6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 06 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, LLC — Respondent

v.

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

RECORD ON APPEAL
VOLUME I OF IV

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

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

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

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

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

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

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

IT IS SO ORDERED.

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

On this 20th day of April 2016
Charleston, SC

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

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

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

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

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

IT IS ORDERED THAT:

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

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

On this 14 day of July 2016
Charleston, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

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

Palmetto Construction Group LLC

PLAINTIFF(S)

Restoration Specialists, LLC, et al.

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

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

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

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

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

ORDER INFORMATION

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

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

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

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

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

Circuit Court Judge

3062
Judge Code

10/28/16
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

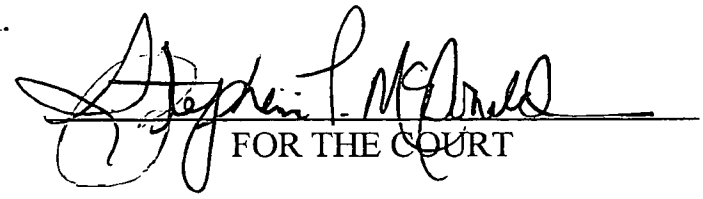
v.

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

Appellate Case No. 2016-002096

ORDER

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



FOR THE COURT

Columbia, South Carolina

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

FILED
November 10, 2016

The South Carolina Court of Appeals

Palmetto Construction Group, LLC, Respondent,

v.

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

Appellate Case No. 2016-002308

ORDER

The motion to dismiss is denied. *See Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) (providing an order denying a motion to compel arbitration is immediately appealable); *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 521 S.E.2d 749 (Ct. App. 1999) (providing an order finding that a party waived its right to compel arbitration is immediately appealable). Nothing prevents the parties from arguing the issue of appealability in their briefs.

FOR THE COURT

Columbia, South Carolina

FILED
February 1, 2017

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
PALMETTO CONSTRUCTION GROUP, LLC.,)
Plaintiff(s))
)
vs.)
)
RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

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

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

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

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (*Check One Box Below*)

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

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

Previous Notice of Intent Case # 20____-NI-_____-_____
- [ ] Notice/ File Med Mal (230)
- [ ] Other (299) _____

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

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

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

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

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

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

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

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

9

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

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

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

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

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

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

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

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

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

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

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

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

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

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

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

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

TO: THE DEFENDANTS NAMED ABOVE:

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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

DATED: February 12, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-_1143 **COMPLAINT**

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

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

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

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

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

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

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

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

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

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

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

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

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

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

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

27. There are claims on the surety bond.

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

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

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

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

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

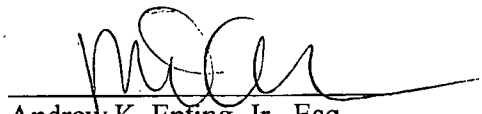
32. Palmetto restates each and every allegation above.

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.
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ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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

Bindertek #CLEX A

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(1114130519)

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

§ 13.8 PROPERTY INSURANCE

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

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

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

§ 13.9 WAIVERS OF SUBROGATION

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

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

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

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

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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification	Date

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

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

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TEAMING AGREEMENT

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

ARTICLE 1 SUBMISSION OF PROPOSAL

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

ARTICLE 2 PERFORMANCE OF CONTRACTS

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

ARTICLE 3 EXCLUSIVE AGREEMENT

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

ARTICLE 4 SCOPE OF AGREEMENT

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

B

Binderlek #CLEX

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

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

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

ARTICLE 5 RELATIONSHIP

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

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

ARTICLE 7 TERMINATION

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

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

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

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

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

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

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

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

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

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

ARTICLE 9 DAMAGES

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

ARTICLE 10 ASSIGNMENT

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

ARTICLE 11 NOTICE

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

Attention: **Mark Ward**	Attention: **Jay Handegan**
Restoration Specialists, LLC	Palmetto Construction Group, LLC
PO Box 5352	2265 Clements Ferry Rd. Suite 204
Savannah, Ga. 31414	Charleston, SC 29492
(912) 659-4355	(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

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

RESTORATION SPECIALISTS LLC	PALMETTO CONSTRUCTION GROUP
By: _____	By: _____
(Authorized Signature)	(Authorized Signature)
Title: Managing Member	Title: Vice President
Date: 12/01/11	Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

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

AREAS OF RESPONSIBILITY

RS

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

PCG

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

SPS

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

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

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

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

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

OBLIGATION:

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

CONDITIONS:

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

WITNESS:

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

Bindertek #CLEX C

Restoration Specialists, LLC — PRINCIPAL

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

INDIVIDUAL SURETY(IES)

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

The Hanover Insurance Company — CORPORATE SURETY(IES)

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

CORPORATE SURETY(IES) *(Continued)*

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

INSTRUCTIONS

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

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

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

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

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

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

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

Bond No. 1944091

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

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

PRINCIPAL *(Legal name and business address)*

Restoration Specialists, LLC
P. O. Box 5352
Savannah, GA 31414

TYPE OF ORGANIZATION *("X" one)*

☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☒ CORPORATION

STATE OF INCORPORATION: GA

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

The Hanover Insurance Company
440 Lincoln Street
Worcester, MA 01653

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	360	00

CONTRACT DATE	CONTRACT NO.
March 13, 2012	VA247-C-0035

OBLIGATION:

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

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

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

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

WITNESS:

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

Restoration Specialists, LLC — **PRINCIPAL**

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

INDIVIDUAL SURETY(IES)

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

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

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

CORPORATE SURETY(IES) *(Continued)*

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

SECTION I: Hearing Information

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

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

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

SECTION III: Motion Fee

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

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

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

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

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

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

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

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

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

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

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

ATTORNEYS FOR PLAINTIFFS

On this 12 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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

Binderlok #CLEX
A

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User Notes:

Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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User Notes:

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1 THE SUBCONTRACT DOCUMENTS

2 MUTUAL RIGHTS AND RESPONSIBILITIES

3 CONTRACTOR

4 SUBCONTRACTOR

5 CHANGES IN THE WORK

6 MEDIATION AND BINDING DISPUTE RESOLUTION

7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

8 THE WORK OF THIS SUBCONTRACT

9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

10 SUBCONTRACT SUM

11 PROGRESS PAYMENTS

12 FINAL PAYMENT

13 INSURANCE AND BONDS

14 TEMPORARY FACILITIES AND WORKING CONDITIONS

15 MISCELLANEOUS PROVISIONS

16 ENUMERATION OF SUBCONTRACT DOCUMENTS

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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User Notes:

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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User Notes:

§ 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

Init.

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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User Notes:

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

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

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

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

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

§ 13.8 PROPERTY INSURANCE

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

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

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

§ 13.9 WAIVERS OF SUBROGATION

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

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

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

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

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

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User Notes:

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification	Date

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

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

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User Notes:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2016_-CP-10_1143
	)	
PALMETTO CONSTRUCTION GROUP, LLC.	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
	)	
RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD	)	
Defendant.	)	

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

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

SECTION I: Hearing Information

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

SECTION II: Motion/Order Type

☒Written motion attached
☐Form Motion/Order

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

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

SECTION III: Motion Fee

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

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

CLERK'S VERIFICATION

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

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

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

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

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

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

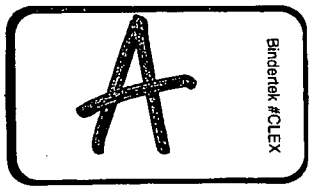
Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

DATED: April 18, 2016
Charleston, South Carolina

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

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

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



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

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

Andrew K. Epting

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

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

Notary Public for South Carolina

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

AFFIDAVIT OF SERVICE

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

Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

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

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

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

Binderteк #CLEX 1

RECEIVED MAR 22 2016 By _____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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

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

NOTARY PUBLIC

My Commission Expires

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

PROCESS SERVER #
Appointed in accordance with State Statute

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

Our Job Serial Number: 2016000516

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AFFIDAVIT OF SERVICE

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

Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

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

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

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

COMMENTS: _____

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

RECEIVED
MAR 23 2016
By_____

Bindertek #OLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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

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

NOTARY PUBLIC

My Commission Expires: OCT. 15 2019

JOHN WOFISP MY COMMISSION EXPIRES CHATHAM CO., GEORGIA NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statutes

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

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

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

RECEIVED
MAR 29 2016
By

Case Number: 2016-CP-10-1143

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

For: Andrew Epting

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

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

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

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

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

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

COMMENTS: _____

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

RECEIVED
MAR 22 2016
By
Bindertek #CLEX
3

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

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

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

NOTARY PUBLIC

My Commission Expires:

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

PROCESS SERVER #
Appointed in accordance with State Statutes

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

Our Job Serial Number: 2016000517

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

FILED
2016 JUN -6 AM 11: 15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

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

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

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

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

Notary Public for the State of Georgia

My Commission Expires 09/11/2019.

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

Law Office of A. Bright Ariail, LLC

June 6, 2016

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

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

Dear Julie;

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

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

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc:
All Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

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

Notary Public for the State of Georgia

My Commission Expires 09/11/2019

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

Law Office of A. Bright Ariail, LLC

June 6, 2016

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

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

Dear Julie;

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

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

With kindest regards, I am.

Sincerely yours,

A. Bright Ariail

Enclosures

cc:
All Counsel

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVER SHEET
vs.	)	
	)	
Restoration Specialists, LLC., *et al.*,	)	
	)	
Defendants.	)	

Plaintiff's Attorney: Andrew K. Epting, Jr. and Michelle Nicole Endemann Address: Andrew K. Epting, Jr. LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871 Email: ake@epting-law.com;men@epting-law.com Other:	Defendant's Attorney: A. Bright Ariail S.C. Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 12E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Email: bright@brightariaillaw.com Other:

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

SECTION I: Hearing Information

Nature of Motion: Motion for Continuance and Protection
Estimated Time Needed: 15 min Court Reporter Needed: YES

SECTION II: Motion Type

X Written motion attached.
Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached consent order.

Signature of Attorney for Defendant Date submitted

SECTION III: Motion Fee

X PAID – AMOUNT: $25.00
EXEMPT: Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Motion Contained in Answer

JUDGE'S SECTION Motion Fee to be paid upon filing of the attached order.	JUDGE

Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

MOTION FEE COLLECTED: _____

CONTESTED – AMOUNT DUE: _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

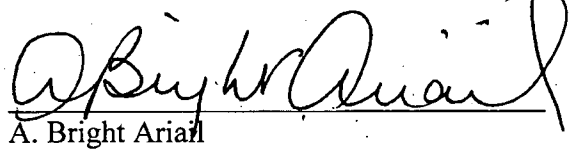
(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

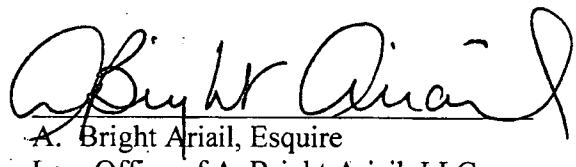
June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3: 3
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 3rd day of June, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF



A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVER SHEET
vs.	)	
	)	
Restoration Specialists, LLC., *et al.*,	)	
	)	
Defendants.	)	

Plaintiff's Attorney: Andrew K. Epting, Jr. and Michelle Nicole Endemann Address: Andrew K. Epting, Jr. LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871 Email: ake@epting-law.com;men@epting-law.com Other:	Defendant's Attorney: A. Bright Ariail S.C. Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 12E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Email: bright@brightariaillaw.com Other:

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

SECTION I: Hearing Information

Nature of Motion: Motion to Set Aside Entry of Default
Estimated Time Needed: 30 min Court Reporter Needed: YES

SECTION II: Motion Type

X Written motion attached – **Motion to Set Aside Entry of Default**
Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached consent order.

Signature of Attorney for Defendant — Date submitted: 30 June 16

SECTION III: Motion Fee

X PAID – AMOUNT: $25.00
EXEMPT: Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Motion Contained in Answer

JUDGE'S SECTION Motion Fee to be paid upon filing of the attached order.	_____ JUDGE

Other:	CODE: _____ Date: _____
CLERK'S VERIFICATION	
	Date Filed:
Collected by: _____ MOTION FEE COLLECTED: _____ CONTESTED – AMOUNT DUE: _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order setting aside the Entry of Default for good cause, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendant have promptly and timely filed their Motion seeking relief from the Entry of Default;

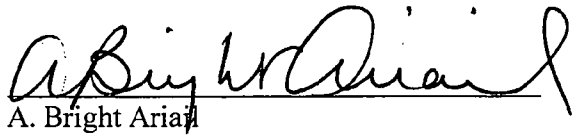
(2): The Defendants delay in responding to the Plaintiff's lawsuit was not culpable;

(3): The Defendants have a meritorious defense to the Plaintiff's lawsuit; and

(4): The Plaintiff will not suffer prejudice if Entry of Default is set aside.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Set Aside Entry of Default which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

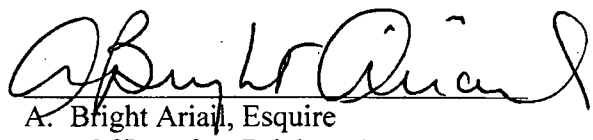
June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
Defendants.	)	

FILED
2016 JUN -3 PM 3: 3
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 3rd day of June, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF



A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

Law Office of A. Bright Ariail, LLC

June 3, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258
Dillon, SC 29536

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

Dear Julie;

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c)* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

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

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: All Counsel (via email)

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
Palmetto Construction Group, Plaintiff,	)	**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.	)	
Restoration Specialists, LLC., et al., Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Andrew K. Epting and MIchelle N. Endemann, Bar No. 01908 & 79894, respectively Address: Andrew K. Epting, Jr., LLC 3 State Street Charleston, SC 29401 Phone: (843) 377-1871Fax (843) 377-1310 E-mail: ake@epting-law.comOther: mne@epting-law.com	A. Bright Ariail, Bar No. 69570 Address: Law Office of A. Bright Ariail, LLC 125E Wappoo Creek Dr., Suite 202 Charleston, SC 29412 Phone: (843) 814-8805 Fax(843) 266-0538 E-mail: bright@brightariaillaw.comOther: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion to Stay and to Compel
Estimated Time Needed: 30 min. Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — 07/11/16 Date submitted

SECTION III: Motion Fee

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

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

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 11 AM 11:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

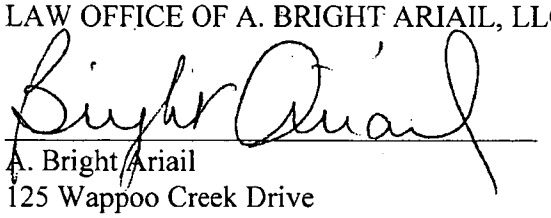
(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

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

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

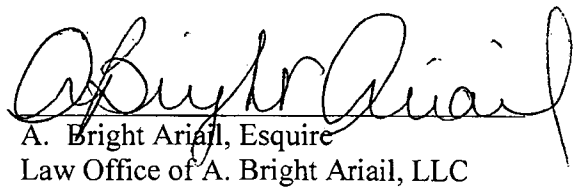
July 11, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
Defendants.	)	

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF



A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
ATTORNEY FOR DEFENDANTS

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

July 11, 2016

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

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

Dear Julie:

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Stay and to Compel Pursuant to SCRCP12(b)(1) and Applicable Law* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

By copy of this letter, I am providing a copy of the Motion to the Honorable Mikell R. Scarborough, and I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely,

A. Bright Ariail

ABA/wd
Enclosures
cc: The Honorable Mikell R. Scarborough (Via Hand Delivery)
All Counsel of Record (via email & US Mail)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 14 AM 11:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). (*Exhibit A)*. Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following:

(1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B).* There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C)*. Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

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

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

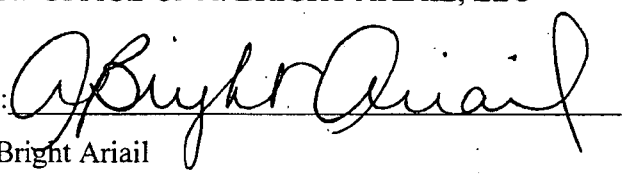
As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: 

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

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

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

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

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

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

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

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

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

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

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

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

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

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

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

Structured Parking Solutions
21 South Tarragona Street, Suite 101

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

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

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

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

Bindertek ACLEX A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

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

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

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

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

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

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

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

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

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

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

§ 3.2 COMMUNICATIONS

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

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

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

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

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

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

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§ 3.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

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

§ 3.4 CONTRACTOR'S REMEDIES

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

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

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

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

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

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

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

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

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

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

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

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

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

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

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

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

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

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

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

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

§ 4.4 CLEANING UP

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

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

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

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

§ 6.2 BINDING DISPUTE RESOLUTION

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

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

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

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

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

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

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

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

§ 7.2 TERMINATION BY THE CONTRACTOR

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

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

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

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

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

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

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

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

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

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

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

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

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

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

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

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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

ARTICLE 10 SUBCONTRACT SUM

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

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

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

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

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

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 11.9 SUBSTANTIAL COMPLETION

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

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

ARTICLE 12 FINAL PAYMENT

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

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

ARTICLE 13 INSURANCE AND BONDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

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

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

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

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

Modification	Date

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

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

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

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

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

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

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*
Jay Hannegan - Vice President
(Printed name and title)

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User Notes:

TEAMING AGREEMENT

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

ARTICLE 1 SUBMISSION OF PROPOSAL

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

ARTICLE 2 PERFORMANCE OF CONTRACTS

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

ARTICLE 3 EXCLUSIVE AGREEMENT

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

ARTICLE 4 SCOPE OF AGREEMENT

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

B

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

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

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

ARTICLE 5 RELATIONSHIP

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

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

ARTICLE 7 TERMINATION

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

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

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

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

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

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

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

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

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

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

ARTICLE 9 DAMAGES

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

ARTICLE 10 ASSIGNMENT

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

ARTICLE 11 NOTICE

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

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

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

ARTICLE 12 ENTIRE AGREEMENT

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

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)

Title: Managing Member

Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)

Title: Vice President

Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

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

AREAS OF RESPONSIBILITY

RS

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

PCG

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

SPS

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

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

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

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

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA

SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	5	999	860	00
	CONTRACT DATE: March 13, 2012		CONTRACT NO.: VA247-C-0035	

OBLIGATION:

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

CONDITIONS:

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

WITNESS:

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

Bindertek #CLEX C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) (Typed)	1.	2.	

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

CORPORATE SURETY(IES) *(Continued)*

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

INSTRUCTIONS

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

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

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

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

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

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

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

Bond No. 1944091

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

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

PRINCIPAL (Legal name and business address)
Restoration Specialists, LLC
P. O. Box 5352
Savannah, GA 31414

TYPE OF ORGANIZATION ("X" one)
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☒ CORPORATION

STATE OF INCORPORATION
GA

SURETY(IES) (Name(s) and business address(es))
The Hanover Insurance Company
440 Lincoln Street
Worcester, MA 01653

PENAL SUM OF BOND

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

CONTRACT DATE	CONTRACT NO.
March 13, 2012	VA247-C-0035

OBLIGATION:

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

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

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

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

WITNESS:

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

Restoration Specialists, LLC — **PRINCIPAL**

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

INDIVIDUAL SURETY(IES)

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

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

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

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

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

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

INSTRUCTIONS

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

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

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 27 PM 12:3
JANIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial Circuit at a time and place to be arranged by the Court and counsel involved for the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion)*;

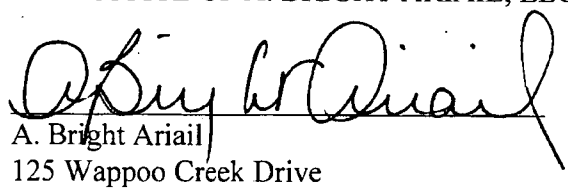
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

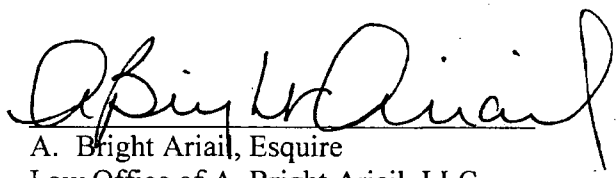
July 27, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 JUL 27 PM 12: 39
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies, that on this 27th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF



A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
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ATTORNEY FOR DEFENDANTS

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
125E WAPPOO CREEK DRIVE, SUITE 202
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bright@brightariaillaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

July 27, 2016

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

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

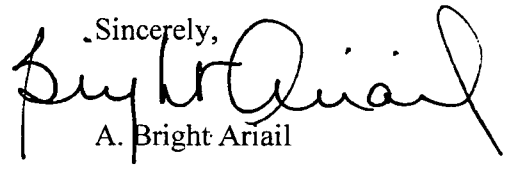
Dear Julie:

Enclosed, please find the original and one copy of the *Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP59(e) and Applicable Law* with the appropriate Motion Cover Sheet and Filing Fee for filing in the above captioned case.

By copy of this letter, I am providing a copy of the Motion to the Honorable Mikell R. Scarborough, and I am serving this Motion on all Counsel of Record.

With kindest regards, I am

Sincerely,



A. Bright Ariail

ABA/wd
Enclosures
cc: The Honorable Mikell R. Scarborough (Via Hand Delivery)
All Counsel of Record (via email & US Mail)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 14 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

Pursuant to Rule 59(e), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Reconsider and Alter or Amend.

LEGAL AUTHORITIES

(1): **The Defendants showed good cause such that the entry of default should be lifted in this matter.**

The Defendants showed good cause such that the entry of default should be lifted. As a part of the good cause shown, the Defendants asserted their rights to mandatory mediation/arbitration under the mandatory alternative dispute resolution provisions under the contract. The Defendants' rights to mandatory mediation/arbitration are substantial rights which cannot be vitiated and foreclosed to the Defendants by the simple entry of default. *See, legal authorities cited below.*

Furthermore, these mandatory rights to mediation/arbitration are the same rights asserted and demanded by the Plaintiff in its Motion to Stay and Compel filed contemporaneously with the commencement of this action. For this reason, as well as the additional reasons cited in Defendants' Memorandum in Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP

55(c), the Plaintiff cannot claim prejudice if the Entry of Default is lifted.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this circumstance, the Plaintiff will have received significant undue advantage in achieving a litigated result in a case subject to contractually agreed upon mandatory mediation/arbitration. This extreme prejudice will be further magnified by the significant limitations and restrictions imposed upon Defendants' rights to defend against Plaintiff's claims in the damages hearing forum.

On the basis of good cause shown, inclusive of the Defendants' rights to mediation/arbitration and the mandatory requirement of the Court to stay and compel mediation/arbitration, the interests of justice and the policy favoring disposition of cases on the merits dictate the vacation of the entry of default. Upon vacating the entry of default, the Court should stay the case and compel the case to mediation/arbitration consistent with the mandatory contract provisions and demands for mediation/arbitration made by all parties to this litigation.

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action.

By virtue of the mandatory mediation/arbitration provisions in the contract, the Court is required to stay this litigation and submit the matter to mediation/arbitration. Under both federal and state law, when a case is sent to arbitration, the court is divested of jurisdiction over the case. *U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (2007); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E. 2d 300 (2004). By virtue of the requirements of a mandatory stay and submission to mandatory mediation/arbitration, the Court shall be divested of jurisdiction over the matter.

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration.

The contract giving rise to this action requires mandatory mediation, and if necessary binding arbitration. The Plaintiff acknowledged this fact and the mandatory nature of the alternative dispute resolution provisions at the inception of this litigation in its Motion to Stay and Compel. In fact, the Plaintiff made a formal demand for mandatory mediation/arbitration in its Motion to Stay and Compel filed with the Court.

By virtue of the mandatory mediation/arbitration provisions in the contract, the Court is required to stay this litigation and submit the matter to mediation/arbitration. This stay of litigation requirement is mandatory under both federal and state law. *U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (DSC 2007); *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009).

(4): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel. The Defendants joined in and consented to this motion, which motion should be properly adjudicated before the court and the relief requested therein granted.

The Defendants joined in and consented to the Motion to Stay and Compel originally filed by the Plaintiff, thus rendering the motion a joint motion of all parties to the case.

The Clerk of Court "closed out" the Motion to Stay and Compel due to the referral of the case to the Master in Equity. *See, Transcript of Hearing before the Honorable Mikell R. Scarborough on July 14, 2016.* The summary closure of this motion as an administrative matter without the Court's consideration and ruling upon the motion for all parties concerned was not a proper and valid adjudication of this motion.

The motion should be properly adjudicated before the Court and the relief requested therein granted. *See, all cases and legal authorities cited herein.*

(5): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law.

The policy of the United States and South Carolina is to favor arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000). In the present case, the Defendants have not defaulted upon nor waived their right to mediation/arbitration under either state or federal law.

The Defendants have not defaulted upon nor waived their right to mediation/arbitration under state law because: (a): a substantial length of time did not transpire between the commencement of the action and the commencement of the motion to compel arbitration; (b): the Defendants did not engage in extensive discovery before moving to compel arbitration; and (3): the Plaintiff has not been prejudiced through an undue burden caused by any delay in seeking arbitration. *Toler's Cover Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581; *Carlson v. South State Plastering, LLC,* 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App 2001); and related cases.

The Defendants have not defaulted upon nor waived their right to mediation/arbitration under federal law because they have not so substantially utilized the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay. *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (DSC 2008); *Rich v. Walsh,* 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); and related cases.

The Court's Entry of Default against the Defendants, dated April 21, 2016 does not constitute a default upon or waiver of the Defendants' right to mediation/arbitration. *Id., see also, Cedar Surgery Center v. Bonelli,* 96 P.3d 911, 2004 UT 58 (Utah, 2004).

CONCLUSION

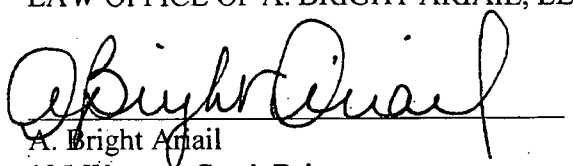
Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an order lifting the entry of default, staying this action and compelling mandatory mediation/arbitration of this matter.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and

Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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

ATTORNEY FOR DEFENDANTS

October 4, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 14 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 4th day of October, 2016, a true and correct copy of the Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP59(e) and Applicable Case Law was hand delivered to the following:

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401

A. Bright Arrail

Charleston, South Carolina
October 4, 2016

Law Office of A. Bright Ariail, LLC

October 11, 2016

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

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

Dear Julie;

Enclosed, please find the original and one copy of Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law with Certificate of Service for filing in the above captioned case which was handed delivered to the Court and opposing counsel during the hearing held in this case on October 4, 2016. A SASE is also enclosed for return of the clocked copy.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: All Counsel

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	COUNTY OF CHARLESTON
	)	FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION, GROUP LLC.,	)	CASE NO. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	
RESTORATION SPECIALISTS, LLC REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,	)	**PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
Defendants.	)	

FILED
2016 OCT 26 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT

A. BACKGROUND

This matter arises out of Palmetto's suit against Defendants alleging, *inter alia*, that the Defendants misappropriated funds from a government construction project, failed to pay the subcontractors and suppliers, defaulted on its agreements with Palmetto and the indemnity agreement with the surety, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Defendants on March 14, 2016, but the Defendants failed to answer. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to this Court.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Defendants and filed a motion to lift the default and compel arbitration. The motions were denied by Order dated July 14, 2016. The Order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Defendants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Defendants wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. The Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11.

On September 30, 2016, Palmetto was served with a notice of appeal, and immediately filed a motion to dismiss. The parties appeared before this Court on October 4, and a record of the parties' positions was made as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending.

On October 5, Palmetto's counsel received a letter from the Court of Appeals returning its motion to dismiss on the grounds that the Court had no record of such an appeal. Also on October 5, Palmetto was served by facsimile with a copy of another notice of appeal, different than the one previously served, which attached the July 14, 2016 Order and portions of the transcript of hearing. On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. On October 17, 2016, Palmetto's counsel received a letter from the Court of Appeals stating that one of the notices of appeal was being returned to Ms. Arial together with the transcript as the transcript is not an order and is not properly included with a notice of appeal **(EXHIBIT A).**

Palmetto submits the following in opposition to Defendants' Rule 59 motion.

B. THE COURT PROPERLY DENIED DEFENDANTS' MOTION TO BE RELIEVED FROM DEFAULT

The South Carolina Rules of Civil Procedure provide: "For good cause shown the court may set aside an entry of default . . ." Rule 55(c), SCRCP. "The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court." *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). In the present case, the Court correctly concluded that the Defendants failed to show good cause for why the default should be lifted. Defendants submitted an affidavit by Mr. Ward, acknowledging service of the complaint but stating that he failed to answer because he believed this litigation was part and parcel of that filed by Hanover, the surety. However, the surety has not instituted legal proceedings. Further, the Defendants do not have a meritorious defense to Plaintiff's claims as Mr. Ward acknowledges that he has failed to pay his subcontractors and suppliers, despite being paid over $8 Million dollars by the Department of Veterans Affairs. Further, Palmetto would be severely prejudiced if the default were lifted as the passage of time pushes Palmetto closer to closing their doors, and further, Palmetto has taken actions, like the withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer.

C. PARTIES IN DEFAULT CANNOT ASSERT AFFIRMATIVE DEFENSES

As an initial matter, there are multiple Defendants named in this action and all are in default. Defendants have moved to compel arbitration, but arbitration is not a defense available to Mark Ward or Lynette Ward as they are not parties to the construction contract that contains the arbitration provision. *Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (Arbitration is a matter of contract, and only parties to the agreement can be compelled to arbitrate).

1. **Arbitration is an Affirmative Defense as Specifically Defined by the South Carolina of Civil Procedure**

Rule 8(c) SCRCP states in relevant part:

> Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality...and any other matter constituting an avoidance or affirmative defense.

Further, South Carolina courts have consistently held that arbitration is an affirmative defense. See, e.g., *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 452, 730 S.E.2d 312, 314 (2012) (where plaintiff "opposed the motion to compel arbitration on the ground Brentwood Homes waived the right to assert the affirmative defense due to its delay in responding"; *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 490, 689 S.E.2d 602, 603 (2010) ("Upstate Auto asserted three affirmative defenses in its Answer, including an arbitration agreement with Partain.").

2. **An Affirmative Defense is Waived if Not Plead**

An affirmative defense is waived if not pled. *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 272, 750 S.E.2d 615, 623 (Ct. App. 2013) (internal citations omitted), *Howard v. S. C. Dep't of Highways*, 343 S.C. 149, 152, 538 S.E.2d 291, 294 (Ct. App. 2000); see also *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182-83, 597 S.E.2d 152, 159 (Ct. App. 2004)(claims or defenses not presented in the pleadings are waived).

Specifically in the context of a party in default seeking to compel arbitration, courts in the fourth circuit have held that unless the movant is able to show good cause for its default, the defaulting party has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court. *See State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 168-69, 539 S.E.2d 106, 111-12 (2000) *citing American*

Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 96 (4th Cir. 1996) (affirmative defense of arbitration must be pled in answer); *McDonnell v. Dean Witter Reynolds*, Inc., 620 F. Supp. 152, 155-56 (D. Conn. 1985) ("the affirmative defense of arbitration must appear in the answer, and 'a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation.'") (internal citation omitted). *In State ex rel. Barden,* the West Virginia Supreme Court held that "[u]nexcused conduct that results in the entry of a default judgment is no less of an implicit waiver of a right to arbitration than any other procedural forfeiture".[1]

Defendants have cited one case in the context of a defaulting party moving for arbitration, the Supreme Court of Utah's opinion in *Cedar Surgery Center, LLC v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (2004). In Cedar Surgery, the Court suggests that the failure of the Bonellis to participate in the litigation evidenced their intent to enforce the parties' arbitration provision.[2] However, in this case, the Defendants failure to respond to the complaint and the accompanying motion to stay the litigation and compel arbitration evidences the opposite. Here, Palmetto served its own motion for arbitration with its complaint. If Restoration Specialists intended to enforce the arbitration provision, it could have simply answered and consented to arbitration. When the defendants chose to ignore

---

[1] Facts in further support of the argument that Restoration Specialists waived its right to arbitration include the filing of an affidavit and motions with the Court unrelated to the arbitration issue as well as participating in discovery. The defendants answered written discovery on July 6, 2016 and then made three separate document productions on July 6, 11, and 13, 2016. It was only after their motion to lift the default was denied by this Court that Defendants moved to compel arbitration in search of a more favorable forum.

[2] "By declining to answer Cedar Surgery's complaint or otherwise respond to the litigation, the Bonellis were, in effect, refusing to acknowledge Cedar Surgery's efforts to circumvent the arbitration process with which it had contractually agreed to abide." *Cedar Surgery Ctr., LLC*, 96 P.3d 911, 915

the pleadings, Palmetto took steps in reliance on that inaction, including asking the circuit court to refer the case and withdrawing its own motion to compel arbitration. As the *Cedar Surgery Center* Court stated, Defendants should have "raised the contractual arbitration clause in an answer...and then brought a motion to compel arbitration, rather than simply ignoring" the litigation. *Id.* at 915. Defendants only sought to compel arbitration after they were unsuccessful before this Court in lifting the default. Defendants' motion to compel arbitration is more akin to forum shopping than preserving any contractual rights.

3. <u>The Federal Arbitration Act</u>

Where the contract documents "evidence transactions in commerce," the Federal Arbitration Act ("FAA"), enacted pursuant to the commerce clause, supersedes South Carolina law. *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977).

