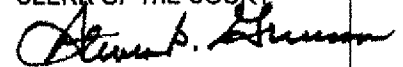


# **EXHIBIT H**

# **EXHIBIT H**



1 **Marquis Aurbach Coffing**  
Jack Chen Min Juan, Esq.  
2 Nevada Bar No. 6367  
Cody S. Mounteer, Esq.  
3 Nevada Bar No. 11220  
Tom W. Stewart, Esq.  
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*Attorneys for APCO Construction*

8 -and-

9 **SPENCER FANE LLP**  
John H. Mowbray, Esq. (Bar No. 1140)  
10 John Randall Jefferies, Esq. (Bar No. 3512)  
Mary E. Bacon, Esq. (Bar No. 12686)  
11 300 S. Fourth Street, Suite 700  
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14 RJJefferies@spencerfane.com  
MBacon@spencerfane.com

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 APCO CONSTRUCTION, a Nevada  
18 corporation,

19 Plaintiff,

20 vs.

21  
22 GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

23 Defendant.  
24

25  
26 AND ALL RELATED MATTERS

Case No.: A571228  
Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

**ORDER GRANTING MOTION  
FOR 54(b) CERTIFICATION AND FOR  
STAY PENDING APPEAL**

27 Plaintiff APCO Construction's Motion for 54(b) Certification and for Stay Pending  
28 Appeal on Order Shortening Time having come on for hearing before this Court on June 21,

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

RECEIVED

JUL 20 2018

DISTRICT COURT DEPT#13

1 2018, Plaintiff APCO Construction, being represented by and through its attorney of record,  
2 Cody S. Mounteer, Esq. of the law firm of Marquis Aurbach Coffing, and Defendant Zitting  
3 Brothers Construction, Inc., being represented by and through its attorney of record, I-Che Lai,  
4 Esq. of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP; the Court having  
5 reviewed the papers and pleadings on file herein, having heard arguments of the parties, and for  
6 good cause shown;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, APCO's Motion for  
8 NRCP 54(b) Certification is GRANTED;

9 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
10 enters an express direction for the entry of judgment as to the Findings of Fact, Conclusions of  
11 Law, and Order Granting Zitting Brother Construction, Inc.'s Motion for Partial Summary  
12 Judgment, which is hereby certified as final under NRCP 54(b);

13 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
14 enters an express direction for the entry of judgment as to the Order Denying APCO's Motion  
15 for Reconsideration of Court's Order Granting Zitting Brother Construction, Inc.'s Partial  
16 Motion for Summary Judgment, which is hereby certified as final under NRCP 54(b);

17 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
18 enters an express direction for the entry of judgment as to Order Determining Amount of Zitting  
19 Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interest, which is hereby  
20 certified as final under NRCP 54(b);

21 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
22 enters an express direction for the entry the Judgment in Favor of Zitting Brothers Construction,  
23 Inc., which is hereby is certified as final under NRCP 54(b);

24 IT IS FURTHER ORDERED that APCO's Motion for Stay Pending Appeal is also  
25 GRANTED;

1 IT IS FURTHER ORDERED that APCO shall have thirty days from notice of entry of  
2 this order to post a bond for the full amount of the Judgment in favor of Zitting Brothers  
3 Construction, Inc., \$1,516,723.46, in order to stay these proceedings pending appeal.

4 ORDER

5 IT IS SO ORDERED.

6 Dated this 28<sup>th</sup> day of July, 2018

7  
8  
9   
DISTRICT COURT JUDGE

10 Respectfully submitted by:

11 MARQUIS AURBACH COFFING

12 By   
13

14 Jack Chen Min Juan, Esq.  
15 Nevada Bar No. 6367  
16 Cody S. Mounteer, Esq.  
17 Nevada Bar No. 11220  
18 Tom W. Stewart, Esq.  
19 Nevada Bar No. 14280  
20 10001 Park Run Drive  
21 Las Vegas, Nevada 89145  
22 Attorneys for APCO Construction  
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28



# **EXHIBIT G**

# **EXHIBIT G**

*Steven D. Grierson*

**Original**

**Marquis Aurbach Coffing**  
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*-and-*

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**DEPARTMENT XIII  
NOTICE OF HEARING**  
DATE 6/21/18 TIME 9:00 AM  
APPROVED BY RA

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

**PLAINTIFF'S MOTION**  
**FOR 54(b) CERTIFICATION AND FOR**  
**STAY PENDING APPEAL**  
**ON ORDER SHORTENING TIME**

AND ALL RELATED MATTERS

Plaintiff, APCO Construction ("APCO"), by and through the law firms of Marquis Aurbach Coffing and Spencer Fane, LLP hereby submits their Motion for 54(b) Certification and

**MARQUIS AURBACH COFFING**

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Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**RECEIVED**

**JUN 07 2018**

**DISTRICT COURT DEPT# 13**

1 for Stay Pending Appeal on Order Shortening Time. This Motion is made and based upon the  
2 points and authorities attached hereto, the papers and pleadings on file herein, and any argument  
3 of counsel at the time of hearing in this matter.

