

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PALMETTO CONSTRUCTION GROUP,)
LLC)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)

CASE NO. 2016-CP-10-114)

RECEIVED

MAY 19 2017

SC Court of Appeals

ORDER

JULIE J. ARMSTRONG
CLERK OF COURT

2016 JUL 20 PM 12:02

FILED

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

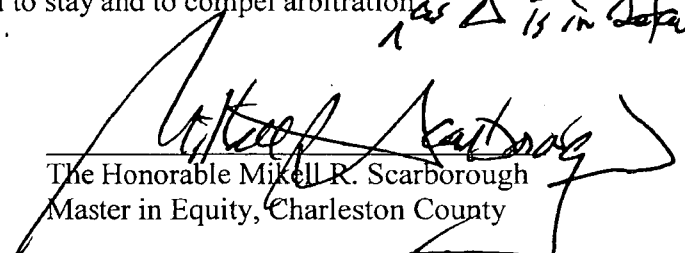
WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

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

IT IS ORDERED THAT:

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

*is denied RS
as Δ is in default.*


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

On this 14 day of July 2016
Charleston, SC

PROCEEDINGS

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

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

17
 18
 19
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 21 Christine A. Smith, Court Reporter
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1
 2
 3 THE COURT: Palmetto Construction Group versus
 4 Restoration Specialists, LLC. For the Plaintiffs is
 5 Mr. Drew Epting and Ms. Michelle Endemann. For the
 6 Defendants is Ms. Bright Ariail. Good morning,
 7 Ms. Ariail. I believe we are here on your motion,
 8 are we? Is that what got us here?

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

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

19 THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: Okay.

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

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

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

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

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

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

4 MS. ARIAIL: You did not.

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

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

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

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

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

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

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

21 THE COURT: Okay.

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

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

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

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

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

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

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

1 the damages hearing.

2 THE COURT: Ms. Endemann?

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

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

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

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

1 THE COURT: Okay.

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

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

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

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

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

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

15 MS. ENDEMANN: Thank you.

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

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

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

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

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Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

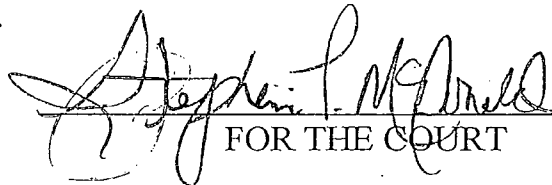
v.

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

Appellate Case No: 2016-002096

ORDER

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


FOR THE COURT

Columbia, South Carolina

cc:

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

FILED

November 10, 2016



PROCEEDINGS

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

11
 12 Hearing before the Honorable Mikell R.
 13 Scarborough, reported by Christine A. Smith, Court
 14 Reporter and Notary Public, at 10:57 a.m. on October
 15 4, 2016 at 100 Broad Street, Charleston,
 16 South Carolina.

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1
 2
 3 THE COURT: We're back on the record. This is
 4 the case that is captioned Palmetto Construction
 5 Group versus Restoration Specialists, LLC, and Ruben
 6 and Lynette Ward. The case number is
 7 2016-CP-10-1143.

8 The case is in a bit of an unusual posture,
 9 and that's really why I got you-all here today. We
 10 had it scheduled for a damages hearing. I know
 11 there's a motion outstanding for a Rule 59 Motion, I
 12 think it was, that Ms. Ariail had sent.

13 Then I was informed yesterday, I believe it
 14 was, that the case was on appeal. Ms. Ariail, let me
 15 start with you on the Defense side, and then I'll
 16 come to the Plaintiff's side and just figure out
 17 where we are. Okay?

18 MS. ARIAIL: Yes, sir, Your Honor.
 19 Bright Ariail for the Defendants. Quite frankly,
 20 based on the scheduling of the damages hearing and
 21 the hearing for the Motion to Alter or Amend, I filed
 22 a Notice of Appeal basically taking the position that
 23 the failure of the Court to rule on that motion prior
 24 to the damages hearing was essentially a denial.
 25 Case law supports that.

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1 THE COURT: What case do you have for that?
 2 MS. ARIAIL: There are so many issues,
 3 Your Honor. I have things everywhere.

4 THE COURT: Mainly we need to talk about the
 5 procedural aspect of where we are. Okay?

6 MS. ARIAIL: Okay.

7 THE COURT: Let me do this while you look for
 8 that case. Let me just sort of make sure I get -- I
 9 want to do the timeline down here. I think one of
 10 the questions is, where's jurisdiction? I fully
 11 understand that the filing of a Notice of Appeal is
 12 designed to divest the Court of jurisdiction. I'm
 13 just trying to figure out what is being appealed. So
 14 we had a hearing on the 6th of June, our first
 15 hearing. From that an order was issued on the 14th
 16 of July. Notice appears to have been sent and
 17 received on July 18th.

18 MS. ARIAIL: Yes, sir.

19 THE COURT: And that order set the damages
 20 hearing for today.

21 MS. ARIAIL: Yes, sir.

22 THE COURT: And then a 59(e) Motion appears to
 23 have been timely filed on July 27th. That's within
 24 ten days. That hearing was then scheduled by my
 25 office for a week from today, October 11th. Then we

1 went back and forth the week of September 7th.
2 Defendant requests that the 59(e) come before the
3 damages hearing.

4 Plaintiff's objected, and I kept the schedule
5 the same, and then apparently an appeal was filed on
6 September 30th, which would have been last Friday.
7 Today is Tuesday, the 4th of October. I'm trying to
8 figure out what it is you're appealing because
9 clearly the order of July 14th is well past the 30
10 days.

11 I'm not familiar with any law which says that
12 the failure to obtain a motion in a timely fashion
13 would total the time to appeal, so that's what I'm
14 trying to get at.

15 MS. ARIAIL: All right.

16 THE COURT: My initial reaction is that you're
17 too late on the appeal, but you're not too late on a
18 59(e). The Court is not entertaining a 59(e). So we
19 have the cart before the horse on one, and we have it
20 after the fact.