Ms. Arial represented that Restoration Specialists is a Georgia corporation, and the project was in fact constructed in Augusta Georgia. Therefore, there is interstate commerce and the FAA applies. The analysis under the FAA is the same as arbitration is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure. *See, e.g., McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152, 155-56 (D. Conn. 1985) (Holding that under Fed. R. Civ. P. 8(c), the affirmative defense of arbitration must appear in the answer, and "a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation." *citing Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495, 503 (2 Cir. 1985)). See also *Gen. Star Nat'l Ins. Co. v. Administratia Asigurarilor de Stat*, 289 F.3d 434, 438 (6th Cir. 2002) (finding waiver where a movant waited until after the entry of default judgment to compel arbitration).

D. CONCLUSION

Defendants' motion to reconsider should be denied as the Court properly found Defendants had not shown good cause to lift the default, and a party in default cannot assert the affirmative defense of arbitration.

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 18th day of October, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true d correct copies of the pleading or paper to which is certificate is affixed was served upon the party(s) this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

_____

Signed this 18 day of October 2016 at Charleston, South Carolina

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 13, 2016

RECEIVED
OCT 17 2016
By

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

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Bindertek #CLEX
A

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

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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October 13, 2016

RECEIVED
OCT 17 2016
By

Carolyn Taylor
1220 Senate St., Suite 101
Columbia, S.C. 29201

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Ms. Taylor:

We received a duplicative notice of appeal in the above appeal. A. Bright Ariail, Esquire provided this office with a $100.00 notice of appeal filing fee in the form of a check (no. 1386) which was deposited on October 11, 2016, (receipt no. 81210). This second notice of appeal is being returned to Ms. Ariail.

Please refund the $100.00 filing fee to Ms. Ariail at the mailing address furnished below:

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

Thank you for your assistance in this matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

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

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

July 25, 2016

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

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

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Palmetto Construction Group's Memorandum in Opposition to Defendants' Motion to Reconsider, Alter or Amend in the above-referenced matter.

I would greatly appreciate your filing the original Motion and returning the file-stamped copy to me in the self-addressed, stamped envelope provided. Thank you.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/*Angela*

Angela Gross
Legal Assistant to Andrew K. Epting, Jr.
and

/agg

Enclosures

cc: The Honorable Mikell R. Scarborough (w/enc.)
Bright Ariail, Esquire (w/enc.)

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann · mne@epting-law.com
46A State Street · Charleston · South Carolina · 29401
Phone: (843) 377-1871 · Fax: (843) 377-1310

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**REPLY TO PALMETTO CONSTRUCTION'S OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ALTER OR AMEND**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 25 AM 10: 44
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider Alter or Amend.

FACTS/PROCEDURAL HISTORY

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia. ("the Norwood Parking Garage Project" or the "Project"). Prior to the contract award, the Plaintiff entered into a Teaming Agreement with Restoration in December 2011. The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project. *(Exhibit A)*.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balance due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward and Lynnette Pennington Ward ("Ward Defendants").

Plaintiff filed this lawsuit on March 7, 2016. *(Exhibit B)*. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. *(Exhibit C)*. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

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

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

On the evening of June 2, 2016, the Defendants were served with a Notice of Hearing scheduling the default damages hearing for June 6, 2016. *(Exhibits F & G).* The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. *(Exhibit H).* Upon receipt of this Notice of Hearing, the Defendants immediately retained legal counsel on June 3, 2016. *(Id.).* Defendants' counsel immediately filed a Motion for Continuance of the damages hearing and a Motion to Set Aside Entry of Default on June 3, 2016. *(Exhibits I & J).*

At the hearing on June 6, 2016, the Master in Equity ("Master") granted Defendants' Motion for Continuance of the damages hearing and held the Motion to Set Aside Entry of Default in abeyance. *(Exhibit K).* The Master then directed the Defendants to provide the Plaintiff with financial information relative to the Project to see what could be resolved between the parties prior to reconvening the matter for a status conference on July 14, 2016. *(Id.).* Per the Master's direction, the Defendants provided certain documents and basic written discovery responses to Plaintiff.

On July 11, 206, the Defendants filed their own Motion to Stay and to Compel on the basis of the mandatory contractual mediation/arbitration provisions. *(Exhibit L).* In addition, the Defendants joined and consented to Plaintiff's Motion to Stay and to Compel, rendering that motion a joint Motion to Stay and to Compel mandatory mediation/arbitration ("Joint Motion"). *(Id.).* As such, Defendants' Motion to Stay and Compel and the Joint Motion to Stay and Compel were pending before the Master at this time.[1]

The parties reconvened before the Master on July 14, 2016. *(Exhibit M).* The Defendants also filed their Memorandum in Support of their Motion to Lift Entry of Default on July 14, 2016, including the continued assertion of their right to arbitration. *(Exhibit N).* During the reconvened hearing the Master stated that the Clerk of Court "closed out" the Plaintiff's Motion to Stay and Compel. *(Exhibit M.).* The Clerk's closure of the motion occurred despite Defendant's joinder in the motion. The Master issued a bench ruling finding that the Clerk's action constituted an adjudication of this motion. *(Id.).*

[1] While Plaintiff asserts that it withdrew its Motion to Stay and Compel, Defendants have not been provided a copy of

The Master further ruled from the bench finding Defendants in default, denying Defendants' Motion to Lift Entry of Default and scheduling a default damages hearing for October 4, 2016. *(Id.)*.

Upon completion of the reconvened hearing, the Master issued a formal order dated July 14, 2016. *(Exhibit O)*. The Master's formal order: (a): Denied Defendants' Motion to Lift Entry of Default for lack of good cause; (b): Denied Defendants' Motion to Stay and Compel on the basis of default; and (c): Set a damages hearing for October 4, 2016. *(Id.)*. Defendants received written notice of entry of these orders on July 18, 2016. *(Exhibit P)*.

The Defendants filed a timely Motion to Reconsider and to Alter and Amend the Master's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. *(Exhibit Q)*. The Master scheduled the hearing on Defendants' Rule 59(e) motion to be held on October 11, 2016, seven days after the scheduled damages hearing on October 4, 2016. *(Exhibit R.)*.

On September 7, 2016 standing on their rights to mandatory mediation/arbitration, the Defendants requested in writing that the Master schedule the hearing on Defendants' Rule 59(e) motion prior to the October 4, 2016 damages hearing. *(Exhibit S)*.

On September 7, 2106, the Master replied to Defendants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. *(Exhibit T)*. The Master asked the parties to advise if this plan was acceptable. *(Id.)* The Appellants informed the Master that this plan was acceptable. *(Id.)*. The Respondent notified the Master that it would defer to the Master, but preferred the damages hearing to proceed on October 4, 2016 and the motions hearing to be held thereafter on October 11, 2016. *(Id.)*.

After further consideration, the Master then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would proceed on October 4, 2016 and the motions hearing would be held on October 11, 2016. *(Id.)*. The Defendants received written notice of the Master's decision on September 12, 2016. *(Id.)*.

The Master's decision to proceed with the damages hearing and not hear the Defendants' Rule 59(e) motion prior thereto effectively denied this motion as proceeding with the damages hearing under these circumstances would have severely prejudiced and potentially forced a waiver of Defendants' rights to arbitration and foreclosure of any appeal therefrom. Therefore, subject to, without waiving and in fully reserving their rights to arbitration, the Defendants commenced an appeal in this matter on

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documentation reflecting such withdrawal, and, there is likewise nothing in the record to Defendants' knowledge.

September 30, 2016.

LAW/ANALYSIS

A. Good Cause exists such that the entry of default should be lifted in this matter.

In the present case, the contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Pursuant to these provisions, and contemporaneously with the commencement of this action, the Plaintiff made and served upon Defendants a demand for mandatory mediation/arbitration in its Motion to Stay and Compel ("Plaintiff's motion"). The Defendants joined in Plaintiff's motion and filed its own Motion to Stay and Compel mandatory mediation/arbitration less than four (4) months after Plaintiff's commencement of suit.

Applying the proper legal standard regarding the waiver/ default of arbitration rights to the evidence on record establishes that the Defendants have neither waived nor defaulted upon their rights to arbitration. *Toler's Cove Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.E. 250, 586 S.E. 2d 581 (2003); *Carlson v. South State Plastering,* LLC, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001) (; *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC*, 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

Since there has been no waiver/default upon Defendants' rights to mandatory mediation/arbitration, the Court is required to stay this litigation and submit the matter to mediation/arbitration. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (DSC 2007); *Widener v. Fort Mill* Ford, 381 S.C. 522, 674 S.C. 172 (Ct. App. 2009). Furthermore, by virtue of this requirement to stay the litigation and compel arbitration, the Court is divested of subject matter jurisdiction. *U.S. ex rel. Coastal Roofing Co., v. P. Browne & Associates, Inc.*, 585 F. Supp. 2d 708 (D.S.C. 2007); *Main Corp. v. Black*, 357 S.C. 179, 592 S.E. 2d 300 (2004).

Standing alone, these facts and the legal conclusions arising therefrom constitute good cause for lifting the entry of default, staying this action and compelling mandatory mediation/arbitration. *Id.*, *see also, Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004).

In addition, numerous other factors in this case further establish good cause and the propriety of granting relief from the entry of default. These factors include:

(1): Defendants' reasonable and good faith explanation for the default;

(2): The brief delay in Defendants appearance in this action;

(3): The Defendants prompt and timely filing of their motion seeking relief from the entry of default;

(4): The existence of significant meritorious defenses to Plaintiff's claims;

(5): The lack of prejudice to the Plaintiff if the entry of default is set aside[2];

(6): The extreme prejudice to the Defendants if the entry of default is not lifted;

(7): The promotion of justice and disposition of the case on the merits which will both be served by vacation of the entry of default.

SCRCP 55(c); *see also, Memorandum in Support of Defendants' Motion to Set Aside Entry of Default Pursuant to SCRCP 55(c); Memorandum in Support of Defendants' Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law.*

For these reasons, good cause exits to vacate the entry of default in this matter.

B. All Defendants, including the Ward Defendants, are entitled to mandatory mediation/arbitration in this matter.

The Plaintiff asserts that the Ward Defendants are not entitled to mediation/arbitration in this matter because they are not signatories to the contract that contains the arbitration provisions. The Plaintiff's argument lacks merit for a number of reasons.

First, the Plaintiff's Complaint, and the causes of action asserted against all Defendants, including the Ward Defendants, allegedly arise out of or are related to the contract containing the arbitration provisions. These provisions require all claims arising out of or related to the contract to be

[2] Plaintiff asserts that it would be severely prejudiced if the default were lifted "as the passage of time pushes [Plaintiff] closer to closing their doors and further, [Plaintiff] has taken actions, like withdrawal of its motion to compel arbitration and referral of the action to the Master in Equity, as a result of Defendants failure to timely answer." However, the claim of potentially having to close its doors is a bare assertion not supported by evidence in the record. Proof of prejudice must be concrete, not merely speculative. Furthermore, the remaining claims of "prejudice" refer to activities which are either not supported by the record or are nominal at best. Such claims are not sufficient to establish prejudice in this matter.

mediated, and if not resolved by mediation, to be resolved by binding arbitration.

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

> "Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law of fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder."

The Ward Defendants consented in writing to their joinder in the arbitration in their Motion to Stay and to Compel Pursuant to SCRCP 12(b)91) and Applicable Case Law. Specifically, the Ward Defendants stated in their motion:

> "The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. *The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of Plaintiff's claims to mediation and, if necessary, binding arbitration.*" (emphasis added).

Third, the Plaintiff is equitably estopped from denying the Ward Defendants' standing to enforce the arbitration provisions on the following grounds: (1): The Plaintiff's Motion to Stay and Compel demanded that all claims in this action, including Plaintiff's claims against the Ward Defendants, be stayed and compelled to arbitration; (2): The application of the principles of equitable estoppel espoused and enforced in *U.S. ex rel. Coast. Roofing v. P. Browne & Assoc.*, 585 F. Supp. 2d 708 (D.S.C. 2007).

C. The Plaintiff's Arguments That The Right To Arbitrate Is An Affirmative Defense Which Has Been Waived By Defendants Lack Merit.

The Plaintiff first claims that "arbitration" is an affirmative defense as specifically defined by Rule 8(c) SCRCP. However, the only arbitration related affirmative defense specified in Rule 8(c) is the defense of "arbitration and award." The defense of "arbitration and award" is an affirmative defense asserting that the subject matter of the action has already been settled in arbitration. *Black's Law Dictionary* 120 (9th ed. 2009). Thus, Rule 8(c) is limited to the situation where a dispute already has been arbitrated and an award has been obtained. *Id.*; *Lee v. Grandcor Medical Systems, Inc.*, 702 S.

Supp. 252 (D. Colo., 1988). Neither has occurred in this case and Plaintiff's reliance on Rule 8(c) is erroneous.

The Plaintiff next asserts that South Carolina courts have consistently held that arbitration is an affirmative defense. Plaintiff cites two South Carolina cases for this proposition; namely, *Bradley v. Brentwood Homes, Inc.,* 398 S.C. 447, 730 S.E. 2d 312 (2012) and *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E. 2d 602 (2010).

The Plaintiff's reliance on these cases for this proposition is misplaced. In *Bradley*, 730 S.E. 2d at 314, the Court, in reviewing the procedural history of the case, stated:

"At the hearing before the circuit court, [Plaintiff] initially opposed the motion to compel arbitration on the ground [Defendant] waived the right to assert the affirmative defense due to its delay in responding to discovery requests."

The court's reference to Plaintiff's objection to an affirmative defense in Defendant's motion to compel arbitration was a recitation of a portion of the case procedural history and the Plaintiff's characterization of the grounds for objection.

The actual legal issue before the *Bradley* Court was whether the transaction involved interstate commerce thus rendering the arbitration agreement enforceable under the Federal Arbitration Act. The Court ultimately held that the motion to stay the proceedings and compel arbitration must be denied due to a lack of sufficient evidence of interstate commerce. The Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

Likewise, in *Partain*, 689 S.E. 2d at 603, the Court was again reviewing the procedural history of the case and Defendant's characterization of its defenses when referencing that the Defendant had "asserted three affirmative defenses in it Answer, including an arbitration agreement with [Plaintiff]." The legal issue before the *Partain* Court was whether the Plaintiff's claims were within the scope of the arbitration agreement. Once again, the Court did not hold or otherwise rule that the right to compel arbitration is an affirmative defense in South Carolina.

The remainder of Plaintiff's Opposition to Defendants' Motion to Reconsider Alter or Amend asserts that the right to compel arbitration is an affirmative defense that is waived if not plead and that a party in default cannot assert this defense. A review of the remaining cases cited by Plaintiff establish that they are distinguishable and inapposite to the present case:

(1): *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E. 2d 615 (Ct. App. 2013) – This case does not involve an arbitration agreement and concerns the defenses of res judicata and collateral estoppel);

(2): *Howard v. S.C. Dep't of Highways*, 343 S.C. 149, 538 S.E. 2d 291 (Ct. App. 2000) – This case does not involve an arbitration agreement and concerns the defense of assumption of the risk;

(3): *RIM Assocs. V. Blackwell*, 359 S.C. 170, 597 S.E. 2d 152 (Ct. App. 2004) – This case does not involve an arbitration agreement and concerns the defense of res judicata;

(4): *State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 539 S.E. 2d 106 (2000) – This case is not a South Carolina case, does not apply South Carolina law and is not binding precedent in South Carolina. This is a West Virginia case with the opinion issued by the Supreme Court of Appeals of West Virginia. While acknowledging that other courts find the arbitration defense in Rule 8(c) pertains exclusively to completed arbitration proceedings, the Court specifically holds that arbitration is an affirmative defense under West Virginia law. While holding arbitration to be an affirmative defense, the court does not find that failure to assert the defense in an answer constitutes waiver of the defense as a matter of law. The court states that as an affirmative defense it must be asserted in the answer or *it may, under appropriate circumstances, be deemed waived* pursuant to W. Va. R. Civ. P. 8(c) (emphasis added). Finally, the court's review of West Virginia waiver law does not indicate a standard similar to South Carolina's arbitration waiver law.

(5): *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F. 3d (4th Cir. 1996) – This is a federal case with the opinion issued by the United States Court of Appeals, Fourth Circuit on appeal from the United States District Court for the Eastern District of Virginia. The court applies federal civil procedure law finding that arbitration is required to be raised as an affirmative defense in the answer under the Federal Rules of Civil Procedure. Obviously, the Federal Rules of Civil Procedure do not apply in the present case. Moreover, the court made it clear in citing *Maxum Foundations, Inc., v. Salus Corp.* 779 F.2d 974 (4th Cir. 1985) in support of its finding of no waiver, that failure to assert the right to arbitrate as an affirmative defense does not waive the defense as a matter of law. Instead, it takes additional delay, significant utilization of the litigation machinery and prejudice to the party opposing the stay to before waiver/default can be found. *See Maxum Foundations, Inc.*, 779 F.2d at 982-83 (holding that defendant had not waived its right to arbitrate when it did not raise arbitration as an affirmative defense in its answer, it delayed three months after the complaint to file a motion to dismiss because of arbitrability, and it filed the motion to dismiss after discovery had been initiated in the action).

(6): *McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152 (D. Conn. 1985) - This is a federal

court case with the opinion issued by the United States District Court for the District of Connecticut. Likewise, the court applies federal civil procedure and makes it clear that any failure to assert arbitration as an affirmative defense must be accompanied by significant delay, substantial involvement in litigation and sufficient prejudice to the opposing party to find waiver.

(6): *Doubleday & Company, Inc. v. Curtis*, 763 F.2d 495 (2 Cir. 1985) – This is a federal case with the opinion issued by the United States Court of Appeals, Second Circuit on appeal from the United States District Court for the Southern District of New York. The case arises out of a book publishing dispute, applies federal procedural law and New York substantive law and involves the affirmative defense of waiver. The case does not in any way involve issues of arbitration.

(7): *General Star Nat'l Ins. Cp. V. Administratia Asigurarilor de Stat*, 289 F.3d 434 (6th Cir. 2002) – This case is a federal case with the opinion issued by the United States Court of Appeals, Sixth Circuit on appeal from the United States District Court for the Southern District of Ohio. The court applied federal law in finding that the Defendant waived its right to arbitrate due to its extreme delay in asserting the right to arbitrate and the prejudice incurred by the Plaintiff. Specifically, the Defendant did not assert its right to arbitration until 17 months after receiving notice of the lawsuit and 1 year after the entry of default judgment, during which time the Plaintiff incurred the costs of the action.

D. The Defendants Have Not Defaulted Upon Nor Waived Their Right To Mediation/Arbitration Under The Mandatory Alternative Dispute Resolution Provisions Of The Contract And Applicable Law.

The policy of the United States and South Carolina is to favor arbitration of disputes. *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000).

In South Carolina, "[i]n order to establish waiver of the right to enforce an arbitration clause, a party must show prejudice through an undue burden caused by delay in demanding arbitration." *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E. 2d 749, 753 (Ct. App. 1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.* (internal quotation marks omitted).

The Court of Appeals has recognized three factors to consider when determining whether a party has waived its right to compel arbitration:

(1) whether a substantial length of time transpired between the commencement of the action and the

commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.

Davis v. KB Home of S.C., Inc., 394 S.C. 116, 131, 713 S.E. 2d 799, 807 (Ct. App. 2011) (internal quotation marks omitted).

"To establish prejudice, the non-moving party must show something more than mere inconvenience." *Id.* (internal quotation marks omitted). In addition to the above factors, the Court of Appeals has also considered the extent to which the parties have availed themselves of the circuit court's assistance. *See id.* at 133, 713 S.E. 2d at 808.

Similarly, under federal law governing arbitration agreements subject to the Federal Arbitration Act, the party opposing arbitration bears a heavy burden of proving default or waiver. *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008). Default or waiver only arises when the party seeking arbitration "so substantially utilize[ed] the litigation machinery that to subsequently permit arbitration would prejudice the party opposing the stay." *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *see also, Brown v. Green Tree Services, LLC,* 585 F.Supp. 2d 770 (D.S.C.); *Rich v. Walsh*, 357 S.C. 64, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003). Because of the strong federal policy favoring arbitration the federal courts do not lightly infer the circumstances constituting waiver. *Patten Grading*, 380 F. 3d 200.

In the present case, the Defendants moved to set aside the entry of default, one of the grounds for which included Defendants' right to arbitration, within 2 ½ months after commencement of this action and 1 ½ months after the entry of default. In addition, they formally moved to compel arbitration less than four (4) months after commencement of the action, within 2 ½ months after the entry of default and within 5 weeks of learning of the entry of default. No depositions have been taken in this action. The Defendants have not served and the Plaintiff has not responded to any interrogatories, requests for production or other written discovery. In fact, the only discovery engaged in is the Defendants answering of Plaintiff's basic First Set of Interrogatories and First Request for Production. Defendants answered Plaintiff's limited written discovery pursuant to the direction of the Court. The Court's assistance has been limited to two (2) brief motions hearings and one (1) brief proffering conference. Finally, the Plaintiff has not been prejudiced through an undue burden caused by any delay in the Defendants' demand for arbitration.

Applying the above standards to the facts in this case, it is clear that the Defendants have not defaulted upon nor waived their right to mandatory mediation/arbitration under either state or federal law. *See, Toler's Cover Homeowners Ass'n v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E. 2d 581; *Carlson v. South State Plastering, LLC*, 404 S.C. 250, 743 S.E. 2d 860 (Ct. App. 2013); *General Equip & Supply Co., Inc. v. Keller Rigging & Constr.*, 344 S.C. 533, 544 S.E. 2d 643 (Ct. App. 2001); *Patten Grading & Paving, Inc. v. Skanska USA Building, Inc.*, 380 F. 3d 200 (4th Cir. 2004); *Brown v. Green Tree Services, LLC,* 585 F. Supp. 2d 770 (D.S.C. 2008); *Rich v. Walsh*, 590 S.E. 2d 506, 357 S.C. 64 (Ct. App. 2003); *see also*, *Cedar Surgery Center v. Bonelli*, 96 P. 3d 911, 2004 UT 58 (Utah, 2004) (applying default/waiver standard similar to South Carolina and federal law (Federal Arbitration Act) standard, finding defendant's failure to answer and assert arbitration defense in answer as not waiving right to arbitration, and setting aside default judgment and compelling arbitration).

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an order lifting the entry of default, staying this action and compelling mandatory mediation/arbitration of this matter.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Reconsider and to Alter or Amend Pursuant to Rule 59(e) and Applicable Law be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
By: _____
A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

October 24, 2016
Charleston, SC

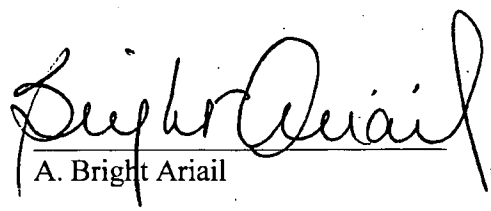
ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

FILED
2016 OCT 25 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on the 24th day of October, 2016, a true and correct copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter or Amend was delivered via US Mail and/or electronic transmission to the following:

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401



A. Bright Ariail

Charleston, South Carolina
October 24, 2016

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

EXHIBIT A

AIA Document A401™ – 2007. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:04:41 on 03/17/2015 under Order No.9014699599_1 which expires on 06/03/2015, and is not for resale.
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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .

(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. **Note:** It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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(1114130519)

payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*
JAY HANNEGAN - Vice President
(Printed name and title)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
PALMETTO CONSTRUCTION GROUP, LLC.,)
Plaintiff(s))
)
vs.)
)
RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 -CP - 10- 1143

Submitted By: ANDREW K. EPTING, JR, ESQUIRE and MICHELLE N. ENDEMANN, ESQUIRE
Address: ANDREW K. EPTING, JR., LLC
46A State Street
Charleston SC 29401

SC Bar #: SC Bar 01908 and 79894
Telephone #: 843-377-1871
Fax #: 843-377-1310
Other: ake@epting-law.com
E-mail: mne@epting-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☒ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

FILED
2016 MAR -7 PM 12:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

EXHIBIT B

Submitting Party Signature: _____ **Date:** 02/12/2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **SUMMONS**

FILED
2016 MAR -7 PM 12: 36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com
ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-_1143 **COMPLAINT**

FILED
2016 MAR -7 PM 12: 36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The above-named Plaintiff, subject to its simultaneously filed Motion to Stay and to Compel, states as follows:

1. Plaintiff Palmetto Construction Group, LLC ("Palmetto"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

2. Defendant Restoration Specialists, LLC ("Restoration"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant Reuben Mark Ward ("Mr. Ward") is an individual residing in the State of South Carolina at 1042-A East Montague Avenue, Charleston, SC 29405 and doing business in Charleston County, South Carolina as the Managing Member of Restoration.

4. Defendant Lynnette Pennington Ward ("Mrs. Ward") is an individual residing in the State of South Carolina and doing business in Charleston County, South Carolina.

5. Palmetto entered into a contract with Restoration on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

6. That venue is proper in this court and this court has jurisdiction over the parties.

7. Attached as Exhibit A is the contract between Palmetto and Restoration together with a Teaming Agreement, Exhibit B, dated November 28, 2011.

8. That Palmetto has performed its contract and has completed all of its work on the project aforesaid.

9. Restoration has failed to pay the contract balances due under the contract and furthermore has failed to account for the profit sharing funds. As a consequence, Restoration has defaulted under its agreements with Palmetto.

10. Palmetto, Restoration, and, individually, Mr. Ward and Mrs. Ward, all signed an indemnity agreement with a surety in relation to a Payment Bond for this project (Exhibit C). Accordingly, Restoration, Mr. Ward, and Mrs. Ward must indemnify the surety and Plaintiffs to the extent that they are required to pay.

11. Claims have been made by other subcontractors upon the Payment Bond and as a consequence subcontractors are making claims against Palmetto and its surety.

FOR A FIRST CAUSE OF ACTION
BREACH OF AGREEMENTS

12. Palmetto restates each and every allegation above.

13. Restoration has received funds from the United States of America and has not paid those funds as required by its agreements with Palmetto as well as other subcontractors performing services for Restoration.

14. As a consequence of Restoration's default under its agreements with Palmetto and other subcontractors, Palmetto has been damaged in a sum to be determined.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

15. Palmetto restates each and every allegation above.

16. Mr. Ward represented that he would manage this project and that all monies from the project would be used to pay for material and work supplied to or performed on the project.

17. Mr. Ward has a pecuniary interest in the project.

18. The representations of Mr. Ward were material and were relied upon by Palmetto. Mr. Ward is personally liable for his own tortious conduct.

19. Palmetto's justifiable reliance upon Mr. Ward has resulted in damages in a sum to be determined.

FOR A THIRD CAUSE OF ACTION
CONSTRUCTIVE AND ACTUAL FRAUD

20. Palmetto restates each and every allegation above.

21. Mr. Ward knew or should have known that his statements were material and would be relied upon by Palmetto.

22. Mr. Ward intended and induced Palmetto to rely upon his representations.

23. Palmetto's justifiable reliance has damaged Palmetto in a sum to be determined.

24. Palmetto, in addition to requesting actual damages, requests punitive damages.

FOR A FOURTH CAUSE OF ACTION
OTHER LEGAL AND EQUITABLE RELIEF

25. Plaintiff restates each and every allegation above.

26. All Defendants are contractually bound to pay funds if there are claims on the surety bond.

27. There are claims on the surety bond.

28. Plaintiff requests legal and equitable relief against the Defendants.

FOR A FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF

29. Palmetto restates each and every allegation above.

30. Palmetto requests that this court enter its order mandating that any funds held or to be received by Restoration be utilized to pay Palmetto the sums due.

31. Upon information and belief, given Restoration and Mr. Ward's financial viability, an award of monetary damages would not protect Palmetto from injury.

FOR A SIXTH CAUSE OF ACTION
ACCOUNTING

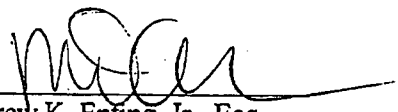
32. Palmetto restates each and every allegation above.

33. Because Palmetto does not know all funds Mr. Ward has received and what has been distributed Palmetto asks for an accounting.

WHEREFORE, Palmetto requests actual and punitive damages, injunctive relief, an accounting, and such other relief as is just and proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC



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P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

DATED: February 12, 2016
Charleston, South Carolina

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

Binderlek #CLEX A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of Insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*
Jay Hanegan - Vice President
(Printed name and title)

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TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:

B

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(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**	Attention: **Jay Handegan**
Restoration Specialists, LLC	Palmetto Construction Group, LLC
PO Box 5352	2265 Clements Ferry Rd. Suite 204
Savannah, Ga. 31414	Charleston, SC 29492
(912) 659-4355	(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC	PALMETTO CONSTRUCTION GROUP
By: _____	By: _____
(Authorized Signature)	(Authorized Signature)
Title: Managing Member	Title: Vice President
Date: 12011	Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract) April 23, 2012	OMB No.:9000-0045 Expires: 11/30/2012

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	MILLION(S): 5; THOUSAND(S): 999; HUNDRED(S): 860; CENTS: 00 CONTRACT DATE: March 13, 2012 CONTRACT NO.: VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum, for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

Bindertek #CLEX C

Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1. Laura W. Dennison, Attorney-in-Fact	2.	

THE HANOVER INSURANCE COMPANY 1852

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 tat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the ritten approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, eir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract) April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA

SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	5	999	860	00
	CONTRACT DATE	CONTRACT NO.		
	March 13, 2012	VA247-C-0035		

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mill Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contr with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

The Hanover Insurance Company — CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000.00	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY 1852

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10- 1143 **MOTION TO STAY AND TO COMPEL**

FILED
2016 MAR -7 PM 12: 4
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this court for an order staying this matter and compelling mediation and, if necessary, arbitration by the parties to proceed as contractually required by Article 6 of their Subcontract Agreement. In support thereof, Plaintiff states as follows:

1. Palmetto entered into a Subcontract Agreement (Exhibit A) with Restoration Specialists, LLC ("Restoration") on or about September 10, 2014 for the construction of facilities for the United States government on a project located in Augusta, Georgia.

2. The Subcontract Agreement contains a provision (Section 6.1.1) requiring the submission of any claim arising out of or related to the agreement to mediation as a condition precedent to binding dispute resolution. Additionally, Section 6.1.2 sets out specifically that the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement.

EXHIBIT C

3. Section 6.1.2 of the Subcontract Agreement provides that a request for mediation may be made concurrently with the filing of binding dispute resolution proceedings. Under Section 6.2, any claim subject to but not resolved by mediation shall be resolved by binding arbitration pursuant to Section 6.3 of the agreement. Further, Section 6.3.1 provides that the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement.

4. Palmetto now alleges that a dispute has arisen out of and involving said Subcontract Agreement and that the Defendants are bound to mediate and arbitrate.

WHEREFORE, Palmetto prays that an order of this court be made directing that the claims asserted by Palmetto against the Defendants that arise out of the parties dealings be stayed, that mediation, and, if necessary, arbitration proceed in the manner provided for in said agreement, and for such other and further relief as to the court may seem proper.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR PLAINTIFFS

On this 12 day of February 2016
Charleston, SC

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

Bindertek #CLEX
A

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(1114130519)
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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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TABLE OF ARTICLES

1 THE SUBCONTRACT DOCUMENTS

2 MUTUAL RIGHTS AND RESPONSIBILITIES

3 CONTRACTOR

4 SUBCONTRACTOR

5 CHANGES IN THE WORK

6 MEDIATION AND BINDING DISPUTE RESOLUTION

7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

8 THE WORK OF THIS SUBCONTRACT

9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

10 SUBCONTRACT SUM

11 PROGRESS PAYMENTS

12 FINAL PAYMENT

13 INSURANCE AND BONDS

14 TEMPORARY FACILITIES AND WORKING CONDITIONS

15 MISCELLANEOUS PROVISIONS

16 ENUMERATION OF SUBCONTRACT DOCUMENTS

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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User Notes:

Init. / 3

(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.

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User Notes:

§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

.1 cease operations as directed by the Contractor in the notice;

.2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ **9.4** With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ **9.5** No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ **10.1** The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ **10.2** The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ **10.3** Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ **10.4** Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ **11.1** Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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User Notes:

payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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User Notes: (1114130519)

§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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User Notes:

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification **Date**

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC	PALMETTO CONSTRUCTION GROUP, LLC
CONTRACTOR *(Signature)*	SUBCONTRACTOR *(Signature)*
Mark Ward – Managing Member	Jay Hanegan · Vice President
(Printed name and title)	*(Printed name and title)*

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **MOTION TO REFER TO THE MASTER IN EQUITY AND FOR ENTRY OF DEFAULT**

FILED
2016 APR 18 PM 3:2
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Palmetto Construction Group, LLC ("Palmetto"), hereby moves this Court for an order referring this case to the Master in Equity and for entry of default against the Defendants. As appears from the attached affidavit of default, Plaintiff served Defendants by way of process server with a copy of the summons and complaint and discovery requests on March 14, 2016. (See Exhibit A). Defendants have filed no pleading and have made no appearance in this case. Therefore, Plaintiff respectfully requests a default and that this matter be referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

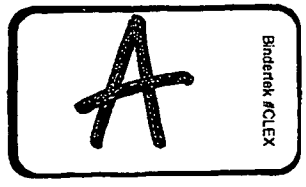
DATED: April 18, 2016
Charleston, South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **AFFIDAVIT OF DEFAULT**

PERSONALLY APPEARED before me, Andrew K. Epting, Jr., who, being duly sworn, alleges and says as follows:

1. I am the attorney for Palmetto Construction Group, LLC. in the above captioned matter, and I have personal knowledge of the facts relating to this action.
2. On March 7, 2016, Plaintiff filed a Summons and Complaint against Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, in the Charleston County Court of Common Pleas.
3. A copy of the Summons and Complaint was served on Defendant Restoration Specialists, LLC, by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, attached hereto as EXHIBIT 1.
4. A copy of the Summons and Complaint was served on Defendant Reuben Mark Ward by personal service, as evidenced by the Affidavit of Service dated March 14, 2016, and attached hereto as EXHIBIT 2.
5. A copy of the Summons and Complaint was served on Defendant Lynnette Pennington Ward by personal service, as evidenced by the Affidavit of Service dated



March 14, 2016, and attached hereto as EXHIBIT 3.