4 Dated this 7<sup>th</sup> day of June, 2018.

5 MARQUIS AURBACH COFFING

6  
7 By 

8 Jack Chen Min Juan, Esq.  
9 Nevada Bar No. 6367  
Cody S. Munteer, Esq.  
10 Nevada Bar No. 11220  
Tom W. Stewart, Esq.  
11 Nevada Bar No. 14280  
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13 Attorneys for APCO Construction  
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**ORDER SHORTENING TIME**

Upon the Declaration of Tom W. Stewart, Esq., and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of the **PLAINTIFF'S MOTION FOR 54(b) CERTIFICATION AND FOR STAY PENDING APPEAL** will be shortened and will be heard on the 21<sup>st</sup> day of June, 2018, at the hour of 9:00 a.m. in Department XIII of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Any opposition is due: \_\_\_\_\_ with courtesy copies by: \_\_\_\_\_

Any reply is due: \_\_\_\_\_ with courtesy copies by: \_\_\_\_\_


If needed, further reply is due: \_\_\_\_\_ with cc by: \_\_\_\_\_

Dated this 7<sup>th</sup> day of June, 2018.

  
DISTRICT COURT JUDGE

Submitted by:

MARQUIS AURBACH COFFING

By   
Jack Chen Min Juan, Esq.  
Nevada Bar No. 6367  
Cody S. Mounteer, Esq.  
Nevada Bar No. 11220  
Tom W. Stewart, Esq.  
Nevada Bar No. 14280  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for APCO Construction

**DECLARATION OF TOM W. STEWART, ESQ.**  
**IN SUPPORT OF ORDER SHORTENING TIME**

Tom W. Stewart, Esq. declares as follows:

1. I am an associate with the law firm of Marquis Aurbach Coffing, counsel for APCO Construction in the above-stated action.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. APCO has filed an appeal regarding the Findings of Fact, Conclusions of Law, and Order Granting Zitting Brother Construction, Inc.'s Motion for Partial Summary Judgment (the "Order") and the denial of APCO's Motion to Reconsider the Order.

4. The appeal requires the certification of the Order as final pursuant to NRCP 54(b).

5. If heard in the ordinary course, the Order may not be certified as final in sufficient time to maintain appellate jurisdiction pursuant to NRAP 3A, which would see APCO's appeal dismissed.

6. Further, a stay is necessary to preserve the status quo pending appeal.

7. If heard in the ordinary course, the judgment could be executed upon prior to APCO's appeal being resolved, which would defeat the object of the appeal and cause APCO to suffer serious or irreparable injury.

8. Good cause therefore exists to shorten time.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 7<sup>th</sup> day of June, 2018.

  
Tom W. Stewart, Esq.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION.**

This case arises out of a construction project in Las Vegas, Nevada, known as the Manhattan West Condominiums Project and involves several parties including, among others, APCO and Defendant Zitting Brothers Construction, Inc. ("Zitting"). While some minor portions of the case remains active—mostly motions for attorney fees that do not involve Zitting—the claims between APCO and Zitting have been resolved on summary judgment entered in favor of Zitting and against APCO.<sup>1</sup> APCO has appealed both the order granting partial summary judgment in favor of Zitting (the "Order") and the subsequent denial of APCO's motion to reconsider the Order.<sup>2</sup>

Accordingly, APCO requests that this Court (1) grant final judgment certification pursuant to NRCP 54(b) of the Order, and (2) stay the execution of judgment pending appeal pursuant to NRAP 8(c). Certifying the Order as final allows the parties to reach a final judgment as to these two parties and, further, staying execution of the judgment preserves the status quo pending resolution of the matter on appeal.

**II. LAW AND ARGUMENT.****A. THIS COURT SHOULD CERTIFY THE ORDER AS FINAL UNDER NRCP 54(B).**

A party may move for an order certifying a judgment as final when other parties remain pending in the matter. This is confirmed by NRCP 54(b), which states, in pertinent part:

**(b) Judgment Involving Multiple Parties.** When multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates the rights and liabilities of fewer

<sup>1</sup> See Findings of Fact, Conclusions of Law, and Order Granting Zitting Brother Construction, Inc.'s Motion for Partial Summary Judgment, attached as **Exhibit A**; see also Register of Actions, attached as **Exhibit B**.

<sup>2</sup> See Notice of Appeal, attached as **Exhibit C**.

1 than all the parties shall not terminate the action as to any of the parties, and the  
2 order or other form of decision is subject to revision at any time before the entry  
of judgment adjudicating all the rights and liabilities of all the parties.

3 When a district court is asked to certify a judgment based on the elimination of a party, the court  
4 considers prejudice in the party "being forced to bring its appeal," as well as "prejudice to the  
5 parties remaining below if the judgment is certified as final." *Mallin v. Farmers Ins. Exch.*, 106  
6 Nev. 606, 611, 797 P.2d 978, 981 (1990). The district court should weigh the prejudice to the  
7 various parties and should certify a judgment as final "if the prejudice to the eliminated party  
8 would be greater than the prejudice to the parties remaining below." *Id.* Any order for final  
9 certification must state "there is no just reason for delay and upon express direction for the entry  
10 of judgment." See NRCP 54(b). Consequently, the order granting summary judgment should be  
11 certified as final pursuant to NRCP 54(b), because prejudice will not result to the remaining  
12 parties if the order is deemed final. Indeed, because Zitting's claims against APCO were  
13 separated for the order granting summary judgment, it is most efficient to maintain the separation  
14 of those claims and issues through a final judgment with 54(b) certification of the order. As a  
15 result, the parties remaining in this action will not suffer any prejudice if the order is deemed  
16 final. On the other hand, the potential prejudice to APCO in prolonging resolution of its filed  
17 appeal significantly outweighs any prejudice to other parties, including Zitting.