21 MS. ARIAIL: The issue is this: There is a
22 three-prong test whereby my clients can waive their
23 right to arbitration. One of those includes
24 proceeding with litigation, and this hearing, this
25 damages hearing, is a potential item that may end up

1 waiving my client's rights for an arbitration.

2 THE COURT: Wouldn't default do that as well?

3 MS. ARIAIL: Your Honor --

4 THE COURT: Wouldn't that be the principal
5 test? You have to demand it, and then you have to do
6 it in a timely fashion.

7 MS. ARIAIL: The decision that the right for
8 arbitration or the Motion for Arbitration was denied
9 to stay the case and send it to arbitration was
10 denied was based on -- according to your order, the
11 Defendant's being in default, that is not one of the
12 standards for not allowing arbitration to go forward.
13 There are other prongs. There are other tests. It's
14 the length of time between the initiation of the
15 lawsuit and the Motion to Compel Arbitration which
16 was very short in this case. It's whether or not
17 there has been any litigation, anything has gone
18 forward.

19 Our position is at this point, no, but I have
20 to preserve my client's rights for arbitration, and
21 that's why I'm concerned that they would be
22 prejudiced if we went through with this -- went
23 forward with this damages hearing. And the third one
24 is whether or not the Plaintiff has been prejudiced
25 because of some delay.

1 If this had been a lawsuit that had been
2 answered and taking the normal course of litigation,
3 we would just barely be in the discovery phase. So
4 the point is that the wrong standard was used to deny
5 the Motion to Compel Arbitration, and that by going
6 forward today we are potentially -- we are in danger
7 of waiving the Defendant's right.

8 THE COURT: But you still have your 59(e)
9 outstanding. Doesn't that protect you?

10 MS. ARIAIL: If the 59(e) had been heard
11 before this damages hearing, but potentially not.
12 That's why I asked to have them switched.

13 THE COURT: All right. Let me hear from
14 Ms. Endemann.

15 MS. ENDEMANN: Thank you, Judge. I think
16 you've sort of hit the nail right on the head. Her
17 objections are preserved under the 59(e) Motion. The
18 Notice of Appeal is -- according to the Rules on its
19 face defective, because it's supposed to include the
20 order appealed from. There is no order subject to
21 appeal at this point in the case.

22 As you indicated the first order -- first,
23 Judge, it's interlocutory because it's denying a
24 motion to lift the defaults and the associated
25 affirmative defense that they tried to raise, which I

1 think Your Honor, it's clear in the transcript said
2 you weren't really ruling on the merits of that.
3 What you were saying is that they had to be out of
4 default in order to bring it. So the order denies me
5 from default. That is not immediately appealable
6 until after final judgment and there is black letter
7 South Carolina law on that point.

8 Number two, the 59(e) Motion that she's trying
9 to appeal from remains outstanding before you. There
10 is no order entered on that issue, and so this
11 argument about waiver and arbitration -- there are
12 cases, Your Honor, that I'm happy to provide the
13 Court that state that arbitration is an affirmative
14 defense, and if you're in default and you failed to
15 raise that affirmative defense you can't bring it
16 until you're in default just like you ruled.

17 There is no ruling. The point is there is no
18 ruling yet to be appealed. This notice is defective
19 on its face because it doesn't attach an order
20 pursuant to the rule, and there's nothing to appeal
21 from.

22 THE COURT: I'm just not sure it's final yet;
23 Ms. Ariail. I understand your concern and your
24 desire to preserve your clients' rights, and you seek
25 arbitration. I fully understand that. I just don't

1 see where the -- other than the default I don't see
 2 where your clients have waived it. I don't see where
 3 you've waived it at all. We covered that back in
 4 June, as I recall, about the default and what
 5 happened there. I fully understand that. My
 6 recollection is that you acted timely. I'm not sure
 7 that your clients did, but I think you did. I think
 8 that's to your credit, but that doesn't get us to a
 9 final -- my opinion is it doesn't get us to a final
 10 order. Unless you can show me something that says
 11 that having a damages hearing before having a 59(e)
 12 hearing results in finality and no written order has
 13 been issued, I'm not sure I really fully understand.

14 I'm going to defer to the Rules because you
 15 have a Notice of an Intent to Appeal out there, but I
 16 need you all to sort of make a record because I think
 17 that's what you-all need to take up to the Appellate
 18 Court because they're not going to have an
 19 evidentiary hearing. Okay?

20 You-all need to be able to argue this by
 21 motion to the Appeals Court as to whether or not, in
 22 fact, there is jurisdiction or there's a technical
 23 violation of it or whatever if the order is not
 24 attached. All that stuff is within their purview.
 25 This notice was filed at 2:40 on Friday afternoon,

1 and like I said, I just got wind of it yesterday.

2 Ms. Ariail?

3 MS. ARIAIL: Your Honor, as I understand
 4 you're going to allow us to continue with the appeal
 5 at this point?

6 THE COURT: That's not within my purview.
 7 That's within the purview of the Court of Appeals.

8 MS. ARIAIL: And there will not be a damages
 9 hearing today?

10 THE COURT: What I'm going to do is I'm going
 11 to have them proffer what their damages are, and I'm
 12 going to have you proffer what you consider your
 13 59(e) to be, and I'm going to let you-all take that
 14 up there. I'm just going to do it as a proffer. I'm
 15 not going to take testimony. They're going to tell
 16 me how much their damages are so it's in the record.
 17 You are going to tell me why I should overturn my
 18 underlying order, and then you-all can go forward
 19 from there. Okay?

20 MS. ARIAIL: Yes, sir.

21 THE COURT: And if they decide they don't have
 22 jurisdiction and they want to send it back to me,
 23 we'll have a full-blown hearing. If they decide it's
 24 proper for appeal then they can hear it. All right?
 25 I'm just making them a record because otherwise what

1 they're going to do is they're going to send it right
 2 back here, and we're going to do it again. All
 3 right?