6. More than thirty (30) days have elapsed since service of Plaintiff's Summons and Complaint. Defendants Restoration Specialist, LLC, Reuben Mark Ward, and Lynnette Pennington Ward have failed to answer or otherwise respond to the Complaint. Neither the Defendants nor counsel for Defendants have made an appearance or contacted Plaintiff or counsel for plaintiff.
7. Defendant Restoration Specialists, LLC is in default.
8. Defendant Rueben Mark Ward is in default.
9. Defendant Lynnette Pennington Ward is in default.
10. Defendant Reuben Mark Ward is not a minor, incompetent or in the military service.
11. Defendant Lynnette Pennington Ward is not a minor, incompetent or in the military service.

Andrew K. Epting, Jr.

ANDREW K. EPTING, JR., ESQUIRE
Andrew K. Epting, Jr.
Michelle N. Endemann
Attorneys for Plaintiff
46A State Street
Charleston, SC 29401
Phone: (843) 722-6612
Fax: (843) 377-1310
ake@epting-law.com
mne@epting-law.com

SWORN TO BEFORE ME THIS
18 day of APRIL, 2016.

Notary Public for South Carolina

ANGELA GODDARD GRAY NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 10-20-2018

AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Restoration Specialists, LLC, Reuben Mark Ward, Registered Agent, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:20pm., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Reuben Ward as Registered Agent a person authorized to accept service.

( ) GOVERNMENT AGENCY: By serving _____ as _____ of the within named agency.

( ) NON SERVICE: Due to reasons detailed in Comments below.

COMMENTS: Served at: 7 Diamond Causeway, Savannah, GA 31406

Age 40 Sex (M) F Race White Height 5'10" Weight 185 Hair Bald Glasses Y (N)

Blindertek #CLEX 1

RECEIVED MAR 22 2016 By _____

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of November, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires

JOHN W. CRISP
MY COMMISSION EXPIRES
OCT. 15 2019
CHATHAM CO., GEORGIA
NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statute

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000516

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

Received by SERVE ONE PROCESS SERVING CORP to be served on **Reuben Mark Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 2016 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

( ) INDIVIDUAL SERVICE: Served personally to the within-named.

(X) SUBSTITUTE SERVICE: By delivering to: Lynnete Ward, as co-resident/spouse, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age F Sex M (F) Race White Height 5'6" Weight 130 Hair Blond Glasses Y (N)

RECEIVED
MAR 22 2016
By _____

Bindertek #CLEX 2

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: OCT. 15 2019

MY COMMISSION EXPIRES OCT. 15 2019 CHATHAM CO., GEORGIA NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE ONE PROCESS SERVING CORP
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Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000515

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2016-CP-10-1143

Plaintiff:
Palmetto Construction Group, LLC
vs.
Defendant:
Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward

For: Andrew Epting

RECEIVED
MAR 29 2016
By

Received by SERVE ONE PROCESS SERVING CORP to be served on Lynnete **Pennington Ward, 3 Bailey Reach, Savannah, GA 31411.** I, Bennett Crisp, being duly sworn, depose and say that on the 14th day of March, 20 16 at 8:10p.m., executed service by delivering a true copy of the **Summons, Complaint, Motion to Stay and to Compel, Plaintiff's First Set of Interrogatories to All Defendants, Plaintiff's First Set of Request for Production to Defendant and Exhibits** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served personally to the within-named.

( ) SUBSTITUTE SERVICE: By delivering to:_____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE:Due to reasons detailed in Comments below.

( ) MILITARY STATUS: Y N If Yes, what branch:_____

COMMENTS: _____

Age 35 Sex M (F) Race White Height 5'6" Weight 130 Hair Blond Glasses Y (N)

RECEIVED
MAR 22 2016
Bindertek #CLEX
3

AFFIDAVIT OF SERVICE For 2016-CP-10-1143

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of March 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

My Commission Expires: OCT 15 2019

JOELLE BRISP
MY COMMISSION EXPIRES
CHATHAM CO., GEORGIA
NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE ONE PROCESS SERVING CORP
P.O. Box 2584
Greenville, SC 29602
(864) 235-7766

Our Job Serial Number: 2016000517

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-[illegible]-1143 **ORDER**

FILED
2016 APR 21 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on the motion of Plaintiff seeking a referral to the Master in Equity and that the Defendants be declared in default.

WHEREAS an affidavit of default was filed on April 18, 2016;

WHEREAS from the affidavit of default, it appears that no pleading has been filed and no appearance on behalf of the Defendants made;

WHEREAS the Plaintiff seeks to have this matter referred to the Master in Equity and seeks a default against Defendants;

IT IS ORDERED that the Defendants are in default and this matter is referred to the Master in Equity pursuant to Rule 53(b) SCRCP for all purposes including entry of final judgment against Defendants.

IT IS SO ORDERED.

The Honorable Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

On this 20th day of April 2016
Charleston, SC

EXHIBIT E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, v. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	**AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11: 1
CHARLES A. BARRETT
CLERK OF COURT
BY

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

I was served with the Notice of Hearing for the default damages hearing on June 2, 2016 at 6:30 p.m. by process server at my home located at 3 Bailey Reach, Savannah, Ga. 31411.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/4/2019.

REBECCA M MAZUR
NOTARY PUBLIC
Exp. Sept. 11, 2019
CHATHAM COUNTY, GA

EXHIBIT F

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants	)	CASE NO. 2016-CP-10-1143 **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a default damages hearing is scheduled on Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Charleston County Court of Common Pleas located at 100 Broad Street, Charleston, SC 29401 pursuant to the enclosed Order of the Honorable Roger M. Young, Sr. dated April 20, 2016.

Respectfully submitted,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843 877 1871
F: 843 377 1110
ak@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

June 1, 2016
Charleston, South Carolina

EXHIBIT G

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A NO. 2016-CP-10-1143
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, v. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	**AFFIDAVIT OF REUBEN MARK WARD**

FILED
2016 JUN -6 AM 11: 15
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Reuben Mark Ward, who having been first duly sworn, deposes and states as follows:

1. I am the Managing Member of Restoration Specialists, LLC ("Restoration Specialists").

2. On March 29, 2012, Restoration Specialists was awarded a contract to construct the Charlie Norwood VAMC Parking Garage in Augusta, Georgia (the "Project").

3. On April 23, 2012, pursuant to the terms of that contract, Restoration Specialists provided Payment Bond 1944091 (the "Bond"), which was issued by The Hanover Insurance Company ("Hanover"). The Bond is at issue in this action.

4. I received the Summons and Complaint in the above referenced action on or about March 14, 2016.

5. Prior to receipt of the Summons and Complaint, I was contacted by James E. Rudnik, Esq., the Director – Risk Mitigation|Surety for The Hanover Insurance Group regarding the Bond.

6. On or about March 10, 2016, Mr. Rudnik notified me of certain bond claims that had been made against the Bond.

7. Pursuant to my discussions with Mr. Rudnik, Restoration Specialists has made direct payment to several subcontractors deemed to have valid bond claims.

8. Further, Restoration Specialists continues to have discussions with Hanover regarding other bond claims made.

EXHIBIT H

9. When I received the Summons and Complaint for the instant action, I thought that it was related to my arrangements with Hanover.

10. I am not an attorney and did not understand that the above captioned action was separate and apart from the bond claims that I have been working directly with Mr. Rudnik and Hanover to address.

11. I have no record and no recollection of receiving 1) a notice of motion hearing related to the Motion to Stay and to Compel, 2) the Motion to Refer to the Master in Equity and for Entry of Default, or 3) the Order for Entry of Default and Referral to the Master in Equity.

12. Upon receipt of the Notice of Hearing for the default damages hearing, the defendants understood for the first time that this was a separate action and immediately notified their attorney.

FURTHER DEPONENT SAYETH NAUGHT.

Reuben Mark Ward

Sworn to before me
This 3 th day of June 2016.

Notary Public for the State of Georgia

My Commission Expires 09/11/2019

REBECCA M MAZUR
NOTARY PUBLIC
Exp. Sept. 11, 2019
CHATHAM COUNTY, GA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUN -3 PM 3:3

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

(2): The Defendants were served with the Notice of the default damages hearing on June 2, 2016 at 6:30 p.m. and; therefore, have not received timely notice of the hearing pursuant to SCRCP 6(d);

(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

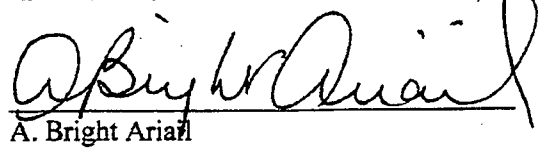
(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

EXHIBIT I

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION FOR CONTINUANCE AND PROTECTION PURSUANT TO SCRCP 6(d) and 40(i)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUN -3 PM 3: 3

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order continuing the default damages hearing scheduled for Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Court of Common Pleas and for an Order of Protection for the period of June 10 – 24, 2016. This Motion is made for good cause, pursuant to Rules 6(d) and 40(i) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendants have promptly and timely filed a Motion to Set Aside Entry of Default, which Motion is pending before the Court for decision;

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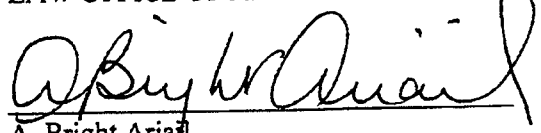
(3): The Defendants retained legal counsel on June 3, 2016 immediately after service of the hearing notice; and, said counsel has had insufficient time to prepare for the default damages hearing. Further, counsel has long standing vacation plans for the period of June 10 – 24, and while counsel has obtained Orders of Protection in all courts in which she has active cases, she has not obtained an Order of Protection in the Ninth Circuit as she had no active cases in that Court prior to this date; and

(4): The Plaintiff has filed a Motion to Stay the claims asserted by it against the Defendants and to

order mediation, and, if necessary, arbitration of these claims pursuant to the contract that is the subject of this action. This motion remains pending before the Court for decision.

This Motion is based on upon the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
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Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUN -3 P 3: 30

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order setting aside the Entry of Default for good cause, pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is made on the following grounds:

(1): The Defendant have promptly and timely filed their Motion seeking relief from the Entry of Default;

(2): The Defendants delay in responding to the Plaintiff's lawsuit was not culpable;

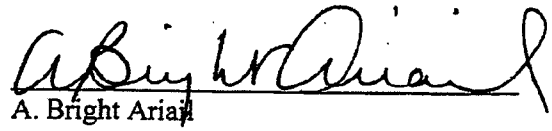
(3): The Defendants have a meritorious defense to the Plaintiff's lawsuit; and

(4): The Plaintiff will not suffer prejudice if Entry of Default is set aside.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Set Aside Entry of Default which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

EXHIBIT J

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

June 3, 2016
Charleston, SC 29412

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON

3 Palmetto Construction Group,

4 Plaintiff,

5 vs. CASE NO. 2016-CP-10-1143

6 Restoration Specialists, LLC,
Reuben Mark Ward, and Lynnette
7 Pennington Ward,

8 Defendants.

9

10

11

12 Hearing before the Honorable Mikell R.
13 Scarborough, reported by Christine A. Smith, Court
14 Reporter and Notary Public, at 11:29 a.m. on
15 June 6, 2016 at 100 Broad Street, Charleston,
16 South Carolina.

17

18 COPY

19

20

21 Christine A. Smith, Court Reporter
Master-in-Equity
22 P.O. Box 30276
Charleston, South Carolina, 29417
23 (843) 958-5071
casmith@charlestoncounty.org

24

25

EXHIBIT K

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

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8 ATTORNEYS FOR THE DEFENDANT:

9 A. Bright Ariail, Esq.
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12 Bright@brightariaillaw.com

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1 P R O C E E D I N G S

2

3 THE COURT: This matter is captioned Palmetto
4 Construction Group, LLC versus Restoration
5 Specialists, LLC, Reuben Mark Ward, and Lynnette
6 Pennington Ward. The case number is 2016-CP-10-1143.
7 The matter is set today as a default damages
8 hearing, and the matter was referred to the Court on
9 April 18th, and entry of default was entered on that
10 same date. It appears that service process was
11 performed on Reuben Ward on or about March 14th, the
12 case having been filed on March 7th, and also on
13 Lynnette Ward on that same date it appears.
14 I believe Mr. Ward was served as the agent for
15 the corporation, Restoration Specialists, LLC. This
16 Court set it for a hearing in April on damages. I
17 did receive, and I don't know -- have you got that --
18 MR. FISHBURNE: That is it.
19 THE COURT: Late last week from the Law Office
20 of A. Bright Ariail a Motion to Set Aside the Entry
21 of Default and also for continuance. Have you-all
22 been provided with that as well?
23 MS. ENDEMANN: Yes, Judge, we were served on
24 Friday afternoon.
25 THE COURT: Do you want to be heard first on

1 the motion before we get to the subset of the aspect
2 of it, or where do we stand on that?
3 MS. ENDEMANN: Well, Judge, we were served
4 late Friday, and we are amenable to try to come to
5 some resolution of these motions. If I could give
6 you a little bit of context and background for the
7 case?
8 THE COURT: Sure.
9 MS. ENDEMANN: It's a case that arises out of
10 a project for the VA. It was completing a hospital
11 parking deck in Georgia. So Restoration Specialists
12 was the general contractor on the project with the
13 Department of Veteran's Affairs. My client, Palmetto
14 Construction Group -- I have Mr. Kendle with me here
15 today -- was approached by Restoration.
16 This was a large project for them. They
17 needed some help getting a bond in place. In order
18 to complete the job they needed help managing the
19 project. They needed help completing the project.
20 So they came to my client, Palmetto Construction
21 Group, and asked for assistance.
22 A teaming agreement was entered into. So
23 under this agreement Palmetto would manage the
24 project, they would do other certain
25 responsibilities, and Restoration would stay as the

1 general contractor. There would be a profit split as
2 a result of this agreement. The project started --
3 seemingly it was going pretty well.
4 Towards the end of the project, we started to
5 get some red flags. We started to get notices that
6 some of the subcontractors, some of the suppliers,
7 are not being paid by Restoration. Unfortunately, as
8 part of this agreement with Restoration, Palmetto got
9 their bonding company to write this bond. Palmetto
10 is liable on the bond with Mr. Ward and Restoration
11 and Ms. Ward. Mr. Kendle personally is liable on the
12 bond. Mr. Handegan, another primary principal at
13 Palmetto is obligated on the bond and so is his wife.
14 So when all of these claims start coming in
15 from these subcontractors who say they're not getting
16 paid from Restoration, it becomes our problem in a
17 very large way. Hanover, the bonding company, turns
18 to us and says, You need to pay for this. You're
19 obligors on the bond. Now we have approximately
20 $1.4 million dollars in claims on this bond for
21 subcontractors and suppliers that have not been paid,
22 and Hanover is looking to us to pay it.
23 It's impacting other jobs because obviously
24 they have this issue with the bonding company,
25 getting other bonds is becoming a problem. So

1 there's some real urgency on our clients' part to get
2 this worked out as fast as we possibly can.
3 Mr. Ward had been making some overtures.
4 Ms. Ariail was retained, and she filed the motions
5 that you discussed earlier on Friday. If we could
6 get some agreement, Judge? We need the file. We
7 need the financials. We need the bank accounts. We
8 need to get these documents in place, and we would
9 like to ask him some questions about, where are these
10 funds? You are receiving payments from the Federal
11 Government. Where is the money going because Hanover
12 is coming to us saying we need to pay it. We did our
13 part but we're going to end up in a really tough spot
14 here. So the urgency is really what we're impressing
15 here.
16 We're amenable to trying to work something out
17 on these motions, but we really need to have an
18 agreement and exchange so that we can have these
19 documents. We actually served the discovery with the
20 Complaint, so it's already pretty well overdue. I
21 actually today just served some deposition notices on
22 Ms. Ariail. Of course she's just getting involved in
23 the case.
24 We are looking to get these records as soon as
25 possible. That's a little bit about potential

1 accounting that would be great. If that can't be
2 done in the short term we would like the file. We
3 would like the file anyway, but we would like that at
4 least in the next seven or so days. If we can take a
5 deposition in the next 14 days I think Ms. Ariail
6 might have some issues with the date but as soon as
7 possible, and maybe even get a hearing in front of
8 Your Honor in case any other issues come up with the
9 discovery or if we need to go to mediation. If there
10 is any kind of order that we would like the Court's
11 help with we could come back to you in order to work
12 this out as quickly as we possibly can.
13 THE COURT: Ms. Ariail?
14 MS. ARIAIL: Your Honor, I learned of this
15 matter Thursday night of last week. I have
16 represented Restoration Specialists in other matters,
17 so I am, unfortunately very new to this issue. I do
18 understand from Mr. Ward, who is the managing member
19 of Restoration Specialists, that he has been in
20 contact with the attorney -- I guess it's an in-house
21 attorney with the bonding company, and he has made
22 some payments on some of these claims that are
23 considered valid reaching back into the March
24 timeframe of this year.
25 I know that he is eager to get this issue

1 resolved and behind him also. I've spoken to him
2 after speaking with Palmetto's counsel on Friday, and
3 he is willing to provide the documentation and
4 absolutely would be willing to mediate this case. I
5 believe there were -- per the contractors there was a
6 mediation and then mandatory mediation as condition
7 precedent to arbitration. So we would like to do
8 that.
9 Unfortunately it's compounded by -- I'm
10 actually leaving the country on Saturday for
11 two weeks. I had not asked for an order of
12 protection in this Court because I didn't have
13 anything active in this Court. So that unfortunately
14 is going to impact the time. I'm willing to do what
15 I need to do to try to facilitate the exchange of
16 information and move forward with this.
17 THE COURT: I think June 10th through the 24th
18 were the dates you were requesting that you would be
19 out?
20 MS. ARIAIL: Yes, sir.
21 THE COURT: Do you have information? Do you
22 have documentation from your client based on your
23 conversation you must have had last week with them?
24 Have you gotten any of this stuff? Do you have it in
25 hand I guess is my question?

1 MS. ARIAIL: I do not. The only thing I have
2 are a couple of affidavits that are specific to the
3 subject of the motions that I had filed.
4 THE COURT: I haven't seen any affidavits.
5 MS. ARIAIL: I just filed them this morning,
6 Your Honor. He's out of state, so I had to have them
7 overnighted to me on Saturday.
8 THE COURT: Sure.
9 MS. ARIAIL: I'll be happy to pass a copy up
10 to you.
11 THE COURT: Okay.
12 MS. ARIAIL: Again, I had filed a Motion for
13 Continuance and Protection. This is just dealing
14 with this schedule to try to give me some time to
15 figure out what's going on here and -- and then the
16 Motion to Set Aside the Default. So there's two
17 affidavits.
18 THE COURT: Okay. You have two affidavits
19 from Mr. Ward: One explaining what was going on
20 relative to the bond, and acknowledging receipt of
21 the Summons and Complaint on or about March 14th; the
22 other stating he's the managing member and just got
23 notice of this hearing on June 2, which would have
24 been last Thursday night at 6:30.
25 Ms. Endemann?

1 MS. ENDEMANN: Thank, you, Judge. I'm going
2 to object to these just because I haven't seen them
3 before now. One of the things I would like to point
4 out -- we did serve Mr. Ward pursuant to the Rule
5 last week with the notice of this hearing, and then
6 ever since then there's sort of been a flurry of
7 e-mail correspondence with the bonding company, and
8 there have been some payments, but my understanding
9 is that it's right near $20,000 on the $1.4 million
10 that's outstanding.
11 So while he's making overtures, respectfully,
12 we really need to push forward with the discovery
13 because obviously that's not even putting a dent into
14 what's owed. We're copied on most of this
15 correspondence with the bonding company since they're
16 coming to us weekly, if not daily, to get updates and
17 try to get their money.
18 THE COURT: Are you-all already out the 1.4 or
19 is that the amount of the claim.
20 MS. ENDEMANN: That's the amount of the
21 claims. The bonding company has been making demand
22 on this because they have been starting to pay these
23 claims, and so our time is running very short. Then
24 Ms. Ariail is going on vacation. I understand that.
25 We can maybe work with her on the deposition dates.

1 I think we noticed it on the 20th. She will be back
2 on the 26th. We can certainly move it until when she
3 gets back, but Your Honor, I would really, really
4 request that we can get these documents produced and
5 the bank account information produced in advance of
6 her going on her trip.
7 THE COURT: Ms. Arial, is that possible?
8 MS. ARIAIL: Your Honor, I will speak to my
9 client. I can't represent to you when I can do it.
10 I know he's out of the state today. He's in
11 Oklahoma. I'm not sure when he's coming back, but I
12 will absolutely do my best to make that happen.
13 THE COURT: All right. Here's what I'm going
14 to do. I'm going to see if -- you-all need to get on
15 a short timetable to see if you-all can't get a
16 little scheduling order worked out over the next
17 60 days. I'm going to bring you-all back in here.
18 I'm going to hold both of these motions under -- I'm
19 going to essentially grant your Motion to Continue
20 the Matter. Okay? Your Motion for Relief from the
21 Entry of Default I'm not going to rule on yet.
22 There's not much I saw in that affidavit that would
23 give me indication that I would grant that motion. I
24 can tell you that right now. Okay?
25 I will give you-all some time to see what

1 you-all can do to work out in the meanwhile, but it
2 sounds like it needs to happen sooner than later.
3 Okay? So I'll hold the Motion to Reopen the Entry of
4 Default in abeyance.
5 As it stands now, the Defendants are in
6 default. I'm going to give you some time because you
7 are going on vacation, but it sounds to me like your
8 client needs to come up with some information pretty
9 darn quick. Okay? Let's see if you-all can't get
10 this thing resolved. You indicated there was -- I
11 think I read that in your correspondence. There was
12 some sort of mandatory mediation prior to arbitration
13 was you-all's contractual arrangement; is that what
14 it was?
15 MS. ARIAIL: Yes, sir.
16 THE COURT: Well, we'll cross that bridge when
17 we get to it. Okay? I would see if you-all can't
18 set that up and get some information and get rolling
19 with this. I'm going to bring you-all back in here.
20 Let's get a date.
21 MS. BECK: We have some time July 14th.
22 THE COURT: Do you want to get a status about
23 that time? July 14th? Does that give you enough
24 time? You're going to be gone until the 24th, so
25 back in the office -- that would be -- we ought to

1 find out where we're going at that time? Why don't
2 you-all give me a response -- what does that day look
3 like? Is it wide open?
4 MS. BECK: The 14th?
5 THE COURT: Yes.
6 MS. BECK: We have one at 11:00.
7 THE COURT: I'll put you-all down for 11:00
8 a.m. on the 14th of July. We'll reconvene at that
9 time. See what you-all can resolve.
10 MS. ENDEMANN: Thank you, Judge.
11 (The proceedings were concluded at 11:43 a.m.)
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State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of July, 2016 at Charleston, Charleston County, South Carolina.

Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Palmetto Construction Group Plaintiff, vs. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1143 **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE CASE LAW**

FILED
2016 JUL 11 AM 11:59
CLERK OF COURT

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial circuit at a time and place to be arranged by the Court and counsel involved for an Order staying this matter and compelling mediation and, if necessary, arbitration by the parties, pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure and all applicable case law.

This Motion is made on the following grounds:

(1): The Plaintiff's Complaint, and the causes of action asserted therein, arise out of or are related to a contract containing mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and should stay this action and submit the matter to mediation, and if necessary, binding arbitration. S.C.R.C.P. 12(b)(1); *Steinmetz v American Media Services, LLC*, 393 S.C. 72, 709 S.E. 2d 708 (S.C. Ct. App. 2011); *Widner v. Fort Mill Ford*, 381 S.C. 522, 674 S. E. 2d 172 (S.C. Ct. App. 2009); *U.S. ex rel. Coastal Roofing Co., Inc. v. P.Browne & Associates, Inc.*, 585 F.Supp. 2d 708 (D.S.C. 2007).

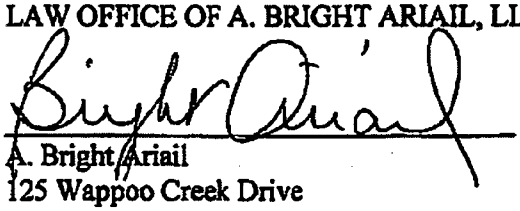
(2): The Plaintiff has moved the Court to stay this action and compel mediation, and if necessary, arbitration by the parties to proceed as contractually required by the mandatory mediation/arbitration provisions contained in Article 6 of the contract. The Defendants hereby join in and consent to Plaintiff's motion and the relief requested therein, including the stay of this matter and submission of

EXHIBIT L

Plaintiff's claims to mediation and, and if necessary, binding arbitration.

This Motion is based on upon Defendants' Memorandum of Law in Support of Motion to Stay and to Compel which will be submitted to the Court prior to the hearing of this motion, the complete files and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



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Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

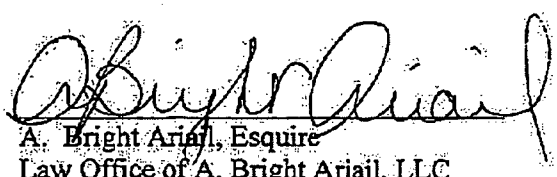
July 11, 2016
Charleston, SC 29412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Palmetto Construction Group	)	Civil Action No. 2016-CP-10-1143
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
Defendants.	)	

FILED
2016 JUL 11 AM 11:59
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies, that on this 11th day of July, 2016, a true and correct copy of the foregoing: **DEFENDANTS' NOTICE OF MOTION AND MOTION TO STAY AND TO COMPEL PURSUANT TO SCRCP 12(b)(1) AND APPLICABLE LAW** has been served on the below counsel of record via hand delivery, email, facsimile and/or United States Mail with sufficient first class postage affixed thereto and addressed as follows:

Andrew K Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC 29401
ATTORNEYS FOR PLAINTIFF



A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
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ATTORNEY FOR DEFENDANTS

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON

3 Palmetto Construction Group,

4 Plaintiff,

5 vs. CASE NO. 2016-CP-10-1143

6 Restoration Specialists, LLC,
Reuben Mark Ward, and Lynnette
7 Pennington Ward,

8 Defendants.

9

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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
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16 South Carolina.

17 COPY

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19

20

21 Christine A. Smith, Court Reporter
Master-in-Equity
22 P.O. Box 30276
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23 (843) 958-5071
casmith@charlestoncounty.org

24

25

EXHIBIT M

1 APPEARANCES OF COUNSEL:

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1 P R O C E E D I N G S

2

3 THE COURT: Palmetto Construction Group versus
4 Restoration Specialists, LLC. For the Plaintiffs is
5 Mr. Drew Epting and Ms. Michelle Endemann. For the
6 Defendants is Ms. Bright Ariail. Good morning,
7 Ms. Ariail. I believe we are here on your motion,
8 are we? Is that what got us here?
9 MS. ENDEMANN: Judge, I think we are here on a
10 couple of different things that were noticed. I
11 think you set it for sort of a general status after
12 we were here before you about a month ago. Also,
13 there is a Motion to be Relieved from Default that
14 Ms. Ariail has filed, as well as a Motion to Compel
15 Arbitration.
16 I can give you a little bit of an overview of
17 sort of where we are from last time. I think it
18 would be helpful.
19 THE COURT: Sure.
20 MS. ENDEMANN: If you recall, Judge, this is a
21 case where my client, Palmetto Construction has sued
22 a business associate of theirs on a project for the
23 V.A. The agreement between Restoration Specialist
24 and the other Defendants which are the principals of
25 that company and Palmetto was essentially that they

1 would work together on a job with the V.A.
2 Restoration was to be the general contractor.
3 Palmetto was to aid Restoration in this job, provide
4 their expertise on a job of this size, provide the
5 bonds that were required in order to complete the
6 project. There would be a split of the profits, and
7 Mr. Ward was the one who had the contracts with the
8 V.A., and then all the subcontractors below.
9 Unfortunately what happened is Mr. Ward
10 stopped paying his subcontractors. He stopped paying
11 them it looks like all together. We started
12 receiving bond claims coming in toward the end of the
13 job. We didn't know what was going on because we
14 weren't a party to those agreements. We weren't the
15 ones that were paying them. We weren't the ones that
16 were receiving money from the V.A.
17 So Mr. Ward is getting money from the V.A.
18 He's diverting the funds. His subcontractors filed
19 claims on the bond for which Palmetto was liable, and
20 personally liable, all of its principals, their
21 wives, and now Hanover, the bonding company with
22 surety is looking to us to pay over a million dollars
23 in bond claims.
24 We were here before you last time for a
25 damages hearing because we had served discovery with

1 our Complaint and the Complaint went unanswered.
2 We're here for a damages hearing. We served Mr. Ward
3 with notice of that hearing pursuant to the Rules,
4 and it was then that he had hired Ms. Ariail.
5 She came and actually had a vacation planned,
6 so we kind of came to an agreement. She was able to
7 get us some of the documents that were owed. The
8 discovery is not complete. In particular we're
9 missing some pretty important things like the
10 payments from the V.A. to Mr. Ward and then where
11 that money went.
12 From the documents that we have received it
13 appears that the project was pretty profitable with
14 all the subcontractors being paid, and then still
15 some hundreds of thousands of dollars in profit. So
16 we're left looking at records that show there should
17 be a surplus of funds.
18 Instead we're faced with the surety coming to
19 us and saying, Hey, you owe us over a million
20 dollars. The other problem that my client has is
21 they do a lot of bonded work. They have a surety
22 that says, You owe us over a million dollars. Nobody
23 wants to bond any projects. So time is really,
24 really of the essence here because we can't get work.
25 If we can't get work our business goes under, and all

1 of our people don't have jobs, so we're really sort
2 of in dire straits here.
3 THE COURT: Okay.
4 MS. ENDEMANN: We were served with this Motion
5 to Compel Arbitration this week, and Your Honor has
6 set it probably for expediency today. We don't
7 think, Your Honor, that we can go forward on that
8 motion. First, we don't think that he can bring the
9 motion, period, because he's in default; and second,
10 it's not properly before this Court as we only got
11 notice of it a couple of days ago.
12 We think that the tapat here might be to try
13 to get relief from default, get this motion heard,
14 and get it appealed if Your Honor does not rule in
15 their favor and ties this up for several years. If
16 that happens, again, my client's out of business.
17 What we would like to see happen here today is
18 have a damages hearing set because Mr. Ward is in
19 default. He's not provided the Court with any
20 reasonable explanation for being in default and is
21 not entitled to make this Motion for Arbitration
22 since he is in default. Thank you, Your Honor.
23 THE COURT: Ms. Ariail, let me hear from you
24 on that one.
25 MS. ARIAIL: Your Honor, I don't totally agree

1 with the facts, but I think the thing that disturbs
2 me the most is the statement that we haven't provided
3 payments from the V.A. We have provided
4 documentation of the amount of payments that have
5 been made.
6 When we were in front of you a month or so ago
7 there was a -- and there still is a standing Motion
8 for Compelling Arbitration by the Plaintiff. They
9 actually filed that. The contract requires it, and
10 there is a motion that has not been heard that was
11 filed by the Plaintiff for compelling arbitration.
12 In the meantime, despite the requirement for
13 mediation and arbitration, and based on direction
14 from the Court at the last hearing, we have complied
15 with discovery. We have answered discovery. We have
16 been continuously providing documents as we've
17 compiled them, and at my direction my client has
18 concentrated on the financial records rather than the
19 voluminous information that is compiled on a
20 two-or-three-year construction project.
21 That being said, I think it's proper to hear
22 the Motion to Compel Mediation and Arbitration today.
23 We merely joined what the Plaintiff's have already
24 filed. For that reason I would ask that you go ahead
25 and hear that motion.

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?
4 MS. ARIAIL: You did not.
5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?
9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.
18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.
2 Well, Ms. Ariail, I think the first thing you
3 have to do is get out of default before you can bring
4 affirmative relief. It does appear that the matter
5 was referred over here. I think that took care of
6 the -- the clerk closed out the Motion to Compel the
7 Arbitration because of the fact that it was referred
8 over here. So that based some adjudication on that
9 motion is how the Court considers that.
10 I think what we were wrestling with last time
11 was whether or not you-all could resolve it. That
12 doesn't look like it's been done. I find that
13 because it was not shown by Mr. Ward in his
14 affidavits that that supported why he was in default
15 I find the Defendant in default and I so order.
16 So this will be a question of a damages
17 hearing to be set. How much time do you-all want?
18 MS. ENDEMANN: Your Honor, we probably need
19 about an hour to two hours for the hearing, and we
20 can hear it whenever the Court is available.
21 THE COURT: Okay.
22 MS. ARIAIL: Your Honor, I would ask since I
23 have in good faith participated in discovery that I
24 at least be allowed to serve some form of discovery
25 related to damages so that I can prepare properly for

1 the damages hearing.
2 THE COURT: Ms. Endemann?
3 MS. ENDEMANN: I don't think we're in a
4 position, Your Honor, to consent to that. Ms. Ariail
5 can certainly Cross the Plaintiff on any damages that
6 we present at the hearing as is allowed by the Rules,
7 but she isn't allowed to present her own evidence in
8 any event.
9 We're happy to try to -- most of the documents
10 that we would use in support of our case are her
11 clients and also Hanover's, which are the bond claims
12 spreadsheets and everything, which Hanover is sending
13 directly to her client and which we're happy to
14 provide if that's not happening. I think she has
15 everything that she would need. It would just be the
16 testimony, and of course, she's entitled to Cross
17 under the Rules.
18 THE COURT: All right. I think that's the
19 case. All right? I'm assuming you've got what
20 you've got. You're entitled to participate in a
21 damages hearing. There's no doubt about that by
22 Cross-Examination but not by putting forth in
23 evidence.
24 MS. ARIAIL: Right, Your Honor, but to
25 properly prepare to Cross-Examine their witnesses,

1 I've seen nothing they have. They have discussed an
2 indemnity agreement in the Complaint. I don't have
3 that. My client doesn't have that.
4 THE COURT: Well, it may expedite the matter
5 to move forward so everybody's talking with the same
6 thing. We don't have to read documents when we're
7 here. I would ask that you-all share what you can in
8 that regard. I'm not going to mandate it because I
9 don't think that's proper. If we don't get it worked
10 out we'll have a hearing in the next, what, 60 days
11 or so?
12 MS. BECK: I didn't know if this might be
13 something you might want to put on the trial term as
14 a possibility. If not, we've got some time the first
15 week in October.
16 THE COURT: I can bring you-all back -- I've
17 got some trials coming up. I've been squeezing stuff
18 in there. I've got a trial term in August and one in
19 September. The last week of September?
20 MS. BECK: Yes, sir, or if they prefer a date
21 certain we can do the first week of October.
22 MS. ARIAIL: Your Honor, I have a
23 Court-ordered mediation the last week of September,
24 so if we could move it to the first week of October
25 that would be helpful.