18 Here, the Order resolves all claims between Zitting and APCO. The trial and all post-  
19 trial briefing and motion work are complete, with the exception of pending motions for fees and  
20 costs that do not pertain to Zitting.<sup>3</sup> NRCP 54(b) certification will simply permit APCO and  
21 Zitting to move forward with a pending appeal of the Order. Thus, this Court should certify as  
22 final the Order pursuant to NRCP 54(b).

23 **B. THIS COURT SHOULD ISSUE A STAY PENDING APPEAL PURSUANT**  
24 **TO NRAP 8(C).**

25 In granting stay relief, this Court should consider the NRAP 8(c) factors as favoring  
26 APCO's entitlement to a stay and to preserve the status quo: (1) whether the object of the appeal  
27 will be defeated if the stay is denied; (2) whether appellant will suffer irreparable or serious

28 <sup>3</sup> See Ex. B.



1 injury if the stay is denied; (3) whether the respondent will suffer irreparable or serious injury if  
2 the stay is granted; and (4) whether appellant is likely to prevail on the merits of the appeal. *See*  
3 *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also Mikohn*  
4 *Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (holding that while no one  
5 factor is more important, “if one or two factors are especially strong, they may counterbalance  
6 other weak factors”). In reviewing these factors, the Supreme Court has emphasized that the  
7 purpose of a stay is to preserve the status quo. *See Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d  
8 1252, 1254 (2005). Therefore, this Court should consider the NRAP 8(c) factors and enter the  
9 requested stay.

10 **1. The object of APCO’s appeal will be defeated if the stay is denied and**  
11 **they will thus suffer irreparable or serious injury.**

12 Generally, “a stay should issue to avoid defeating the object of the appeal.” *Mikohn*  
13 *Gaming Corp.*, 120 Nev. at 252, 89 P.3d at 38. The object of an action is “[t]he legal relief that a  
14 plaintiff seeks; the remedy demanded or relief sought in a lawsuit.” *Object*, Black’s Law  
15 Dictionary (10th ed. 2014). Here, APCO seeks the reversal of the Order and the denial of the  
16 motion for reconsideration of the Order.<sup>4</sup> Thus, if no stay is issued, Zitting will be able to  
17 execute upon the judgment, which will defeat the object of APCO’s appeal. Further, APCO will  
18 suffer serious injury if Zitting is allowed to execute on the judgment before APCO has the  
19 opportunity to fully litigate its rights on appeal. Thus, these two factors weigh heavily in favor  
20 of issuing a stay.

21 **2. Zitting will not suffer irreparable or serious injury if the stay is**  
22 **granted.**

23 The act of seeking stay relief pending appellate proceedings does not in and of itself  
24 constitute harm to the non-moving party for purposes of entering a stay. *See Hansen*, 116 Nev.  
25 at 658, 6 P.3d 982 at 986–87. Additionally, any delay caused by the appellate proceedings can  
26 be addressed by the accrual of legal interest as it relates to any future judgment awarded, if any,  
27 to Zitting. *See Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167 (2006).

28 <sup>4</sup> *See Ex. C.*



1 Therefore, the Court should conclude that APCO has satisfied the third NRAP 8(c) factor for  
2 granting a stay.

3 **3. APCO is likely to prevail on the merits of the appeal.**

4 For the final NRAP 8(c) factor, the movant must “present a substantial case on the merits  
5 when a serious legal question is involved and show that the balance of equities weighs heavily in  
6 favor of granting the stay.” *Hansen*, 116 Nev. at 659, 6 P.3d at 987. Here, as articulated in  
7 APCO’s earlier opposition to Zitting’s motion for summary judgment and APCO’s motion to  
8 reconsider, APCO’s appeal presents a substantial case involving serious legal questions  
9 regarding the litany of material facts that remain in dispute between APCO and Zitting, as well  
10 as the legal errors underlying the Order, demonstrating that the balance of equities weigh heavily  
11 in favor of granting a stay.<sup>5</sup> Further, APCO prevailed at trial against the non-Zitting defendants,  
12 all of whom advanced claims that were nearly identical to Zitting’s, demonstrating the strength  
13 of APCO’s position and the likelihood of prevailing on appeal.<sup>6</sup> As a result, this factor also  
14 weighs heavily in favor of APCO.

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26 <sup>5</sup> See APCO’s Opposition to Zitting Brother Constriction’s Partial Motion for Summary Judgment,  
27 attached as **Exhibit D**, and APCO’s Motion for Reconsideration of Court’s Order Granting Zitting  
28 Brother Construction, Inc.’s Partial Motion for Summary Judgment, attached as **Exhibit E**.

<sup>6</sup> See **Ex. B**

1     **III.     CONCLUSION.**

2             For the foregoing reasons, APCO respectfully requests that this Court (1) grant final  
3 judgment certification pursuant to NRCP 54(b) of the December 29, 2017, Findings of Fact,  
4 Conclusions of Law, and Order Granting Zitting Brother Construction, Inc.'s Motion for Partial  
5 Summary Judgment, and (2) stay the execution of judgment pending appeal pursuant to NRAP  
6 8(c).