4 So you went into your argument. Let me do
 5 that. You went into your argument about the 59(e).
 6 Go ahead and tell me why the 59(e) should be granted?

7 MS. ARIAIL: I have a memorandum prepared that
 8 I would like to pass up.

9 THE COURT: All right.

10 MS. ARIAIL: Your Honor, I have five different
 11 arguments to make on this point. Honestly the one
 12 that I mentioned prior is probably the most important
 13 which is the one that is actually listed as Item 5 in
 14 my memorandum, and that is that the wrong -- the test
 15 for whether or not this case should have gone to
 16 arbitration the wrong standard was applied.
 17 Specifically the Court applied a standard that --
 18 because the Defendants were in default that they
 19 could not compel arbitration.

20 Case law gives you in South Carolina -- both
 21 the Federal the State Courts mirror each other
 22 somewhat. I mention the three standards. One is
 23 that a substantial length of time did not transpire
 24 between commencement of the action and commencement
 25 of the Motion to Compel Arbitration; two, the

1 Defendants did not engage in extensive discovery or
 2 litigation; three, the Plaintiff has not been
 3 prejudiced through an undue burden caused by any
 4 delays seeking arbitration.

5 So those are the three standards that the
 6 Court should have applied to determine whether or not
 7 arbitration was proper rather than the fact that the
 8 Defendants at that point were in default in this
 9 case.

10 THE COURT: Do any of the cases you've cited,
 11 Toler's Cove, Carlson, or General Equipment deal with
 12 default matters?

13 MS. ARIAIL: No, sir. Well, actually the case
 14 that I have that deals with the default matter is
 15 actually a case out of another jurisdiction.

16 THE COURT: Okay.

17 MS. ARIAIL: If you look on -- unfortunately
 18 my memo is not numbered, but if you look at the
 19 paragraph just before the conclusion, it's the Cedar
 20 Surgery Center versus Bonelli case out of Utah. Why
 21 that's important to us is they essentially have the
 22 same three-prong test, or their test is very similar
 23 to that test in South Carolina case law.

24 In that case, not only did the -- in our case
 25 an entry of default has been entered, but in that

1 case they actually went through the entry of default
2 damages hearing all the way to default judgment, and
3 when the Defendants filed a motion to send it to
4 arbitration, the Court found that arbitration was
5 proper even though they went through all of these
6 steps.

7 THE COURT: Okay.

8 MS. ARIAL: Other arguments that I have --

9 THE COURT: So in that case, I don't know if
10 you have a copy of that, but in that case what you're
11 telling me is the Defendant was in default. They had
12 the damages hearing. Instead of an order of default
13 they had the damages hearing subsequent to that, and
14 then the demand for arbitration was made?

15 MS. ARIAIL: Yes, sir. In fact, the Defendant
16 didn't show up through any of the Court hearings.

17 THE COURT: Was a judgment issued prior to?

18 THE WITNESS: They had a judgment issued
19 against them, and then after that judgment had been
20 entered against them they filed an arbitration, and
21 the Court held that it was proper.

22 THE COURT: And that was under Utah state law?

23 MS. ARIAIL: Yes, sir. And again, their test
24 is very similar to our test.

25 THE COURT: Okay.

1 MS. ARIAIL: My other argument -- again,
2 that's the -- in my opinion that's the most
3 significant issue that's before us.

4 Also, I believe that we showed good cause that
5 the entry of default should be lifted because we did
6 assert our right to mandatory mediation and
7 arbitration. It is a contract requirement. It's
8 very specific in the contract. It's not, as it's
9 been suggested, just a form contract. It's one where
10 you actually have to check the box and select the
11 dispute resolution procedures that you're going to
12 use.

13 In addition to that, not only was
14 arbitration -- mandatory mediation and arbitration
15 selected, but the contract also calls for it to be --
16 any mediation, any alternative dispute resolution
17 take place in the state where the project occurred
18 which is the State of Georgia and not the State of
19 South Carolina.

20 THE COURT: All right.

21 MS. ARIAIL: There is a question -- once a
22 case has been submitted to an arbitrator or a
23 mediator under both federal and state law, then the
24 State Court no longer has jurisdiction over this
25 proceeding.

1 Interestingly, not only did the Defendants in
2 this case file a Motion to Compel Arbitration, but
3 the Plaintiff actually filed it, contemporaneously
4 with their Complaint. Now, in an earlier hearing
5 Your Honor found that because the Clerk of Court
6 basically -- once the entry of default was submitted
7 or filed, that the Clerk of Court essentially just
8 took that motion out of the case records, and it was
9 never heard.

10 Obviously, by submitting that to the Court in
11 the first place the Plaintiffs acknowledged that
12 there was a requirement for mandatory mediation and
13 arbitration, and it was something that was put before
14 the Court. It's not something that the Clerk can
15 just merely remove from the docket because an entry
16 of default has been entered. I think the language
17 that came out of the transcript was that the Clerk of
18 Court closed it out.

19 THE COURT: Okay. I'm reviewing the June 6th
20 transcript. Is it alternative mandatory mediation
21 prior to arbitration, or are they both obligatory
22 under the contract? Which are you telling me?

23 MS. ARIAIL: Let me pull it. The contract
24 says -- this is Article 6 -- this is a standard AIA
25 subcontract document, but there are certain things,

1 as I said, that you have go in and select for your
2 particular contract. You have the name of the
3 project, who the parties are, what have you.

4 In Article 6, the first paragraph addresses
5 mediation. It says, Any claim arising out of or
6 related to the subcontract except those waived in the
7 subcontract shall be subject to mediation as a
8 condition precedent to binding dispute resolution.
9 Also, it basically says that they will use the AAA,
10 be administered by AAA, and they will use the
11 construction industry rules of AAA.

