Subcontractor in the performance of this Subcontract. Such advance payments may be made without notification to the surety on any bond furnished by or in behalf of Subcontractor and failure to give such notice will not deprive Owner of any claim, right or remedy under any such bond.

#### Article V PROJECT CLOSEOUT AND FINAL PAYMENT

Subcontractor's timely submission of all closeout documents/materials is a specific performance requirement of this Subcontract Agreement, in order to facilitate Contractor's closeout of the entire project in order to obtain prompt release of retainage to Contractor and Subcontractor's. Subcontractor shall submit all close out documents/materials, (including but not limited to As-Built Drawings, Operating and Maintenance Manuals, Product Data, Warranties, Guarantees, Consents of Surety, Final Unconditional Lien Waivers, spare parts/equipment and Attic Stock Materials) no later than the Project Substantial completion (as defined by the Subcontract Documents) or upon completion of Subcontractor's work, whichever occurs first. Subcontractor's final monthly Progress Pay Application (per Article IV) shall also be submitted, along with its separate billing for retainage, and payment therefore may be withheld by Owner until Subcontractor has submitted all close-out documents/materials acceptable to Contractor, Architect, and Owner. Subcontractor shall be liable for all damages and expenses resulting from its lack of timely closeout submittals including interest burden/foregone interest income on all retainage dollars withheld by Owner for the project at an interest rate no less than twelve (12%) per annum.

Final payment shall be due when all of the following have occurred: the work described in this Subcontract Agreement is fully completed and performed in accordance with the Subcontract Documents, Owner and Architect have accepted the Project, and Subcontractor has submitted all close-out documents/materials. Subcontractor shall submit evidence satisfactory to Contractor and Owner that all payrolls, material bills, and all known indebtedness connected with Subcontractor's work have been satisfied.

#### Article VI PERFORMANCE AND PAYMENT BONDS

In the event Owner requires bonds (as indicated on Page 1), Subcontractor shall furnish separate Payment and Performance Bonds in the form specified by Owner, each in the amount of One Hundred Percent (100%) of the Subcontract Amount.

All costs of these bonds shall be included in the Subcontract Amount. Subcontractor shall also pay, at its own expense, any additional bond premium resulting from changes to the Subcontract Amount. These

bonds shall be furnished by a company on the U.S. Treasury List and acceptable to Owner prior to the commencement of any work by Subcontractor, unless agreed otherwise in writing by Owner. Subcontractor shall submit to Owner the name, address and phone number of its bonding agent with said bonds. In the event Owner elects to Subcontractor's bond premiums directly to the bonding company, Subcontractor shall forward the bond premium invoice from its bonding company to Owner or Contractor, and any such payment by Owner shall be applied against the Subcontract Amount.

#### Article VII TEMPORARY SITE FACILITIES

Subcontractor shall be fully responsible for all of its materials and its vendors' materials stored on-site and shall protect them properly from weather, vandalism, and theft. Subcontractor shall maintain insurance covering such stored materials until such time as those materials are incorporated into the Work and accepted by Contractor and Owner. Subcontractor shall be fully responsible for 24 hours minimum advance notification to, and coordination with, Contractor's Project Superintendent for all such material deliveries and comply with Project Superintendent's directives regarding the placement and storage of said deliveries.

Subcontractor shall carefully protect the finished work of Subcontractor and of other trades, any existing improvements, any equipment, materials, and any property of others from any damage by Subcontractor or its subcontractors/vendors.

#### Article VIII INSURANCE

##### SUBCONTRACTOR'S INSURANCE

Before commencing the Subcontract work, and as a condition precedent to any payment, the Subcontractor shall purchase and maintain insurance in conformance with the provisions contained in this Exhibit. This insurance will provide a defense and indemnify the Contractor, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Subcontractor's acts or omissions or the acts or omissions of those acting on the Subcontractor's behalf.

Proof of this insurance shall be provided to the Contractor before the work commences, as set forth below. To the extent that the Subcontractor subcontracts with any other entity or individual to perform all or part of the Subcontractor's work, the Subcontractor shall require the other Sub-Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Sub-Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Contractor of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Contractor, the Subcontractor or the Sub-Subcontractor will, upon demand by the Contractor, defend and indemnify the Contractor at the Subcontractor's or Sub-Subcontractor's expense.

#### MINIMUM LIMITS OF LIABILITY

The Subcontractor must maintain the required insurance with a carrier rated A- or better by A. M. Best. The Subcontractor shall maintain at least the limits of liability as set forth below:

**Commercial General Liability Insurance**  
\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)  
\$2,000,000 General Aggregate  
\$2,000,000 Ongoing & /Completed Operations Aggregate  
\$1,000,000 Personal and Advertising Injury Limit

**Business or Commercial Automobile Liability Insurance**  
\$1,000,000 combined single limit per accident

**Workers' Compensation and Employers' Liability Insurance**  
\$100,000 Each Accident  
\$100,000 Each Employee for Injury by Disease  
\$500,000 Aggregate for Injury by Disease

**Excess or Umbrella Liability (to overlay Employer's Liability, Automobile Liability and Commercial Liability coverages)**  
\$1,000,000 occurrence/aggregate

#### Additional Insured Status and Certificate of Insurance

The Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be **primary and noncontributory** with respect to the additional insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by the Contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Contractor and Owner, and this clause shall apply to the Contractor's and Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of work, Subcontractor shall submit a Certificate of Insurance in favor of Contractor and an Additional Insured Endorsement (in a form acceptable to the Contractor) as required hereunder. The Certificate shall provide for thirty (30) days' notice to Contractor for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Contractor upon request.