1 THE COURT: Okay.

2 MS. BECK: The afternoon of the 5th, after

3 those allocation hearings that you set, we can do the

4 rest in the afternoon.

5 THE COURT: What's going on on the 4th?

6 MS. BECK: Nothing. That would be fine, too.

7 THE COURT: Why don't we set this for October

8 4th at 2:00 p.m. Let's just set it up. That's a

9 Tuesday afternoon the first week of October. Okay?

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

12 THE COURT: Very good. I'm just going to do a

13 Form 4, and I'll put that in there. If you-all want

14 to follow up with an order you can. 2:00 p.m.

15 MS. ENDEMANN: Thank you.

16 (The proceedings were concluded at 11:11 a.m.)

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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.
8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.
11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
14
15
16
17 Christine A. Smith
18 Notary Public
My Commission Expires
19 May 12, 2021
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO SCRCP 55(c)**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

2016 JUL 14 AM 11:21

Pursuant to Rule 55(c), SCRCP, the Defendants, Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward (hereinafter collectively "Defendants"), by and through their undersigned counsel, submit this Memorandum in Support of their Motion to Set Aside Entry of Default.

STATEMENT OF FACTS

This action arises out of a construction project in Augusta, Georgia. On March 29, 2012, the Defendant, Restoration Specialists ("Restoration") was awarded a contract (the "Contract") to construct the Charlie Norwood VAMC Parking Garage in Augusta ("the Project") by the Department of Veteran's Affairs. The Plaintiff entered into a Teaming Agreement with Restoration in December 2011 The Plaintiff entered into a Subcontract Agreement with Restoration on September 10, 2014 in connection with the Project in the amount of One Million, Eighty Two Thousand, Three Hundred Forty Two and 10/100 Dollars ($1,082,342.10). (*Exhibit A*). Payment has been made to Plaintiff in the amount of One Million, Ninety Six Thousand, Five Hundred Sixty Nine and 19/100 Dollars ($1,096,569.19), an overpayment of Fourteen Thousand, Two Hundred Twenty Seven and 09/100 Dollars ($14,227.09). Currently, the Department of Veteran's Affairs is retaining Ninety Thousand, Eight Hundred Eighty Seven and 08/100 Dollars ($90.887.08) of contract funds due Restoration under the Contract.

Plaintiff's Complaint alleges that Restoration has failed to pay the contract balances due under the Subcontract Agreement and asserts additional claims against the Defendants, Reuben Mark Ward

EXHIBIT N

and Lynnette Pennington Ward arising out of and involving said Subcontract Agreement.

Plaintiff filed this lawsuit on March 7, 2016. Simultaneously with filing the lawsuit, Plaintiff filed a Motion to Stay and to Compel on March 7, 2016. The basis of Plaintiff's Motion to Stay and to Compel was that the Subcontract Agreement contained mandatory mediation/arbitration provisions requiring the Court to stay the litigation and the parties to mediate and, if necessary, arbitrate all claims contained in Plaintiff's lawsuit.

Plaintiff simultaneously served Defendants with both the Complaint and Motion to Stay and to Compel on March 14, 2016.

Plaintiff filed a Motion to Refer to the Master in Equity and for Entry of Default on April 18, 2016. The Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in Equity.

On June 2, 2016 at 6:30 pm, the Defendants were served with a Notice of default damages hearing. The Defendants were unaware of the default status of the case and the scheduling of the damages hearing until they received this hearing Notice on June 2, 2016. Upon receipt of this Notice, the Defendants immediately retained legal counsel on June 3, 2016 and, through said counsel, filed their Motion to Set Aside Entry of Default.

LEGAL AUTHORITIES

A. Rule 55 (c), SCRCP

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E. 2d 537 (2014). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E. 2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted." *White Oak Manor*, 407 S.C. at ___, 753 S.E.2d at 542. In applying this standard, Rule 55(c) "is liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E. 2d 636, 638

(Ct. App. 1995).

LEGAL ANALYSIS

A. There is good cause for Defendants' brief delay in appearing in this action and vacation of the default entry will serve the interests of justice.

In the present case, the Defendants did not file a timely response to the Complaint for the reasons stated in the Affidavit of Reuben Mark Ward, dated June 3, 2016. The Defendants' omission was unintentional and the result of a good faith misunderstanding of the status of Defendants' arrangements with The Hanover Insurance Company ("Hanover") and the relation of Plaintiff's lawsuit thereto.

The Defendants are not attorneys and did not understand that Plaintiff's lawsuit was separate and apart from the bond claims that they have been working directly with Hanover to address. The Defendants' misunderstanding in this regard was innocent and carried no intention of gaining an unfair advantage over the Plaintiff or delaying legal proceedings. Upon learning of their error, Plaintiffs immediately retained legal counsel to appear and respond on their behalf in this matter.

Furthermore, the law does not favor defaults. As such, Rule 55(c) is liberally construed to promote justice and dispose of cases on the merits. *Dixon*, 320 S.C. at ___, 463 S.E. 2d at 638. The Defendants' short delay in appearing in and responding to Plaintiff's lawsuit constitutes no prejudice to the Plaintiff. The Defendants have asserted various defenses to Plaintiff's lawsuit, which if prevailed upon, would render a verdict contrary to the result reached by the entry of default.

For these reasons, and in light of the Defendants' good faith explanation for the default, vacating the entry of default would serve the interests of justice and promote disposition of the case on the merits.

B. The Defendants promptly and timely filed their motion seeking relief from the Entry of Default.

The Plaintiff filed a Motion to Refer to the Master In Equity and for Entry of Default on April 18, 2016. Thereafter, the Court entered default against the Defendants on April 21, 2016. The Defendants have no record and no recollection of receiving: (1) the Motion to Refer to the Master in Equity and for Entry of Default or (2) the Order for Entry of Default and Referral to the Master in

Equity. *Affidavit of Reuben Mark Ward, dated June 3, 2016.*

On June 2, 2016 at 6:30 pm, the Defendants were served with the Notice of the default damages hearing. *Affidavit of Reuben Mark Ward, dated June 3, 2016.* The Notice scheduled the default damages hearing for the morning of June 6, 2016. The Defendants retained legal counsel on June 3, 2016, the very next day after being served with the default damages hearing Notice the night before. The Defendants' counsel immediately appeared on behalf of Defendants and filed the instant Motion to Set Aside Entry of Default on the afternoon of June 3, 2016.

As established by the above timeline, the Defendants took immediate action upon learning of the default status and receipt of notice of the damages hearing. This action included the retention of defense counsel within 24 hours of becoming aware of the default status and damages hearing followed by the immediate filing of the Motion to Set Aside Entry of Default. Thus, the Defendants satisfied the good cause timely motion filing requirement under Rule 55(c), SCRCP.

C. The Defendants have a meritorious defense to the Plaintiff's lawsuit.

The Defendants' defenses to the Plaintiff's lawsuit, include, but are not limited to the following:

(1): The contract giving rise to Plaintiff's Complaint contains mandatory mediation/arbitration provisions. These provisions require all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. As such, the Court lacks subject matter jurisdiction of this matter and must stay this action and submit the matter to mediation, and if necessary, binding arbitration. Rule 55(c), SCRCP; *See also, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

(2): Plaintiff has been paid in full under the Subcontract Agreement; in fact, Plaintiff has been overpaid by Fourteen Thousand, Two Hundred Twenty Seven and 09/110 Dollars ($14,227.09).

(3) There is no agreement for profit sharing between the parties. Per the Teaming Agreement, entered into between Restoration and Plaintiff in connection with the Project, "[n]othing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties." (*Exhibit B*). There is no provision for profit sharing contained within the Subcontract Agreement.

(4) The Payment Bond delineates the obligation for payment of Project subcontractors and vendors as that of Restoration, as Principal, and The Hanover Insurance Company, as Surety. *(Exhibit C).* Restoration disputes the claims made by many of the subcontractors which have made claims against the Payment Bond.

(5) Restoration has not paid all subcontractors and vendors in full as the Department of Veterans' Affairs is retaining funds due under the Contract.

(6) The Teaming Agreement includes a waiver of damages, specifically: "ARTICLE 9 DAMAGES – Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise."

If Defendants prevail on any of these defenses, the outcome would be contrary to the result rendered by the entry of default. Therefore, the Defendants have set forth a meritorious defense sufficient to satisfy the good cause standard of Rule 55(c), SCRCP.

D. The Plaintiff will not suffer prejudice if Entry of Default is set aside.

The Defendants responded to Plaintiff's lawsuit with the retention of counsel and filing of the instant Motion to Set Aside Entry of Default on June 3, 2016. The Defendants took these actions within 51 days of the date on which Defendants' Answer to Plaintiff's Complaint was originally due, within 43 days of the entry of default, and within 24 hours of first learning of the default status and damages hearing. The Defendants' delay was short and creates no prejudice to the Plaintiff's ability to litigate the case. This brief delay has caused no tangible harm to Plaintiff such as a loss of evidence, increased difficulties of discovery, opportunity for fraud or collusion, undue expense or damage to the Plaintiff's legal position.

In fact, the corollary to the lack of prejudice to the Plaintiff is the extreme prejudice the Defendants will suffer if the default is not lifted and the court proceeds with a default damages hearing. In this scenario, the Plaintiff will have received significant undue advantage in that a litigated result will have been achieved by the Plaintiff in a case which Plaintiff acknowledges is governed by mandatory alternative dispute resolution and in which the court has no subject matter jurisdiction. *See, Defendants' Motion to Stay and to Compel (and authorities cited therein); Plaintiff's Motion to Stay and to Compel.*

As no prejudice will result to Plaintiff in setting aside the entry of default, this good cause factor under Rule 55(c), SCRCP is satisfied.

CONCLUSION

Based on the foregoing, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order Setting Aside the Entry of Default pursuant to Rule 55(c), SCRCP.

For these reasons, the Defendants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Set Aside Entry of Default be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

By: _____

A Bright Ariail
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ATTORNEY FOR RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD and LYNNETTE PENNINGTON WARD

July 14, 2016
Charleston, SC 29412

AIA® Document A401™ – 2007

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 10 day of September in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Restoration Specialists LLC a South Carolina Corporation
1042-A East Montague Ave.
Charleston, SC 29405

and the Subcontractor:
(Name, legal status, address and other information)

Palmetto Construction Group, LLC
2265 Clements Ferry Road, Suite 204
Charleston, SC 29492

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: March 29, 2012

with the Owner:
(Name, legal status, address and other information)

Department of Veterans Affairs / Charlie Norwood VAMC
950 15th Street
Augusta, GA 30901

for the following Project:
(Name, location and detailed description)

CHARLIE NORWOOD VAMC PARKING GARAGE
950 15th Street
August, GA 30901
Phase I – Uptown Temporary Parking Lot
Phase II – Downtown Parking Garage Sitework

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

Structured Parking Solutions
21 South Tarragona Street, Suite 101

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by the Associated Specialty Contractors, Inc.

Bindertek/CUEX A

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Pensacola, FL 32502

The Contractor and the Subcontractor agree as follows.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Contractor shall make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter, upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

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ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2007 apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor.

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§ 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

.1 seven days' written notice prior to the Contractor's providing services or materials, except in an emergency; and

.2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

.3 Liquidated Damages will be assessed at $ N/A per calendar day past the established completion date.

§ 3.4 CONTRACTOR'S REMEDIES

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by appropriate Modification, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.1.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.1.3 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under this Subcontract.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and separate contractors whose work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and

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advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or separate contractors.

§ 4.2 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 4.2.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.3.5 The Subcontractor shall indemnify the Contractor for the cost and expense the Contractor incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.3.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

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§ 4.5 WARRANTY
The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.6 INDEMNIFICATION
§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 4.7 REMEDIES FOR NONPAYMENT
If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization.

ARTICLE 5 CHANGES IN THE WORK
§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time

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by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

ARTICLE 6 MEDIATION AND BINDING DISPUTE RESOLUTION

§ 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except those waived in this Subcontract, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Contractor and Subcontractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 6.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 6.3 ARBITRATION

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

§ 6.3.3 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 6.3.4 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

§ 6.3.5 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.3.6 This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 TERMINATION BY THE SUBCONTRACTOR

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a ten-day period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

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§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent that

.1 performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible; or

.2 an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201–2007 provided the Owner accepts the assignment.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.
(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted alternates.)

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontractor's date of commencement is the date from which the Subcontract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than .
(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier substantial completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)

Portion of Work	Substantial Completion Date
Provide supervision and management of concrete subcontractor (Atlantic Concrete Contractors). See PCG Subcontract Breakdown spreadsheet dated 9/5/14 provided, attached. Note: It is the subcontractor's responsibility to visit Submittal Exchange (www.submittalexchange.com) to access and verify they are using the latest revisions of all contract documents. An email invitation will be sent to each subcontractor's point of contact to initiate	Commence Work: Mobilize 9/22/14 Completion Date: Final Completion 7/7/15

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access to the site. ALL SUBMITTALS FROM SUBCONTRACTORS ARE TO BE SUBMITTED TO RESTORATION SPECIALISTS BY UPLOADING PDF DOCUMENTS TO THE SUBMITTAL EXHANGE SITE.
Schedule: As follows
Submittals: Submittals are due no later than 9/23/14 (submitted electronically via Submittal Exchange)

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of One million eighty two thousand three hundred forty two dollars and 10/100, ($ 1,082,342.10), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:
(Insert the numbers or other identification of accepted alternates.)

§ 10.3 Unit prices, if any:
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit ($0.00)
N/A		

§ 10.4 Allowances included in the Subcontract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
N/A	

ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Government, and certificates for payment issued by the Government, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Government with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the

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part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Government. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Government.

§ 11.4 If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work that have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 that are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause that is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.9 SUBSTANTIAL COMPLETION

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for

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payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.
(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

Type of insurance or bond	Limit of liability or bond amount ($1,000,000.00 per incident)
Commercial General Liability Insurance	$ 1,000,000.00 (per incident)
Business Automobile Liability Insurance	$ 1,000,000.00 (per incident)
Commercial Umbrella Coverage	$ 1,000,000.00 (limits must include as insureds all entities that are additional insureds on the CGL)
Worker's Compensation and Employer's Liability Insurance	$ 1,000,000.00 (per incident & per employee)

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

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§ 13.4 The Subcontractor shall cause the commercial liability coverage required by the Subcontract Documents to include: (1) the Contractor, the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor as an additional insured for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's completed operations.

§ 13.5 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

§ 13.6 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 13.7 Performance Bond and Payment Bond:
(If the Subcontractor is to furnish bonds, insert the specific requirements here.)

Bond type	Bond amount ($0.00)	Bond delivery date	Bond form
N/A			

§ 13.8 PROPERTY INSURANCE
§ 13.8.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 13.8.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.8.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.9 WAIVERS OF SUBROGATION
The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS
§ 14.1 The Contractor shall furnish and make available at no cost to the Subcontractor the Contractor's temporary facilities, equipment and services, except as noted below:

Temporary Facility, Equipment or Service	Cost, if any ($0.00)

§ 14.2 Specific working conditions:
(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)

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ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

(Insert rate of interest agreed upon, if any.)

%

(Paragraphs deleted)

§ 15.3 Retainage and any reduction thereto are as follows:

0% (zero)

(Paragraph deleted)

ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated in the sections below.

§ 16.1.1 This executed AIA Document A401–2007, Standard Form of Agreement Between Contractor and Subcontractor.

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement.

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date

§ 16.1.4 Additional Documents, if any, forming part of the Subcontract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents:
(List here any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be made part of the Subcontract Documents.)

1. PCG Subcontract Breakdown
2. Atlantic Concrete Subcontract

This Contract / P.O. Number will be: 1401-010000-005
This Contract / P.O. # is to be referenced on all billings / invoices / submittals, etc.

This Agreement entered into as of the day and year first written above.

RESTORATION SPECIALISTS, LLC

CONTRACTOR *(Signature)*
Mark Ward – Managing Member
(Printed name and title)

PALMETTO CONSTRUCTION GROUP, LLC

SUBCONTRACTOR *(Signature)*
JAY HANNEGAN - Vice President
(Printed name and title)

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TEAMING AGREEMENT

This Agreement is made and entered into as of the **28th** day of **November**, **2011**, by and between **Restoration Specialists, LLC**, a **Georgia** limited liability company (hereinafter called "RS"), and **Palmetto Construction Group, LLC**, a **South Carolina** limited liability company (hereinafter called "PCG"), each a "Party" and together the "Parties", for the purpose of submitting a proposal for **Solicitation Number VA-247-11-RP-0211** (hereinafter the "Services") to **Department of Veteran Affairs** (the "Customer") for the **New SCIU Hospital Parking Deck Minor Project: 509-325** project (the "Project"). ***RS, cage code 5GXE1, is a "Verified" Service Disabled Veteran Owned Small Business and PCG, cage code 3P1G3, is a "Certified" Small Business. RS and PCG have a successful teaming record on previous contracts such as: FA4418-11-R-0017-0004***

ARTICLE 1 SUBMISSION OF PROPOSAL

RS and PCG shall each undertake to accomplish certain tasks in connection with the preparation of a proposal to be submitted to the Customer for the Project (the "Proposal"). The Proposal will identify RS as the prime contractor and PCG as the subcontractor that will perform the Services. The Proposal will be developed in conformance with the delineation of respective areas of responsibility and contract share set forth in Exhibit A. Both Parties have the right to determine the contents of the Proposal to the Customer as it relates to that Party. RS will be responsible for preparing the final copies of all Proposal documents and submitting the Proposal to the Customer.

ARTICLE 2 PERFORMANCE OF CONTRACTS

If RS is selected as the prime contractor as a result of the Proposal, RS and PCG will provide assistance and support to each other in the joint negotiation of the terms and conditions of the prime contract with Customer so as to obtain terms and conditions which are mutually agreeable to RS and PCG. Additionally, RS and PCG shall enter into a contractual arrangement between themselves on mutually acceptable terms and conditions. The Parties will endeavor to incorporate terms consistent with the Scope of Work substantially in accord with the provisions of Exhibit A and Exhibit B, Standard Subcontract Terms and Conditions, as may be modified subject to the terms and conditions described in the prime contract.

ARTICLE 3 EXCLUSIVE AGREEMENT

When mutually agreed to for a specific Project, to preserve the interests of the Parties hereto in the competition for such Project only, RS and PCG shall work exclusively with each other with respect to its area of responsibility and share of the contract in a proposal for the Project. RS and PCG acknowledge that it may be necessary to utilize other subcontractors on the team as may be mutually agreed.

ARTICLE 4 SCOPE OF AGREEMENT

This Agreement shall relate only to the solicitation specified herein, and nothing herein shall be deemed to:

B

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(a) Confer any right or impose any obligation or restriction on either Party with respect to any other efforts or marketing activity at any time undertaken by either Party hereto, jointly or separately; or

(b) Preclude either Party hereto from soliciting or accepting any prime contract or subcontract from any third Party (or subcontractor of any tier) under any other solicitation during or after termination of this Agreement; or

(c) Limit the rights of either Party to promote, market, sell, lease, license or otherwise dispose of its standard products or services, except where such would conflict with the obligations of the Party under this Agreement.

ARTICLE 5 RELATIONSHIP

Nothing in this Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties; except as may be provided for in any resultant contractual arrangement agreed to between the Parties. The cooperation of the Parties is for the purpose of complementing their respective capabilities in pursuit and execution of the subject solicitation.

ARTICLE 6 EXCHANGE OF CONFIDENTIAL INFORMATION

During the term of this Agreement, each Party agrees to receive from the other, cost, pricing and technical information and data, hereinafter referred to as "Data", for the purpose of responding to the request for proposal for the Project from the Customer. Such Data shall consist of that needed to satisfy the requirements of Exhibit "A" and Customer's request for proposal.

For a term of five (5) years from the date of this Agreement, each Party agrees to keep in confidence and to use its best efforts to prevent the disclosure to any person or persons outside its own organization all Data (i) which is designated in writing, by appropriate stamp (or legend) by the disclosing Party, to be of a proprietary or confidential nature, (ii) which is received from the disclosing Party under this Agreement, and (iii) which pertains to proprietary or confidential data regarding the disclosing Party's costs, pricing and technological techniques, processes, inventions, and research and development; provided, however, that neither Party shall be liable for use or disclosure of any such Data if the same:

(a) Is in the public domain at the time it is disclosed; or

(b) Is known, as demonstrated by written documentation, to the Party receiving it at the time of disclosure; or

(c) Is used or disclosed with the prior written approval of the other Party; or

(d) Becomes known to the receiving Party from a source other than the disclosing Party; or

(e) Is independently developed, separate from the activities undertaken pursuant to this Agreement; or

(f) Is disclosed under legal compulsion provided that the disclosing Party is given a reasonable opportunity to pursue injunctive relief.

ARTICLE 7 TERMINATION

All rights and obligations of the Parties under this Agreement shall terminate on the earliest of the following:

(a) Notice from Customer that the Project has been cancelled, or that the prime contract will not be awarded to RS or PCG;

(b) Award to other contractors to the exclusion of RS or PCG of contracts for all or substantially all of the Project work contemplated by the proposal;

(c) Notice from the Customer that RS or PCG is unacceptable in the role and function set forth in the proposal; however, if the Customer requests a change in the role and/or function of RS or PCG, this Agreement shall not be deemed terminated unless RS and PCG fail to agree to effect appropriate changes within the time period permitted by the Customer;

(d) Either Party hereto may exercise an option to terminate this Agreement for its convenience. A condition enabling this right is that the Party which withdraws shall not compete for this Project either as an individual firm or in combination with any other firm;

(e) Execution by both Parties hereto of the contractual arrangement between themselves contemplated by this Agreement, or failure of the Parties hereto to agree on the terms of the contemplated arrangement;

(f) The failure of the Parties hereto and the Customer to reach agreement on the terms of the contemplated prime contract;

(g) The expiration of 24 months from the effective date hereof; provided, however, if the proposal has been submitted and is under consideration by the Customer upon the expiration of such 24 month period, this Agreement shall continue to be in force until terminated pursuant to one of the foregoing conditions; and provided further that if an award is made by the Customer on the proposal at any time after the 24 month period is over, this Agreement shall be deemed to have continued in full force and effect.

(h) Mutual agreement of the Parties.

ARTICLE 8 COSTS

Each Party shall perform its obligations hereunder at its own cost unless the Parties agree in writing to other cost sharing arrangements.

ARTICLE 9 DAMAGES

Neither Party shall be liable to the other for any indirect, special or consequential losses, whether arising in contract, tort (including negligence), or otherwise.

ARTICLE 10 ASSIGNMENT

This Agreement shall not be assigned by either Party without the prior written approval of the other Party.

ARTICLE 11 NOTICE

All notices hereunder shall be given by letter addressed, except as each may change its address pursuant hereto, as follows:

Attention: **Mark Ward**
Restoration Specialists, LLC
PO Box 5352
Savannah, Ga. 31414
(912) 659-4355

Attention: **Jay Handegan**
Palmetto Construction Group, LLC
2265 Clements Ferry Rd. Suite 204
Charleston, SC 29492
(843) 971-7156

ARTICLE 12 ENTIRE AGREEMENT

This document contains the entire agreement between the Parties and supersedes any previous understandings, commitments or agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by an authorized representative of each Party. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Georgia.

RESTORATION SPECIALISTS LLC

By: _____
(Authorized Signature)

Title: Managing Member

Date: 12-01-11

PALMETTO CONSTRUCTION GROUP

By: _____
(Authorized Signature)

Title: Vice President

Date: 12/7/11

EXHIBIT A

AREAS OF PROJECT PARTICIPATION

This Exhibit is based on Customer's stated plans to pursue the Project. It is currently contemplated that as the Project develops from the bid phase through the final contract award phase, one or more special purpose entities may be established to bid and execute the Project. The following represents a general distribution of Project participation. As the Project develops, this Exhibit will be modified as required as detailed scope of work responsibilities and specific contractual arrangements are determined.

AREAS OF RESPONSIBILITY

RS

Restoration Specialists, LLC, a Verified SDVOSB, will serve as the Prime Contractor on this project. The role of the prime will include contract administration, subcontractor administration, material procurement, project management, scheduling, site supervision, quality control and health and safety management.

PCG

Palmetto Construction Group, LLC, a Certified Small Business, shall provide field Project Managers and Superintendents and a qualified labor force to perform the construction of the New SCIU Parking Deck.

SPS

Structured Parking Solutions, a Certified Small Business, will provide all design services including architectural, mechanical, electrical, plumbing, structural and civil engineering and environmental consulting. If requested, SPS will provide contract administration, inspection and testing services during the construction phase of the projects.

Other Sub Contractors

Pre Casters

EXHIBIT B

Standard Subcontract Terms and Conditions

Bond No. 1944091

PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract) April 23, 2012	OMB No.:9000-0045 Expires: 11/30/2012

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one)
Restoration Specialists, LLC P. O. Box 5352 Savannah, GA 31414	☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☒ CORPORATION STATE OF INCORPORATION: GA

SURETY(IES) (Name(s) and business address(es)	PENAL SUM OF BOND			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
The Hanover Insurance Company 440 Lincoln Street Worcester, MA 01653	5	999	860	00
	CONTRACT DATE: March 13, 2012	CONTRACT NO.: VA247-C-0035		

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. for payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

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Restoration Specialists, LLC — PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)			
SIGNATURE(S)	1. (Seal)	2. (Seal)	
NAME(S) (Typed)	1.	2.	

The Hanover Insurance Company — CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS	440 Lincoln Street, Worcester, MA 01653	STATE OF INC.: NH	LIABILITY LIMIT: $96,082,000
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1. Laura W. Dennison Attorney-in-Fact	2.	

THE HANOVER INSURANCE COMPANY CORPORATE SEAL 1852

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Prescribed by GSA-FAR (48 CFR) 53.2228(c)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

INSTRUCTIONS

. This form, for the protection of persons supplying labor and material, is sed when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

. Insert the full legal name and business address of the Principal in the pace designated "Principal" on the face of the form. An authorized person hall sign the bond. Any person signing in a representative capacity (e.g., an ttorney-in-fact) must furnish evidence of authority if that representative is not member of the firm, partnership, or joint venture, or an officer of the orporation involved.

. (a) Corporations executing the bond as sureties must appear on the epartment of the Treasury's list of approved sureties and must act within the mitation listed therein. Where more than one corporate surety is involved, heir names and addresses shall appear in the spaces (Surety A, Surety B, tc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

Bond No. 1944091

PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract) April 23, 2012	OMB No.: 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, D.C. 20405

PRINCIPAL *(Legal name and business address)*

Restoration Specialists, LLC
P. O. Box 5352
Savannah, GA 31414

TYPE OF ORGANIZATION *("X" one)*

☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☒ CORPORATION

STATE OF INCORPORATION

GA

SURETY(IES) *(Name(s) and business address(es))*

The Hanover Insurance Company
440 Lincoln Street
Worcester, MA 01653

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
5	999	360	00

CONTRACT DATE	CONTRACT NO.
March 13, 2012	VA247-C-0035

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Mil[illegible] Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contra[illegible] with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

Restoration Specialists, LLC — **PRINCIPAL**

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) *(Typed)*	1.	2.

The Hanover Insurance Company — **CORPORATE SURETY(IES)**

SURETY A	NAME & ADDRESS	440 Lincoln Street Worcester, MA 01653	STATE OF INC. NH	LIABILITY LIMIT $96,082,000.00	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1. Laura W. Dennison Attorney-in-Fact	2.		

THE HANOVER INSURANCE COMPANY 1852

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND $ $15 1st 500M; $12 next $2 mil; $9 next $2.5mil; $8 next $2.5 mil	TOTAL $61,999.00 $0.00

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the paces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;
2) A damages hearing is set for October 4, 2016 at 2:00pm; and
3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

EXHIBIT O

Law Office of A. Bright Ariail, LLC

July 19, 2016

FILED
2016 JUL 22 PM 2:2
CLERK OF COURT

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records related to the Order executed on July 14, 2016 in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT P

bright@brightariaillaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Sent: Monday, July 18, 2016 8:42 AM
To: 'Michelle Endemann'; Bright Ariail; 'Andrew K. Epting'
Subject: Palmetto Construction Group v. Restoration Specialists et al.
Attachments: 201607180829.pdf

Dear All -

As to the last hearing in this matter, please see the attached order Judge Scarborough executed last week. I am forwarding it to the clerk right now for processing.

Best Regards,

Barnwell

--
J. Barnwell Fishburne, Jr., Esq.
Judicial Law Clerk to The Honorable Mikell R. Scarborough
100 Broad Street, Suite 266
Charleston, South Carolina
29401
Tel: 843-958-5053
jfishburne@charlestoncounty.org

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
To: Bright Ariail
Sent: Monday, July 18, 2016 8:35 AM
Subject: Read: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Your message

To:
Subject: Palmetto Construction Group c. Restoration Specialists, et al;
Sent: Monday, July 18, 2016 5:35:12 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, July 18, 2016 5:35:02 AM (UTC-08:00) Pacific Time (US & Canada).

Bright Ariail

From:	Microsoft Outlook
To:	Barnwell Fishburne
Sent:	Friday, July 15, 2016 12:32 PM
Subject:	Relayed: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Barnwell Fishburne (JFishburne@charlestoncounty.org)

Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Bright Ariail

From: Bright Ariail
Sent: Friday, July 15, 2016 12:32 PM
To: Barnwell Fishburne
Cc: Andrew K. Epting; 'Michelle Endemann'
Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

I have reviewed the proposed order and request that the Court also address its ruling/disposition of Plaintiff's Motion to Stay and Compel (filed on March 7, 2016) in the order when issued. Thanks for your assistance in this matter.

I have copied all counsel of record by this email.

VR. Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Michelle Endemann [mailto:mne@epting-law.com]
Sent: Thursday, July 14, 2016 12:10 PM
To: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Cc: Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

We have prepared a simple proposed order for today's hearing so that Judge Scarborough does not have to prepare a Form 4.

Please note I have copied Ms. Ariail.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: 843-877-1871

F: 843-377-1310
mnc@epting-law.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2016-CP-10-1143
	)	
Palmetto Construction Group	)	
	)	
Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER AND TO ALTER OR AMEND PURSUANT TO SCRCP 59(e) AND APPLICABLE CASE LAW**
	)	
vs.	)	
	)	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	)	
	)	
Defendants.	)	

TO: ANDREW K. EPTING, JR., ESQUIRE, AND MICHELLE N. ENDEMANN, ESQUIRE, ATTORNEYS FOR PLAINTIFF, PALMETTO CONSTRUCTION GROUP

PLEASE TAKE NOTICE that the Defendants, through their undersigned attorney, will move before the presiding Judge or Master in Equity of the Ninth Judicial Circuit at a time and place to be arranged by the Court and counsel involved for the Court to reconsider and amend its Order dated July 14, 2016 ("Order"). The Defendants will move the Court to amend its Order so as to make a final ruling on the merits of all motions filed in this matter and to lift the entry of default, stay this action and compel mandatory mediation/arbitration of this matter. The Defendants' Motion to Reconsider and to Alter or Amend ("Defendant's Motion) is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and all applicable case law.

The Defendants' Motion is made on the following grounds:

(1): The Defendants showed good cause such that the entry of default should be lifted in this matter. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(2): The Court lacks subject matter jurisdiction due to the mandatory and binding mediation/arbitration provisions contained in the contract giving rise to this action. *See, Defendants'*

EXHIBIT Q

Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).