12 As I've mentioned before it says, Mediation
13 shall be held in the place where the project is
14 located unless another location is mutually agreed
15 upon. The next paragraph is binding dispute
16 resolution, and it says, For any claim subject to but
17 not resolved by mediation pursuant to Section 6.1,
18 the method of bonding dispute resolution shall be as
19 follows. That's where it gives you various choices.

20 The first one is arbitration pursuant to
21 Section 6.3 of this agreement. That's the one that
22 was selected. The other two are litigation, and then
23 it's got just an other, and it lets you fill in the
24 blank. If you go to --

25 THE COURT: So the other was not filled out

1 either, so it's arbitration --

2 MS. ARIAIL: The only thing that's been
3 checked -- and the subcontract is actually attached
4 to the Complaint.

5 THE COURT: Okay.

6 MS. ARIAIL: The only thing that's been --
7 there's a big "X" in the block by arbitration
8 pursuant to Section 6.3 of this agreement. 6.3 says,
9 If the contractor and subcontractor have selected
10 arbitration as a method of binding dispute resolution
11 in Section 6.2, any claims subject to but not
12 resolved by mediation shall be subject to arbitration
13 which, unless the parties agree otherwise, shall be
14 administered by AAA. It goes on and talks about the
15 procedure itself.

16 THE COURT: The preceding paragraph said,
17 Except as waived. Is there a definition of what
18 waiver is constituted in there?

19 MS. ARIAIL: Say that again? I'm sorry.

20 THE COURT: The paragraph just prior to that,
21 when you get into the -- it said, Except as waived.
22 Is there a provision in the contract that talks about
23 a waiver?

24 MS. ARIAIL: There is a paragraph that talks
25 about Waiver of Subrogation.

1 THE COURT: Waiver of subrogation?

2 MS. ARIAIL: Yes, sir. So what the
3 paragraph -- the site to waiver that you asked me
4 about, when it says, Any claim arising out of or
5 relating to the subcontract except as waived in the
6 subcontract. So it's the Waiver of Subrogation.
7 That appears in Paragraph 13.9 of the subcontract,
8 and again, Article 6 is Mediation and Binding Dispute
9 Resolution.

10 THE COURT: Take me back. Which paragraphs
11 are you reading from?

12 MS. ARIAIL: Article 6, which appears on
13 Page 8 of the subcontract as Attachment A to the
14 Complaint.

15 THE COURT: I've got it.

16 MS. ARIAIL: Page 8, if you look at the top,
17 it's Article 6, Mediation and Binding Dispute
18 Resolution.

19 THE COURT: I've got it.

20 MS. ARIAIL: 6.1 addresses the mediation. 6.2
21 is where they determine which method of dispute
22 resolution will be used after mediation. Then below
23 is where it describes the arbitration process.

24 THE COURT: I've got you. And you said waiver
25 was found in Section 13?

1 MS. ARIAIL: Waiver is -- yes, sir, 13.9 which
2 is on Page 14.

3 THE COURT: Anything further on that?

4 MS. ARIAIL: Your Honor, I would like to
5 clarify one thing while we're looking at the
6 subcontract. On Page 1 it does say that Restoration
7 Specialists is a South Carolina corporation. That is
8 not correct. That is a typo. They do have a local
9 field office, but they are actually a Georgia
10 corporation.

11 THE COURT: Page 1 of the subcontract you
12 said?

13 MS. ARIAIL: Sir?

14 THE COURT: Of the subcontract?

15 MS. ARIAIL: Yes, sir. The first page of the
16 subcontract. I'm not sure -- why it reads that way,
17 but the reality is that they are a Georgia
18 corporation.

19 THE COURT: Okay.

20 MS. ARIAIL: I have a stack of cases that are
21 cited in my memo, which I'm happy to share with all.

22 THE COURT: Very good.

23 MS. ARIAIL: I don't believe they're in the
24 order that they appear in the memo, but the Cedar
25 Surgery Center, which is the Utah case that I

1 mentioned that deals with the default, is on the top.

2 THE COURT: Thank you. That would be great.

3 All right. Ms. Endemann, let me hear from
4 you. Let's first talk about where we are
5 procedurally, and then we'll go into the damages
6 question. Okay?

7 MS. ENDEMANN: Thank you, Your Honor. Let me
8 just respond to Ms. Ariail. I apologize. I don't
9 have a memorandum with me. We just received hers
10 now, and I wasn't prepared to go forward on this
11 today, so I'm happy to provide the cases to Your
12 Honor in a reply memorandum if you would like.

13 I am not aware of the Utah case. I've just
14 been handed a copy that Ms. Ariail is referring to,
15 but there are cases in other jurisdictions -- I have
16 found several -- that state that affirmative defenses
17 are waived by default, and that arbitration is an
18 affirmative defense. It's true that the Plaintiffs
19 with their Complaint did, in fact, move to compel
20 arbitration. That motion was withdrawn when no
21 answer was received.

22 We served notice of everything including the
23 arbitration demand. Obviously it was with the
24 Complaint. Mr. Ward never made any appearance. Once
25 no appearance was made default was entered. We asked

1 the Circuit Court, Judge Young, to send it here for a
2 damages hearing and withdrew our Motion to Compel
3 Arbitration.

4 Our position, Judge, without getting into the
5 specific defenses is simply that, it's an affirmative
6 defense. They can't raise it. They're in default.
7 I think that's what your original order said. We
8 don't even reach the merits of the arbitration
9 argument. It's simply that they are in default.
10 There was no good cause why the default should be
11 lifted, which is what Your Honor found in your
12 discretion in the first order, and that we never
13 reached this question.

14 The motion is not properly brought. If they
15 were going to answer, go into arbitration, we would
16 have done that. We have been unduly prejudiced even
17 under this test. A long substantial period of time
18 has not eclipsed. We served discovery with the
19 pleadings. We served our motion with the pleadings.
20 We did everything we could because this is such a
21 time sensitive case.

22 In this specific case though there wasn't a
23 great lapse of time. The time that has lapsed has
24 caused substantial harm to my client who was going to
25 get ready to testify to that before Your Honor today.