#### NO LIMITATION ON LIABILITY

With regard to any and all claims against the additional insured by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### CANCELLATION, RENEWAL AND MODIFICATION

The Subcontractor shall maintain in effect all insurance coverages required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor until final completion and acceptance of the entirety of the Subcontract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of insurance showing required coverage to be in force must be delivered to the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling the Contractor, at its sole discretion, to purchase such equivalent coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

#### CONTINUATION OF COVERAGE

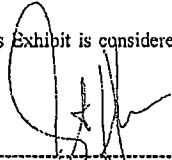
The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

#### ACKNOWLEDGMENT OF REFERRAL OF THIS PROVISION TO THE SUBCONTRACTOR'S INSURANCE AGENT OR BROKER

The Subcontractor represents that it has provided a copy of the "Insurance Provisions" to his insurance agent and/or broker, and that the Subcontractor has instructed the agent/broker to provide insurance in full compliance with the terms and conditions herein.

The Contractor and Subcontractor hereby acknowledge that this Exhibit is considered a material term of the Subcontract.

  
On Behalf of the Contractor

  
On Behalf of the Subcontractor

Date: 4-5-13

Date:

Article IX  
ADDITIONAL PROVISIONS

In addition to the foregoing provisions, the parties also agree as follows:

That Subcontractor shall:

1. Clean-up - Keep the building and premises clean at all times of debris arising out of the performance of this Subcontract Agreement or Subcontractor's operations. Subcontractor shall daily remove all trash, rubbish, and debris caused by its work to Owner's dumpster or the location designated by Contractor. If Subcontractor does no clean up, as outlined above, on direction from Contractor or his representative, within a twenty-four (24) hour period, Contractor may perform this work and charge all costs incurred to Subcontractor. Charges associated with the clean-up of debris created by more than one subcontractor shall be assessed on a pro-rata basis according to Subcontractor's share of the general debris, as determined by Contractor.
2. Safety - Comply with all statutory, regulatory, contractual, and Project safety requirements applying to its work and/or initiated by Contractor, and shall immediately report to Contractor any injury to Subcontractor's employees at the site of the Project. The parties to this Subcontract Agreement agree to abide by the Construction Safety Act of 1969, the Occupational Safety and Health Act of 1970, Contractor's Safety Program, all applicable state and federal statutes, and any amendments thereto, and shall be responsible for the acts of their employees. Subcontractor to indemnify Contractor and Owner against any and all fines, costs and expense incurred by Contractor or Owner as a result of Subcontractor's failure to comply with any law, regulation or directive by any and all government entities.
  - A. Hazard Communication - Subcontractor is required to implement, and maintain at the jobsite, a written hazard communication program per OSHA Standard 1926.59.
  - B. MSDS - Subcontractor agrees to provide a list of all materials Subcontractor will utilize on site that are regulated by OSHA Standard 1926.59 and to provide Contractor with Material Safety Data Sheets (MSDS) for all such listed materials. Subcontractor will also require this of any sub-subcontractors.
  - C. Safety Rails - Subcontractor will immediately repair and or replace any safety railings or other safety provisions that Subcontractor has removed or altered.
  - D. Accident Notification - Subcontractor will full disclose, in writing, all facts and circumstances related to any accidents involving Subcontractor's work and/or Subcontractor's employees within twenty-four (24) hours of the occurrence of such an accident.
  - E. Hard Hats / Attire - Subcontractor will, at its expense, require all of its employees, including anyone directly or immediately employed by them, to wear hard hats, shirts, shoes, long pants, and all other required safety clothing or personal protective equipment at all times while on the Project site.
  - F. Safety Meetings - Subcontractor's employees will be required to attend Contractor's weekly safety meetings or attend weekly safety meetings conducted by the Subcontractor, in which case, the Subcontractor will provide to the Contractor a list of the meeting attendees and a copy of the minutes of the meeting.
  - G. Safety Enforcement - Should Subcontractor, or anyone for whom Subcontractor is responsible, fail to comply with any of these provisions, Contractor has the right to immediately suspend Subcontractor's work until such time as Subcontractor has come into full compliance. Such suspension will not entitle Subcontractor to a change order for additional costs or an extension of time. Contractor also reserves the right to immediately remove from the jobsite any individual whom Subcontractor is responsible that willfully or persistently violates any provisions herein.

3. Assignment / Sub-Subcontractors - Not assign this Subcontract Agreement or any amounts due or to become due hereunder without the prior written consent of Owner, nor subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of Owner. Owner's consent to any full or partial assignment shall not constitute a novation or release Subcontractor from any of its obligations under this Subcontract.

4. Guarantee - Guarantee its work against all defects of materials and/or workmanship as called for in the plans, specifications and addenda for such period of time as required thereby or by any other provision in the Subcontract Documents, or, if no other guarantee is called for, then for a period of one (1) year from the date of acceptance of the Project by Owner and Contractor.

Prior to the expiration of the one-year guarantee period, as referenced above, Owner reserves the right to carry out a detailed inspection of the project with regard to the work covered under the terms of the Subcontract Agreement and present findings and observations of such inspection to Subcontractor. Upon notice Subcontractor is required to immediately correct the work as a result of defective or unsatisfactory materials and/or workmanship as noted by such detailed inspection.

5. Progress Reports - Furnish periodic progress reports concerning the work including the progress of materials or equipment in the course of preparation or manufacture and permit Contractor to communicate directly with Subcontractor's equipment/material vendors regarding status.

6. As - Built Documents - Subcontractor will update on a weekly basis a record set of as-built drawings, and/or drawings as designated by the Contract Documents. These drawings will be kept on site for review at any time by Contractor, Architect, Engineer, and/or Owner. As-built drawings will accurately show dimensioned locations for all pipe, conduit, and equipment, including underground and concealed items. A record set of as-built drawings in quantities defined by Exhibit "B" or the Subcontract Documents whichever is greater, and shall be provided to Contractor and Owner upon completion of all work covered by this Subcontract Agreement.

7. Coordination - Cooperate and coordinate with Contractor and other subcontractors whose work might conflict or interfere with Subcontractor's work and to participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising Contractor of any such conflict or interference. Subcontractor shall carefully study the project plans and specifications, perform on-site surveys, review submittals furnished by all other trades that interface with subcontractors work and inform Contractor of any errors, inconsistencies or conflicts.