7             Dated this 7<sup>th</sup> day of June, 2018.

8                             MARQUIS AURBACH COFFING

9  
10             By 

11             Jack Chen Min Juan, Esq.  
12             Nevada Bar No. 6367  
13             Cody S. Munteer, Esq.  
14             Nevada Bar No. 11220  
15             Tom W. Stewart, Esq.  
16             Nevada Bar No. 14280  
17             10001 Park Run Drive  
18             Las Vegas, Nevada 89145  
19             Attorneys for APCO Construction

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **PLAINTIFF'S MOTION FOR 54(b) CERTIFICATION ON SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the \_\_\_ day of June, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>7</sup>

		Select All	Select None		
Bennett-Tueller Johnson & Deere					
Name	Email			Select	
Benjamin D. Johnson	<a href="mailto:ben.johnson@btd.com">ben.johnson@btd.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kenzie Dunn	<a href="mailto:kdunn@btd.com">kdunn@btd.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Brian K. Berman, Chtd.					
Name	Email			Select	
Brian K. Berman, Esq.	<a href="mailto:b.k.berman@att.net">b.k.berman@att.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Cadden & Fuller LLP					
Name	Email			Select	
Dana Y. Kim	<a href="mailto:dkim@caddenfuller.com">dkim@caddenfuller.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
S. Judy Hirahara	<a href="mailto:jhirahara@caddenfuller.com">jhirahara@caddenfuller.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tammy Cortez	<a href="mailto:tcortez@caddenfuller.com">tcortez@caddenfuller.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
David J. Merrill P.C.					
Name	Email			Select	
David J. Merrill	<a href="mailto:david@djmerrillpc.com">david@djmerrillpc.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Dickinson Wright, PLLC					
Name	Email			Select	
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Christine Spencer	<a href="mailto:cspencer@dickinsonwright.com">cspencer@dickinsonwright.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Donna Wolfbrandt	<a href="mailto:dwolfbrandt@dickinsonwright.com">dwolfbrandt@dickinsonwright.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Erk Dobberstein	<a href="mailto:edobberstein@dickinsonwright.com">edobberstein@dickinsonwright.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Durham Jones & Pinegar					
Name	Email			Select	
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Cindy Simmons	<a href="mailto:csimmons@djplaw.com">csimmons@djplaw.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Fox Rothschild					
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Richard I. Dretzer	<a href="mailto:rdretzer@foxrothschild.com">rdretzer@foxrothschild.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
G.E. Robinson Law					
Name	Email			Select	

<sup>7</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCp 5(b)(2)(D).

# MARQUIS AURBACH COFFING

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George Robinson	<a href="mailto:grobinson@pezzillollayd.com">grobinson@pezzillollayd.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>GERRARD COX &amp; LARSEN</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
Aaron D. Lancaster	<a href="mailto:alancaster@gerrard-cox.com">alancaster@gerrard-cox.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Douglas D. Gerrard	<a href="mailto:dgerrard@gerrard-cox.com">dgerrard@gerrard-cox.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kaytlyn Bassett	<a href="mailto:kbassett@gerrard-cox.com">kbassett@gerrard-cox.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Gibbs, Giden, Locher, Turner &amp; Senet LLP</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
Becky Pintar	<a href="mailto:bpintar@gglt.com">bpintar@gglt.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Linda Compton	<a href="mailto:lcompton@gglt.com">lcompton@gglt.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Gordon &amp; Rees</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
Robert Schumacher	<a href="mailto:rschumacher@gordonrees.com">rschumacher@gordonrees.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation,

Defendant.

AND ALL RELATED MATTERS

CASE NO. A571228  
DEPT. NO. XIII

Consolidated with:  
A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

Hearing Date: November 16, 2017  
Hearing Time: 9:00 a.m.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING ZITTING**

**BROTHERS CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY**

**JUDGMENT AGAINST APCO CONSTRUCTION**

On November 16, 2017, this Court heard Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction. Jorge A. Ramirez and I-Che Lai of Wilson Elser Moskowitz Edelman & Dicker, LLP appeared at the hearing for Zitting Brothers Construction, Inc. ("ZBCI"). John Randall Jefferies of Spencer Fane LLP and Cody S. Mounteer of Marquis Aurbach Coffing appeared for APCO Construction, Inc. ("APCO"). Having considered ZBCI's motion, the pleadings and papers filed in this case, and oral arguments of counsel, this Court makes the following findings of fact and conclusions of law.

//

1 FINDINGS OF FACT

2 A. APCO's Subcontract with ZBCI

3 1. Around September 6, 2007, Gemstone Development West, Inc. ("Gemstone") and  
4 APCO entered into the ManhattanWest – General Construction Agreement for GMP ("Prime  
5 Contract"). Under the Prime Contract, APCO would serve as the general contractor for the  
6 ManhattanWest mixed-use development project located at the following Assessor's Parcel Numbers  
7 in Clark County, Nevada: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010, and  
8 162-32-101-014 (the "Project").

9 2. Around November 17, 2007, APCO and ZBCI entered into a Subcontract Agreement  
10 ("Subcontract"). Under the Subcontract, ZBCI would provide framing materials and labor for the  
11 Project.

12 3. The Subcontract requires APCO to pay ZBCI 100% of the value of the work  
13 completed on a periodic basis—less 10% retention of the value (the "Retention")—only after APCO  
14 receives actual payments from Gemstone.

15 4. The Subcontract requires APCO to pay ZBCI the Retention amount for each building  
16 of the Project upon (a) the completion of each building; (b) Gemstone's approval of ZBCI's work on  
17 the completed building; (c) APCO's receipt of final payment from Gemstone; (d) ZBCI's delivery to  
18 APCO all "as-built drawings for [ZBCI]'s scope of work and other close out documents"; and (e)  
19 ZBCI's delivery to APCO a release and waiver of claims from ZBCI's "labor, materials and  
20 equipment suppliers, and subcontractors providing labor, materials[,] or services to the Project...."  
21 The Subcontract deems work on a building to be "complete" as soon as "drywall is completed" for  
22 the building.