1 So there has been prejudice even under the waiver
2 test, not even considering the default question, But
3 Your Honor, it's not properly before you. They're in
4 default. It's been waived.

5 THE COURT: Thank you. So what I'll do is
6 I'll give you -- what would you like? Ten days? Is
7 ten days sufficient time to get me some sort of
8 responsive memo?

9 MS. ENDEMANN: Yes, Your Honor.

10 THE COURT: Let's just do that. I'm worried
11 about the courthouse closing at the end of this week,
12 by the way, and we all may have to leave town, so
13 maybe 14 or 15 days. Mr. Epting?

14 MR. EPTING: Judge, just a couple of practical
15 observations. One of the nice things about having
16 done this for now almost 40 years I feel comfortable
17 standing up here and having a conversation with you
18 and just saying, in essence, have you thought about
19 this? In that category have you thought about this?
20 We'd move to dismiss this appeal.

21 THE COURT: Has that already been filed up
22 there?

23 MR. EPTING: Yes.

24 THE COURT: Okay.

25 MR. EPTING: And the probabilities are high,

1 Judge -- high, high, high -- that this is coming back
2 to you. Number one, I'm hoping that what we do here
3 today, if that is what happens, that in essence this
4 Court can move forward and decide the merits of this
5 damage hearing on the record that is before you.

6 Secondly, Judge, and I don't know if this
7 works or not, but if of course, this notice is
8 defective for failure to appeal from an order because
9 that's what the Rule says, Judge. It has to be an
10 order. The only order was an interlocutory one and
11 the 30 days has run. If the notice is defective this
12 Court has jurisdiction, and this Court could proceed,
13 and this Court could rule.

14 Now, here's the piece, Judge that, I'm not
15 able to conceptualize down the road, but if this
16 Court were to enter an order that said, If I had
17 jurisdiction then this would be my ruling. Maybe the
18 whole thing could simply go and be decided in this
19 one appeal, because I think, Judge, what you were
20 trying to do is to make a record here so that
21 hopefully this could be all done at one time somehow,
22 some way. I'm simply observing to you without some
23 sort of rule -- it won't be possible because there
24 will have been no ruling by the lower Court for the
25 Appellate Court to address the merits.

1 I don't know, Judge. In the back of my head
2 something tells me that the contingency of a ruling
3 perhaps doesn't work, but I may be confusing it with
4 something else because if the Court does have
5 jurisdiction, and you say if I was not divested of
6 jurisdiction and having everything before me my
7 ruling would be thus and so.

8 Then one of two things happens. Either they
9 send it back and it's before you, or they can say,
10 this is enough. We'll just go forward. I'm not
11 making a legal argument, Judge. You've been doing
12 this for quite a while yourself. It didn't occur to
13 me until I was sitting here listening to other
14 lawyers talk that that might be of some interest to
15 the Court and for that reason I mention it.

16 THE COURT: Thank you, Mr. Epting.

17 MR. EPTING: Thank you, sir.

18 THE COURT: I'll tell you, the main reason I
19 wanted to go forward today was because I'm well aware
20 that the Appellate Courts are not going to have an
21 evidentiary hearing. They're going to get it on
22 whatever record there is. From my perspective it
23 doesn't look like there's any kind of record, so
24 that's the problem that we've got going forward here.
25 They get to make that call. I've had them send me

1 stuff and say, Make me a record, and then it turns
2 around and goes right back up there. I'm trying to
3 avoid that. So to the extend you-all can get a
4 transcript out of today's hearing when you go up
5 there and argue that point, then at least you can
6 have something to argue upon.

7 What I did, once I got notice of this
8 yesterday, I just went back through the record and
9 procedurally created my own timeline, which is where
10 I started out in my production today. I sort of was
11 scratching my head as to where we got on that
12 particular matter.

13 So what I'll do is I'm going to give you-all a
14 chance to read these, and give myself a chance to
15 read these cases. I'm happy to read the one from
16 Utah and see how it is, but just in going back
17 through the record here, it looks like this case was
18 filed March 7th, I think it was. Service of process
19 was perfected some time in March, and then default
20 was in April, and then it got sent over here, I
21 believe, in early May.

22 The Motion to Refer was the 18th of April, and
23 then we had our first hearing the 6th of June, and
24 then July 11th was the date that the Motion to Stay
25 and Compel Arbitration was filed. Then we had our

1 hearing on the 14th of July. That's what the order
2 came from essentially was at that time and on that
3 date. That's what's got us here. As I said before,
4 it was timely. The 59(e) Motion was timely filed. I
5 don't have any question about that. That issue came
6 up this morning. This one was clearly timely filed.

7 That's sort of what I was waiting to see, and
8 this one just sort of surprised me as to where we
9 were and how it got on appeal as quickly as it did.
10 I understand Ms. Ariail wanted to protect her
11 client's interest in that regard.

12 The Motion to Compel Arbitration filed by the
13 Plaintiff was withdrawn at the time the matter there
14 was referred here; is that my understanding,
15 Ms. Endemann?

16 MS. ENDEMANN: That's correct, Your Honor.

17 THE COURT: Very good. Let me hear about your
18 damages. What do you-all contend your damages are
19 first off? Give me a figure and how you calculated
20 them. We can either take testimony or not. I want
21 to get that figure. I'm not going to rule on that
22 today. I just want you to know I'm not going to rule
23 on any of this, but I'll take this under advisement
24 for ten days or so.

25 MS. ENDEMANN: Yes, Your Honor. We've

1 prepared some Exhibit notebooks if you would like me
2 to hand one up to you so you can have it in front of
3 you. I'm happy to go over it. Our damages being
4 claimed today -- our actual damages being claimed are
5 \$1.681 million. The figures are hard. They are
6 comprised of three components. The first are
7 receivables that are due to Palmetto Construction
8 pursuant to the subcontract, so that includes
9 actually a subcontract of theirs for some work that
10 was performed and some costs that have not been
11 reimbursed.