8. Scheduling & Submittals - Cooperate with Contractor in scheduling the work so as not to conflict or interfere with the work of others. To promptly submit shop drawings, submittals, and samples, as required in order to carry out said work efficiently and at a speed that will not cause delay to the progress of Contractor's work or other branches of the work carried on by other subcontractors. The approval of shop drawings, samples, submittals, catalog cuts, and or other submissions and information shall not relieve the Subcontractor of its responsibility for properly detailing the design, or for any errors, omissions, or discrepancies from the Subcontract Documents which may exist in the final work installed by Subcontractor. Subcontractor shall review and approve all shop drawings, samples, submittals, catalog cuts, and other submissions and information supplied by their subcontractors or suppliers prior to submission to Contractor.

9. Compliance with Laws - Comply with all Federal, State, and Local laws and ordinances applicable to the Project, give adequate notices relating to the work to all proper authorities, and secure, pay for, and comply with all licenses and permits necessary to carry out the work as described in the Subcontract Documents. Subcontractor shall also comply with Federal,

State, and Local tax laws, Social Security laws, Unemployment Compensation laws, and Workers Compensation laws, and pay all benefits and taxes as required by said laws.

10. Punch list/Correction of Work.-- Continually inspect and prepare punch lists concerning its own work to insure conformance with the Subcontract Documents. Subcontractor agrees to correct any deficiencies or deviations from the Subcontract Documents promptly upon discovery by any party. The correction of work as noted on previous punch lists does not relieve Subcontractor from correcting its work per subsequent punch lists. All such work shall be subject to the final acceptance of Contractor, Architect, Engineer, and Owner.
11. Labor -- And does hereby agree to perform its work with labor compatible with that of other trades performing work at the jobsite or on any other building, structure, or other improvement which Contractor may then be erecting or altering.

Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

That Contractor shall:

12. Make available to Subcontractor for inspection, upon reasonable request, any Subcontract Documents which Subcontractor does not possess.
13. Promptly relay to Subcontractor any revisions or clarifications received from Owner, Architect, or Engineer with respect to the design of the work to be performed by subcontractor.
14. Promptly submit to the Owner, Architect, or Engineer any reasonable requests received from Subcontractor for design changes, clarifications, or information.

The Parties also agree:

15. Extra Work/Changes: Subcontractor shall make any and all changes, additions, and/or deviations from the original plans and specifications without nullifying the original Subcontract Agreement. Subcontractor, prior to the commencement of this revised work, shall submit promptly to Contractor written copies of the cost or credit proposal for such revised work in a manner consistent with the Subcontract Documents. Should Contractor and Subcontractor be unable to agree as to the value of Subcontractor's work to be changed, added, or omitted, Subcontractor shall have the duty to promptly proceed with the work under the written order of Contractor from which order the stated value of the work shall be omitted and the value of the work shall be determined as set forth herein.

In the case of omitted work, Owner or his representative (Contractor) shall have the right to withhold from payments due or to become due to the Subcontractor an amount which, in Contractor's opinion, is equal to the value of such work until such time as the value thereof is determined by agreement or the claim procedures. Subcontractor agrees to make all claims for which Owner is or may be liable in the manner provided in the Subcontract Documents for like claims by Contractor against Owner. Notice of such claims shall be given within the time allowed by the Contract between Owner and Contractor and no later than three days prior to the beginning of Subcontractor's work for which such claim is to be made, or immediately upon Subcontractor's knowledge of the claim, whichever shall occur first. Otherwise such claim shall be deemed waived.

There will be no payment for extra work unless authorized in writing by Construction Manager and Owner prior to the beginning of the actual work. Such authorization is to state an exact, or, if agreed by Owner and Contractor, approximate cost of the work. Thereupon, Subcontractor shall submit final charges for any extra work to Contractor within ten (10) calendar days. Contractor reserves the option to approve extra work to be

performed on a time and material cost basis. In this event, Subcontractor must submit work tickets on a daily basis for Construction Manager's signature, including a detailed breakdown of labor hours and material invoices. Subcontractor agrees its failure to provide daily back-up will result in its waiving of any claim for additional payment.

Unless the Subcontract Documents specify otherwise, approved changes are to be paid for on the basis of Subcontractor's actual, documented direct costs as defined by the Subcontract Documents plus a maximum of ten percent (10%) total for overhead and profit. In the event overtime is authorized by Owner and Contractor in writing and in advance as constituting an extra (as opposed, for example, to overtime necessary to remedy Subcontractor's own delays), only the overtime premium portion paid by Subcontractor, without overhead and profit, shall be regarded as an extra. Subcontractor agrees that its execution of any Modification/Change Order will constitute Subcontractor's agreement that the compensation called for therein is full and complete payment for all costs and losses (direct and indirect) of whatsoever kind or nature associated with such changed work and that Subcontractor, by executing such change, waives all impact costs, delay damages, acceleration costs, loss of efficiency or productivity costs, and other costs and damages associated with such change.