(3): The contract giving rise to this action requires all claims arising out of or related to the contract to be mediated, and if not resolved by mediation, to be resolved by binding arbitration. Accordingly, the Court is required to stay this action and submit the matter to mediation, and if necessary, binding arbitration. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and to Compel, dated July 11, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion).*

(3): The Plaintiff made a demand for mandatory mediation/arbitration contemporaneously with the commencement of this action pursuant to its Motion to Stay and Compel ("Plaintiff's Motion"). The Defendants joined in and consented to Plaintiff's Motion, which motion should be properly adjudicated before the court and the relief requested therein granted. *See, Plaintiff's Motion to Stay and Compel, dated March 7, 2016 (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendants' Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion)*;

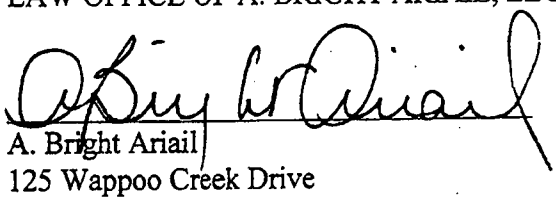
(4): The Defendants have not defaulted upon nor waived their right to mediation/arbitration under the mandatory alternative dispute resolution provisions of the contract and applicable law. *See, Defendants' Motion to Lift Entry of Default, dated June 3, 2016 and supporting legal memorandum (including, all referenced legal authorities and exhibits); Defendants' Motion to Stay and Compel, dated July 11, 2016 (including, all referenced legal authorities and exhibits); Memorandum of Law in Support of Defendant's Motion to Reconsider and to Alter or Amend (to be submitted to the Court prior to the hearing of Defendants' Motion to Reconsider and to Alter or Amend).*

This Motion is based upon Defendants' Memorandum of Law in Support of Motion to Reconsider and to Alter or Amend which will be submitted to the Court prior to the hearing of

Defendants' Motion, the parties' prior motions and supporting memorandums of law referenced above, the complete files, exhibits, and records in this action, such oral and documentary evidence as may be allowed at the hearing of this motion and upon all applicable law pertaining thereto.

Respectfully submitted,

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412

ATTORNEY FOR DEFENDANTS

July 27, 2016
Charleston, SC 29412

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court/Agency	Master In Equity	Judge	Scarborough	Room	952
Roster Type	Motion Hearings	Roster Date	10/11/2016		10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
1	10/11/2016	10:00 AM		Motion/Reconsider by plaintiff, crt/srv	Maria Kiehling Brees-PAT	07/25/2016	2012CP1006835 Joanne S Reed VS Christina Salters , defendant, et al	Real Prop/Other 499	1880000169	Maria Kiehling Brees (843) 724-7707 D. Nathan Davis (843) 571-4042	Jestine Townsend Graham (843) 467-9492 Irene Townsend Hodge (843) 889-9513 Kelvin Maurice Huger (843) 573-0143 Althea Salters (843) 889-2450 Irma Townsend (843) 425-7226 Jessie Townsend Mary Alice Townsend Morrison Karen Waters	EXHIBIT R
2	10/11/2016	10:00 AM		Motion/Alter or Amend by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/29/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420				
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6726 Patrick R. Watts (843) 851-7050	
4	10/11/2016	11:00 AM		Motion/Alter or Amend by plaintiff, crt/srv	Merritt Gordon Abney-PAT	07/29/2016	2010CP1002432 Regions Bank VS Bdt Projects Llc Etc , defendant, et al	Foreclosure 420				
5	10/11/2016	2:00 PM		Motion/Alter or Amend by plaintiff, crt/srv	Andrew K. Epting Jr.-PAT	07/29/2016	2016CP1001143 Palmetto Construction Group LLC VS Restoration Specialists LLC	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871 Andrew K. Epting Jr. (843) 377-1871	A. Bright Ariail (843) 814-8805	
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Ariail-DAT	07/27/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871	A. Bright Ariail (843) 814-8805	

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Room	952
Roster Type	Motion Hearings	Roster Generated	10/11/2016	Roster Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006736 Municipal Tax Investment LLC VS Gilbert J White , defendant, et al	Real Prop/Other 499	4271600239	Scott Daniel Spivey (803) 225 -0463		
8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearings	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006755 Municipal Tax Investment LLC VS William T Simmons III , defendant, et al	Real Prop/Other 499	4640100054	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900 T. Parkin C. Hunter (803) 734 -6151 Brittany Lauren Kilpatrick (843) 696-3048 E.B. "Trey" McLeod III (803) 737-3043	318
10	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
11	10/11/2016	3:00 PM		Master/Cross Claim Hearing	Municipal Tax Investment LLC-PLT	10/11/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
12	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Law Office of A. Bright Ariail, LLC

RECEIVED
SEP 09 2016
By_____

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

FILED
2016 SEP 13 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

---

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

EXHIBIT S

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Law Office of A. Bright Ariail, LLC

September 20, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2016 SEP 22 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records with attachments for filing in the above referenced action which are related to Defendants' request that two outstanding motions be heard by the Court prior to the damages hearing set for October 4, 2016 at 2:00 p.m.; specifically, Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016 and Plaintiff's Motion to Alter or Amend filed July 29, 2016. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

EXHIBIT T

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From:	Bright Ariail
Sent:	Wednesday, September 7, 2016 10:43 AM
To:	master@charlestoncounty.org
Cc:	Andrew K. Epting; Michelle Endemann
Subject:	Palmetto Constr. Group, LLC v. Restoration Specialists, LLC et al., 2016-CP-10-1143
Attachments:	Ltr Scarborough Motions Hearing.pdf

Judge Scarborough,

Please see my letter attached. Thanks for your consideration.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

RECEIVED
SEP 22 2016
Clerk of Court BS

CONFIDENTIALITY NOTICE
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Bright Ariail

From: Bright Ariail
Sent: Wednesday, September 7, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Michelle Endemann <mne@epting-law.com>
Sent: Wednesday, September 7, 2016 12:45 PM
To: Laura Dukes Beck; Angela Gross; Andrew K. Epting; Bright Ariail
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Hello Laura,

Plaintiffs would prefer that the hearings go forward as originally scheduled. This way, all rulings can be reconsidered/appealed, if necessary, at one time rather than piecemeal. We will, of course, defer to the Judge's preference.

Best,

Michelle Endemann

From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 07, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; bright@brightariaillaw.com
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, September 12, 2016 2:02 PM
To: Bright Ariail; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

After further consideration, the Judge has decided to leave the hearings in the order that they were originally scheduled, with the Damages hearing to be held prior to the Motions to Alter or Amend. The previously sent roster publication emails and the published rosters have the date and time, or email me if you need more information.
Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Wednesday, September 07, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>

Cc: Barnwell Fishburne <BFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Law Office of A. Bright Ariail, LLC

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[1] and Plaintiff[2] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

[1] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[2] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Law Office of A. Bright Ariail, LLC

October 24, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find the original and one copy of the Reply to Palmetto Construction's Opposition to Defendants' Motion to Reconsider, Alter and Amend in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE.

By copy of this letter, I am servicing opposing counsel with same.

Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

81409

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
OCT 28 2016
SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants on March 14, 2016; Appellants failed to answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for all purposes, including a determination of damages.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The Court, after considering affidavits and hearing argument, found in its discretion that there was no good to lift the default and set a default damages hearing for October 4, 2016 at 2:00pm. The order served on all parties by the Court on July 18, 2016. Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Appellants requested that the motions be heard in advance of the damages hearing. The Court elected to keep the hearings as originally scheduled. Appellants have not timely noticed an appeal of the July 18, 2016 interlocutory order, and the motion to reconsider remains pending.

On September 30, 2016, the Respondent was served with a notice of appeal. (Exhibit A). Respondent immediately drafted, served, and filed a motion to dismiss the appeal and sought expedited review of the motion in order that the October 4 damages hearing proceed. (Exhibit B). The parties appeared before the lower court on October 4, though the damages hearing did not proceed. Instead, the Court asked that the parties make a record of their positions as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending. Briefs were filed by both sides with regard to Appellants' Rule 59 motion.

On October 5, Palmetto's counsel received a letter from this Court returning its motion to dismiss as the Court had no record of such an appeal. (Exhibit C). Also on October 5, Palmetto's counsel was served by facsimile with a copy of another notice of appeal, different than the one previously served. (Exhibit D). On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. (Exhibit E). On October 13, 2016, Palmetto received a copy of a letter from the Court of Appeals, which returned Appellants' October 6 notice of appeal together with the portions of the transcripts that Appellants attached to the notice as "transcripts are not part of a notice of appeal." (Exhibit F).

SUMMARY OF ARGUMENT

The appeal must be dismissed as it is: (1) defective on the face of the notice of appeal as there is no final appealable order attached to the notice; (2) untimely; (3) interlocutory; and (4) without merit and filed solely for the purpose of delay.

ARGUMENT

None of the three notices of appeal attach an order appealed from as required by Rule 203 SCRAP. As there is no appealable order, all three notices are defective and the appeal must be dismissed.

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016 (or maybe even as late as October 6, 2016), more than seventy-five days after the interlocutory order was received. Therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP

(requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.

CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter in order to mitigate its damages.

Respectfully Submitted by:

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 27th day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

RECEIVED
OCT 28 2016
SC Court of Appeals

CASE NO. 2016-CP-10-1143

Palmetto Construction Group, (Respondent)

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

PROOF OF SERVICE

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 27, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

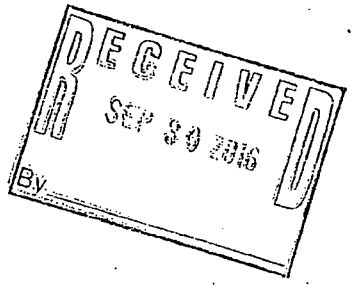
LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

September 30, 2016



VIA HAND DELIVERY
Andrew K. Epting, Jr.
Michelle N. Endemann
ANDREW K. EPTING, JR., LLC
46a State Street
Charleston, SC 29401

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

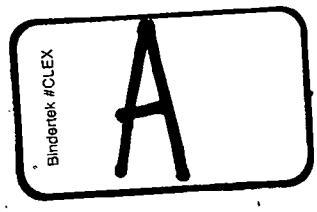
Dear Drew and Michelle:

Enclosed for service upon you please find a Notice of Appeal, together with proof of service, in the above-referenced case.

Sincerely,

A. Bright Ariail

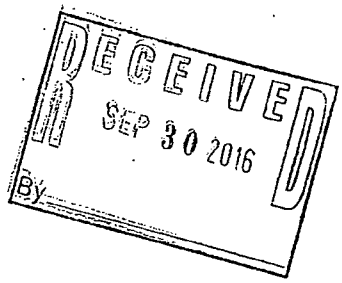
Enclosure: (Notice of Appeal/Proof of Service)



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity



Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

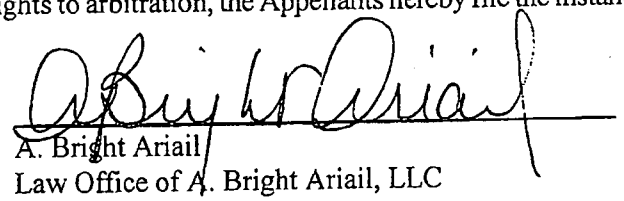
Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

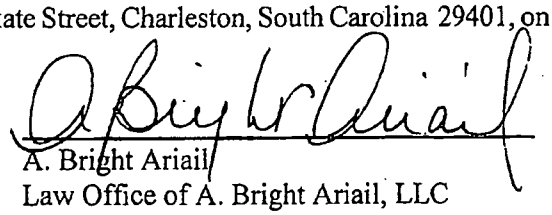
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENTS' EMERGENCY MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review of this motion in order to attempt to mitigate its damages. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto

Bindertek #CLEX B

responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants, but the Appellants failed to file an answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for a default damages hearing and for all other matters.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The motions were heard, and the Court, after considering affidavits and hearing argument, found in its discretion that there was no good cause shown such that the default should be lifted. The order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Respondents wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. After some consideration, the Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11. Appellants never timely noticed an appeal of the July 18, 2016 order, which is interlocutory, and the motion to reconsider is pending.

ARGUMENT

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct.

App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016, some seventy-four days after the order was received; therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP (requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.[1]

CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

[signature on following page]

[1] Palmetto's motion is truncated in an effort to mitigate its damages by filing this appeal in the hopes that it may be dismissed in advance of the damages hearing scheduled for October 4, 2016 so that it may proceed.

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 3rd day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

CASE NO. 2016-CP-10-1143

Palmetto Construction Group, (Respondent)

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

PROOF OF SERVICE

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 3, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 4, 2016

Andrew K. Epting , Jr., Esq.
Michelle N. Endemann, Esq.
46 A State Street
Charleston, SC 29401

In Re: Palmetto Construction Group v. Restoration Specialists
Motion to Dismiss

Dear Counsel:

We have received your motion to dismiss for the above referenced matter. However, no notice of appeal has been filed under that name or lower court case number. Since no appeal is pending in this Court, we will not accept or take action on your motion to dismiss. We are returning your original documents to you, along with your filing fee, check #4184, in the amount of $50.00.

Very truly yours,

Clerk

cc:
A. Bright Ariail, Esq.

Binderlek #CLEX
C

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125-E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412

(843) 814-8805 (TELEPHONE)
(843) 266-0538 (FACSIMILE)

FACSIMILE TRANSMITTAL SHEET

TO: THE HONORABLE JENNY ABBOTT KITCHINGS	FROM: A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 5, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 12

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

(5) THE FILING FEE CHECK OF $100.00.

THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return original message to us at the above address via the U. S. Postal Service. Thank you.

Binderlek #CLEX D

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 01/11

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Facsimile: (843) 266-0538

October 5, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,

A. Bright Ariail
Attorney for Appellants

Enclosures
cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
Andrew K Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

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10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 03/11

After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016

A. Bright Ariail
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(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 04/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Mikell R. Scarborough, Master in Equity

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Palmetto Construction Group, Respondent,

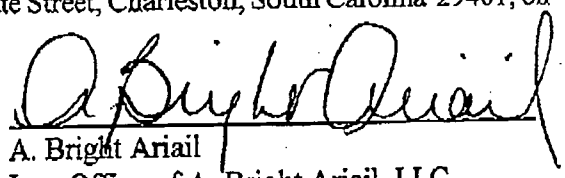
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



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Attorney for Appellants

10/06/2016 13:24 8432660538 ARIAIL LAW FIRM PAGE 05/11

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;
2) A damages hearing is set for October 4, 2016 at 2:00pm; and
3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

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(9)
Page

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON — COURT OF COMMON PLEAS

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Notary Public
P.O. Box [illegible]
Charleston, South Carolina [illegible]
(843) [illegible]
[illegible]

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

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Michelle Endemann, Esq.
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ATTORNEYS FOR THE DEFENDANT:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

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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

6

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

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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.

8

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?
4 MS. ARIAIL: You did not.
5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?
9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.
18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.
2 Well, Ms. Ariail, I think the first thing you
3 have to do is get out of default before you can bring
4 affirmative relief. It does appear that the matter
5 was referred over here. I think that took care of
6 the -- the clerk closed out the Motion to Compel the
7 Arbitration because of the fact that it was referred
8 over here. So that based some adjudication on that
9 motion is how the Court considers that.
10 I think what we were wrestling with last time
11 was whether or not you-all could resolve it. That
12 doesn't look like it's been done. I find that
13 because it was not shown by Mr. Ward in his
14 affidavits that that supported why he was in default
15 I find the Defendant in default and I so order.
16 So this will be a question of a damages
17 hearing to be set. How much time do you-all want?
18 MS. ENDEMANN: Your Honor, we probably need
19 about an hour to two hours for the hearing, and we
20 can hear it whenever the Court is available.
21 THE COURT: Okay.
22 MS. ARIAIL: Your Honor, I would ask since I
23 have in good faith participated in discovery that I
24 at least be allowed to serve some form of discovery
25 related to damages so that I can prepare properly for

1 the damages hearing.
2 THE COURT: Ms. Endemann?
3 MS. ENDEMANN: I don't think we're in a
4 position, Your Honor, to consent to that. Ms. Ariail
5 can certainly Cross the Plaintiff on any damages that
6 we present at the hearing as is allowed by the Rules,
7 but she isn't allowed to present her own evidence in
8 any event.
9 We're happy to try to -- most of the documents
10 that we would use in support of our case are her
11 clients and also Hanover's, which are the bond claims
12 spreadsheets and everything, which Hanover is sending
13 directly to her client and which we're happy to
14 provide if that's not happening. I think she has
15 everything that she would need. It would just be the
16 testimony, and of course, she's entitled to Cross
17 under the Rules.
18 THE COURT: All right. I think that's the
19 case. All right? I'm assuming you've got what
20 you've got. You're entitled to participate in a
21 damages hearing. There's no doubt about that by
22 Cross-Examination but not by putting forth in
23 evidence.
24 MS. ARIAIL: Right, Your Honor, but to
25 properly prepare to Cross-Examine their witnesses,

1 I've seen nothing they have. They have discussed an
2 indemnity agreement in the Complaint. I don't have
3 that. My client doesn't have that.
4 THE COURT: Well, it may expedite the matter
5 to move forward so everybody's talking with the same
6 thing. We don't have to read documents when we're
7 here. I would ask that you-all share what you can in
8 that regard. I'm not going to mandate it because I
9 don't think that's proper. If we don't get it worked
10 out we'll have a hearing in the next, what, 60 days
11 or so?
12 MS. BECK: I didn't know if this might be
13 something you might want to put on the trial term as
14 a possibility. If not, we've got some time the first
15 week in October.
16 THE COURT: I can bring you-all back -- I've
17 got some trials coming up. I've been squeezing stuff
18 in there. I've got a trial term in August and one in
19 September. The last week of September?
20 MS. BECK: Yes, sir, or if they prefer a date
21 certain we can do the first week of October.
22 MS. ARIAIL: Your Honor, I have a
23 Court-ordered mediation the last week of September,
24 so if we could move it to the first week of October
25 that would be helpful.

1 THE COURT: Okay.
2 MS. BECK: The afternoon of the 5th, after
3 those allocation hearings that you set, we can do the
4 rest in the afternoon.
5 THE COURT: What's going on on the 4th?
6 MS. BECK: Nothing. That would be fine, too.
7 THE COURT: Why don't we set this for October
8 4th at 2:00 p.m. Let's just set it up. That's a
9 Tuesday afternoon the first week of October. Okay?
10 MS. ENDEMANN: Thank you, Judge.
11 MR. EPTING: Thank you, Judge.
12 THE COURT: Very good. I'm just going to do a
13 Form 4, and I'll put that in there. If you-all want
14 to follow up with an order you can. 2:00 p.m.
15 MS. ENDEMANN: Thank you.
16 (The proceedings were concluded at 11:11 a.m.)
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25

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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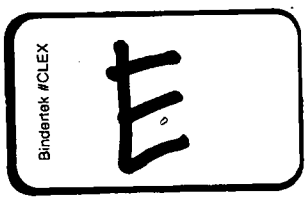
BEST REGARDS,

A. BRIGHT ARIAIL

The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have read this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you.



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October 6, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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A. Bright Ariail
Attorney for Appellants

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September 29, 2016

A. Bright Ariail
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

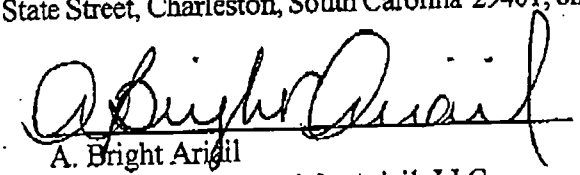
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



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10/06/2016 13:38 8432660538 ARIAIL LAW FIRM PAGE 05/12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON — COURT OF COMMON PLEAS

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on July 14, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
[illegible]

APPEARANCES OF COUNSEL:

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PROCEEDINGS

THE COURT: Palmetto Construction Group versus Restoration Specialists, LLC. For the Plaintiffs is Mr. Drew Epting and Ms. Michelle Endemann. For the Defendants is Ms. Bright Ariail. Good morning, Ms. Ariail. I believe we are here on your motion, are we? Is that what got us here?

MS. ENDEMANN: Judge, I think we are here on a couple of different things that were noticed. I think you set it for sort of a general status after we were here before you about a month ago. Also, there is a Motion to be Relieved from Default that Ms. Ariail has filed, as well as a Motion to Compel Arbitration.

I can give you a little bit of an overview of sort of where we are from last time. I think it would be helpful.

THE COURT: Sure.

MS. ENDEMANN: If you recall, Judge, this is a case where my client, Palmetto Construction has sued a business associate of theirs on a project for the V.A. The agreement between Restoration Specialist and the other Defendants which are the principals of that company and Palmetto was essentially that they

would work together on a job with the V.A. Restoration was to be the general contractor. Palmetto was to aid Restoration in this job, provide their expertise on a job of this size, provide the bonds that were required in order to complete the project. There would be a split of the profits, and Mr. Ward was the one who had the contracts with the V.A., and then all the subcontractors below.

Unfortunately what happened is Mr. Ward stopped paying his subcontractors. He stopped paying them it looks like all together. We started receiving bond claims coming in toward the end of the job. We didn't know what was going on because we weren't a party to those agreements. We weren't the ones that were paying them. We weren't the ones that were receiving money from the V.A.

So Mr. Ward is getting money from the V.A. He's diverting the funds. His subcontractors filed claims on the bond for which Palmetto was liable, and personally liable, all of its principals, their wives, and now Hanover, the bonding company with surety is looking to us to pay over a million dollars in bond claims.

We were here before you last time for a damages hearing because we had served discovery with

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5

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

6

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

7

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 compiled
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.

8

1 THE COURT: You want to get out of Default
2 first, don't you? I didn't rule on that last time I
3 don't think?
4 MS. ARIAIL: You did not.
5 THE COURT: You're right. Mr. Epting and
6 Ms. Endemann, it looks like there was a motion filed
7 back in March to Compel. Is it mediation or
8 arbitration? Is it contract specific?
9 MS. ENDEMANN: Your Honor, it's a standard
10 Form AIA contract, so there is a provision in there
11 having to do with mediation and arbitration. We did
12 file that motion assuming that we were going to get a
13 responsive pleading and that we would send it to
14 arbitration. That's not what happened in this case.
15 Instead we set aside that motion and asked for an
16 order referring this case to you for a damages
17 hearing which was granted by the Circuit Court.
18 THE COURT: I've got it. This was filed
19 March 7th. That motion was with those -- that was as
20 a result of the matter to referral. Mr. Ward was
21 served on the 14th of March. The Motion to Set Aside
22 the Entry was there. I recall we had a quick meeting
23 and then you-all did some discovery and I haven't
24 been able to resolve anything. Basically, it's a
25 Motion for a Continuance which we granted. And then

1 Mr. Ward's affidavit. All right. That rings a bell.
2 Well, Ms. Ariail, I think the first thing you
3 have to do is get out of default before you can bring
4 affirmative relief. It does appear that the matter
5 was referred over here. I think that took care of
6 the -- the clerk closed out the Motion to Compel the
7 Arbitration because of the fact that it was referred
8 over here. So that based some adjudication on that
9 motion is how the Court considers that.
10 I think what we were wrestling with last time
11 was whether or not you-all could resolve it. That
12 doesn't look like it's been done. I find that
13 because it was not shown by Mr. Ward in his
14 affidavits that that supported why he was in default
15 I find the Defendant in default and I so order.
16 So this will be a question of a damages
17 hearing to be set. How much time do you-all want?
18 MS. ENDEMANN: Your Honor, we probably need
19 about an hour to two hours for the hearing, and we
20 can hear it whenever the Court is available.
21 THE COURT: Okay.
22 MS. ARIAIL: Your Honor, I would ask since I
23 have in good faith participated in discovery that I
24 at least be allowed to serve some form of discovery
25 related to damages so that I can prepare properly for

1 the damages hearing.
2 THE COURT: Ms. Endemann?
3 MS. ENDEMANN: I don't think we're in a
4 position, Your Honor, to consent to that. Ms. Ariail
5 can certainly Cross the Plaintiff on any damages that
6 we present at the hearing as is allowed by the Rules,
7 but she isn't allowed to present her own evidence in
8 any event.
9 We're happy to try to -- most of the documents
10 that we would use in support of our case are her
11 clients and also Hanover's, which are the bond claims
12 spreadsheets and everything, which Hanover is sending
13 directly to her client and which we're happy to
14 provide if that's not happening. I think she has
15 everything that she would need. It would just be the
16 testimony, and of course, she's entitled to Cross
17 under the Rules.
18 THE COURT: All right. I think that's the
19 case. All right? I'm assuming you've got what
20 you've got. You're entitled to participate in a
21 damages hearing. There's no doubt about that by
22 Cross-Examination but not by putting forth in
23 evidence.
24 MS. ARIAIL: Right, Your Honor, but to
25 properly prepare to Cross-Examine their witnesses,

1 I've seen nothing they have. They have discussed an
2 indemnity agreement in the Complaint. I don't have
3 that. My client doesn't have that.
4 THE COURT: Well, it may expedite the matter
5 to move forward so everybody's talking with the same
6 thing. We don't have to read documents when we're
7 here. I would ask that you-all share what you can in
8 that regard. I'm not going to mandate it because I
9 don't think that's proper. If we don't get it worked
10 out we'll have a hearing in the next, what, 60 days
11 or so?
12 MS. BECK: I didn't know if this might be
13 something you might want to put on the trial term as
14 a possibility. If not, we've got some time the first
15 week in October.
16 THE COURT: I can bring you-all back -- I've
17 got some trials coming up. I've been squeezing stuff
18 in there. I've got a trial term in August and one in
19 September. The last week of September?
20 MS. BECK: Yes, sir, or if they prefer a date
21 certain we can do the first week of October.
22 MS. ARIAIL: Your Honor, I have a
23 Court-ordered mediation the last week of September,
24 so if we could move it to the first week of October
25 that would be helpful.

1 THE COURT: Okay.
2 MS. BECK: The afternoon of the 5th, after
3 those allocation hearings that you set, we can do the
4 rest in the afternoon.
5 THE COURT: What's going on on the 4th?
6 MS. BECK: Nothing. That would be fine, too.
7 THE COURT: Why don't we set this for October
8 4th at 2:00 p.m. Let's just set it up. That's a
9 Tuesday afternoon the first week of October. Okay?
10 MS. ENDEMANN: Thank you, Judge.
11 MR. EPTING: Thank you, Judge.
12 THE COURT: Very good. I'm just going to do a
13 Form 4, and I'll put that in there. If you-all want
14 to follow up with an order you can. 2:00 p.m.
15 MS. ENDEMANN: Thank you.
16 (The proceedings were concluded at 11:11 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.
8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.
11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
14
15
16
17 Christine A. Smith
18 Notary Public
19 My Commission Expires
May 12, 2021
20
21
22
23
24
25

SECTION 3
SUPPORTING DOCUMENT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;

2) A damages hearing is set for October 4, 2016 at 2:00pm; and

3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 13, 2016

RECEIVED
OCT 17 2016
By

Ms. A. Bright Ariail, Esquire
125E Wappoo Creek Drive
Suite 202
Charleston SC 29412

Re: Palmetto Construction Group, LLC v. Restoration Specialists, LLC
Appellate Case No. 2016-002096

Dear Counsel:

We are returning the second notice of appeal filed with this Court regarding circuit court case no. 2016CP1001143, that includes a cover letter dated October 6, 2016, as it appears to be a duplicate of the notice of appeal filed with this Court with a cover letter dated October 5, 2016. The second notice of appeal filing fee (paid by your check no. 1386) will also be returned to you.

We are also returning copies of the transcript filed with both notices of appeal as they are not a part of a notice of appeal. As the transcript has already been received, the appellants' initial brief and designation of matter are due October 31, 2016.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Bindertek #CLEX
F

cc: Andrew K. Epting, Jr., Esquire
Michelle Nicole Endemann, Esquire

81819

RECEIVED
DEC 06 2016
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143
Appellate Case No.: 2016-002308

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENT'S
MOTION TO DISMISS THE APPEAL

Respondent, Palmetto Construction Group, LLC ("Palmetto"), files its motion to dismiss the appeal on the following grounds:

A. <u>Background Facts</u>

This matter arises out of Palmetto's suit against Appellants alleging, inter alia, that the Defendants misappropriated funds from a government construction project, failed to pay the subcontractors and suppliers, and defaulted on its agreements with Palmetto and the indemnity agreement with the surety, leaving Palmetto responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants on March 14, 2016, but the Appellants failed to answer. An affidavit of default was filed on April 18, 2016, and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity. A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion for a continuance of the damages hearing and to lift the default. The motion for continuance was granted and a new hearing was scheduled for July 14, 2016. Four days prior to the hearing, Appellants filed a motion to compel arbitration. The motions to left the default was denied by Order dated July 14, 2016, and further held that the motion to compel arbitration was not properly made as the Appellants were in default. The Order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the lower court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Defendants wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. The Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11.

On September 30, 2016, Palmetto was served with a notice of appeal, and immediately filed a motion to dismiss. The parties appeared before this Court on October 4, and a record of the parties' positions was made as the procedural posture of the case was unusual considering there was no timely appeal of the interlocutory order denying the motion to lift the default and the Rule 59 motions remained pending.

On October 5, Palmetto's counsel received a letter from the Court of Appeals returning its motion to dismiss on the grounds that the Court had no record of such an appeal. Also on October

5, Palmetto was served by facsimile with a copy of another notice of appeal, different than the one previously served, which attached the July 14, 2016 Order and portions of the transcript of hearing. On October 6, 2016, Palmetto's counsel was served by facsimile with yet another version of the notice of appeal. On October 17, 2016, Palmetto's counsel received a letter from the Court of appeals stating that one of the notices of appeal was being returned to Ms. Arial together with the transcript as the transcript is not an order and is not properly included with a notice of appeal. Palmetto promptly refiled its motion to dismiss the appeal which was granted by this Court on November 10, 2016. While the motion was pending, the Master issued his order denying Appellants' motion to reconsider on the grounds that: (1) Appellants failed to show good cause to lift the default; and 2) the Appellants' Motion to Stay and Compel Arbitration was not properly made as a party in default cannot raise affirmative defenses. (Reconsideration Order dated October 28, 2016). This appeal followed.

B. <u>The Appeal Must Be Dismissed as the Orders at issue are Interlocutory</u>

Appellants appeal the Master's order dated July 14, 2016, which denies Appellants' motion to lift the entry of default against them as well as the Master's Order dated October 28, 2016, denying Appellants' motion to reconsider. "An order denying a motion to lift entry of default is interlocutory and not immediately appealable." *See Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment.").[1] Appellants contend that the orders are appealable because they also deny that the dispute is subject to arbitration. However, the orders make no substantive

[1] At the hearing on Appellants' motion to reconsider, Judge Scarborough reasoned: "The question as I see it is whether or not the question for the appeal is procedural, whether or not there's a final order from which you can appeal. I think that's number one. The second thing has to do with whether or not there's finality to that, and I don't think there's finality until a determination of damages has been held." (October 4, 2016 Hearing Transcript, p. 32 lines 15-21).

ruling on the arbitration issue and thus are not immediately appealable. Rather, Judge Scarborough held that the arbitration motion was not properly before him as the Appellants were in default. (See July 14, 2016 Order). Judge Scarborough succinctly stated his ruling at the July 14, 2016 hearing: "Well, Ms. Ariail, I think the first thing you have to do is get out of default before you can bring affirmative relief." (June 14, 2016 Hearing Transcript, p. 9 lines 2-4).

C. The Lower Court Correctly Held That the Motion to Compel Arbitration Was Not Properly Before Him as Parties in Default Cannot Seek Affirmative Relief

As an initial matter, there are multiple Appellants/Defendants named in this action and all are in default. Arbitration is not a defense available to Mark Ward or Lynette Ward as they are not parties to the construction contract that contains the arbitration provision. *Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co.*, 356 S.C. 202, 207, 588 S.E.2d 136, 138 (Ct. App. 2003) (Arbitration is a matter of contract, and only parties to the agreement can be compelled to arbitrate). The appeal, as to these parties, should be dismissed for this reason alone.

1. Arbitration is an Affirmative Defense that must be Plead

Arbitration is an affirmative defense as specifically defined by the South Carolina of Civil Procedure and by the Federal Rules of Civil Procedure. Rule 8(c) SCRCP states in relevant part:

> Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality...and any other matter constituting an avoidance or affirmative defense.

Further, South Carolina courts have consistently held that arbitration is an affirmative defense. See, e.g., *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 452, 730 S.E.2d 312, 314 (2012) (where plaintiff "opposed the motion to compel arbitration on the ground Brentwood Homes waived the right to assert the affirmative defense due to its delay in responding"; *Partain v. Upstate*

Auto. Grp., 386 S.C. 488, 490, 689 S.E.2d 602, 603 (2010) ("Upstate Auto asserted three affirmative defenses in its Answer, including an arbitration agreement with Partain.").

Where the contract documents "evidence transactions in commerce," the Federal Arbitration Act ("FAA"), enacted pursuant to the commerce clause, supersedes South Carolina law. Episcopal Hous. Corp. v. Fed. Ins. Co., 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977). Ms. Arial represented that Restoration Specialists is a Georgia corporation, and the project was in fact constructed in Augusta Georgia. Therefore, there is interstate commerce and the FAA applies.

The analysis under the FAA is the same as arbitration is an affirmative defense under Rule 8(c) of the Federal Rules of Civil Procedure. *See, e.g., McDonnell v. Dean Witter Reynolds, Inc.*, 620 F. Supp. 152, 155-56 (D. Conn. 1985) (Holding that under Fed. R. Civ. P. 8(c), the affirmative defense of arbitration must appear in the answer, and "a party's failure to plead an affirmative defense bars its invocation at later stages of the litigation." (internal citations omitted).

2. An Affirmative Defense is Waived if Not Plead

An affirmative defense is waived if not pled. *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 272, 750 S.E.2d 615, 623 (Ct. App. 2013) (internal citations omitted), *Howard v. S. C. Dep't of Highways*, 343 S.C. 149, 152, 538 S.E.2d 291, 294 (Ct. App. 2000); see also *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182-83, 597 S.E.2d 152, 159 (Ct. App. 2004)(claims or defenses not presented in the pleadings are waived).