23 5. Alternatively, if the Prime Contract is terminated, the Subcontract requires APCO to  
24 pay ZBCI the amount due for ZBCI's completed work after receipt of payment from Gemstone.

25 6. The conditions precedent of the Subcontract requiring APCO's payment only upon  
26 receipt of payment from Gemstone are colloquially known as "pay-if-paid provisions."

27 7. The Subcontract only allows APCO to terminate—with written notice to ZBCI and  
28 with cause—the Subcontract for non-performance.

1           8.     If any party to the Subcontract "institute[s] a lawsuit ... for any cause arising out of  
2 the Subcontract..." the Subcontract expressly authorizes the prevailing party to recover "all costs,  
3 attorney's fees[,] and any other reasonable expenses incurred" in connection with the lawsuit. The  
4 Subcontract does not provide a rate of interest that would accrue on the amount owed under the  
5 Subcontract.

6           9.     If any term of the Subcontract is void under Nevada law, the Subcontract expressly  
7 provides that the void term would not affect the enforceability of the remainder of the contract.

8 **B.     ZBCI's Work under the Subcontract**

9           10.    Around November 19, 2007, ZBCI began its scope of work under the Subcontract.

10          11.    The Prime Contract was terminated in August 2008, and the Project had shut down on  
11 December 15, 2008. APCO never provided ZBCI with a written notice of termination with cause for  
12 non-performance.

13          12.    Prior to the Project's shutdown, ZBCI submitted written requests to APCO for change  
14 orders valued at \$423,654.85. APCO did not provide written disapproval of those change orders to  
15 ZBCI within 30 days of each request.

16          13.    Also prior to the Project's shutdown, ZBCI had completed its scope of work on  
17 Buildings 8 and 9 of the Project, including work on the change orders, without any complaints on the  
18 timing or quality of the work. ZBCI had submitted close-out documents for its work, including  
19 release of claims for ZBCI's vendors. The value of ZBCI's completed work amounted to  
20 \$4,033,654.85.

21          14.    At the time of the Project's shutdown, the drywall was completed for Buildings 8 and  
22 9.

23          15.    To date, ZBCI had only received \$3,282,849.00 for its work on the Project. ZBCI had  
24 completed work in the amount of \$347,441.67 on the change orders and \$403,365.49 of the  
25 Retention—totaling \$750,807.16—which remains unpaid.

26          16.    ZBCI demanded APCO pay the \$750,807.16 still owed on the contract. However,  
27 APCO refused to do so, causing ZBCI to initiate proceedings to recover the requested amount.

28

1     **C.     Procedural History**

2           17.     On January 14, 2008, ZBCI served its Notice of Right to Lien to APCO and  
3     Gemstone via certified mail.

4           18.     On December 5, 2008, ZBCI served its Notice of Intent to Lien to APCO and  
5     Gemstone via certified mail.

6           19.     On December 23, 2008, ZBCI recorded its Notice of Lien on the Project with a lien  
7     amount of \$788,405.41 and served this document on APCO and Gemstone via certified mail on  
8     December 24, 2008.

9           20.     On April 30, 2009, ZBCI filed a complaint against Gemstone and APCO and a Notice  
10    of Lis Pendens. The complaint alleged 6 claims: (a) breach of contract, (b) breach of implied  
11    covenant of good faith and fair dealing, (c) unjust enrichment, (d) violation of Chapter 108 of the  
12    Nevada Revised Statutes, (e) claim for priority, and (f) violation of Chapter 624 of the Nevada  
13    Revised Statutes.

14          21.     On June 10, 2009, APCO answered ZBCI's complaint. APCO's answer alleged 20  
15    affirmative defenses, including the tenth affirmative defense alleging that APCO's obligation to  
16    ZBCI had been satisfied or excused and the twelfth affirmative defense alleging that ZBCI's failure  
17    to satisfy conditions precedent barred ZBCI's breach of contract claim.

18          22.     Around June 16, 2009, ZBCI provided a Notice of Foreclosure of Mechanic's Lien,  
19    and this notice was published in accordance with Nev. Rev. Stat. 108.239.

20          23.     On April 7, 2010, ZBCI recorded its Amended Notice of Lien with a lien amount of  
21    \$750,807.16 and served this document on APCO and Gemstone via certified mail around the same  
22    date.

23          24.     APCO does not dispute that ZBCI complied with all requirements to create, perfect,  
24    and foreclose on its lien under Chapter 108.

25          25.     On April 29, 2010, APCO responded to ZBCI's interrogatories that requested, *inter*  
26    *alia*, APCO's explanation for refusing payment to ZBCI and APCO's grounds for the tenth and  
27    twelfth affirmative defenses. ZBCI had sent those interrogatories to obtain more details about  
28    APCO's defenses against ZBCI's complaint and to narrow the issues for discovery and trial.

1 APCO's interrogatory responses indicated that APCO would rely solely on the enforceability of the  
2 pay-if-paid provision in the Subcontract to excuse payment to ZBCI.

3 26. On April 23, 2013, this Court authorized the sale of the Project free and clear of all  
4 liens, including liens arising under Chapter 108 of the Nevada Revised Statutes. The sale resulted in  
5 the distribution of the entire net proceeds from the sale to Scott Financial Corporation (the "Lender")  
6 upon the Nevada Supreme Court's determination that the Lender's claim to the net proceeds is  
7 superior to the Chapter 108 lien claimants' claim.