16. **Payments Withheld** - Payments otherwise due may be withheld by Owner on account of defective work not remedied, claims filed against Subcontractor or against Owner or Contractor relating to Subcontractor's work, evidence indicating that the filing of such a claim is probable, failure of Subcontractor to make payments properly to its subcontractors or for material or labor, evidence or knowledge of Subcontractor's current/pending bankruptcy, or a reasonable doubt that this Subcontract Agreement can be completed for the Subcontract balance then unpaid. If the said causes are not removed, within forty eight hours (48) after written notice, Owner may rectify the same at Subcontractor's expense.
17. **Deductions from Payments; Set-off** - Owner or Contractor shall be entitled to deduct from or set-off against any progress payment and/or the final payment under this Subcontract Agreement or any amounts otherwise payable to Subcontractor under this Subcontract Agreement or any other contract between Owner and Subcontractor; (a) any sums expended by Owner or Contractor in performing any obligations under such contract that Subcontractor has failed to perform; (b) any damages, costs, or expenses incurred by Owner or Contractor as a result of Subcontractor's failure to perform any of its obligations under such contract; and (c) any other amount owing from Subcontractor to Owner or Contractor under any such contract or otherwise.
18. **Daily Reports** - Subcontractor's highest ranking on-site representative shall submit on a daily basis a written report to Contractor's highest ranking on-site representative detailing crew sizes and composition, materials received, work completed, the reasons for any delays or deviations from Project Schedule, and any other information that may be requested by Contractor or its highest ranking on-site representative.
19. **Licenses/Permits** - Subcontractor is responsible for its respective local and state business licenses, permits, Occupational License, State registration, vehicle registrations, and any other jurisdictional requirements to perform its work. Proof of compliance shall be submitted prior to the start of Subcontractor's work.
20. **Existing Substrates** - If Subcontractor is to build or apply its work upon that of Contractor's or another subcontractor, Subcontractor shall inspect the existing conditions and, if any deficiencies exist, notify Contractor of the need for corrective action. Otherwise, Subcontractor acknowledges the previous work as being acceptable and warrants the resultant quality and performance of the finished work.
21. **Supervision & Layout** - Subcontractor shall designate one individual from among its supervisory personnel located on-site as being in charge of all work performed by

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Subcontractor and its subcontractors and to serve as Subcontractor's agent for purposes of communication with Contractor and his Project Superintendent. This person shall be on site at all times while Subcontractor is performing work and shall not be changed without the consent of Contractor unless he ceases to be in the employment of Subcontractor. Subcontractor shall provide all layout engineering and/or field dimensioning required for the performance of the work described herein. Errors in layout and installation of this Subcontractor's work causing additional work by others shall be the responsibility of Subcontractor, and the cost for same shall to be borne by Subcontractor.

22. **Indemnification** — Subcontractor shall indemnify and hold harmless Contractor, Owner, Architect, and Engineer, and their respective agents and employees, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of Subcontractor's work, provided that any such claim, damage, loss or expense (A) is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (B) is caused in whole or in part by any negligent act or omission of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is also caused in part by a party indemnified hereunder.

In any and all claims which may be asserted against Contractor, Owner, Architect, or Engineer, or any of their respective agents or employees, by any employee of Subcontractor, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages recoverable, or the compensation or benefits payable, by or for Subcontractor or any of its subcontractors under Workers Compensation acts, disability benefit acts, or other employee benefits acts.

#### Article X Claims and Disputes

- A. Any claim, dispute, or controversy between Owner or Contractor, or Subcontractor, shall be conclusively resolved and settled as follows:

Subcontractor shall conclusively be bound by and abide by Owner or Contractor's decision, unless Subcontractor shall timely commence arbitration proceedings in strict accordance with the following provisions:

- i. If Subcontractor decides to appeal the decision of the Owner or Contractor, then the controversy shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Association prevailing at that time, and the arbitration decision shall be final and binding upon both parties: provided, however, that arbitration proceedings shall be commenced by Subcontractor not later than 30 days following Subcontractor's receipt of notice of Owner or Contractor's decision; otherwise, the Owner or Contractor's decision becomes final and binding. Venue for arbitration or any subsequent litigation whatsoever shall be in the city of the Owners office as shown on Page 1 of this Agreement.
- ii. Any arbitration arising out of relating to this Agreement or the breach thereof may, at Owner or Contractor's sole option and election, include by consolidation, joinder or any other manner, any other entities or persons whom Owner or Contractor believes to be substantially involved in a common question of fact or law. Without limiting the generality of the foregoing, this provision shall specifically entitle Owner or Contractor, at its sole option and election, to consolidate any arbitration proceeding between Owner or Contractor and Subcontractor with any other arbitration

- proceeding(s) arising out of the same Project (unless and except to the extent Owner or Contractor is precluded from doing so by the terms of its arbitration agreement with the parties to the other arbitration proceeding(s)).
- iii. In the event Subcontractor fails to abide by a final binding decision of Owner or Contractor, or any arbitrator(s), Owner or Contractor shall have the right to enforce said decision by withholding appropriate sums from any payments that would otherwise be due Subcontractor, or, to the extent the Subcontract balance is insufficient to satisfy Subcontractor's obligation, by legal action, with all costs of such legal action, including Owner or Contractor's reasonable attorneys' fees to be borne by Subcontractor.

- B. In the event of any dispute between Owner and Contractor or Subcontractor relating to this Subcontract or a breach thereof, Subcontractor agrees to exhaust all remedies available through Contractor under Contractor's Contract with Owner prior to instituting any separate action or, in the event that a separate action is instituted prior to the exhaustion of the aforesaid remedies, Subcontractor agrees to stay said action pending the exhaustion of all remedies against the Owner. Subcontractor also agrees to be bound to Construction to the same extent Contractor is bound to Owner by the final decision resulting from arbitration or of a court of competent jurisdiction, whether or not Subcontractor is a party to such proceeding. If such dispute is prosecuted or defended by Contractor against Owner under the terms of the Contractor's Contract with Owner or in any court action, arbitration, or other proceeding, Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights and shall have the duty to cooperate with Contractor. Subcontractor agrees to furnish to Contractor at no cost all documents, statements, witnesses and other information required by Contractor for such purpose, to fully cooperate with and assist Contractor with respect thereto, and to pay or reimburse Construction for all expenses and costs, if any, incurred by Contractor in connection therewith.

In any arbitration proceeding, Subcontractor agrees to the appointment of arbitrators as may be selected by Contractor and Owner pursuant to the requirements of the arbitration provision in the Contractor's Contract with Owner. It is expressly agreed and understood that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor, in connection with this Project, Contractor shall never be liable to Subcontractor to any greater extent that Owner is liable to Contractor for same.