In the context of a party in default seeking to compel arbitration, courts in the Fourth Circuit have held that unless the movant is able to show good cause for its default, the defaulting party has waived its right to assert arbitration as an affirmative defense against continued litigation in the circuit court. *See State ex rel. Barden & Robeson Corp. v. Hill*, 208 W. Va. 163, 168-69, 539 S.E.2d 106, 111-12 (2000) *citing American Recovery Corp. v. Computerized Thermal Imaging,*

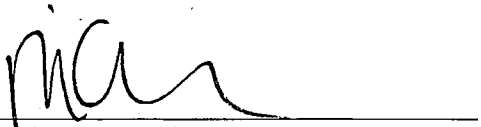
Inc., 96 F.3d 88, 96 (4th Cir. 1996) (affirmative defense of arbitration must be pled in answer). *In State ex rel. Barden,* the West Virginia Supreme Court held that "[u]nexcused conduct that results in the entry of a default judgment is no less of an implicit waiver of a right to arbitration than any other procedural forfeiture."

D. Conclusion

Appellants are in default, and this appeal was filed before the entry of default judgment. Appellants never answered the complaint and never plead the affirmative defense of arbitration. As the lower court held, the motion to compel arbitration was not properly made. This appeal must be dismissed and the case returned to the Master for disposition.

Respectfully Submitted by:

ANDREW K. EPTING, JR., LLC

BY: 

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ATTORNEYS FOR PLAINTIFF / RESPONDENT

On this 2nd day of December, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

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SC Court of Appeals

CASE NO. 2016-CP-10-1143

Appellate Case No.: 2016-002308

Palmetto Construction Group, (Respondent)

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

PROOF OF SERVICE

I certify that I have served the Respondent's Dismiss Appeal on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on December 2, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
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Attorneys For Respondent

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

RECEIVED
DEC 06 2016
SC Court of Appeals

December 2, 2016

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

RE: *Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward*
Case No.: 2016-CP-10-1143
Appellate Case No.: 2016-002308

Dear Ms. Kitchings:

Enclosed for filing the original and seven (7) copies of Respondent's Motion to Dismiss together with a Proof of Service and the $25.00 motion fee in the above-referenced matter. I would greatly appreciate your filing the originals and returning a file-stamped copy to me in the self-addressed, stamped envelope provided.

With kind regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
AKE/agg

Enclosures – as stated

cc: A.Bright Ariail, Esquire

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BILL SENDER

TO JENNY ABBOTT KITCHINGS
SC COURT OF APPEALS
1220 SENATE ST

COLUMBIA SC 29201
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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, Respondent,

RECEIVED
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SC Court of Appeals

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

APPELLANTS' MOTION TO EXCLUDE AND STRIKE

Pursuant to Rules 208, 209, 210 and 240, SCACR, the Appellants, Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, by and through their undersigned counsel, hereby file their Motion to Exclude and Strike on the following grounds:

FACTS/PROCEDURAL HISTORY

The Appellants commenced the instant appeal on November 14, 2016, appealing the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28, 2016. On December 2, 2016, the Respondent filed a Motion to Dismiss Appeal. On February 1,

2017, the Court of Appeals issued an order denying Respondent's Motion to Dismiss Appeal and directing Appellants to file their initial brief and designation of matter.

On March 3, 2017, the Appellants served and filed their Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal. On April 18, 2017 the Respondent served and filed its Initial Brief of Respondent and Respondent's Designation of Matter on Appeal.

LAW/ANALYSIS

A. The Respondent's Designation of Matter on Appeal Contains Documents Which Were Not Presented To The Lower Court And, Therefore Violates Rules 209 And 210, SCACR Requiring Exclusion And Striking Of These Documents

SCACR 209(b) requires that the Designation of Matter to be Included in the Record on Appeal ***may only propose*** to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be ***properly*** included in the Record on Appeal. (Emphasis added).

SCACR 210(c) mandates that the Record on Appeal **shall not include matter which was not presented to the lower court or tribunal**. (Emphasis added)

The Respondent's Designation of Matter on Appeal violates both of these South Carolina Appellate Court Rules inasmuch as it contains documents that were not presented to the lower court and cannot be properly included in the Record on Appeal. Specifically, the documents listed as items 2., 3. and 4. in Respondent's Designation of Matter on Appeal were never presented to the lower court in the proceeding below. *Affidavit of A. Bright Ariail, Esq.*. The referenced documents are not a part of any pleading, motion, legal memoranda, order, exhibit or other filings with the lower court. (Id.). Likewise, these documents were not made a part of the record at any of the hearings before the lower court in this matter. (Id.). In short, none of these documents are a part of the record in the lower court. (Id.).

Since these documents were never presented to the lower court, they cannot be

properly included in the Record on Appeal. *See* SCACR 210(c). Thus, the inclusion of these documents in the Respondent's Designation of Matter on Appeal violates SCACR 209(c). As such, these documents should all be excluded and stricken from the Respondent's Designation of Matter on Appeal.

B. The Initial Brief of Respondent Is Replete With References to Documents Which Were Not Presented To The Lower Court And, Therefore Violates Rules 208, 209 And 210, SCACR Requiring Exclusion And Striking Of These References

The Initial Brief of Respondent contains numerous citations to the documents contained in Items 2., 3. and 4. of Respondent's Designation of Matter on Appeal. These documents were never presented to the lower court and cannot be properly included in the Designation of Matter on Appeal or Record on Appeal. *See* Appellants Motion to Strike and Exclude, Section A.

The specific documents in question include the following:

(1): VA Contract;

(2): Subcontract, Attachment 1;

(3): Indemnity Agreement;

(4): PCG letter;

(5): Hanover demand;

(6): final pay application;

(7): Appellants' answers to discovery;

(8): job cost billing detail;

(9): AR history report;

(10): Subcontract, Attachment;

(11): Subcontract Breakdown;

(12): PCG Subcontract Breakdown;

(13): Ward email dated January 11, 2016;

(14): Appellants Answers to Interrogatories;

(15): Restoration Specialists' contract log;

(16): Restoration Specialists' monthly expenses spreadsheet;

(17): Restoration Specialists' subcontract log;

(18): Proof of Profitability Breakdown.

The Respondent references the above-enumerated documents as proof of factual allegations asserted throughout its Initial Brief. Furthermore, the Respondent references these documents as authority for certain legal conclusions argued in its Initial Brief. Respondent's multiple references to these documents in its' Initial Brief are set forth below:

LIST OF REFERENCES TO DOCUMENTS NOT PRESENTED TO LOWER COURT CONTAINED IN INITIAL BRIEF OF RESPONDENT:

(1): "Appellant Restoration Specialists, LLC ("Restoration Specialists") was awarded a contract with the VA for completion of a parking garage for the VA facility in Augusta, Georgia (the "VA Project"). The contract between Restoration Specialists and the VA is dated March 29, 2012, though the project was delayed for several years before commencement. The total contract price was in excess of $8.1 Million. (VA Contract). Restoration Specialists was the general contractor on the VA Project, responsible for hiring subcontractors and obtaining a payment and performance bond. (VA Contract)." *(Initial Brief of Respondent, Page 3, Lines 1-7).*

(2): "Pursuant to the subcontract, PCG was to be paid as a concrete subcontractor for its work and was also to share the profits equally with Restoration Specialists. (Subcontract, Attachment 1)." *(Initial Brief of Respondent, Page 4, Lines 2-4).*

(3): "However, Hanover required that both PCG and Restoration Specialists, as well as their respective principals and their spouses sign an indemnity agreement, requiring them to indemnify Hanover for any sums it expends in paying claims made on the bond. (Indemnity Agreement)." *(Initial Brief of Respondent, Page 4, Lines 6-9).*

(4): "The concrete work was performed by PCG, and as the Project neared completion, PCG asked that the parties meet to discuss the profit split provided for in the subcontract. (See PCG letter)." *(Initial Brief of Respondent, Page 4, Lines 10-12)*.

(5): "PCG too, was owed over $180,000.00 pursuant to its own subcontract with Restoration Specialists. (Id.)." (*Initial Brief of Respondent, Page 4, Lines 13-14*).

(6): "It soon became apparent that multiple subcontractors were owed money, which Hanover was required to pay, in the amount of $1,425,144.00. (Hanover demand)." (*Initial Brief of Respondent, Page 4, Lines 15-17*).

(7): "Hanover in turn made a demand under its indemnity agreement and upon the VA for the contract balance but by this time Mr. Ward had collected all bu $90,000 of the $8.1 Million contract. (See final pay application)." (*Initial Brief of Respondent, Page 4, Lines 17-20*).

(8): "Appellants provided answers to PCG's interrogatories and requests for production on July 7, 2016. (Appellants' answers to discovery)." (*Initial Brief of Respondent, Page 6, Lines 6-7*).

(9): ",despite being paid over $8 Million dollars by the Department of Veterans Affairs. (See final pay application signed by Ward...)." (*Initial Brief of Respondent, Page 14, Lines 1-3*).

(10): "There is no basis to support this allegation, and in fact, the records, including those provided by Restoration Specialists in discovery, show that PCG is owed $184,858.69. (See checks to PCG written by Restoration Specialists, subcontract pay

application breakdown, job cost billing detail, ..., AR history report)." (*Initial Brief of Respondent, Page 14, Lines 16-19*).

(11): "The profit-sharing provision is found in the parties' agreement, which delineates all sums that Restoration Specialists is to pay PCG, including the "RS/PCG Projected 50% Profit Share." (Subcontract, Attachment and Subcontract Breakdown made part of the Subcontract by way of Subcontract Provision 16.1.4.2 titled "Other documents." Provision 16.1.4.2 states "[l]ist here any additional documents that are intended to form part of the Subcontract Documents...#1. PCG Subcontract Breakdown")" (*Initial Brief of Respondent, Page 15, Lines 10-16).*

(12): "However, in its most recent demand letter to all indemnitors, Hanover states:

> Hanover conducted its own investigation of the claims pursuant to the Miller Act, 40 U.S.C.S. § 270a et seq., <u>and has sought your input in the payment of these claims including whether any viable defenses to the claims exist</u>, and has made payment to the bond claimants and secured releases of the claims.

Hanover demand dated September 30, 2016, emphasis added)." (*Initial Brief of Respondent, Page 16, Lines 2-8*).

(13): "As of the date of Hanover's demand, Appellants had no defenses to the subcontractors' claims, which is why they were paid by Hanover. For example, Mr. Ward's email exchanges with Hanover show that after several attempts by Hanover to obtain information from Mr. Ward regarding the bond claim made by a subcontractor of Restoration Specialists' called Tupperway, Hanover finally asks Mr. Ward, "So I should just pay them?" and Mr. Ward responds, "Certainly not what I want but I don't think we can win this argument." (Ward email dated January 11, 2016)." (*Initial Brief of Respondent, Page 16, Lines 8-15*).

(14): "Appellants' records and answers to interrogatories establish that the VA is holding approximately $90,887.08 in retainage, and this because the VA received

notice of subcontractor claims. (Appellants Answers to Interrogatories). (*Initial Brief of Respondent, Page 16, Lines 21-23*).

(15): "However, Appellants can hardly claim that the lack of a $90,887.08 payment has resulted in sixteen of Restoration Specialists' subcontractors making $1,425,144.00 in claims on the payment bond. (Hanover Demand)." (*Initial Brief of Respondent, Page 16, Line 24 & Page 17, Lines 1-2*).

(16): "Further, the documents provided by Appellants in discovery also show that Restoration Specialists received over $8.1 Million from the VA. This sum, based solely on the contract with the VA and the subcontracted cost ($6,929,212.00 per Appellants) and in house cost ($1,038,724.04 per Appellants) provided by Appellants in discovery, should have been more than enough to pay all the subcontractors in full and produce a profit of $226,092.67." (See VA Contract, Restoration Specialists' contract log, Restoration Specialists' monthly expenses spreadsheet)." (*Initial Brief of Respondent, Page 17, Lines 2-8*).

(17): "Footnote 4 – The profit of $226,092.67 is based on the figures provided by Appellants. When the inflated in house costs is adjusted per industry standards to $642,385.80, and the subcontract cost is adjusted up in favor of Appellants to $7,108,182.00 (based on an error in Restoration Specialists' subcontract log), the VA Project produced a profit of $443,460.91. (See Proof of Profitability Breakdown)." (*Initial Brief of Respondent, Page 17, Lines 19-23*).

SCACR 208(b)(4) requires that the parties' briefs shall contain only references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal to support the salient facts alleged. The above-enumerated references violate SCACR 208(b)(4) inasmuch as they reference documents that were never presented to the lower court and cannot be properly included in the Record on Appeal. *See* Appellants'

Motion to Strike and Exclude, Section A. As such, these references should all be excluded and stricken from the Initial Brief of Respondent.

CONCLUSION

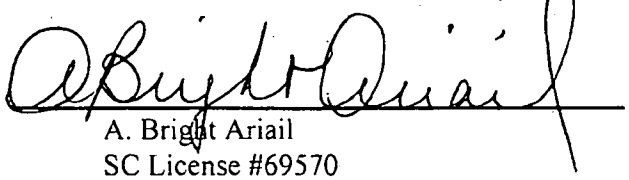
Based on the foregoing, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order:

(1): Excluding and striking the documents listed as items 2., 3. and 4. in the Respondent's Designation of Matter on Appeal; and

(2): Excluding and striking all references to these documents contained in the Initial Brief of Respondent.

For these reasons, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Exclude and Strike be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
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125 Wappoo Creek Drive
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Charleston, S.C. 29412
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ATTORNEY FOR APPELLANTS

April 28, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	Appellants

---

AFFIDAVIT OF A. BRIGHT ARIAIL, ESQ.

PERSONALLY APPEARED BEFORE ME, A. Bright Ariail, Esq., who having been first duly sworn deposed, states as follows:

1. I am a licensed attorney in South Carolina, SC Bar No. 69570.
2. I represent the Appellants, Restoration Specialists, Reuben Mark Ward, and Lynnette Pennington Ward in the above-referenced matter.

3. Respondent filed and served its Initial Brief and Designation of Matter on April 18, 2017.
4. There are documents included in Respondent's Designation of Matter that were not presented to the lower court including:
    1) Item 2 – Appellants' Answers to interrogatories and requests for production
    2) Item 3 – Appellants' document productions dated July 6, 11 and 13, 2106
    3) Item 4 – Respondent's exhibit notebook in support of its proffer of damages.
5. I have performed a complete review of all documents filed with the Charleston County Clerk of Court that appear on the Clerk's Public Index and none of the documents listed in 4. a., b. or c. were part of any pleading, motion, legal memoranda, order, exhibit or other filings with the lower court.
6. I have performed a complete review of the transcripts for the three hearings held in front of the Master in Equity, and none of the documents listed in 4. a., b. or c. were a part of the record at any of the hearings before the lower court in this matter.
7. Accordingly, the following documents cited in Respondent's Initial Brief are not in the record:
    (1): VA Contract;
    (2): Subcontract, Attachment 1;
    (3): Indemnity Agreement;
    (4): PCG letter;

(5): Hanover demand;

(6): Final pay application;

(7): Appellants' answers to discovery;

(8): job cost billing detail;

(9): AR history report;

(10): Subcontract, Attachment;

(11): Subcontract Breakdown;

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(13): Ward email dated January 11, 2016;

(14): Appellants Answers to Interrogatories;

(15): Restoration Specialists' contract log;

(16): Restoration Specialists' monthly expenses spreadsheet;

(17): Restoration Specialists' subcontract log;

(18): Proof of Profitability Breakdown.

8. There are numerous references made to those documents and allegations of facts that those documents purportedly contain within Respondent's Initial Brief.

9. Furthermore, the Respondent references these documents as authority for certain legal conclusions argued in its Initial Brief.

FURTHER DEPONENT SAYETH NAUGHT.

- SIGNATURE PAGE FOLLOWS -

A. Bright Arjail, Esq.

Sworn to before me
This 28th day of April, 2017.

Notary Public for the State of South Carolina

My Commission Expires: 11-30-2026

ELIZABETH A HATFIELD
NOTARY
MY COMMISSION EXPIRES 11-30-2026
PUBLIC
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

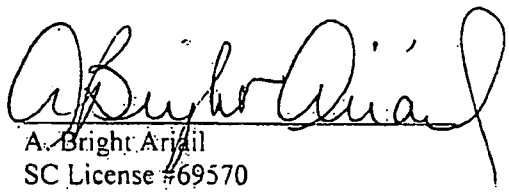
Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	Appellants

---

PROOF OF SERVICE

I certify that I have served the Affidavit of A. Bright Ariail, Esq. on Palmetto Construction Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on April 28, 2017, addressed to Palmetto Construction Group, LLC's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, LLC, 46A State Street, Charleston, South Carolina, 29401.

April 28, 2017



A. Bright Ariail
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Law Office of A. Bright Ariail, LLC
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843/814-8805
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 01 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, LLC — Respondent

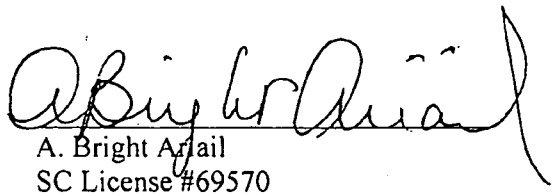
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward — Appellants

PROOF OF SERVICE

I certify that I have served Appellants' Motion to Exclude and Strike on Palmetto Construction Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on April 28, 2017, addressed to Palmetto Construction Group, LLC's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, LLC, 46A State Street, Charleston, South Carolina, 29401.

April 28, 2017



A. Bright Ariail
SC License #69570
Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412
843/814-8805
Attorney for Appellants

Law Office of A. Bright Ariail, LLC

April 28, 2017

VIA PRIORITY MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
Appellate Case No. 2016-002308

Dear Ms. Kitchings;

Enclosed, please find for filing the original and seven copies of Appellants' Motion to Exclude and Strike and Proof of Service with a firm check for the $25 filing fee. By copy of this letter, I am serving opposing counsel with a copy of same.

Please return a file stamped copy to me via the enclosed SASE.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures as stated

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

RECEIVED
MAY 01 2017
SC Court of Appeals

bright@brightariaillaw.com
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Suite 202
Charleston, SC 29412
843/814-8805

Law Office of A. Bright Ariail, LLC

April 28, 2017

VIA PRIORITY MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
MAY 01 2017
SC Court of Appeals

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
Appellate Case No. 2016-002308

Dear Ms. Kitchings;

Enclosed, please find for filing the original and two copies of the Affidavit of A. Bright Ariail, Esquire with Proof of Service which is being filed in support of Appellants' Motion to Exclude and Strike. By copy of this letter, I am serving opposing counsel with a copy of same. A copy of the Affidavit is being attached to Appellant's Motion to Exclude and Strike as a document in support of that motion.

Please return a file stamped copy to me via the enclosed SASE.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures as stated

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

RECEIVED
JUN 12 2017
SC Court of Appeals

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

APPELLANTS' REPLY TO RESPONDENT'S OPPOSITION TO APPELLANTS' MOTION TO EXCLUDE AND STRIKE

Pursuant to Rules 208, 209, 210 and 240, SCACR, the Appellants, Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward, by and through their undersigned counsel, hereby file their Reply to Respondent's Opposition to Appellants' Motion to Exclude and Strike.

FACTS/PROCEDURAL HISTORY

The Appellants commenced the instant appeal on November 14, 2016, appealing the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28,

2016. On December 2, 2016, the Respondent filed a Motion to Dismiss Appeal. On February 1, 2017, the Court of Appeals issued an order denying Respondent's Motion to Dismiss Appeal and directing Appellants to file their initial brief and designation of matter.

On March 3, 2017, the Appellants served and filed their Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal. On April 18, 2017, the Respondent served and filed its Initial Brief of Respondent and Respondent's Designation of Matter on Appeal. After receipt of Respondent's Initial Brief and Designation of Matter, Appellants filed a Motion to Strike and Exclude pursuant to SCACR 208(b)(4), SCACR 209(b), SCACR 210(c) and SCACR 240. ("Appellants' Motion"). Appellants' Motion requests that all documents listed in the Designation of Matter that were not presented to the lower court be stricken, and all references to these documents in Respondent's Initial Brief be excluded. Most of the documents in question are contained in an exhibit notebook which was not presented to the lower court in the proceedings below.[1] Two of the documents in question, specifically, the VA Contract and the Final pay application, do not appear in the exhibit notebook or anywhere in the record of the lower court. *Affidavit of A. Bright Ariail, Esq. dated June 9, 2017.*

Rather than allow the Court of Appeals to decide Appellants' Motion after receipt of Respondent's Return and Appellants' Reply, the Respondent, through its counsel, contacted the Master in Equity requesting permission to file the disputed exhibit notebook and documents contained therein with the lower court. *Letters of Andrew K. Epting, Jr., Esq., dated May 16 and May 17, 2017.* Respondent's request to the lower court was made prior to the filing of its Opposition to Appellants' Motion and despite the fact that this case is on appeal with jurisdiction vested in the Court of Appeals. Appellants objected to Respondent's request to the lower court. *Letter of A. Bright Ariail, Esq., dated May 16,*

[1] The Respondent asserts that "[T]he records [Appellants] seek to exclude are in large part their own documents." *Respondent's Opposition to Appellants' Motion to Strike, p. 8, Line 7.* Respondent's assertion is both irrelevant and incorrect. First, the sole issue before this Court is not whose documents these are, but rather whether the documents were presented to the lower court prior to the appeal. Second, of the documents in question (see, *Appellants' Motion to Strike and Exclude, pgs. 3-4*), only 5 of these documents are Appellants' documents. *Affidavit of A. Bright Ariail, Esq. dated June9, 2017.*

2017.

The Master entertained Respondent's request, over Appellants' objection, and issued the opinion that the documents in the disputed notebook were a part of the Respondent's proffer of damages made at the hearing before the court on October 4, 2016. *Email of The Honorable Mikell R. Scarborough, dated May 18, 2017.*

LAW/ANALYSIS

A. The Respondent's Designation Of Matter On Appeal Contains Documents Which Were Not Presented To The Lower Court And The Initial Brief of Respondent Contains Numerous References To These Documents. The Inclusion Of These Documents and References Thereto Violates Rules 208, 209 And 210, SCACR Requiring Exclusion And Striking Of The Documents And References.

SCACR 209(b) requires that the Designation of Matter to be Included in the Record on Appeal ***may only propose*** to include portions of the transcript, pleadings, orders, exhibits, or other materials ***which may be properly*** included in the Record on Appeal. (Emphasis added).

SCACR 210(c) mandates that the Record on Appeal **shall not include matter which was not presented to the lower court or tribunal**. (Emphasis added).

As a corollary to these Rules, SCACR 208(b)(4) requires that the parties' briefs shall contain only references to the transcript, pleadings, orders, exhibits, or other materials ***which may be properly*** included in the Record on Appeal to support the salient facts alleged. (Emphasis added).

The Respondent contends that the official transcript of the October 4, 2016 hearing demonstrates that the notebook was presented to the lower court as part of the proffer of its damages requested by the Master. In support of this argument, the Respondent references a portion of an excerpt from the October 4, 2016 transcript. Specifically, Respondent cites a portion of the discussion between the Master and Appellants' counsel, Ms. Ariail, wherein Ms. Ariail disagrees with Respondent's counsel's oral summary of Respondent's alleged damages.[2] However, Respondent does not consider the entire

[2] *Respondent's Opposition to Appellants' Motion to Strike, p. 4 Lines 15-21 and p. 5 Lines 1-4.*

transcript, which provides, *inter alia*, the Master's statement below concerning the purpose of the hearing:

> 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?

(October 4, 2016 Transcript, p. 10 Lines 10-19).

Nor does Respondent include the full body of Appellants' counsel's statements within the excerpt selected from the October 4, 2016 transcript. Appellants' counsel's statements dispute certain substantive elements of Respondent's counsel's oral summary of Respondent's alleged damages. Appellants' statements were made in light of the Master's cancellation of the damages hearing and in the absence of the entry of duly proffered exhibits into the record. Appellants' counsel's remaining statements on this issue at the October 4 hearing are as follows:

> 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 they 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.

(October 4, 2016 Transcript, p. 29 Lines 14-19).

In its Opposition, Respondent has not addressed two specific disputed documents cited in its Initial Brief, nor has it addressed Item 3 of its Designation of Matter which consists of Appellants' document productions dated July 6, 11 and 13, 2106. While these two specific disputed documents, the VA contract and the Final pay application, are comprised of the combination of several documents provided in Appellants' document production, they do not appear in the exhibit notebook nor are they contained in the record of the lower court. *Affidavit of A. Bright Ariail, Esq. of June 9, 2017.*

Aside from the documents contained in the exhibit notebook, Item 4 of its Designation of Matter, Respondent has assert no arguments in its Opposition that any of the other documents produced in Appellants' production are contained in the record of the lower court. In short, none of those documents are contained in the record of the lower court. *Affidavit of A. Bright Ariail, Esq. of April 28, 2017.* Accordingly, Item 3 of Respondent's Designation of Matter, including those two specific documents, should be excluded from the Initial Brief of Respondent and all references thereto should be stricken.

Item 2 of Respondent's Designation of Matter consists solely of Appellant's Discovery Responses – Appellants' answers to interrogatories and responses to requests for production. Insomuch as these two items are also contained within the exhibit notebook, Item 4 of Respondent's Designation of Matter, listing Appellants' Discovery Responses as a separate item in the Designation of Matter is redundant and should be stricken.

After addressing Items 2 and 3 of Respondent's Designation of Matter and those two specific documents contained within Item 3, the sole question remaining before this Court on Appellants' Motion is whether or not Item 4 of Respondent's Designation of

Matter, consisting of the exhibit notebook[3], and documents contained therein[4], were presented to the lower court prior to the appeal. See, SCACR 208(b)(4), 209(b) and 210(c). The following facts established by the record in this case are dispositive of this question:

(1): The exhibit notebook and referenced documents are not a part of any pleading, motion, legal memoranda, order, exhibit or other filings with the lower court.[5] *Affidavit of A. Bright Ariail, Esq., dated April 28, 2017.*

(2): The exhibit notebook and referenced documents were never marked or entered into evidence nor were they ever entered into or made a part of the record at the June 6, 2016 or July 14, 2016 hearings before the lower court. *Affidavit of A. Bright Ariail, Esq., dated April 28, 2017; June 6, 2016 Transcript; July 14, 2016 Transcript.*

(3): The exhibit notebook and referenced documents were never marked or entered into evidence nor were they ever entered into or made a part of the record at the October 4, 2016 hearing. *Affidavit of A. Bright Ariail, Esq., dated April 28, 2017; October 4, 2016 Transcript.*

(4): The exhibit notebook and referenced documents were never distributed to or handed up to the Master at the October 4, 2016 hearing. Also, the Master did not accept, review nor ever take possession of the exhibit notebook and referenced documents at any time during the October 4, 2016 hearing. Finally, the Master did not take, keep or retain possession of the exhibit notebook and referenced documents upon conclusion of the October 4, 2016 hearing.[6] *October 4, 2016 Transcript.*

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[3] By Appellants' Motion to Strike and to Exclude, it has requested that Item 2, 3 and 4 of Respondent's Designation of Matter be excluded and all references to those documents stricken. Items 2 and 3 are addressed immediately above. Item 4 is Respondent's exhibit notebook in support of its proffer of damages, which is the subject of Respondent's Opposition to the Motion to Exclude and Strike.

[4] Which includes Item 2 of Respondent's Designation of Matter.

[5] The Respondent asserts that "many of these documents are attached to Appellants' various memoranda filed before the lower court and appearing on Appellants' own Designation of Matter..." *Respondent's Opposition to Appellants' Motion to Strike, p. 3, lines 8-10.* Respondent's assertion is incorrect as none of these documents were attached to the Appellants' memoranda filed in the lower court or Appellants' Designation of Matter filed with the Initial Brief of Appellants. A review of Appellants' memoranda and Designation of Matter establishes this fact.

[6] Respondent asserts that the documents Appellants seek to exclude and strike from the

(5): Respondent states that the exhibit notebook was prepared for use at a damages hearing and was to be entered into the record at that hearing by way of testimony of Mr. John Kendle. However, Respondent acknowledges that the damages hearing did not occur and the exhibit notebook was not entered in the record as Mr. Kendle did not testify. *Respondent's Opposition to Appellants' Motion to Strike, p. 4. Lines 3-9.*

(6): While Respondent's counsel proffered oral statements summarizing Respondent's alleged damages, said counsel did not proffer the exhibit notebook itself, nor the documents contained therein. *October 4, 2016 Transcript.*

(7): The exhibit notebook and referenced documents were never marked or entered into evidence nor were they ever entered into or made a part of the record of the lower court prior to the appeal. As part and parcel thereof, the exhibit notebook and documents contained therein were never filed with the lower court prior to the appeal. *Affidavit of A. Bright Ariail, Esq., dated April 28, 2017.*

(8): The orders of the Master which are on appeal do not cite or reference in any way the exhibit notebook and documents contained therein. Likewise, these orders do not cite or reference any of these materials as a basis for the lower court's decision. In fact, the exhibit notebook and documents contained therein were not even a part of the Master's file at the time these orders were issued. *Appellants' Notice of Appeal, dated November 14, 2016 (with the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28, 2016 attached).*

(9): Respondent felt compelled and sought leave to file the exhibit notebook and referenced documents with the lower court **only after** Appellants filed their Motion to Strike and Exclude in this appeal. If the Respondent was convinced that the exhibit notebook and referenced documents had been presented to the lower court before appeal, why did Respondent feel it necessary to file these materials with the lower court **after** Appellants' Motion?

(10): At the end of the hearing on October 4, 2016, the Master clearly stated that

---

record were "before the Master...". Respondent's assertion is incorrect as established by Sub-paragraphs 1-10 above.

the proffer consisted of Respondent's counsel's oral summary of the amount of Respondent's alleged damages. The Master made no reference to the exhibit notebook or the documents as being part of the proffer. The colloquy between the Master and Respondent's counsel in regard to this proffer is as follows:

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: $1,681,100, 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 proffer,
24 but again, just so you-all have it in the
25 record and the Court understands what this case is
1 about.

(October 4, 2016 Transcript, p. 31, Lines 10-25 and p. 32, Line 1).

Accordingly, the paramount question here is how can anything that has not been filed with the lower court, or in the possession of the lower court, be part of the court record?

Based on the above facts, the Appellants respectfully submit that the exhibit notebook and documents contained therein were not presented to the lower court.

Therefore, Appellants respectfully request that Items 2, 3 and 4 of Respondent's

Designation of Matter, including Appellants' Answers to interrogatories and requests for production (Item 2), Appellants' document productions dated July 6, 11, and 13, 2016 (Item 3), and Respondent's exhibit notebook in support of its proffer of damages (Item 4) and the documents included therein be excluded from Respondent's Designation of Matter and all references to them in the Initial Brief of Respondent be stricken.[7]

CONCLUSION

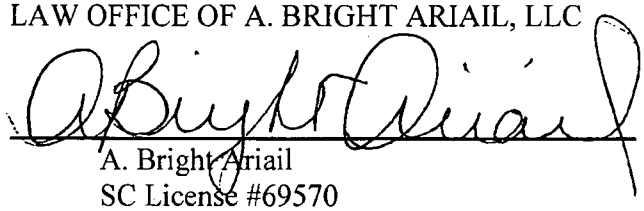
Based on the foregoing, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward are entitled to an Order:

(1): Excluding and striking the documents listed as Items 2., 3. and 4. in the Respondent's Designation of Matter on Appeal; and

(2): Excluding and striking all references to these documents contained in the Initial Brief of Respondent.

For these reasons, the Appellants Restoration Specialists, LLC, Reuben Mark Ward and Lynnette Pennington Ward hereby respectfully request that their Motion to Exclude and Strike be granted.

LAW OFFICE OF A. BRIGHT ARIAIL, LLC



A. Bright Ariail
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Charleston, S.C. 29412
P: (843) 814-8805
F: (843) 266-0538
ATTORNEY FOR APPELLANTS

June 9, 2017
Charleston, South Carolina

[7] The references to the exhibit notebook and documents contained in Respondent's Initial Brief are identified in *Appellants' Motion to Exclude and Strike, p. 4-7.*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	Appellants

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AFFIDAVIT OF A. BRIGHT ARIAIL, ESQ.

PERSONALLY APPEARED BEFORE ME, A. Bright Ariail, Esq., who having been first duly sworn deposed, states as follows:

1. I am a licensed attorney in South Carolina, SC Bar No. 69570.
2. I represent the Appellants, Restoration Specialists, Reuben Mark Ward, and Lynnette Pennington Ward in the above-referenced matter.

3. I have performed a complete review of the documents contained within Respondent's exhibit notebook which it prepared for a damages hearing (which has not been held to date) in this case in the lower court.
4. I have also performed a complete review of documents produced to Respondent by Appellant to date. Those documents include two documents (consisting of five pages) that were not bates numbered by Appellants, and documents bates numbered RS00001 through RS01141.
5. Respondent's exhibit notebook consists of eighteen documents totaling eighty-eight (88) pages. *See Exhibit A.*
6. A total of five of the documents cited in Respondent's Initial Brief were produced to Respondent by Appellants.
7. Two of those five documents, specifically, the VA Contract and the Final pay application, do not appear in Respondent's exhibit notebook and are not found anywhere in the record of the lower court. Further, neither document, as described by Respondent, is contained as a stand-alone document within Appellant's document production. Rather, each requires a combination of several documents, as well as the exclusion of some pages of those several documents. Those two documents (made by combining four documents without excluding certain irrelevant pages) consist of 69 pages.