8 27. On April 12, 2017, ZBCI served APCO with a set of interrogatories that are similar to  
9 the ones served in 2010. This set of interrogatories again requested, *inter alia*, APCO's explanation  
10 for refusing payment to ZBCI and APCO's grounds for the tenth and twelfth affirmative defenses.  
11 ZBCI sent those interrogatories to confirm APCO's prior discovery responses on APCO's defenses  
12 against ZBCI's complaint.

13 28. On May 12, 2017, APCO responded to ZBCI's interrogatories that again indicated  
14 APCO's sole reliance on the enforceability of the pay-if-paid provision in the Subcontract to excuse  
15 payment to ZBCI.

16 29. On June 5, 2017, ZBCI deposed APCO's Nev. R. Civ. P. 30(b)(6) witness regarding  
17 APCO's affirmative defenses. At the deposition, APCO's Nev. R. Civ. P. 30(b)(6) witness declined  
18 to update APCO's interrogatory responses and re-affirmed APCO's sole reliance on the  
19 enforceability of the pay-if-paid provision to excuse payment.

20 30. On July 19, 2017, ZBCI deposed APCO's Nev. R. Civ. P. 30(b)(6) witness regarding  
21 topics pertaining to APCO's accounting for the Project. At the deposition, APCO's Nev. R. Civ. P.  
22 30(b)(6) witness again declined to update APCO's interrogatory responses.

23 31. APCO did not supplement its discovery responses prior to the June 30, 2017  
24 discovery cutoff.

25 32. On July 31, 2017 and after the close of discovery, ZBCI moved for summary  
26 judgment against APCO on ZBCI's breach of contract and Nev. Rev. Stat. 108 claim—setting forth  
27 ZBCI's prima facie case for those claims and addressing the enforceability of the pay-if-paid  
28 provision in the Subcontract.

33. On August 21, 2017, APCO filed its opposition to ZBCI's motion, arguing—for the first time—other grounds for refusing payment of the amount owed to ZBCI. ZBCI objected to the admissibility of the evidence in support of APCO's opposition.

34. APCO's refusal to pay ZBCI the amount owed under the Subcontract had compelled ZBCI to incur attorney's fees and costs to collect the amount owed.

### CONCLUSIONS OF LAW

### A. Burden of Proof

1. Summary judgment is appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

2. As the party moving for summary judgment, ZBCI bears the initial burden of production to show the absence of a genuine issue of material fact. *Id.* ZBCI also bears the burden of persuasion at trial on its breach of contract and Chapter 108 claims and therefore must present evidence that would entitle it to a judgment as a matter of law on those two claims in the absence of contrary evidence. *See id.*

### B. APCO's Breach of the Subcontract

3. To establish a breach of contract under Nevada law, ZBCI must provide admissible evidence of (1) the existence of a valid contract, (2) a breach by APCO, and (3) damage as a result of the breach. See *Richardson v. Jones*, 1 Nev. 405, 408 (1865). In this case, this Court concludes that ZBCI has presented sufficient admissible evidence on all elements of a breach of contract.

4. The Subcontract between the respective parties is a valid contract. However, as discussed in this Court's separate decision regarding the enforceability of the Subcontract's "pay-if-paid provisions," the pay-if-paid provisions are against public policy and are void and unenforceable under Nev. Rev. Stat. 624.628(e). The remaining terms of the Subcontract remain enforceable.

5. Nev. Rev. Stat. 624.626(3) automatically approves written requests for change orders unless the higher-tiered contractor denies the requests in writing within 30 days after the lower-tiered contractor submits the requests. Here, this Court concludes that because ZBCI did not receive any

1 written denials of its change order requests within 30 days of request, ZBCI's change order requests  
2 amounting to \$347,441.67 were approved by operation of law. ZBCI is therefore entitled to payment  
3 in the amount of \$347,411.67 for all of the change orders submitted.

4         6. Under Nevada law, compliance with a valid condition precedent requires only  
5 substantial performance. *See, e.g., Laughlin Recreational Enterprises, Inc. v. Zab Dev. Co., Inc.*, 98  
6 Nev. 285, 287, 646 P.2d 555, 556-57 (1982). ZBCI proved at least substantial compliance with the  
7 conditions precedent for payment of the Retention, entitling ZBCI to payment of \$403,365.49 for the  
8 Retention.

9         7. Alternatively, by the very terms of the Subcontract itself, the termination of the Prime  
10 Contract automatically entitles ZBCI to payment of \$403,365.49 for the Retention and \$347,441.67  
11 for the completed work on the change orders. This Subcontract language—exclusive of the void pay-  
12 if-paid provisions—coincides with a prime contractor's obligations to pay its subcontractors  
13 pursuant to Nev. Rev. Stat. 624.626(6).

14         8. APCO breached the Subcontract by refusing to pay ZBCI all of the amount owed for  
15 the Retention and the change orders, and as a result ZBCI is entitled to judgment on its Complaint as  
16 a matter of law. This gives rise to \$750,807.16 in damages, exclusive of attorney's fees, costs, and  
17 interest.

18 **C. ZBCI's Nev. Rev. Stat. 108 Claim**

19         9. There is no dispute that ZBCI complied with the requirements for enforcing its lien  
20 rights under Chapter 108 of the Nevada Revised Statutes.