- C. In the event of any claim by Subcontractor or dispute between Subcontractor and Contractor, Subcontractor and its sureties agree to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contractor's Contract with Owner and by any and all decisions or determinations made thereunder by the party or entity so authorized in Contractor's Contract with Owner.
- D. No claim, dispute or controversy shall interfere with the progress of construction, and Subcontractor shall proceed with its work without interruption, deficiency or delay irrespective of any claim, dispute, or controversy which may arise.
- E. Should either party to this Agreement demand arbitration or institute a lawsuit to enforce any of the provisions hereof, to protect its interest in any matter arising under the Subcontract, to collect damages for the breach of the Subcontract, or to recover on a surety bond given by a party to the Subcontract, the prevailing party shall be entitled to recover, and the losing party agrees to pay, all reasonable attorneys' fees, costs, charges, and expenses expended or incurred therein.

Article XI  
SUBCONTRACTOR DEFAULT/TERMINATION

**Failure to Perform:** Should Subcontractor at any time fail to supply a sufficient number of skilled workmen or sufficient equipment, tools, and materials of proper quality, or fail in any respect to prosecute the work covered by this Subcontract Agreement with promptness and diligence, or fail to perform work of the quality required by the Subcontract Documents, or fail in the performance of any of the agreements herein contained, or should any workmen performing work covered by this subcontract engage in a strike or other work stoppage, or cease to work due to picketing or other such activity, Owner or Contractor may, at its sole option, and without prejudice to any other rights it may have, after twenty-four (24) hours written notice to Subcontractor: (1) provide any such labor, equipment, tools, or (2) terminate the employment of Subcontractor for the work under this Subcontract, enter upon the premises and take possession, for the purpose of completing the work hereunder, of all Subcontractor's materials, tools and equipment thereon, finish the work either with its own employees or another subcontractor, or (3) both (1) and (2).

In case of any such termination of the Subcontractor's employment, Subcontractor shall not be entitled to receive any further payments under this Subcontract Agreement or otherwise except as provided herein, and shall be liable for any damages which Owner or Contractor incurs as a result of Subcontractor's failure to properly and timely perform this Agreement, including, but not limited to, any expenses Owner or Contractor incurs in completing Subcontractor's work in excess of the unpaid Subcontract balance. Such expenses include, but are not limited to, all supervision, labor, materials, tools, equipment, overhead costs, incurred by Owner or Contractor in completing the work plus ten percent (10%) profit applied to such costs and expenses, any liquidated or actual damages that may be assessed against and collected from Contractor as a result of Subcontractor's failure to perform its work properly and in a timely manner or as a result of the time lost in arranging for the completion of the work by others; and all attorney's fees and other damages Contractor may sustain by reason of Subcontractor's failure to properly and timely perform its work. Subcontractor shall pay any such excess completion costs to Owner or Contractor, along with any other damages incurred by Owner or Contractor as a result of Subcontractor's default. Owner shall have a lien upon all materials, tools, and appliances taken into Owner's or Contractor's possession to secure the payment thereof; and Subcontractor agrees to execute any assignments necessary to make available to Owner and Contractor the rights of Subcontractor. Subcontractor shall reimburse Owner or Contractor for all damages and excess completion costs incurred by Owner or Contractor due to Subcontractor's failure to properly and timely perform its Subcontract. If, upon completion of Subcontractor's work, the final acceptance of the work by Owner, and final payment to Contractor for said work, Contractor's total damages and completion costs are less than the remaining Subcontract balance, then Owner will pay the difference to Subcontractor.

The parties acknowledge that determinations as to the adequacy of a contractor's performance or a contractor's ability to complete the work are difficult to make and must be made under pressing circumstances; and agree that any determination by Owner or Contractor that the provisions of this Article should be invoked shall be deemed conclusive and binding upon the parties absent bad faith on the part of Owner or Contractor. Upon written request by Owner or Contractor, Subcontractor shall furnish to Owner or Contractor such evidence as Owner or Contractor may require relating to Subcontractor's ability to fully perform this Subcontract Agreement in the manner and within the time required by Contractor.

**Termination Without Cause:** Owner or Contractor shall have the right, by giving twenty-four (24) hours written notice to Subcontractor, to terminate this Subcontract, without cause and in the absence of any default or breach by Subcontractor, and to require Subcontractor to cease work hereunder, in which case, Owner shall pay Subcontractor for work properly in place and costs directly resulting from such cessation of work, except that Subcontractor shall not be entitled to anticipated profits on work unperformed or on materials, labor or equipment unfurnished. In the event Owner terminates its contract with Contractor, Subcontractor shall not be entitled to any greater recovery than Contractor receives on behalf of Subcontractor or related to the Subcontract. Any claim by Subcontractor arising from such a termination shall be subject to the requirements of Article X. Further, in the event Owner or Contractor terminates Subcontractor for default and it is later determined that the termination was not warranted or was wrongful; such termination shall be deemed a termination without cause, subject to the provisions of this paragraph.

#### Article XII MERGER

This Subcontract Agreement supersedes any and all proposals, negotiations and agreements prior to the date of this Agreement, and may be amended only by written instrument signed by both Owner or Contractor and Subcontractor. This Subcontract Agreement is solely for the benefit of the signatories hereto. No term or provision of this Subcontract Agreement may be waived by Owner or Contractor except in writing, signed by Owner or Contractor, or their duly authorized officer or agent; and Owner's or Contractor's waiver or, or failure to enforce, and term of this Agreement in one instance shall not constitute a waiver of that term with respect to any other instance or a waiver of any other terms of this Agreement.

If this Subcontract Agreement has not been signed and returned within fifteen (15) calendar days of date of this Subcontract Agreement, Subcontractor's failure to do so shall constitute acceptance of this Subcontract Agreement in full as issued. Subcontractor shall not be entitled to any payment until this Subcontract Agreement has been properly executed and all documents and information to be furnished by Subcontractor (including, but not limited to, any bonds and evidence of insurance required herein) have been supplied to Owner or Contractor.