8. Only three of the eighteen documents contained within Respondent's exhibit notebook were produced to Respondent by Appellants and include:

   a) Appellants' Discovery Responses[1] (15 pages)

   b) Subcontract Log dated 6/10/16 (3 pages)

   c) Estimate of VA Monthly Expenses dated 6/10/16 (2 pages)

9. Accordingly, the following documents cited in Respondent's Initial Brief were not produced to Respondent by Appellants:

   (1): Subcontract, Attachment 1;

   (2): Indemnity Agreement;

   (3): PCG letter;

   (4): Hanover demand;

   (5): job cost billing detail;

   (6): AR history report;

   (7): Subcontract, Attachment;

   (8): Subcontract Breakdown;

   (9): PCG Subcontract Breakdown;

   (10): Ward email dated January 11, 2016;

   (11): Proof of Profitability Breakdown.

FURTHER DEPONENT SAYETH NAUGHT.

[1] Appellant's Discovery Responses consist of Defendants' Answers to Plaintiff Palmetto Construction Group's First Set of Interrogatories to Defendants and Defendants' Responses to Plaintiff Palmetto Construction Group's First Set of Requests for Production to Defendants. No documents are attached thereto.

A. Bright Arrail, Esq.

Sworn to before me
This 9 th day of June, 2017.

Notary Public for the State of South Carolina

My Commission Expires: 11·30·2026

ELIZABETH A HATFIELD
NOTARY
MY COMMISSION
EXPIRES 11-30-2026
PUBLIC
SOUTH CAROLINA

Index of Documents in PCG Notebook

TAB	Description of Document(s)	# of Pages
1	Teaming Agreement w/Ex A & B	6
	Subcontract w/Attachment 1	16
2	Indemnity Agreement	10
	Performance Bond	4
	Payment Bond	2
3	Ltr Handegan to Ward	1
4	Email string 1/11/16	3
5	Defendants' Discovery responses	15
6	PCG Damages Summary	1
7	PCG Proof of Profitability	1
	Contract Log dated 6/10/16	3
	Estimate of VA Monthly Expenses dated 6/10/16	2
8	Untitled	1
	PCG A/R History Report of 9/28/16	2
	PCG Job Cost & Billing Detail of 9/28/16	13
	PCG Pay Application Summary	2
9	Hanover claims/payment summary	1
	Hanover letter of 9/30/16 with claims catalog	5
		88

EXHIBIT A

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

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann *(Special Counsel)* · mne@epting-law.com
Jaan G. Rannik* · jgr@epting-law.com
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

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

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

May 17, 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,

We are not asking to reopen the record or to include something that was not previously before you. We came to Court in October hoping to go forward with the damages hearing. We prepared notebooks for the Court, our witness and for Ms. Ariail. She clearly has her copy as she objected to the documents. In hindsight, we should have marked the notebook for identification at the hearing, but did not know what to expect given the odd procedural posture, nor did we expect that Ms. Ariail would try to exclude the documents that were provided and discussed in offering the proffer. We do not claim the documents were admitted as evidence or that they are admissible; just that the documents and more importantly the facts contained in them were before you. We simply ask that we be allowed to file them as this seems to be Ms. Ariail's chief compliant

ANDREW K. EPTING, JR., LLC

s/Drew

Andrew K. Epting, Jr.

AKE,Jr./agg

cc: Bright Ariail, Esquire

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann *(Special Counsel)* · mne@epting-law.com
Jaan G. Rannik* · jgr@epting-law.com
46A State Street · Charleston · South Carolina · 29401
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*Currently Admitted Only in Maryland

Law Office of A. Bright Ariail, LLC

May 16, 2017

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143
Appellate Case 2016-002308

Dear Judge Scarborough:

I am in receipt of Mr. Epting's letter of this date requesting that Palmetto Construction Group, LLC ("PCG" or "Respondent") now be allowed to file documents in the above referenced case, which is currently under appeal. I vehemently object to Mr. Epting's request.

This appeal is currently in the initial briefing status, as noted by the Court of Appeals. After receipt of Respondent's Initial Brief and Designation of Matter, Appellants filed a Motion to Strike Exclude and Strike pursuant to SCACR 209(b) and SCACR 210(c) requesting that all documents listed in the Designation of Matter that were not contained in the record in the lower court be stricken, and all references to them in Respondent's Initial Brief be excluded. These documents are all contained in an exhibit notebook that was prepared by Respondent's counsel for use at a damage's hearing and was not entered into the record at the October 4, 2016 hearing before this court.

In response to Appellant's Motion, Mr. Epting initially requested a ten day extension to submit Respondent's Return to this Motion, which was granted by the Court of Appeals; the Return is currently due on May 18, 2017. Now, however, rather than allow the Court of Appeals to decide this motion after receipt of Respondent's Return and Appellants' Reply, he has requested that you reopen the record and allow Respondent to file documents that are clearly not in the record with the lower court, all despite the fact that the case is on appeal and jurisdiction is with the Court of Appeals.

While SCACR 212(b) allows a party to supplement the record on appeal under certain circumstances through a motion to the Court of Appeals, it still "must, of course, be read in conjunction with Rules 209(c) and 210 (c), SCACR, which states that the record cannot include matter that was not presented to the lower court . . . "[1]

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Mr. Epting has included an excerpt of the transcript from the October 4, 2016 hearing to support his request. However, he has not considered the entire transcript, which provides, *inter alia,* your statement concerning the purpose of the hearing:

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?

(October 4, 2016 Transcript, p. 10 line 10-19).

Nor did Mr. Epting include the remainder of my statements related to my objections as follows:

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.

(October 4, 2016 Transcript, p. 29 line 14-19).

Although Ms. Endemann mentioned an exhibit notebook during that hearing, at no time did the court accept that notebook into evidence or make it a part of the record at the hearing. Moreover, at no time after the hearing, even during the period after the first appeal was dismissed and before the second appeal was filed, did Respondent file that exhibit notebook with the lower Court.

At the end of the hearing, you made it clear that the proffer consisted of Respondent's counsel's oral summary of the amount of damages claimed by the Plaintiff:

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 proffer,
24 but again, just so you-all have it in the
25 record and the Court understands what this case is
1 about.

(October 4, 2016 Transcript, p. 31, line 10-25 and p. 32, line 1.)

In the transcript excerpt cited in Mr. Epting's letter, you indicate that you asked for a proffer on Respondent's alleged damages and that's what you got. That proffer consisted of Respondent's counsel's oral summary of alleged damages and did not include admission of the exhibit notebook that Respondent is now requesting be added to the record. Mr. Epting also states that "[w]e are not seeking to have the Court weigh in on the motion pending before the Court of Appeals. . .". To the contrary, I would respectfully submit that that is exactly what Respondent's counsel is asking the court to do. Accordingly, I'd request that Mr. Epting's request be denied and that the appeal be allowed to properly run its course as deemed appropriate by and under the jurisdiction of the Court of Appeals.

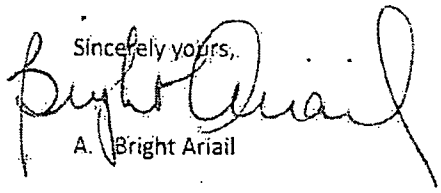
Finally, while I was not copied on any request made to Ms. Beck for a status conference, I was asked by email of May 15, 2017 by staff for Respondent's counsel if I was available to attend a status conference this Thursday afternoon in light of my current motion in the Court of Appeals. Unaware of

how this status conference had come about, I replied to that staff member stating "I know of no directive from the Court of Appeals, where jurisdiction lies in this case, directing the parties to attend a status conference. Accordingly, I must decline unless so directed by the Court of Appeals." See attached.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,



A. Bright Ariail

cc: All Counsel (via email only)

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[i] Jean Hoefer Toal et al., Appellate Practice in South Carolina 370 (2016).

bright@brightariaillaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

Bright Ariail

From: Bright Ariail
Sent: Monday, May 15, 2017 4:47 PM
To: Angela Gross
Cc: Laura Dukes Beck; Michelle Endemann
Subject: RE: Ward

Angela – I know of no directive from the Court of Appeals, where jurisdiction lies in this case, directing the parties to attend a status conference. Accordingly, I must decline unless so directed by the Court of Appeals.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
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From: Angela Gross [mailto:agg@epting-law.com]
Sent: Monday, May 15, 2017 9:56 AM
To: Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Laura Dukes Beck <LBeck@charlestoncounty.org>; Michelle Endemann <mne@epting-law.com>
Subject: Ward

Ms. Ariail,

In light of your current motion, are you available for a status conference on Thursday at 2 p.m. before Judge Scarborough?

Angela

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
And Michelle N. Endemann, Esquire
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
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Bright Ariail

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. Arial 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. Arial 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@brightariaillaw.com
843/814-8805

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON — COURT OF COMMON PLEAS

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on October 4, 2016 at 100 Broad Street, Charleston, South Carolina.

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PROCEEDINGS

THE COURT: We're back on the record. This is the case that is captioned Palmetto Construction Group versus Restoration Specialists, LLC, and Ruben and Lynette Ward. The case number is 2016-CP-10-1143.

The case is in a bit of an unusual posture, and that's really why I got you-all here today. We had it scheduled for a damages hearing. I know there's a motion outstanding for a Rule 59 Motion, I think it was, that Ms. Ariail had sent.

Then I was informed yesterday, I believe it was, that the case was on appeal. Ms. Ariail, let me start with you on the Defense side, and then I'll come to the Plaintiff's side and just figure out where we are. Okay?

MS. ARIAIL: Yes, sir, Your Honor. Bright Ariail for the Defendants. Quite frankly, based on the scheduling of the damages hearing and the hearing for the Motion to Alter or Amend, I filed a Notice of Appeal basically taking the position that the failure of the Court to rule on that motion prior to the damages hearing was essentially a denial. Case law supports that.

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THE COURT: What case do you have for that?

MS. ARIAIL: There are so many issues, Your Honor. I have things everywhere.

THE COURT: Mainly we need to talk about the procedural aspect of where we are. Okay?

MS. ARIAIL: Okay.

THE COURT: Let me do this while you look for that case. Let me just sort of make sure I get -- I want to do the timeline down here. I think one of the questions is, where's jurisdiction? I fully understand that the filing of a Notice of Appeal is designed to divest the Court of jurisdiction. I'm just trying to figure out what is being appealed. So we had a hearing on the 6th of June, our first hearing. From that an order was issued on the 14th of July. Notice appears to have been sent and received on July 18th.

MS. ARIAIL: Yes, sir.

THE COURT: And that order set the damages hearing for today.

MS. ARIAIL: Yes, sir.

THE COURT: And then a 59(e) Motion appears to have been timely filed on July 27th. That's within ten days. That hearing was then scheduled by my office for a week from today, October 11th. Then we

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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

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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.

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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

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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

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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,

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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

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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

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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

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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 contact that talks about
23 a waiver?
24 MS. ARIAIL: There is a paragraph that talks
25 about Waiver of Subrogation.

18

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?

19

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

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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

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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.

22

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,

23

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.

24

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

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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

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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

27

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

28

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.

29

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 teeming agreement
25 specifically says --

30

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

31

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

32

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
18 Notary Public
My Commission Expires
19 May 12, 2021
20
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	Appellants

---

AFFIDAVIT OF A. BRIGHT ARIAIL, ESQ.

PERSONALLY APPEARED BEFORE ME, A. Bright Ariail, Esq., who having been first duly sworn deposed, states as follows:

1. I am a licensed attorney in South Carolina, SC Bar No. 69570.
2. I represent the Appellants, Restoration Specialists, Reuben Mark Ward, and Lynnette Pennington Ward in the above-referenced matter.

3. Respondent filed and served its Initial Brief and Designation of Matter on April 18, 2017.
4. There are documents included in Respondent's Designation of Matter that were not presented to the lower court including:
    1) Item 2 – Appellants' Answers to interrogatories and requests for production
    2) Item 3 – Appellants' document productions dated July 6, 11 and 13, 2106
    3) Item 4 – Respondent's exhibit notebook in support of its proffer of damages.
5. I have performed a complete review of all documents filed with the Charleston County Clerk of Court that appear on the Clerk's Public Index and none of the documents listed in 4. a., b. or c. were part of any pleading, motion, legal memoranda, order, exhibit or other filings with the lower court.
6. I have performed a complete review of the transcripts for the three hearings held in front of the Master in Equity, and none of the documents listed in 4. a., b. or c. were a part of the record at any of the hearings before the lower court in this matter.
7. Accordingly, the following documents cited in Respondent's Initial Brief are not in the record:
    (1): VA Contract;
    (2): Subcontract, Attachment 1;
    (3): Indemnity Agreement;
    (4): PCG letter;

(5): Hanover demand;

(6): Final pay application;

(7): Appellants' answers to discovery;

(8): job cost billing detail;

(9): AR history report;

(10): Subcontract, Attachment;

(11): Subcontract Breakdown;

(12): PCG Subcontract Breakdown;

(13): Ward email dated January 11, 2016;

(14): Appellants Answers to Interrogatories;

(15): Restoration Specialists' contract log;

(16): Restoration Specialists' monthly expenses spreadsheet;

(17): Restoration Specialists' subcontract log;

(18): Proof of Profitability Breakdown.

8. There are numerous references made to those documents and allegations of facts that those documents purportedly contain within Respondent's Initial Brief.

9. Furthermore, the Respondent references these documents as authority for certain legal conclusions argued in its Initial Brief.

FURTHER DEPONENT SAYETH NAUGHT.

- SIGNATURE PAGE FOLLOWS -

A. Bright Arjail, Esq.

Sworn to before me
This 28th day of April, 2017.

Notary Public for the State of South Carolina

My Commission Expires: 11-30-2026

ELIZABETH A HATFIELD
NOTARY
MY COMMISSION EXPIRES 11-30-2026
PUBLIC
SOUTH CAROLINA

1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC,
Reuben Mark Ward, and Lynnette
Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 11:29 a.m. on June 6, 2016 at 100 Broad Street, Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
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3

PROCEEDINGS

THE COURT: This matter is captioned Palmetto Construction Group, LLC versus Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. The case number is 2016-CP-10-1143.

The matter is set today as a default damages hearing, and the matter was referred to the Court on April 18th, and entry of default was entered on that same date. It appears that service process was performed on Reuben Ward on or about March 14th, the case having been filed on March 7th, and also on Lynnette Ward on that same date it appears.

I believe Mr. Ward was served as the agent for the corporation, Restoration Specialists, LLC. This Court set it for a hearing in April on damages. I did receive, and I don't know -- have you got that --

MR. FISHBURNE: That is it.

THE COURT: Late last week from the Law Office of A. Bright Ariail a Motion to Set Aside the Entry of Default and also for continuance. Have you-all been provided with that as well?

MS. ENDEMANN: Yes, Judge, we were served on Friday afternoon.

THE COURT: Do you want to be heard first on

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the motion before we get to the subset of the aspect of it, or where do we stand on that?

MS. ENDEMANN: Well, Judge, we were served late Friday, and we are amenable to try to come to some resolution of these motions. If I could give you a little bit of context and background for the case?

THE COURT: Sure.

MS. ENDEMANN: It's a case that arises out of a project for the VA. It was completing a hospital parking deck in Georgia. So Restoration Specialists was the general contractor on the project with the Department of Veteran's Affairs. My client, Palmetto Construction Group -- I have Mr. Kendle with me here today -- was approached by Restoration.

This was a large project for them. They needed some help getting a bond in place. In order to complete the job they needed help managing the project. They needed help completing the project. So they came to my client, Palmetto Construction Group, and asked for assistance.

A teaming agreement was entered into. So under this agreement Palmetto would manage the project, they would do other certain responsibilities, and Restoration would stay as the

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1 general contractor. There would be a profit split as
2 a result of this agreement. The project started --
3 seemingly it was going pretty well.
4 Towards the end of the project, we started to
5 get some red flags. We started to get notices that
6 some of the subcontractors, some of the suppliers,
7 are not being paid by Restoration. Unfortunately, as
8 part of this agreement with Restoration, Palmetto got
9 their bonding company to write this bond. Palmetto
10 is liable on the bond with Mr. Ward and Restoration
11 and Ms. Ward. Mr. Kendle personally is liable on the
12 bond. Mr. Handegan, another primary principal at
13 Palmetto is obligated on the bond and so is his wife.
14 So when all of these claims start coming in
15 from these subcontractors who say they're not getting
16 paid from Restoration, it becomes our problem in a
17 very large way. Hanover, the bonding company, turns
18 to us and says, You need to pay for this. You're
19 obligors on the bond. Now we have approximately
20 $1.4 million dollars in claims on this bond for
21 subcontractors and suppliers that have not been paid,
22 and Hanover is looking to us to pay it.
23 It's impacting other jobs because obviously
24 they have this issue with the bonding company,
25 getting other bonds is becoming a problem. So

6

1 there's some real urgency on our clients' part to get
2 this worked out as fast as we possibly can.
3 Mr. Ward had been making some overtures.
4 Ms. Ariail was retained, and she filed the motions
5 that you discussed earlier on Friday. If we could
6 get some agreement, Judge? We need the file. We
7 need the financials. We need the bank accounts. We
8 need to get these documents in place, and we would
9 like to ask him some questions about, where are these
10 funds? You are receiving payments from the Federal
11 Government. Where is the money going because Hanover
12 is coming to us saying we need to pay it. We did our
13 part but we're going to end up in a really tough spot
14 here. So the urgency is really what we're impressing
15 here.
16 We're amenable to trying to work something out
17 on these motions, but we really need to have an
18 agreement and exchange so that we can have these
19 documents. We actually served the discovery with the
20 Complaint, so it's already pretty well overdue. I
21 actually today just served some deposition notices on
22 Ms. Ariail. Of course she's just getting involved in
23 the case.
24 We are looking to get these records as soon as
25 possible. That's a little bit about potential

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1 accounting that would be great. If that can't be
2 done in the short term we would like the file. We
3 would like the file anyway, but we would like that at
4 least in the next seven or so days. If we can take a
5 deposition in the next 14 days I think Ms. Ariail
6 might have some issues with the date but as soon as
7 possible, and maybe even get a hearing in front of
8 Your Honor in case any other issues come up with the
9 discovery or if we need to go to mediation. If there
10 is any kind of order that we would like the Court's
11 help with we could come back to you in order to work
12 this out as quickly as we possibly can.
13 THE COURT: Ms. Ariail?
14 MS. ARIAIL: Your Honor, I learned of this
15 matter Thursday night of last week. I have
16 represented Restoration Specialists in other matters,
17 so I am, unfortunately very new to this issue. I do
18 understand from Mr. Ward, who is the managing member
19 of Restoration Specialists, that he has been in
20 contact with the attorney -- I guess it's an in-house
21 attorney with the bonding company, and he has made
22 some payments on some of these claims that are
23 considered valid reaching back into the March
24 timeframe of this year.
25 I know that he is eager to get this issue

8

1 resolved and behind him also. I've spoken to him
2 after speaking with Palmetto's counsel on Friday, and
3 he is willing to provide the documentation and
4 absolutely would be willing to mediate this case. I
5 believe there were -- per the contractors there was a
6 mediation and then mandatory mediation as condition
7 precedent to arbitration. So we would like to do
8 that.
9 Unfortunately it's compounded by -- I'm
10 actually leaving the country on Saturday for
11 two weeks. I had not asked for an order of
12 protection in this Court because I didn't have
13 anything active in this Court. So that unfortunately
14 is going to impact the time. I'm willing to do what
15 I need to do to try to facilitate the exchange of
16 information and move forward with this.
17 THE COURT: I think June 10th through the 24th
18 were the dates you were requesting that you would be
19 out?
20 MS. ARIAIL: Yes, sir.
21 THE COURT: Do you have information? Do you
22 have documentation from your client based on your
23 conversation you must have had last week with them?
24 Have you gotten any of this stuff? Do you have it in
25 hand I guess is my question?

9

1 MS. ARIAIL: I do not. The only thing I have
2 are a couple of affidavits that are specific to the
3 subject of the motions that I had filed.
4 THE COURT: I haven't seen any affidavits.
5 MS. ARIAIL: I just filed them this morning,
6 Your Honor. He's out of state, so I had to have them
7 overnighted to me on Saturday.
8 THE COURT: Sure.
9 MS. ARIAIL: I'll be happy to pass a copy up
10 to you.
11 THE COURT: Okay.
12 MS. ARIAIL: Again, I had filed a Motion for
13 Continuance and Protection. This is just dealing
14 with this schedule to try to give me some time to
15 figure out what's going on here and -- and then the
16 Motion to Set Aside the Default. So there's two
17 affidavits.
18 THE COURT: Okay. You have two affidavits
19 from Mr. Ward: One explaining what was going on
20 relative to the bond, and acknowledging receipt of
21 the Summons and Complaint on or about March 14th; the
22 other stating he's the managing member and just got
23 notice of this hearing on June 2, which would have
24 been last Thursday night at 6:30.
25 Ms. Endemann?

10

1 MS. ENDEMANN: Thank, you, Judge. I'm going
2 to object to these just because I haven't seen them
3 before now. One of the things I would like to point
4 out -- we did serve Mr. Ward pursuant to the Rule
5 last week with the notice of this hearing, and then
6 ever since then there's sort of been a flurry of
7 e-mail correspondence with the bonding company, and
8 there have been some payments, but my understanding
9 is that it's right near $20,000 on the $1.4 million
10 that's outstanding.
11 So while he's making overtures, respectfully,
12 we really need to push forward with the discovery
13 because obviously that's not even putting a dent into
14 what's owed. We're copied on most of this
15 correspondence with the bonding company since they're
16 coming to us weekly, if not daily, to get updates and
17 try to get their money.
18 THE COURT: Are you-all already out the 1.4 or
19 is that the amount of the claim.
20 MS. ENDEMANN: That's the amount of the
21 claims. The bonding company has been making demand
22 on this because they have been starting to pay these
23 claims, and so our time is running very short. Then
24 Ms. Ariail is going on vacation. I understand that.
25 We can maybe work with her on the deposition dates.

11

1 I think we noticed it on the 20th. She will be back
2 on the 26th. We can certainly move it until when she
3 gets back, but Your Honor, I would really, really
4 request that we can get these documents produced and
5 the bank account information produced in advance of
6 her going on her trip.
7 THE COURT: Ms. Arial, is that possible?
8 MS. ARIAIL: Your Honor, I will speak to my
9 client. I can't represent to you when I can do it.
10 I know he's out of the state today. He's in
11 Oklahoma. I'm not sure when he's coming back, but I
12 will absolutely do my best to make that happen.
13 THE COURT: All right. Here's what I'm going
14 to do. I'm going to see if -- you-all need to get on
15 a short timetable to see if you-all can't get a
16 little scheduling order worked out over the next
17 60 days. I'm going to bring you-all back in here.
18 I'm going to hold both of these motions under -- I'm
19 going to essentially grant your Motion to Continue
20 the Matter. Okay? Your Motion for Relief from the
21 Entry of Default I'm not going to rule on yet.
22 There's not much I saw in that affidavit that would
23 give me indication that I would grant that motion. I
24 can tell you that right now. Okay?
25 I will give you-all some time to see what

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1 you-all can do to work out in the meanwhile, but it
2 sounds like it needs to happen sooner than later.
3 Okay? So I'll hold the Motion to Reopen the Entry of
4 Default in abeyance.
5 As it stands now, the Defendants are in
6 default. I'm going to give you some time because you
7 are going on vacation, but it sounds to me like your
8 client needs to come up with some information pretty
9 darn quick. Okay? Let's see if you-all can't get
10 this thing resolved. You indicated there was -- I
11 think I read that in your correspondence. There was
12 some sort of mandatory mediation prior to arbitration
13 was you-all's contractual arrangement; is that what
14 it was?
15 MS. ARIAIL: Yes, sir.
16 THE COURT: Well, we'll cross that bridge when
17 we get to it. Okay? I would see if you-all can't
18 set that up and get some information and get rolling
19 with this. I'm going to bring you-all back in here.
20 Let's get a date.
21 MS. BECK: We have some time July 14th.
22 THE COURT: Do you want to get a status about
23 that time? July 14th? Does that give you enough
24 time? You're going to be gone until the 24th, so
25 back in the office -- that would be -- we ought to

1 find out where we're going at that time? Why don't
2 you-all give me a response -- what does that day look
3 like? Is it wide open?
4 MS. BECK: The 14th?
5 THE COURT: Yes.
6 MS. BECK: We have one at 11:00.
7 THE COURT: I'll put you-all down for 11:00
8 a.m. on the 14th of July. We'll reconvene at that
9 time. See what you-all can resolve.
10 MS. ENDEMANN: Thank you, Judge.
11 (The proceedings were concluded at 11:43 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.
8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.
11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
14
15
16
17 _____
18 Christine A. Smith
Notary Public
19 My Commission Expires
May 12, 2021
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON
3 Palmetto Construction Group,
4 Plaintiff,
5 vs. CASE NO. 2016-CP-10-1143
6 Restoration Specialists, LLC,
Reuben Mark Ward, and Lynette
7 Pennington Ward,
8 Defendants.
9
10
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
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21 Christine A. Smith, Court Reporter
22 [illegible]
23 [illegible]
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2

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3

1 PROCEEDINGS
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

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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

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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

7

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.

8

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

9

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

10

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,

11

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.

12

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.)
17
18
19
20
21
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 26th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
14
15
16
17 _____
18 Christine A. Smith
Notary Public
19 My Commission Expires
May 12, 2021
20
21
22
23
24
25

Law Office of A. Bright Ariail, LLC

November 14, 2016

Andrew K. Epting, Esquire
Michelle N. Endemann, Esquire
46A State Street
Charleston, SC 29401

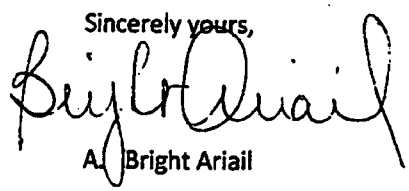
RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Drew and Michelle;

Enclosed for service, please find Defendants' Notice of Appeal dated November 14, 2016.

With kindest regards, I am

Sincerely yours,



A. Bright Ariail

Enclosures

bright@brightariaillaw.com

125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

843/814-8805

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

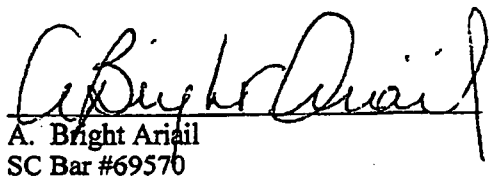
NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Orders of the Honorable Mikell R. Scarborough dated July 14, 2016 and October 28, 2016.

The Order dated July 14, 2016 (Exhibit A): (a) Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b) Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c) Set a damages hearing for October 4, 2105. Appellants received written notice of entry of this order on July 18, 2016. The parties timely filed cross-motions to reconsider the Court's July 14, 2016 Order pursuant to Rule 59, SCRCP.

The Order dated October 28, 2016 (Exhibit B), in response to the parties' cross-motions to reconsider pursuant to Rule 59, SCRCP: (a) Denied Defendants' Motion to Amend on the basis that Defendants have not shown good cause to lift the default, and (b) Denied Defendants' Motion to Stay and Compel filed July 11, 2016 on the basis that the affirmative defense of arbitration had been waived and therefore the motion was not properly made. Appellants received written notice of entry of this order on November 2, 2016.

November 14, 2016



A. Bright Ariail
SC Bar #69570
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:

Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, LLC
46A State Street
Charleston, SC 29401
(8430377-1871
Attorneys for Respondent

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **ORDER**

FILED
2016 JUL 20 PM 12:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

1) Defendants' motion to be relieved from default is DENIED;
2) A damages hearing is set for October 4, 2016 at 2:00pm; and
3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration is denied as Δ is in default.

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-1143

Palmetto Construction Group LLC

PLAINTIFF(S)

Restoration Specialists, LLC, et al.

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED 2016 NOV -2 PM 3:36 JULIE J. ARMSTRONG CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the court for argument on October 11, 2016 on Cross-Motions to Reconsider pursuant to Rule 59, SCRCP. After a review of the file and memoranda submitted by counsel, the court finds as follows: 1) Defendants' Motion to Amend is respectfully DENIED, insomuch as Defendants have not shown good cause to lift the default; and 2) the affirmative defense of arbitration has been waived and Defendant's Motion to Stay and Compel filed July 11, 2016 was not properly made.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	$NA
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amoun or additional taxable costs not available at the time the form and final order are submitted to clerk. **Note: Title abstractors and researchers should refer to the official court order for ju**

EXHIBIT B

Circuit Court Judge

3062
Judge Code

10/28/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

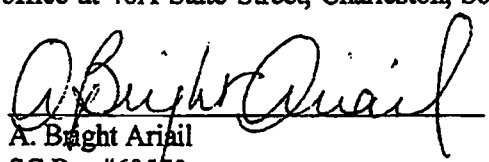
v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on November 14, 2016, addressed to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, LLC, 46A State Street, Charleston, South Carolina, 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew k. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina, 29401, on November 14, 2016.

November 14, 2016



A. Bright Ariail
SC Bar #69570
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, SC 29412
(843) 814-8805
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
JUN 12 2017
SC Court of Appeals

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143
[Appellate Case No. 2016-002308]

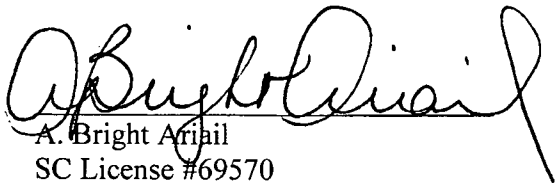
Palmetto Construction Group, LLC	Respondent
v.	
Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward	Appellants

---

PROOF OF SERVICE

I certify that I have served Appellants' Reply to Respondent's Opposition to Appellants' Motion to Exclude and Strike and Affidavit of A. Bright Ariail, Esq. [dated June 9, 2017] on Palmetto Construction Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2017, addressed to Palmetto Construction Group, LLC's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, LLC, 46A State Street, Charleston, South Carolina, 29401.

June 9, 2017



A. Bright Ariail
SC License #69570
Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive, Suite 202
Charleston, SC 29412
843/814-8805
Attorney for Appellants

Law Office of A. Bright Ariail, LLC

June 9, 2017

RECEIVED
JUN 12 2017
SC Court of Appeals

VIA PRIORITY MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
Appellate Case No. 2016-002308

Dear Ms. Kitchings;

Enclosed, please find for filing the original and seven copies of Appellants' Reply to Respondent's Opposition to Appellants' Motion to Exclude and Strike with Affidavit of A. Bright Ariail, Esq. and Proof of Service of same in the appeal reference above which are hereby provided to you for filing. I'd request that you return a stamped copy to me in the enclosed SASE.

By copy of this letter, I am serving opposing counsel with a copy of same.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures as stated

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

2016-CP-10-1143

RECEIVED
OCT 03 2016
SC Court of Appeals

Palmetto Construction Group, LLC Respondent,

v.

Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward, Appellants.

RESPONDENTS' EMERGENCY MOTION TO DISMISS APPEAL AND FOR EXPEDITED REVIEW

COMES NOW the Respondent, Palmetto Construction Group, LLC ("Palmetto"), by and through its undersigned attorneys, and hereby moves, pursuant to Rules 240, 203(b)(1) and 269 SCRAP, for an order dismissing the appeal. Palmetto further moves for expedited review of this motion in order to attempt to mitigate its damages. In support of this motion, Palmetto states as follows:

BACKGROUND

This matter arises out of Palmetto's suit against the Appellants alleging, *inter alia*, that Appellants misappropriated funds from a government construction project, failed to pay its subcontractors and suppliers, and defaulted on its agreements with Palmetto, leaving Palmetto

responsible for over $1,400,000.00 to the surety in claims on the payment bond issued for the project.

Palmetto personally served its complaint on the Appellants, but the Appellants failed to file an answer or otherwise respond. An affidavit of default was filed on April 18, 2016 and on April 21, 2016, The Honorable Roger M. Young entered an order referring the matter to the Master in Equity for a default damages hearing and for all other matters.

A damages hearing was scheduled on June 6, 2016. The day before the hearing, counsel appeared on behalf of Appellants and filed a motion to lift the default and compel arbitration. The motions were heard, and the Court, after considering affidavits and hearing argument, found in its discretion that there was no good cause shown such that the default should be lifted. The order set a default damages hearing for October 4, 2016 at 2:00pm and was served on all parties by the Court on July 18, 2016.

Appellants filed a motion to reconsider pursuant to Rule 59 SCRCP on July 27, 2016. The motion to reconsider was scheduled to be heard by the Court on October 11, 2016. Respondents wrote the Court on September 7, asking that the motions be heard in advance of the damages hearing. After some consideration, the Court elected to keep the hearing as originally scheduled with the damages hearing on October 4 and the motion to reconsider be heard on October 11. Appellants never timely noticed an appeal of the July 18, 2016 order, which is interlocutory, and the motion to reconsider is pending.

ARGUMENT

The July 18, 2016 order is not immediately appealable in the first instance as an order denying a motion to be relieved from default is interlocutory and therefore not appealable until after the entry of default judgment. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct.

App. 1987) ("an order refusing to grant relief from the entry of default is not appealable until after final judgment."). Further, Appellants did not notice their appeal until September 30, 2016, some seventy-four days after the order was received; therefore, the appeal is untimely and must be dismissed. See Rule 203(b)(1) SCRAP (requiring that a notice of appeal be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment).

Appellants argue that declining to move the previously scheduled damages hearing to a date after the motion to reconsider "effectively denies" the motion, though it remains pending before the Court. As the Court has not yet heard the motion to reconsider, there is no order to appeal. See, e.g., *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987)(discussing appealable orders in the context of motions to lift default); see also Rule 201 SCRAP.

The appeal must be dismissed.[1]

CONCLUSION

For the reasons above, Palmetto respectfully requests that the appeal be dismissed. Palmetto further seeks expedited review of this matter so that the appeal may be resolved in advance of the default damages hearing in order that it proceed as scheduled on October 4, 2016.