21         10. Nev. Rev. Stat. 108.239(12) entitles ZBCI to a "personal judgment for the residue  
22 against" APCO.

23         11. Because ZBCI did not receive any of the proceeds from the Nev. Rev. Stat. 108 sale  
24 of the Project, there is no genuine issue that ZBCI is entitled to a personal judgment under Nev. Rev.  
25 Stat. 108.239 against APCO for \$750,807.16 as the lienable amount, plus any reasonable attorney's  
26 fees, costs, and statutory interest that the Court may award.

1     **D.     Preclusion of APCO's Defenses**

2             12.     This Court has considered APCO's arguments in response to ZBCI's motion for  
3     summary judgment and concluded that the arguments have no merit.

4             13.     As discussed above, the pay-if-paid provisions in the Subcontract is unenforceable  
5     and therefore cannot excuse APCO's payment of the amount owed to ZBCI.

6             14.     If APCO wanted to assert other grounds for refusing payment to ZBCI, Nev. R. Civ.  
7     P. 26(e)(2) required APCO to seasonably amend its prior interrogatory responses to include grounds  
8     for refusal other than the enforceability of the pay-if-paid provision. Pursuant to Nev. Rev. Stat.  
9     37(c)(1) and *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. Adv. Op. 37, 396 P.3d 783, 787 (2017),  
10    APCO's failure to seasonably amend precludes APCO from asserting any other defenses "at a trial,  
11    at a hearing, or on a motion" unless APCO substantially justifies this failure or such failure is  
12    harmless to ZBCI.

13            15.     The facts of this case are clear and uncontested. APCO was aware of its alleged  
14    grounds for refusing payment of the \$750,807.16 owed to ZBCI before ZBCI filed its complaint  
15    against APCO. APCO could have asserted its other defenses, other than its belief in the  
16    enforceability of the pay-if-paid provision, at the time it served its April 29, 2010 responses to  
17    ZBCI's interrogatories. In any event, several extensions to discovery were granted in this case even  
18    up to a few weeks before dispositive motions were filed. APCO had ample opportunities to  
19    seasonably amend or supplement its discovery responses to assert additional defenses against paying  
20    ZBCI the amount owed under the Subcontract.

21            16.     Yet, APCO failed to explain why during the seven years of litigation between APCO  
22    and ZBCI, it did not disclose any defenses other than its belief in the enforceability of the pay-if-paid  
23    provision. For example, APCO did not explain its decision to omit the other defenses in its April 29,  
24    2010 responses to ZBCI's interrogatories and May 12, 2017 responses to ZBCI's interrogatories.  
25    APCO also did not explain why it did not amend or supplement its discovery responses with the  
26    other defenses during discovery.

27            17.     ZBCI reasonably relied on APCO's interrogatory responses to formulate its litigation  
28    plan, which included decisions to avoid certain discovery. For example, ZBCI limited its discovery



1 to taking APCO's Nev. R. Civ. P. 30(b)(6) depositions with truncated questioning. ZBCI also filed  
2 its motion for summary judgment that focused on the enforceability of the pay-if-paid provisions.

3 18. By raising defenses other than the enforceability of the pay-if-paid provisions for the  
4 first time in its opposition to ZBCI's motion for summary judgment, APCO has prejudiced ZBCI.  
5 The late defenses have prevented ZBCI from conducting discovery at a time when relevant  
6 information is available and fresh in witnesses' mind. APCO's prejudicial actions also forced ZBCI  
7 to incur time and costs to conduct discovery based on incomplete information.

8 19. APCO's late defenses are not justified and are extremely prejudicial to ZBCI. Those  
9 defenses are now too little, too late. Under Nev. R. Civ. P. 37(c)(1), APCO cannot introduce any  
10 evidence to support any defenses against ZBCI's claims because its prejudicial discovery responses  
11 only claimed that it relied on the void pay-if-paid provisions.

12 20. Due to the preclusion of the other defenses, ZBCI's evidentiary objections regarding  
13 those defenses are moot.

14 21. ZBCI is entitled to judgment on its breach of contract claim and its Nev. Rev. Stat.  
15 108 claims as a matter of law.

16 **E. Attorney's Fees, Costs, and Interest**

17 22. ZBCI is the prevailing party under the Subcontract and the prevailing lien claimant  
18 under Nev. Rev. Stat. 108.237(1).

19 23. Under the Subcontract, ZBCI is entitled to an award of interest, reasonable attorney's  
20 fees, and costs incurred to collect the amount owed to ZBCI.

21 24. Under Nev. Rev. Stat. 108.237(1), ZBCI is also entitled to the cost of preparing and  
22 recording the notice of lien, the costs of the proceedings, the costs for representation of the lien  
23 claimant in the proceedings, and any other costs related to ZBCI's efforts to collect the amount owed  
24 against APCO. This includes, without limitation, attorney's fees and interest.

25 25. Nev. Rev. Stat. 108.237(2)(b) provides the calculation of the interest that accrues  
26 under the amount awarded under Nev. Rev. Stat. 108.237(1). This interest is equal to the prime rate  
27 at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on  
28 January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 4 percent,

1 on the amount of the lien found payable. The rate of interest must be adjusted accordingly on each  
2 January 1 and July 1 thereafter until the amount of the lien is paid.

3 26. Interest is payable from the date on which the payment is found to have been due,  
4 which would be December 15, 2008 in this case. Interest will accrue on the lienable amount,  
5 attorney's fees, and costs until the entire amount is paid.