**Article XIII**  
**GOVERNING LAW / PRECEDENCE / INVALID TERMS**

This Subcontract Agreement shall be governed by, and construed in accordance with, the laws of the State noted on Page One (1) of this Agreement. In the event of any conflicts between the specific provisions contained in this Subcontract Agreement and any provisions or language contained in other parts of the Subcontract Documents which are incorporated herein by reference, the provisions contained in the Subcontract Agreement itself shall prevail. In the event any of the terms of this Subcontract Agreement (including the Subcontract Documents, incorporated herein by reference) are, or are deemed to be, invalid, void, or unenforceable, such shall not affect the applicability of the other provisions of this Agreement, which shall remain in full force and effect. Subcontractor expressly acknowledges that it has had an opportunity to fully review the complete contents of the Contract between Contractor and Owner and the full Subcontract Documents prior to the execution of this Subcontract Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Subcontract Agreement.

SUBCONTRACTOR

CONTRACTOR

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SUBCONTRACTOR WITNESS

CONTRACTOR WITNESS

**HAVERTYS FURNITURE STORE  
DIVISION 3000 / CONCRETE**

**EXHIBIT "B"**

**THE WORK:**

The Subcontractor shall provide all labor, materials, lifts, and safety equipment to furnish and install concrete as per the drawings and specifications in Exhibit "C" for a complete and finished system. The work includes demolition of concrete SOG and CMU block walls, saw cutting, pour, place and finish, reinforcing steel, paver removal and pour back, plumbing & electrical trench removal and pour back, entry slab, new sidewalks, curb and gutter, braced wall with footings and fix block around new CMU door openings. All materials shall be installed and meet all Federal, State and Local codes.

**GENERAL:**

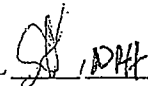
1. Subcontractor shall provide all labor and materials for the lay-out of his work. Contractor shall provide a benchmark for beginning lay-out.
2. Subcontractor shall inspect his areas and areas adjacent to his work for any discrepancies and notify Contractor of such discrepancies prior to beginning work. Failure to notify Contractor of any discrepancies shall constitute Subcontractors acceptance of the conditions and any modification or repair as a result of such discrepancies shall be at a cost to the Subcontractor and shall not be considered a change in work to the Contractor or the Owner.
3. Subcontractor shall protect his work areas from damage by other trades. Subcontractor shall protect areas adjacent to his work while performing the duties of his work.
4. Subcontractor shall provide all labor and materials necessary to keep his work areas clean and in a broom swept condition on a daily basis. Contractor shall provide a dumpster for Subcontractor's use. Failure by the Subcontractor to keep his work picked up will result in a back-charge from the Contractor for all expenses incurred by the Contractor in cleaning up Subcontractor's work. Contractor shall provide one (1) written warning to Subcontractor prior to taking action against Subcontractor.
5. Subcontractor shall install his work in accordance with all Federal, State, or Local codes as they may apply.
6. Subcontractor shall provide sufficient manpower as to keep the work moving in accordance with the Contractor's schedule or direction.
7. Subcontractor shall give Contractor twenty-fours notice prior to any materials being delivered to the project site. Subcontractor shall provide all labor, materials, and lifts necessary to load and un-load his materials.
8. Subcontractor shall warrant his work against defects for a period of not less than twelve (12) calendar months from date of Substantial Completion.

**MATERIALS:**

1. All materials shall be clean, new, and without defects.

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HAVERTYS FURNITURE STORE  
DIVISION 3000 / CONCRETE

EXHIBIT "B"

2. All materials shall be accordance with the plans and specifications, and shall meet all requirements of all Federal, State, or Local building codes as they may apply.
3. All materials shall be approved by Contractor, Architect, and Engineer prior to their use.

MEETINGS / REPORTS:

1. Subcontractor shall attend all Subcontractor meetings as directed by Contractor. Subcontractor shall have his Project Manager and on-site Foreman in attendance at all meetings. Failure to attend any meetings may result in a \$100.00 fine at the Contractor's discretion.
2. Subcontractor shall provide a daily record to Contractor's foreman indicating all materials delivered, employees on-site, and work completed for each day's work. Reports shall be turned in with-in 24's hours of previous days work.

TIME: PHASED SCHEDULE COMPETION

1. Phase 1 – April 16, 2013
2. Phase 2 – May 16, 2013
3. Phase 3 – June 16, 2013

Above are the completion dates each phase will be turned over to Havertys.

Please note these are NOT the dates your work shall be completed, but the date all trades will be complete. Subcontractor understands time is of the essence and will man the project accordingly to work within the contractor's timeframe completing his work so that other trades may complete their work by the dates listed above.

HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

ARCHITECTURAL:

|       |                                           |          |
|-------|-------------------------------------------|----------|
| A0.0  | Cover Page                                | 02.13.13 |
| A0.1  | Responsibility Schedule                   | 02.13.13 |
| A0.2  | Life Safety Plan                          | 02.04.13 |
| A0.3  | Project Standards                         | 02.04.13 |
| A0.4  | ComCheck                                  | 02.04.13 |
| A0.5  | Phasing Floor Plan                        | 02.13.13 |
| A0.6  | Phasing Reflected Ceiling Plan            | 02.13.13 |
| A1.1  | Revised Floor Plan                        | 02.13.13 |
| A1.2  | Revised Reflected Ceiling Plan            | 02.13.13 |
| A1.3  | Finish Plan                               | 02.04.13 |
| A1.4  | Enlarged Exterior Plans & Plan Details    | 02.04.13 |
| A1.5  | Roof Plan                                 | 02.13.13 |
| A2.1  | Exterior Elevations                       | 02.13.13 |
| A2.2  | Exterior Elevations                       | 02.13.13 |
| A3.1  | Wall Sections & Details                   | 02.13.13 |
| A3.2  | Wall Sections & Details                   | 02.04.13 |
| A3.3  | Wall Sections & Details                   | 02.13.13 |
| A4.1  | Enlarged Interior Floor Plans             | 02.13.13 |
| A4.2  | Enlarged Core Floor Plans                 | 02.04.13 |
| A4.3  | Enlarged Reflected Ceiling Plan & Details | 02.04.13 |
| A6.1  | Schedules                                 | 02.04.13 |
| A6.2  | Schedules                                 | 02.13.13 |
| A7.1  | Building Sections                         | 02.04.13 |
| A7.2  | Interior Elevations                       | 02.04.13 |
| A7.3  | Interior Elevations and Details           | 02.13.13 |
| A8.1  | Merchandising Plan (For Reference Only)   | 02.04.13 |
| AD1.1 | Phasing Demolition Plan                   | 02.13.13 |
| AD1.2 | Phasing Demolition Reflected Ceiling Plan | 02.04.13 |
| AD1.3 | Demolition Roof Plan                      | 02.13.13 |
| C0.0  | Cover Sheet                               |          |
| C1.0  | Existing Conditions                       |          |
| C2.0  | Site Demolition Plan                      |          |
| C3.0  | Site Plan                                 |          |
| C4.0  | Utility Plan                              |          |
| C5.0  | Erosion Control Plan                      |          |
| C6.0  | Construction Details                      |          |
| C7.0  | Construction Details                      |          |
| C8.0  | Construction Details                      |          |
| C8.1  | Construction Details                      |          |
| C9.0  | Construction Details                      |          |
| E0.1  | Fixture Schedule & Symbols                | 01.25.13 |

ROPER HANKS, LLC.

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# HAVERTY'S FURNITURE STORE

## EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

|       |                                     |          |
|-------|-------------------------------------|----------|
| E0.2  | Electrical Details                  | 01.25.13 |
| E1.0  | Electrical Power Plan               | 01.25.13 |
| E1.1  | Electrical Lighting Plan            | 01.25.13 |
| E2.0  | Electrical Roof Plan                | 01.25.13 |
| E3.0  | Electrical Enlarged Plans           | 01.25.13 |
| E4.0  | Panel Schedules                     | 02.27.13 |
| ED1.1 | Electrical Demolition Plan          | 01.25.13 |
| FP1.0 | Fire Protection Criteria Sheet      | 01.25.13 |
| M0.1  | Mechanical Notes and Schedules      | 02.27.13 |
| M0.2  | Mechanical Details                  | 01.25.13 |
| M1.0  | Mechanical HVAC Floor Plan          | 01.25.13 |
| M2.0  | Mechanical Roof Plan                | 01.25.13 |
| MD1.0 | Mechanical Demolition Plan          | 01.25.13 |
| ME1.0 | BMS Diagrams and Schedules          | 01.25.13 |
| ME2.0 | BMS Diagrams and Schedules          | 01.25.13 |
| ME3.0 | Building Management System Diagrams | 01.25.13 |
| P0.1  | Plumbing Schedules, Legend & Notes  | 01.25.13 |
| P0.2  | Plumbing Details                    | 01.25.13 |
| P1.0  | Plumbing Floor Plan                 | 01.25.13 |
| P1.1  | Enlarged Plans and Riser Diagrams   | 01.25.13 |
| PD1.0 | Plumbing Demolition Plan            | 01.25.13 |
| S0.1  | General Notes                       | 01.25.13 |
| S1.1  | Existing Roof Framing Plan          | 02.12.13 |
| S2.1  | Sections and Details                | 02.12.13 |
| #1    | Addendum A                          | 02.09.13 |
| #2    | Addendum B                          | 02.25.13 |
| #3    | Addendum C                          | 02.27.13 |

SPECIFICATIONS: 01.20.12

## DIVISION 0 CONDITIONS OF THE CONTRACT

|               |                                      |
|---------------|--------------------------------------|
| Section 00600 | Project Scope                        |
| Section 00810 | General and Supplementary Conditions |

## DIVISION 1 GENERAL REQUIREMENTS

|               |                                     |
|---------------|-------------------------------------|
| Section 01100 | Summary                             |
| Section 01250 | Contract Modifications Procedures   |
| Section 01290 | Payment Procedures                  |
| Section 01310 | Project Management and Coordination |
| Section 01320 | Construction Progress Documentation |
| Section 01330 | Submittal Procedures                |
| Section 01400 | Quality Requirements                |
| Section 01420 | References                          |
| Section 01500 | Temporary Facilities and Controls   |

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**HAVERTY'S FURNITURE STORE**

**EXHIBIT "C" DRAWINGS AND SPECIFICATIONS**

|               |                                |
|---------------|--------------------------------|
| Section 01524 | Construction Waste Management  |
| Section 01600 | Product Requirements           |
| Section 01700 | Execution Requirements         |
| Section 01732 | Selective Demolition           |
| Section 01770 | Closeout Procedures            |
| Section 01781 | Project Record Documents       |
| Section 01782 | Operation and Maintenance Data |
| Section 01820 | Demonstration and Training     |

**DIVISION 2 SITEWORK**

|               |                                   |
|---------------|-----------------------------------|
| Section 02070 | Selective Demolition              |
| Section 02080 | Utility Materials                 |
| Section 02221 | Building Demolition               |
| Section 02230 | Site Clearing                     |
| Section 02300 | Earthwork                         |
| Section 02510 | Water Distribution                |
| Section 02511 | Hot-Mix Asphalt Paving            |
| Section 02751 | Portland Cement Concrete Pavement |
| Section 02764 | Pavement Joint Sealants           |
| Section 02821 | Chain-Link Fences                 |
| Section 02920 | Lawns and Grasses                 |