12 The figures match up to Mr. Ward's documents,
13 so it doesn't appear that there will be any question
14 there. The next, Your Honor, is the current due to
15 Hanover. That's the surety that you recall has made
16 demand upon all the indemnitors for all of these
17 claims of subcontractors and suppliers that
18 Restoration did not pay even though they were paid by
19 the Federal government for the projects. So the
20 demand that has been made is \$1.4 million.

21 THE COURT: That's from the --

22 MS. ENDEMANN: The surety has made demand on
23 the indemnitors for the full amount, \$1.4 million.
24 Yes, Your Honor, there are two open claims that total
25 about \$44,000, but the surety has actually

1 paid \$1,186,501.71 in claims. In our Exhibit
2 notebook we've got the check numbers that they used.
3 That's money that's actually been paid. Then there
4 are some outstanding claims actually paid which make
5 up the \$1.4 million, the difference. That demand was
6 recently reiterated by the surety on the 30th of
7 September.

8 THE COURT: Is that Hanover?

9 MS. ENDEMANN: Yes, that's Hanover. The final
10 element of our damages, Your Honor, is the 50/50
11 profit split under the teaming agreement that was
12 entered into between our clients. It was agreed that
13 50 percent of the proceeds would be split. There
14 should have, under Mr. Ward's own documents, been a
15 profit of \$221,000. We have some dispute with that
16 figure. There is some overhead and some inflated
17 costs in there that we have adjusted somewhat.

18 Even under his own math we are owed a
19 significant amount of money. We are actually
20 claiming under the 50/50 profit split \$221,730.46.
21 Our total damages are made up of those three. We've
22 got -- if you would like me to hand up the Exhibit
23 notebook I'm happy to do so. Mr. Kindle (phonetic)
24 is here and can provide some testimony if Your Honor
25 would like.

1 THE COURT: Ms. Ariail?
2 MS. ARIAIL: Your Honor, I'm going to object
3 to any of this information being put in the record.
4 Again, this is essentially the damages hearing as
5 going forward. I've essentially got Counsel for the
6 Plaintiff testifying with no --

7 THE COURT: Well, I asked for a proffer and
8 that's just what I got. That's what I was wanting.
9 Okay? I want that to be on the record when you-all
10 take that up there.

11 MS. ARIAIL: Well, I don't agree with anything
12 that she said.

13 THE COURT: You don't have to.

14 MS. ARIAIL: I've got problems with a lot of
15 the documents that are contained herein. Her
16 representation that Mr. Ward has admitted -- they
17 admitted that. I object to that. I object to the
18 amount that she says is receivable due to PCG. I
19 object to the profit sharing.

20 THE COURT: Is the teaming agreement the basis
21 for the profit share? Is that what that is?

22 MS. ARIAIL: The teaming agreement expressly
23 says there is no profit sharing. That is in dispute.
24 There is no profit sharing. The teaming agreement
25 specifically says --

1 THE COURT: That's all. You don't have to
2 agree. And there's an indemnification agreement here
3 as well?

4 MS. ARIAIL: Actually, the indemnification is
5 with Hanover, who was the bonding company. There is
6 a line in there that says that the parties can't even
7 seek contribution against each other until they've
8 satisfied the bonding company, so all of this is
9 premature.

10 THE COURT: Is your client getting notices
11 from the sureties as well?

12 MS. ARIAIL: No, Your Honor. He's gotten one
13 Affidavit of Claim. He's gotten one. The majority
14 of this has been negotiated by Palmetto. My client
15 has not had the opportunity to review these claims.
16 Some of them that -- Hanover has shared some
17 information by e-mail with Mr. Ward, and he has
18 disputed some of these claims. Regardless of his
19 disputes with these amounts owed Hanover has gone
20 ahead and made some of these payments as late as the
21 summer. Restoration Specialists has been back on the
22 project repairing work that was performed improperly
23 by Palmetto. They've incurred expenses with that.

24 They've incurred a lot of expenses related to
25 the elevator. They've had to actually hire another

1 company. They've had entrapments. I think that's a
2 nightmare, some of the things that they've done
3 trying to -- you know, they got a good report from
4 the VA, so they have gone over and above to make sure
5 that the VA's happy with his work, and it includes
6 taking care of some defective work.

7 THE COURT: Is the project complete at this
8 time or not?

9 MS. ARIAIL: Yes, sir. Yes, sir.

10 THE COURT: Give me the full amount of your
11 damages again? I'm sorry, Ms. Endemann.
12 \$1.4 million or something?

13 MS. ENDEMANN: \$1,681,000, Your Honor.

14 THE COURT: 681, okay. Thank you. That's the
15 1.186 -- the 221, was it?

16 MS. ENDEMANN: I'll give you the exact
17 figures. The receivables due to the construction are
18 \$184,858.69. The profit share is \$221,730.46, and
19 due to Hanover is \$1,230,888.71 for a total of
20 \$1,681,864.86.

21 THE COURT: Okay. I've got it.

22 MS. ENDEMANN: Thank you.

23 THE COURT: I'm just going to take that as the
24 proffer, but again, just so you-all have it in the
25 record and the Court understands what this case is

1 about. Okay? So what I'm going to do is I'm just
2 going to take it under advisement. I'm going to ask
3 that they give a responsive memorandum within ten
4 days. Ms. Ariail, if you want to respond to that you
5 can within five. Okay?

6 MS. ARIAIL: Yes, Your Honor.

7 THE COURT: I don't know when or how long they
8 will take to make a decision on this thing. I would
9 think it will be relatively quickly, and we may well
10 be back here for this damages hearing. They're
11 entitled to cross-examine the witness, and that's
12 what they're going to do. I'm just trying to give
13 them a picture because otherwise they won't have any
14 idea what's going on.