[signature on following page]

[1] Palmetto's motion is truncated in an effort to mitigate its damages by filing this appeal in the hopes that it may be dismissed in advance of the damages hearing scheduled for October 4, 2016 so that it may proceed.

ANDREW K. EPTING, JR., LLC

BY: _____

Andrew K. Epting, Jr.
Michelle N. Endemann
46aState Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; mne@epting-law.com

ATTORNEYS FOR PLAINTIFF

On this 3rd day of October, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Mikell R. Scarborough, Master-In-Equity

RECEIVED
OCT 03 2016
SC Court of Appeals

CASE NO. 2016-CP-10-1143

Palmetto Construction Group, (Respondent)

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward. (Appellants).

PROOF OF SERVICE

I certify that I have served the Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review on all counsel of record by depositing a copy in the United States Mail, Postage prepaid, on October 3, 2016, addressed as follows:

A. Bright Ariail, Esquire
Law Office of A. Bright Ariail, LLC
125 E Wappoo Creek Drive, Suite 202
Charleston, SC 29412

ANDREW K. EPTING, JR., LLC

By _____
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Respondent

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

October 3, 2016

RECEIVED
OCT 03 2016
SC Court of Appeals

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201

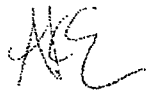
RE: *Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward*
Case No.: 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing the original and seven (7) copies of Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review together with a Proof of Service and the $50.00 motion fee in the above-referenced matter. I would greatly appreciate your filing the originals and returning a file-stamped copy to me in the self-addressed, stamped envelope provided.

With kind regards,

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr.
AKE/agg

Enclosures – as stated

cc: A.Bright Ariail, Esquire

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann · mne@epting-law.com
46A State Street · Charleston · South Carolina · 29401
Phone: (843) 377-1871 · Fax: (843) 377-1310

FAX COVER SHEET

TO	
COMPANY	
FAXNUMBER	18037341839
FROM	Andrew K Epting
DATE	2016-10-03 19:12:42 GMT
RE	Palmetto Construction Group v. Restoration Specialists, et al.

COVER MESSAGE

Dear Ms. Abbott-Kitchings:

Enclosed please find Respondent's Emergency Motion to Dismiss Appeal and for Expedited Review in the above-referenced matter. The original will follow by FedEX. Please note I have copied counsel for Appellants.

Angela

RECEIVED
OCT 03 2016
SC Court of Appeals

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
And Michelle N. Endemann, Esquire
Andrew K. Epting, Jr., LLC
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1 general contractor. There would be a profit split as
2 a result of this agreement. The project started --
3 seemingly it was going pretty well.
4 Towards the end of the project, we started to
5 get some red flags. We started to get notices that
6 some of the subcontractors, some of the suppliers,
7 are not being paid by Restoration. Unfortunately, as
8 part of this agreement with Restoration, Palmetto got
9 their bonding company to write this bond. Palmetto
10 is liable on the bond with Mr. Ward and Restoration
11 and Ms. Ward. Mr. Kendle personally is liable on the
12 bond. Mr. Handegan, another primary principal at
13 Palmetto is obligated on the bond and so is his wife.
14 So when all of these claims start coming in
15 from these subcontractors who say they're not getting
16 paid from Restoration, it becomes our problem in a
17 very large way. Hanover, the bonding company, turns
18 to us and says, You need to pay for this. You're
19 obligors on the bond. Now we have approximately
20 $1.4 million dollars in claims on this bond for
21 subcontractors and suppliers that have not been paid,
22 and Hanover is looking to us to pay it.
23 It's impacting other jobs because obviously
24 they have this issue with the bonding company,
25 getting other bonds is becoming a problem. So

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1 there's some real urgency on our clients' part to get
2 this worked out as fast as we possibly can.
3 Mr. Ward had been making some overtures.
4 Ms. Ariail was retained, and she filed the motions
5 that you discussed earlier on Friday. If we could
6 get some agreement, Judge? We need the file. We
7 need the financials. We need the bank accounts. We
8 need to get these documents in place, and we would
9 like to ask him some questions about, where are these
10 funds? You are receiving payments from the Federal
11 Government. Where is the money going because Hanover
12 is coming to us saying we need to pay it. We did our
13 part but we're going to end up in a really tough spot
14 here. So the urgency is really what we're impressing
15 here.
16 We're amenable to trying to work something out
17 on these motions, but we really need to have an
18 agreement and exchange so that we can have these
19 documents. We actually served the discovery with the
20 Complaint, so it's already pretty well overdue. I
21 actually today just served some deposition notices on
22 Ms. Ariail. Of course she's just getting involved in
23 the case.
24 We are looking to get these records as soon as
25 possible. That's a little bit about potential

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1 accounting that would be great. If that can't be
2 done in the short term we would like the file. We
3 would like the file anyway, but we would like that at
4 least in the next seven or so days. If we can take a
5 deposition in the next 14 days I think Ms. Ariail
6 might have some issues with the date but as soon as
7 possible, and maybe even get a hearing in front of
8 Your Honor in case any other issues come up with the
9 discovery or if we need to go to mediation. If there
10 is any kind of order that we would like the Court's
11 help with we could come back to you in order to work
12 this out as quickly as we possibly can.
13 THE COURT: Ms. Ariail?
14 MS. ARIAIL: Your Honor, I learned of this
15 matter Thursday night of last week. I have
16 represented Restoration Specialists in other matters,
17 so I am, unfortunately very new to this issue. I do
18 understand from Mr. Ward, who is the managing member
19 of Restoration Specialists, that he has been in
20 contact with the attorney -- I guess it's an in-house
21 attorney with the bonding company, and he has made
22 some payments on some of these claims that are
23 considered valid reaching back into the March
24 timeframe of this year.
25 I know that he is eager to get this issue

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1 resolved and behind him also. I've spoken to him
2 after speaking with Palmetto's counsel on Friday, and
3 he is willing to provide the documentation and
4 absolutely would be willing to mediate this case. I
5 believe there were -- per the contractors there was a
6 mediation and then mandatory mediation as condition
7 precedent to arbitration. So we would like to do
8 that.
9 Unfortunately it's compounded by -- I'm
10 actually leaving the country on Saturday for
11 two weeks. I had not asked for an order of
12 protection in this Court because I didn't have
13 anything active in this Court. So that unfortunately
14 is going to impact the time. I'm willing to do what
15 I need to do to try to facilitate the exchange of
16 information and move forward with this.
17 THE COURT: I think June 10th through the 24th
18 were the dates you were requesting that you would be
19 out?
20 MS. ARIAIL: Yes, sir.
21 THE COURT: Do you have information? Do you
22 have documentation from your client based on your
23 conversation you must have had last week with them?
24 Have you gotten any of this stuff? Do you have it in
25 hand I guess is my question?

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1 MS. ARIAIL: I do not. The only thing I have
2 are a couple of affidavits that are specific to the
3 subject of the motions that I had filed.
4 THE COURT: I haven't seen any affidavits.
5 MS. ARIAIL: I just filed them this morning,
6 Your Honor. He's out of state, so I had to have them
7 overnighted to me on Saturday.
8 THE COURT: Sure.
9 MS. ARIAIL: I'll be happy to pass a copy up
10 to you.
11 THE COURT: Okay.
12 MS. ARIAIL: Again, I had filed a Motion for
13 Continuance and Protection. This is just dealing
14 with this schedule to try to give me some time to
15 figure out what's going on here and -- and then the
16 Motion to Set Aside the Default. So there's two
17 affidavits.
18 THE COURT: Okay. You have two affidavits
19 from Mr. Ward: One explaining what was going on
20 relative to the bond, and acknowledging receipt of
21 the Summons and Complaint on or about March 14th; the
22 other stating he's the managing member and just got
23 notice of this hearing on June 2, which would have
24 been last Thursday night at 6:30.
25 Ms. Endemann?

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1 MS. ENDEMANN: Thank, you, Judge. I'm going
2 to object to these just because I haven't seen them
3 before now. One of the things I would like to point
4 out -- we did serve Mr. Ward pursuant to the Rule
5 last week with the notice of this hearing, and then
6 ever since then there's sort of been a flurry of
7 e-mail correspondence with the bonding company, and
8 there have been some payments, but my understanding
9 is that it's right near $20,000 on the $1.4 million
10 that's outstanding.
11 So while he's making overtures, respectfully,
12 we really need to push forward with the discovery
13 because obviously that's not even putting a dent into
14 what's owed. We're copied on most of this
15 correspondence with the bonding company since they're
16 coming to us weekly, if not daily, to get updates and
17 try to get their money.
18 THE COURT: Are you-all already out the 1.4 or
19 is that the amount of the claim.
20 MS. ENDEMANN: That's the amount of the
21 claims. The bonding company has been making demand
22 on this because they have been starting to pay these
23 claims, and so our time is running very short. Then
24 Ms. Ariail is going on vacation. I understand that.
25 We can maybe work with her on the deposition dates.

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1 I think we noticed it on the 20th. She will be back
2 on the 26th. We can certainly move it until when she
3 gets back, but Your Honor, I would really, really
4 request that we can get these documents produced and
5 the bank account information produced in advance of
6 her going on her trip.
7 THE COURT: Ms. Arial, is that possible?
8 MS. ARIAIL: Your Honor, I will speak to my
9 client. I can't represent to you when I can do it.
10 I know he's out of the state today. He's in
11 Oklahoma. I'm not sure when he's coming back, but I
12 will absolutely do my best to make that happen.
13 THE COURT: All right. Here's what I'm going
14 to do. I'm going to see if -- you-all need to get on
15 a short timetable to see if you-all can't get a
16 little scheduling order worked out over the next
17 60 days. I'm going to bring you-all back in here.
18 I'm going to hold both of these motions under -- I'm
19 going to essentially grant your Motion to Continue
20 the Matter. Okay? Your Motion for Relief from the
21 Entry of Default I'm not going to rule on yet.
22 There's not much I saw in that affidavit that would
23 give me indication that I would grant that motion. I
24 can tell you that right now. Okay?
25 I will give you-all some time to see what

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1 you-all can do to work out in the meanwhile, but it
2 sounds like it needs to happen sooner than later.
3 Okay? So I'll hold the Motion to Reopen the Entry of
4 Default in abeyance.
5 As it stands now, the Defendants are in
6 default. I'm going to give you some time because you
7 are going on vacation, but it sounds to me like your
8 client needs to come up with some information pretty
9 darn quick. Okay? Let's see if you-all can't get
10 this thing resolved. You indicated there was -- I
11 think I read that in your correspondence. There was
12 some sort of mandatory mediation prior to arbitration
13 was you-all's contractual arrangement; is that what
14 it was?
15 MS. ARIAIL: Yes, sir.
16 THE COURT: Well, we'll cross that bridge when
17 we get to it. Okay? I would see if you-all can't
18 set that up and get some information and get rolling
19 with this. I'm going to bring you-all back in here.
20 Let's get a date.
21 MS. BECK: We have some time July 14th.
22 THE COURT: Do you want to get a status about
23 that time? July 14th? Does that give you enough
24 time? You're going to be gone until the 24th, so
25 back in the office -- that would be -- we ought to

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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

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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,

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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.

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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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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
COURT OF COMMON PLEAS

Palmetto Construction Group,

Plaintiff,

vs. CASE NO. 2016-CP-10-1143

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:57 a.m. on October 4, 2016 at 100 Broad Street, Charleston, South Carolina.

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PROCEEDINGS

THE COURT: We're back on the record. This is the case that is captioned Palmetto Construction Group versus Restoration Specialists, LLC, and Ruben and Lynette Ward. The case number is 2016-CP-10-1143.

The case is in a bit of an unusual posture, and that's really why I got you-all here today. We had it scheduled for a damages hearing. I know there's a motion outstanding for a Rule 59 Motion, I think it was, that Ms. Ariail had sent.

Then I was informed yesterday, I believe it was, that the case was on appeal. Ms. Ariail, let me start with you on the Defense side, and then I'll come to the Plaintiff's side and just figure out where we are. Okay?

MS. ARIAIL: Yes, sir, Your Honor. Bright Ariail for the Defendants. Quite frankly, based on the scheduling of the damages hearing and the hearing for the Motion to Alter or Amend, I filed a Notice of Appeal basically taking the position that the failure of the Court to rule on that motion prior to the damages hearing was essentially a denial. Case law supports that.

THE COURT: What case do you have for that?

MS. ARIAIL: There are so many issues, Your Honor. I have things everywhere.

THE COURT: Mainly we need to talk about the procedural aspect of where we are. Okay?

MS. ARIAIL: Okay.

THE COURT: Let me do this while you look for that case. Let me just sort of make sure I get -- I want to do the timeline down here. I think one of the questions is, where's jurisdiction? I fully understand that the filing of a Notice of Appeal is designed to divest the Court of jurisdiction. I'm just trying to figure out what is being appealed. So we had a hearing on the 6th of June, our first hearing. From that an order was issued on the 14th of July. Notice appears to have been sent and received on July 18th.

MS. ARIAIL: Yes, sir.

THE COURT: And that order set the damages hearing for today.

MS. ARIAIL: Yes, sir.

THE COURT: And then a 59(e) Motion appears to have been timely filed on July 27th. That's within ten days. That hearing was then scheduled by my office for a week from today, October 11th. Then we

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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

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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.

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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

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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

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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,

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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

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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

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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

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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.

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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.

15

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,

16

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

17

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 contact that talks about
23 a waiver?
24 MS. ARIAIL: There is a paragraph that talks
25 about Waiver of Subrogation.

18

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?

19

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

20

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

21

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.

22

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,

23

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.

24

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

25

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

26

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

27

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

28

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.

29

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 teeming agreement
25 specifically says --

30

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

31

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

32

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.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
PALMETTO CONSTRUCTION GROUP, LLC Plaintiff, vs. RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, and LYNNETTE PENNINGTON WARD Defendants.	)	CASE NO. 2016-CP-10-1143 **NOTICE OF HEARING**

PLEASE TAKE NOTICE that a default damages hearing is scheduled on Monday, June 6, 2016, at 11:30 a.m. before the Honorable Mikell R. Scarborough in the Charleston County Court of Common Pleas located at 100 Broad Street, Charleston, SC 29401 pursuant to the enclosed Order of the Honroable Roger M. Young, Sr. dated April 20, 2016.

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com; mne@epting-law.com
ATTORNEYS FOR PLAINTIFF

June 1, 2016
Charleston, South Carolina

16-CP-10-1143

Law Office of A. Bright Ariail, LLC

July 19, 2016

FILED
2016 JUL 2 PM 2:2
JULIE J. ARMSTRONG
CLERK OF COURT
BY BS

Clocked in date Canceled

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records related to the Order executed on July 14, 2016 in the above referenced action for filing. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

RECEIVED
BS
JUL 22 2016
Clerk of Court

bright@brightariaillaw.com
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412
843/814-8805

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Sent: Monday, July 18, 2016 8:42 AM
To: 'Michelle Endemann'; Bright Ariail; 'Andrew K. Epting'
Subject: Palmetto Construction Group v. Restoration Specialists et al.
Attachments: 201607180829.pdf

Dear All -

As to the last hearing in this matter, please see the attached order Judge Scarborough executed last week. I am forwarding it to the clerk right now for processing.

Best Regards,

Barnwell

--
J. Barnwell Fishburne, Jr., Esq.
Judicial Law Clerk to The Honorable Mikell R. Scarborough
100 Broad Street, Suite 266
Charleston, South Carolina
29401
Tel: 843-958-5053
jfishburne@charlestoncounty.org

Bright Ariail

From: Barnwell Fishburne <JFishburne@charlestoncounty.org>
To: Bright Ariail
Sent: Monday, July 18, 2016 8:35 AM
Subject: Read: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Your message

To:
Subject: Palmetto Construction Group c. Restoration Specialists, et al;
Sent: Monday, July 18, 2016 5:35:12 AM (UTC-08:00) Pacific Time (US & Canada)

was read on Monday, July 18, 2016 5:35:02 AM (UTC-08:00) Pacific Time (US & Canada).

Bright Ariail

From:	Microsoft Outlook
To:	Barnwell Fishburne
Sent:	Friday, July 15, 2016 12:32 PM
Subject:	Relayed: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Barnwell Fishburne (JFishburne@charlestoncounty.org)

Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Bright Ariail

From: Bright Ariail
Sent: Friday, July 15, 2016 12:32 PM
To: Barnwell Fishburne
Cc: Andrew K. Epting; 'Michelle Endemann'
Subject: RE: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

I have reviewed the proposed order and request that the Court also address its ruling/disposition of Plaintiff's Motion to Stay and Compel (filed on March 7, 2016) in the order when issued. Thanks for your assistance in this matter.

I have copied all counsel of record by this email.

VR. Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Michelle Endemann [mailto:mne@epting-law.com]
Sent: Thursday, July 14, 2016 12:10 PM
To: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Cc: Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: Palmetto Construction Group c. Restoration Specialists, et al;

Mr. Fishburne,

We have prepared a simple proposed order for today's hearing so that Judge Scarborough does not have to prepare a Form 4.

Please note I have copied Ms. Ariail.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871

F: 843-377-1310
mne@epting-law.com

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Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Courtroom	952
Roster Type	Motion Hearings	Roster Date/Time	10/11/2016	Roster Updated	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
1	10/11/2016	10:00 AM		Motion/Reconsider by plaintiff, crt/srv	Maria Kiehling Brees-PAT	07/25/2016	2012CP1006835 Joanne S Reed VS Christina Salters , defendant, et al	Real Prop/Other 499	1880000169	Maria Kiehling Brees (843) 724-7707 D. Nathan Davis (843) 571-1042	Jestine Townsend Graham (843) 467-9492 Irene Townsend Hodge (843) 889-9513 Kelvin Maurice Huger (843) 573-0143 Althea Salters (843) 889-2450 Irma Townsend (843) 425-7226 Jessie Townsend Mary Alice Townsend Morrison Karen Waters	
2	10/11/2016	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
3	10/11/2016	11:00 AM		Motion/Dismiss by Thomas Calcote etal, crt/srv		07/28/2016	2010CP1002432 Regions Bank VS Bdl Projects Llc Etc , defendant, et al	Foreclosure 420	3281400181	Merritt Gordon Abney (843) 534-4110	Shawn M. French Sr. (843) 606-6440 H. Brewton Hagood (843) 577-6728 Patrick R. Watts (843) 851-7050	
4	10/11/2016	11:00 AM		Motion/Alter or Amend judgment by plaintiff, crt/srv	Merritt Gordon Abney-PAT	[illegible]	[illegible]	Foreclosure [illegible]	[illegible]	[illegible]	[illegible]	
5	10/11/2016	2:00 PM		Motion/Alter or Amend by plaintiff, crt/srv	Andrew K. Epting Jr.-PAT	07/29/2016	2016CP1001143 Palmetto Construction Group LLC VS Restoration Specialists LLC	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871 Andrew K. Epting Jr. (843) 377-1871	A. Bright Anoll (843) 814-8805	
6	10/11/2016	2:00 PM		Motion/Reconsider, Alter or Amend by defendant, crt/srv	A. Bright Anoll-PAT	07/27/2016	2016CP1001143 Palmetto Construction Group	Breach of Cont 140		Michelle Nicole Endemann (843) 377-1871	A. Bright Anoll (843) 814-8805	

Page: 1

Charleston County - Roster Details
Master's Docket for October 11, 2016

Court Agency	Master In Equity	Judge	Scarborough	Roster ID	952
Roster Type	Motion Hearings	Roster Registration	10/11/2016	Roster Date	10/11/2016

Number of motions = 12

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Tax Map	Plaintiff Attorney	Defendant Attorney	Notes
7	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006736 Municipal Tax Investment LLC VS Gilbert J White , defendant, et al	Real Prop/Other 499	4271600239	Scott Daniel Spivey (803) 225 -0463		
8	10/11/2016	3:15 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
9	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearings	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006755 Municipal Tax Investment LLC VS William T Simmons III , defendant, et al	Real Prop/Other 499	4640100054	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900 T. Parkin C. Hunter (803) 734 -6151 Brittany Lauren Kilpatrick (843) 696-3048 E.B. "Trey" McLeod III (803) 737-3043	
10	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	07/29/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
11	10/11/2016	3:00 PM		Master/Cross Claim Hearing	Municipal Tax Investment LLC-PLT	10/11/2016	2015CP1006756 Municipal Tax Investment LLC VS Llewellyn R Whaley	Real Prop/Other 499	4110800096	Scott Daniel Spivey (803) 225 -0463	Sean Matthew Foerster (803) 771-7900	
12	10/11/2016	3:00 PM		Master/QT AFTER TAX Hearing	Municipal Tax Investment LLC-PLT	08/05/2016	[illegible]	Real Prop/Other 499	[illegible]	[illegible]	[illegible]	

Law Office of A. Bright Ariail, LLC

RECEIVED
SEP 09 2016
By_____

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

FILED
2016 SEP 13 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

---

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Law Office of A. Bright Ariail, LLC

September 20, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

FILED
2016 SEP 22 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

RE: Palmetto Construction Group v. Restoration Specialists, LLC *et al.*
C/A No. 2016-CP-10-1143

Dear Julie;

Enclosed, please find two copies of various email records with attachments for filing in the above referenced action which are related to Defendants' request that two outstanding motions be heard by the Court prior to the damages hearing set for October 4, 2016 at 2:00 p.m.; specifically, Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016 and Plaintiff's Motion to Alter or Amend filed July 29, 2016. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

Enclosures

cc: Andrew Epting, Esquire
Michelle Endemann, Esquire

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

Bright Ariail

From: Bright Ariail
Sent: Wednesday, September 7, 2016 10:43 AM
To: master@charlestoncounty.org
Cc: Andrew K. Epting; Michelle Endemann
Subject: Palmetto Constr. Group, LLC v. Restoration Specialists, LLC et al., 2016-CP-10-1143
Attachments: Ltr Scarborough Motions Hearing.pdf

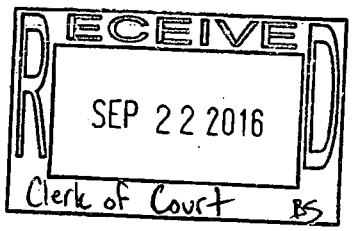
Judge Scarborough,

Please see my letter attached. Thanks for your consideration.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805



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Bright Ariail

From: Bright Ariail
Sent: Wednesday, September 7, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Michelle Endemann <mne@epting-law.com>
Sent: Wednesday, September 7, 2016 12:45 PM
To: Laura Dukes Beck; Angela Gross; Andrew K. Epting; Bright Ariail
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Hello Laura,

Plaintiffs would prefer that the hearings go forward as originally scheduled. This way, all rulings can be reconsidered/appealed, if necessary, at one time rather than piecemeal. We will, of course, defer to the Judge's preference.

Best,

Michelle Endemann

From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 07, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; Michelle Endemann <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; bright@brightariaillaw.com
Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, September 12, 2016 2:02 PM
To: Bright Ariail; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

After further consideration, the Judge has decided to leave the hearings in the order that they were originally scheduled, with the Damages hearing to be held prior to the Motions to Alter or Amend. The previously sent roster publication emails and the published rosters have the date and time, or email me if you need more information.
Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Wednesday, September 07, 2016 11:55 AM
To: Laura Dukes Beck; Angela Gross; 'Michelle Endemann'; Andrew K. Epting
Cc: Barnwell Fishburne
Subject: RE: Palmetto Construction Group v Restoration Specialists 16-1143

Thanks. Yes, that is acceptable to the Defendants.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

CONFIDENTIALITY NOTICE
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From: Laura Dukes Beck [mailto:LBeck@charlestoncounty.org]
Sent: Wednesday, September 7, 2016 11:52 AM
To: Angela Gross <agg@epting-law.com>; 'Michelle Endemann' <mne@epting-law.com>; Andrew K. Epting <ake@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>

Cc: Barnwell Fishburne <JFishburne@charlestoncounty.org>
Subject: Palmetto Construction Group v Restoration Specialists 16-1143

Counsel,
We currently have a Damages hearing set by the Judge from the bench scheduled prior to the Motions to Alter and Amend. The Judge would like to flip these on our roster so that the Motions are heard on October 4th at 2:00 and then if needed, the Damages hearing will be held on October 11 at 2:00.
Please let me know if this plan is acceptable.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

Law Office of A. Bright Ariail, LLC

September 7, 2016

VIA EMAIL AND US MAIL
The Honorable Mikell R. Scarborough
Charleston County Judicial Center
100 Broad Street, Suite 266
Charleston, SC 29401

Re: ***Palmetto Construction Group, LLC v. Restoration Specialists, LLC et al.***
Civil Action 2016-CP-10-1143

Dear Judge Scarborough:

Concerning the above referenced case, you issued a bench and formal Order on July 14, 2016 denying Defendants' Motion to Set Aside Entry of Default and Defendants' Motion to Stay and to Compel Arbitration as well as finding as adjudicated the Plaintiff's Motion to Stay and Compel. You further ordered a damages hearing which is set for October 4, 2016 at 2:00 pm. Both Defendants[i] and Plaintiff[ii] have outstanding Motions for Reconsideration and/or to Alter or Amend the Court's Order as stated above. Both of these Motions have been scheduled to be heard on October 11, 2016. Insomuch as these motions will affect the case status and directly impact the arbitration rights of all parties concerned, I would respectfully request that they be scheduled to be heard on a date prior to the damages hearing.

Thank you in advance for your consideration in this matter.

With kindest regards, I am

Sincerely yours,

A. Bright Ariail

cc: All Counsel (via email only)

---

[i] Defendants' Notice of Motion and Motion to Reconsider and to Alter or Amend Pursuant to SCRCP 59(e) and Applicable Case Law filed July 27, 2016.
[ii] Palmetto Construction Group's Motion to Alter or Amend filed July 29, 2016.

bright@brightariaillaw.com 125E Wappoo Creek Drive Suite 202 Charleston, SC 29412 843/814-8805

LAW OFFICE OF A. BRIGHT ARIAIL, LLC
125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

FILED
2016 OCT -4 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT

October 4, 2016

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Julie:

Enclosed for filing please find two copies of various email records related to the damages hearing set for October 4, 2016 in the above-referenced matter. Please return one clocked copy to me in the enclosed SASE. Thank you for your assistance.

With kindest regards, I am

Sincerely,

A. Bright Ariail

Enclosures
cc: Andrew K Epting, Jr., Esq.
Michelle N. Endemann, Esq.

Bright Ariail

From: Laura Dukes Beck <LBeck@charlestoncounty.org>
Sent: Monday, October 3, 2016 3:58 PM
To: Bright Ariail; Mikell Scarborough; Barnwell Fishburne
Cc: Andrew K. Epting; Michelle Endemann; Angela Gross
Subject: RE: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

The Judge has decided that we ARE going forward with this tomorrow. We will see everyone at 2:00.

Thank you,
Laura

Laura Dukes Beck, Esq.
Scheduling and Roster Clerk
Charleston County Master-In-Equity's Office
100 Broad Street, Suite 266
Charleston, SC 29401
Tel: (843) 958-5075
Fax: (843) 958-5077
lbeck@charlestoncounty.org

From: Bright Ariail [mailto:bright@BRIGHTARIAILLAW.COM]
Sent: Monday, October 03, 2016 11:52 AM
To: Mikell Scarborough; Barnwell Fishburne
Cc: Andrew K. Epting; Michelle Endemann; Laura Dukes Beck; Angela Gross
Subject: RE: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

Your Honor,

I am in receipt of Mr. Epting's email below. The Notice of Appeal was served after careful consideration and in good faith; it is our position that it is timely, it is not taken for the purpose of delay but rather to obtain lawful appellate review and preserve the arbitration rights of the Defendants, and it is in compliance with the South Carolina Appellate Court Rules and applicable law. Accordingly, Defendants will not be withdrawing the Notice of Appeal. Further, per Rule 205 of the SCACR, I understand all proceedings in your court will be stayed and that the appellate court now has exclusive jurisdiction over this matter.

VR, Bright Ariail

Law Office of A. Bright Ariail, LLC
125E Wappoo Creek Drive
Suite 202
Charleston, SC 29412

bright@brightariaillaw.com
843/814-8805

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the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately delete this email and notify me by return email or by telephone at 843/814-8805.

From: Angela Gross [mailto:agg@epting-law.com]
Sent: Friday, September 30, 2016 6:26 PM
To: master@charlestoncounty.org
Cc: Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>; Bright Ariail <bright@BRIGHTARIAILLAW.COM>; Michelle Endemann <mne@epting-law.com>; LBECK@charlestoncounty.org
Subject: Palmetto Construction Group v. Ward, et al; Case No. 2016-CP-10-1143

Judge Scarborough,

As you will recall, there is currently a default damages hearing scheduled for Tuesday, October 4 at 2:00pm in the above referenced case. Hearings on the motions to reconsider by both parties have been set for October 11 at 2:00pm.

This afternoon, we received a copy of Ms. Arial's Notice of Appeal. The Notice of Appeal is facially invalid as the order denying the motion to lift the default and denying the affirmative defense of arbitration was served on all parties by the Court on July 18, 2016. The notice is untimely by more than two months, and the order is interlocutory. No order on the motion to reconsider has been entered as it remains pending.

The appeal is an attempt to continue the damages hearing and further delay any resolution of this matter. We are filing a motion to dismiss and for expedited review in the Court of Appeals. We view the appeal as frivolous, and this is to notify counsel and that Court that we will be seeking sanctions against the Defendants and counsel up to and including any further harm to Palmetto as they will likely have to close their doors.

We ask that Ms. Arial withdraw her notice of appeal and that she advise her decision on the withdrawal by Monday. We are prepared to go forward with the damages hearing as scheduled.

With kindest regards,

Drew

Angela

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
And Michelle N. Endemann, Esquire
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
agg@epting-law.com

81190

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward Appellants.

RECEIVED
OCT 11 2016
SC Court of Appeals

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

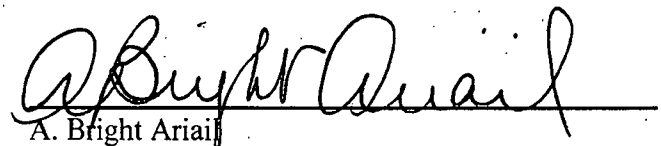
Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
Andrew K. Epting, Jr.
Michelle N. Endemann
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group, Respondent,

v.

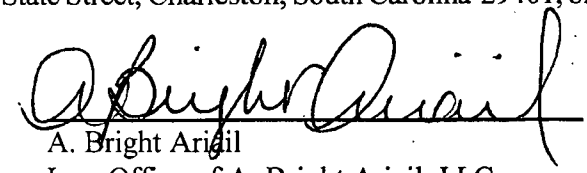
Restoration Specialists, LLC,
Reuben Mark Ward, and
Lynnette Pennington Ward Appellants.

RECEIVED
OCT 11 2016
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Constructions Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Adrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



A. Bright Ariail
Law Office of A. Bright Ariail, LLC
125 Wappoo Creek Drive
Building E, Suite 202
Charleston, S.C. 29412
(843) 814-8805
Attorney for Appellants

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

125E WAPPOO CREEK DRIVE, SUITE 202
CHARLESTON, SC 29412
bright@brightariaillaaw.com

A. Bright Ariail, Esquire

Telephone: (843) 814-8805
Facsimile: (843) 266-0538

October 6, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
OCT 11 2016
SC Court of Appeals

RE: ***Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward***
Case No. 2016-CP-10-1143

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal on the Respondent.

(2) A copy of the order(s) which are to be challenged on appeal.

(3) A filing fee of $100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,

A. Bright Ariail
Attorney for Appellants

Enclosures
cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
Andrew K Epting, Jr., LLC
46A State Street
Charleston, S.C. 29401
(843) 377-1871
Attorneys for Respondent

LAW OFFICE OF A. BRIGHT ARIAIL, LLC

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TO:	FROM:
THE HONORABLE JENNY ABBOTT KITCHINGS	A. BRIGHT ARIAIL, ESQ
FAX NUMBER (803)-734-1839	DATE: OCTOBER 6, 2016
PHONE NUMBER (803) 734-1890	TOTAL NO. OF PAGES INCLUDING COVER: 13

YOUR REFERENCE:
Appeal - Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No; 2016-CP-10-1143

CASE NAME/CASE NUMBER:
.Palmetto Construction Group v. Restoration Specialists, LLC, Reuben Mark Ward, and Lynette Pennington Ward/ Case No: 2016-CP-10-1143

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

NOTES/COMMENTS:

DEAR MS. KITCHINGS:

ENCLOSED PLEASE FIND AN ELECTRONICALLY TRANSMITTED FACSIMILE COPY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH THE ABOVE-REFERENCED APPEAL:

(1) COVER LETTER FILING NOTICE OF APPEAL OF APPELLANTS RESTORATION SPECIALISTS, LLC, REUBEN MARK WARD, AND LYNNETTE PENNINGTON WARD ("NOTICE OF APPEAL");

(2) NOTICE OF APPEAL;

(3) PROOF OF SERVICE OF THE NOTICE OF APPEAL ON THE RESPONDENT;

(4) THE ORDER(S) WHICH ARE TO BE CHALLENGED ON APPEAL;

(5) THE FILING FEE CHECK OF $100.00.

WE ARE REFILING THESE DOCUMENTS AS THE COURT REPORTER'S CERTIFICATION OF THE JULY 14, 2016 BENCH ORDER WAS INADVERTANTLY OMITTED FROM OUR OCTOBER 5, 2016 FILING WITH THE COURT OF APPEALS. THE ORIGINALS OF THESE DOCUMENTS AND THE FILING FEE CHECK WILL BE IMMEDIATELY SENT BY U.S. MAIL TO YOUR OFFICE.

BEST REGARDS,

A. BRIGHT ARIAIL

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