**DIVISION 3 CONCRETE**

|               |                        |
|---------------|------------------------|
| Section 03300 | Cast-In-Place Concrete |
|---------------|------------------------|

**DIVISION 4 MASONRY**

|               |              |
|---------------|--------------|
| Section 04200 | Unit Masonry |
|---------------|--------------|

**DIVISION 5 METALS**

|               |                           |
|---------------|---------------------------|
| Section 05120 | Structural Steel          |
| Section 05400 | Cold-Formed Metal Framing |
| Section 05500 | Metal Fabrications        |

**DIVISION 6 WOOD AND PLASTIC**

|               |                                 |
|---------------|---------------------------------|
| Section 06100 | Rough Carpentry                 |
| Section 06202 | Interior Finish Carpentry       |
| Section 06402 | Interior Architectural Woodwork |

**DIVISION 7 THERMAL & MOISTURE PROTECTION**

|               |                     |
|---------------|---------------------|
| Section 07210 | Building Insulation |
|---------------|---------------------|

ROPER HANKS, LLC.

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HAVERTY'S FURNITURE STORE

EXHIBIT "C" DRAWINGS AND SPECIFICATIONS

|               |                                        |
|---------------|----------------------------------------|
| Section 07241 | Adhered Secondary Barrier System       |
| Section 07543 | Thermoplastic Polyolefin (TPO) Roofing |
| Section 07620 | Flashing                               |
| Section 07720 | Roof Accessories                       |
| Section 07920 | Joint Sealants                         |

DIVISION 8 DOORS AND WINDOWS

|               |                                           |
|---------------|-------------------------------------------|
| Section 08110 | Steel Doors and Frames                    |
| Section 08211 | Flush Wood Doors                          |
| Section 08311 | Access Doors and Frames                   |
| Section 08411 | Aluminum Framed Entrances and Storefronts |
| Section 08710 | Door Hardware                             |
| Section 08800 | Glazing                                   |
| Section 08830 | Mirrors                                   |

DIVISION 9 FINISHES

|               |                                |
|---------------|--------------------------------|
| Section 09111 | Non-Load-Bearing Steel Framing |
| Section 09250 | Gypsum Board                   |
| Section 09310 | Ceramic Tile                   |
| Section 09512 | Acoustical Tile Ceilings       |
| Section 09720 | Wallcoverings                  |
| Section 09911 | Exterior Painting              |
| Section 09912 | Interior Painting              |

DIVISION 10 SPECIALTIES

|               |                             |
|---------------|-----------------------------|
| Section 10155 | Toilet Compartments         |
| Section 10523 | Fire Extinguishers          |
| Section 10801 | Toilet and Bath Accessories |

DIVISION 11 EQUIPMENT (NOT USED)

DIVISION 12 FURNISHINGS (NOT USED)

DIVISION 13 SPECIAL CONSTRUCTION (NOT USED)

DIVISION 14 CONVEYING SYSTEMS (NOT USED)

DIVISION 15 MECHANICAL

|               |                                              |
|---------------|----------------------------------------------|
| Section 15010 | General Provisions                           |
| Section 15100 | HVAC Piping, Valves and Accessories          |
| Section 15170 | Electrical Requirements for Mechanical Equip |
| Section 15250 | Insulation                                   |

ROPER HANKS, LLC.

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**HAVERTY'S FURNITURE STORE**

**EXHIBIT "C" DRAWINGS AND SPECIFICATIONS**

|               |                                             |
|---------------|---------------------------------------------|
| Section 15300 | Fire Protection                             |
| Section 15400 | Plumbing                                    |
| Section 15610 | Fans                                        |
| Section 15700 | Metal and Flexible Ductwork and Accessories |
| Section 15701 | Grilles, Registers and Diffusers            |
| Section 15703 | Dampers and Louvers                         |
| Section 15736 | Variable Refrigerant Flow Indoor Units      |
| Section 15751 | Rooftop Heating and Cooling Units           |
| Section 15900 | HVAC Testing, Adjusting and Balancing       |

**DIVISION 16 ELECTRICAL**

|               |                                         |
|---------------|-----------------------------------------|
| Section 16010 | General Provisions                      |
| Section 16100 | Basic Materials                         |
| Section 16101 | Unitized Switchgear                     |
| Section 16110 | Electrical Raceways                     |
| Section 16130 | Conductors                              |
| Section 16131 | Metal-Clad Cable                        |
| Section 16450 | Grounding                               |
| Section 16500 | Lighting                                |
| Section 16721 | Fire Detection System                   |
| Section 16722 | Cable and Systems Raceway               |
| Section 16760 | Telecommunications Cabling              |
| Section 16999 | Insulation Tests of Equipment and Cable |

**DIVISION 17 BUILDING MANAGEMENT SYSTEMS**

|               |                            |
|---------------|----------------------------|
| Section 17000 | Building Management System |
|---------------|----------------------------|

ROPER HANKS, LLC.

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MAY 02 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Kristi Lea Harrington, Circuit Court Judge

Common Pleas Case No. 2013-CP-10-7413  
Appellate Case No. 2015-001788

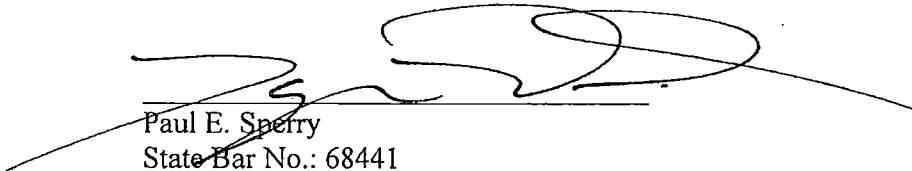
Affordable Concrete and Masonry d/b/a RSS, LLC..... Respondent,

v.

Roper Hanks, LLC.....Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Paul E. Sperry

State Bar No.: 68441

Tyler P. Winton

State Bar No.: 77877

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April 12, 2016