15 The question as I see it is whether or not the
16 question for the appeal is procedural, whether or not
17 there's a final order from which you can appeal. I
18 think that's number one. The second thing has to do
19 with whether or not there's finality to that, and I
20 don't think there's finality until a determination of
21 damages has been held.

22 Ms. Ariail is concerned about waiver of the
23 right to arbitration or mediation, and I understand
24 that. Okay? I'm going to do that and we'll go from
25 there.

1 MS. ARIAIL: Your Honor, one housekeeping
2 thing. We do have a motion hearing next Tuesday.
3 I'm assuming that that is not going forward?

4 THE COURT: We're to going to need to go
5 forward on that one.

6 MS. ARIAIL: Thank you. I just wanted to
7 confirm that.

8 THE COURT: Unless you-all get a remittor down
9 here that quick, but I can't imagine that's going to
10 happen.

11 MR. EPTING: And Judge, it probably will be
12 six months. The Court of Appeals regrettably on
13 these Motions to Dismiss, they're way backed up.

14 THE COURT: I understand. I understand. I'm
15 concerned about that. I just think they will want
16 something to look at. You will have a transcript,
17 and you can go from there, so you can provide them
18 with something, but my understanding is it's a motion
19 practice at this point in time with the Appellate
20 Court. I'm well aware of that. Okay?

21 (The proceedings were concluded at 3:03 p.m.)

22
23
24
25

1 State of South Carolina)
)
2 County of Charleston) C E R T I F I C A T E

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

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

11 Witness my hand, I have hereunto affixed my
12 official seal this 24th day of October, 2016 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

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\$	4	18:20	23:25, 24:20, 33:19	Attachment [1] - 18:13
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ANDREW K. EPTING, JR., L.L.C.

ATTORNEYS AT LAW

May 16, 2017

The Honorable Mikell R. Scarbrough
Master In Equity
100 Broad Street, Suite 266
Charleston, SC 29401

RE: *Palmetto Construction Group, LLC v. Restoration Specialist, LLC et al*
Case No.: 2016-CP-10-1143

Dear Judge Scarborough,

As you are aware, the above referenced case is on appeal. The procedural posture of the case is quite unusual. The parties were scheduled to appear before you on October 4, 2016 for a default damages hearing. The day before the hearing, we were served by Ms. Ariail with a notice of appeal. However, the notice was well past the deadline to appeal Your Honor's July 14, 2016 Order, and no other order had been entered. We moved to dismiss the appeal, and our motion was ultimately granted by the Court of Appeals; unfortunately not soon enough as the defective notice prevented us from going forward with the damages hearing on October 4. Instead of having a damages hearing, Your Honor sought a proffer of damages in order to make a record for the Court of Appeals and heard Ms. Ariail's motion to reconsider. Palmetto was prepared to go forward with the damages hearing, and came to court with Mr. John Kendle to testify to Palmetto's damages and exhibit notebooks which we intended to enter into the record by way of Mr. Kendle's testimony. The exhibit notebook was not formally entered in the record as Mr. Kendle did not testify; however, the notebooks were disbursed and the exhibits were discussed with the Court and objected to by Ms. Ariail – all of which appears from the transcript. After the hearing, Your Honor entered an order denying Ms. Ariail's motion to reconsider and a second appeal was noticed. As part of the second appeal, Ms. Ariail has moved to exclude from the record on appeal and from Respondent's brief, any mention of the exhibits provided by Palmetto in support of its proffer of damages given to the Court on October 4, claiming that the exhibits were not before this court. The following exchange between the Court and Ms. Ariail demonstrates the Court's intent that

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46A State Street · Charleston · South Carolina · 29401
Phone: (843) 377-1871 · Fax: (843) 377-1310

*Currently Admitted Only in Maryland

Palmetto's damages be put in the record as well as Ms. Arial's object to the very documents she now claims were not part of the proceeding:

2 MS. ARIAIL: Your Honor, I'm going to object
3 to any of this information being put in the record.
4 Again, this is essentially the damages hearing as
5 going forward. I've essentially got Counsel for the
6 Plaintiff testifying with no --

7 THE COURT: Well, I asked for a proffer and
8 that's just what I got. That's what I was wanting.
9 Okay? I want that to be on the record when you-all
10 take that up there.

11 MS. ARIAIL: Well, I don't agree with anything
12 that she said.

13 THE COURT: You don't have to.

14 MS. ARIAIL: I've got problems with a lot of
15 the documents that are contained herein.

(October 4, 2016 Transcript, p. 31 line 2-15).

We write today to ask Your Honor's permission to file the exhibit notebook that was provided as part of the proffer of damages taken on October 4, 2016. We asked for a status conference to discuss this issue, and Ms. Beck provided us with a time and date. However, Ms. Ariail has indicated that she will not appear before this Court without an order instructing her to do so from the Court of Appeals. We are not seeking to have the

The Mikell R. Scarborough
May 16, 2017
Page 3 of 3

Court weigh in on the motion pending before the Court of Appeals, we are simply seeking permission to file the notebook rather than file on our own to avoid the allegation that we are trying to slip something in the record that was not before this Court or that we were acting without this Court's approval or knowledge.

We appreciate your consideration of this request

ANDREW K. EPTING, JR., LLC

s/Drew

Andrew K. Epting, Jr.

AKE,Jr./agg

Enclosure

cc: Bright Ariail, Esquire

Michelle Endemann

From: Mikell Scarborough <master@charlestoncounty.org>
Sent: Thursday, May 18, 2017 3:47 PM
To: Bright Ariail
Cc: Andrew K. Epting; Michelle Endemann; Barnwell Fishburne; Laura Dukes Beck
Subject: RE: Appellate Case 2016-002308/Civil Action 2016-CP-10-1143

Importance: High

Counsel,

I have been provided your emails and have gone back to review the record as well as searched my memory about this. This issue came up in an unusual context (as I recall) because the matter was set for a default damages hearing that was returned from appeal of an interlocutory order.

Ms. Ariel has filed an appeal of the denial of her motion to reconsider which is where I understand this matter now rests with the Court of Appeals.

At the scheduled damages hearing, we did not go forth with a full hearing on damages; however, due to the unusual posture of the case, I allowed the Plaintiffs to Proffer their damages into the record. My review is that the figure is \$1.6 Million. The support for that figure was found in the documents presented in the notebook presented by counsel for the Plaintiffs. I am well aware that the amount of damages as well as the supporting documentation for the damages was objected to at the time.

My review of Rule 103, SCRE sets for the effect of Rulings on Evidence. Section b gives the court latitude to set forth the terms of the offer of proof – the reason for the proffer. I allowed the Plaintiff to state the amount of the damages and this was based upon the documentation contained within the notebook. Accordingly, I am of the opinion that the notebook was part of the proffer. It does not constitute admitted evidence because the court never got to the merits of the hearing. It is an offer of proof as to what the Plaintiff seeks to prove whenever the hearing on Damages is finally heard. Ms. Ariel did not agree to the evidence contained within the documents and, as I told her then, she did not have to. Tr. 29. L11-13.

I am aware of this dispute. I asked for the proffer to establish a record for the appellate court as they will decide the issues currently on appeal.

Thanks & I'm hopeful this helps to resolve the record on appeal.

Mikell R. Scarborough
Charleston County Master-in-Equity
100 Broad St, Ste. 266
Charleston, SC 29401
843 958-5070

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Tuesday, May 16, 2017 6:04 PM
To: Mikell Scarborough <master@charlestoncounty.org>
Cc: Andrew K. Epting <ake@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Barnwell Fishburne <JFishburne@charlestoncounty.org>; Laura Dukes Beck <LBeck@charlestoncounty.org>
Subject: Appellate Case 2016-002308/Civil Action 2016-CP-10-1143

Dear Judge Scarborough,

Attached, please see my letter of May 16, 2017 regarding Mr. Epting's letter of this date related to the above referenced matter. The original will be placed in the mail tomorrow.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariailaw.com
843/814-8805

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-1143

Palmetto Construction Group LLC

Restoration Specialists, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), 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

2016 NOV -2 PM 12:39
 FILED
 JULIE J. ANASTASIO
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL, 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: This matter came before the court for argument on October 11, 2016 on Cross-Motions to Reconsider pursuant to Rule 59, SCRPC. After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) Defendants' Motion to Amend is respectfully DENIED, inasmuch as Defendants have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made.

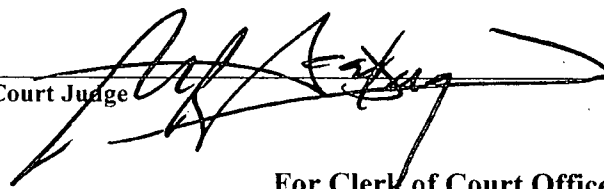
ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	\$NA
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge



3062

Judge Code

Date

10/28/16

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:



Palmetto Construction Group, LLC.

2265 Clements Ferry Road, Suite 204, Charleston, SC 29492 T: 843.971.7156 F: 843.971.3775

Mark Ward
Restoration Specialists
1042-A East Montague Avenue
Charleston, SC 29405

Date: May 13, 2015

RE: Copy of Signed Contract – VAMC Parking Garage

Mark,

I hope you are doing well. Please find the signed contract attached. I am sorry for the delay as that John gave me this a while back to sign but I forgot to send it back to you.

John tells me that the project is going very well onsite and that it is coming to an end (roughly six weeks to finish). He believes this project will be highly profitable, in excess of \$800,000, which is great news. At this point I believe it is a good time to sit down and open our books to each other since we have the 50/50 profit share at the end of the project.

Please let me hear from you as to when would be a good time to meet. I am glad to travel to Savannah if that is more convenient for you.

If you have any questions please do not hesitate to contact me. Also if you see any other projects to go after that we would be a good fit together on please let me know. Thanks for your help and look forward to hearing back from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Handegan".

Jay Handegan

Vice President
Palmetto Construction Group, LLC



AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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

TABLE OF ARTICLES

1	THE SUBCONTRACT DOCUMENTS
2	MUTUAL RIGHTS AND RESPONSIBILITIES
3	CONTRACTOR
4	SUBCONTRACTOR
5	CHANGES IN THE WORK
6	MEDIATION AND BINDING DISPUTE RESOLUTION
7	TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
8	THE WORK OF THIS SUBCONTRACT
9	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
10	SUBCONTRACT SUM
11	PROGRESS PAYMENTS
12	FINAL PAYMENT
13	INSURANCE AND BONDS
14	TEMPORARY FACILITIES AND WORKING CONDITIONS
15	MISCELLANEOUS PROVISIONS
16	ENUMERATION OF SUBCONTRACT DOCUMENTS

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

Init.

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User Notes:

(1114130519)

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

- .1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.
- .3 Liquidated Damages will be assessed at \$ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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§ 4.5 WARRANTY

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

§ 4.6 INDEMNIFICATION

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

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

§ 4.7 REMEDIES FOR NONPAYMENT

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

ARTICLE 5 CHANGES IN THE WORK

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 6.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

- .1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

Portion of Work

Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached.

Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate

Substantial Completion Date

Commence Work: Mobilize 9/22/14
Completion Date: Final Completion 7/7/15

access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXCHANGE SITE.

Schedule: As follows

Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

§ 13.7 Performance Bond and Payment Bond:

(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

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

§ 13.8 PROPERTY INSURANCE

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

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

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

§ 13.9 WAIVERS OF SUBROGATION

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

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

Temporary Facility, Equipment or Service	Cost, if any (\$0.00)
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§ 14.2 Specific working conditions:

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

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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005

This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

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

RESTORATION SPECIALISTS, LLC



CONTRACTOR (Signature)

Mark Ward - Managing Member

(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC



SUBCONTRACTOR (Signature)

JAY HANRAHAN - Vice President

(Printed name and title)