6 **ORDER**

7 **THEREFORE, IT IS HEREBY ORDERED** that ZBCI's Motion for Partial Summary  
8 Judgment Against APCO Construction is **GRANTED** in its entirety.

9 **IT IS FURTHER ORDERED** that ZBCI is awarded \$750,807.16 (the "Award") on its First  
10 Cause of Action (Breach of Contract) and Fourth Cause of Action (Foreclosure of Mechanic's Lien).

11 **IT IS FURTHER ORDERED** that ZBCI's remaining claims—Second Cause of Action  
12 (Breach of Implied Covenant of Good Faith & Fair Dealing), Third Cause of Action (Unjust  
13 Enrichment or in the Alternative Quantum Meruit), and Seventh Cause of Action (Violation of NRS  
14 624)—are moot.

15 **IT IS FURTHER ORDERED** that ZBCI is awarded attorneys' fees and costs incurred in  
16 connection with this litigation.

17 **IT IS FURTHER ORDERED** that interest shall accrue on the unpaid amount of the Award  
18 from ZBCI's complaint was filed, which was April 30, 2009, to the date the entire amount is paid.

19 **IT IS FURTHER ORDERED** that ZBCI has 30 days from the date of this order to submit a  
20 memorandum setting forth its attorney's fees and costs.

21 **IT IS FURTHER ORDERED** that APCO has 30 days after service of the memorandum to  
22 submit a response.

23 **IT IS FURTHER ORDERED** that ZBCI has 10 days after APCO's response to submit a  
24 reply to the response.

25 **IT IS FURTHER ORDERED** that this Court will address the sole issue of whether ZBCI is  
26 entitled to attorney's fees and costs set forth in the memorandum at a hearing before this Court on

27 January 15, 2018 at 9:00 a.m.  
28

1       **IT IS FURTHER ORDERED** that this Court will enter final judgment on ZBCI claims  
2 upon a decision on the fees and costs—consistent with this Findings of Fact, Conclusions of Law,  
3 and Order


4       **IT IS FURTHER ORDERED** that the trial on ZBCI's complaint and all pending hearings  
5 associated with ZBCI's complaint are vacated.

6       **IT IS SO ORDERED.**

7       Dated this 26<sup>th</sup> day of December, 2017.

8   
9  
10 DISTRICT COURT JUDGE

11 Respectfully submitted by:

12   
13 \_\_\_\_\_  
14 Jorge A. Ramirez, Esq.  
14 I-Che Lai, Esq.  
15 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**  
15 300 South Fourth Street, 11th Floor  
16 Las Vegas, Nevada 89101  
16 *Attorneys for Lien Clamant,*  
17 *Zitting Brothers Construction, Inc.*

18 Approved as to form and content by:

19 *declined to sign*  
20 \_\_\_\_\_  
20 John H. Mowbray, Esq.  
21 John Randall Jefferies, Esq.  
21 Mary E. Bacon, Esq.  
22 **SPENCER FANE LLP**  
22 300 South Fourth Street, Suite 700  
23 Las Vegas, Nevada 89101

24 and

25 Cody S. Mounteer, Esq.  
25 **MARQUIS AURBACH COFFING**  
26 10001 Park Run Drive  
26 Las Vegas, Nevada 89145  
27 *Attorneys for APCO Construction, Inc.*  
28

# **EXHIBIT B**

## REGISTER OF ACTIONS

**הנהגת המערכת**

Supreme Court No.: 75197

Counter Claimant	Club Vista Financial Services LLC	Mark E. Ferrario, ESQ <i>Retained</i> 702-792-3773(W)
Counter Claimant	Gemstone Development West Inc	Greg S. Gilbert <i>Retained</i> 702-689-4600(W)
Counter Claimant	Insulpro Projects Inc	Eric Dobberstein <i>Retained</i> 702-806-6561 (W)
Counter Claimant	Tharaldson Motels II Inc	Martin A. Muckleroy <i>Retained</i> 702-907-0097(W)
Counter Claimant	Tharaldson, Gary D	Martin A. Muckleroy <i>Retained</i> 702-907-0097(W)
Counter Defendant	Accuracy Glass & Mirror Company Inc	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Ahern Rentals Inc	D. Shane Clifford, ESQ <i>Retained</i> 435-613-1010(W)
Counter Defendant	APCO Construction	Gwen Rutar Mullins <i>Retained</i> 702-257-1483(W)
Counter Defendant	Arch Aluminum and Glass Co	Jeffrey R. Albregts <i>Retained</i> 702-483-5026(W)
Counter Defendant	Atlas Construction Supply Inc	David W. Bachelot <i>Retained</i> 7022574122(W)
Counter Defendant	Bank of Oklahoma NA	
Counter Defendant	Bruin Painting Corporation	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Buchele Inc	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Cabinetec Inc	Justin L. Watkins <i>Retained</i> 702-662-6000(W)
Counter Defendant	Camco Pacific Construction Co Inc	Steven L. Morris <i>Retained</i> 702-938-2244(W)
Counter Defendant	Camco Pacific Construction Inc	Steven L. Morris <i>Retained</i> 702-938-2244(W)

Counter Defendant	Cellcrete Fireproofing of Nevada Inc	Robert C. Reade <i>Retained</i> 702-794-4411(W)
Counter Defendant	Concrete Visions Inc	
Counter Defendant	Creative Home Theatre LLC	
Counter Defendant	Dave Peterson Framing Inc	Stephen M. Dixon <i>Retained</i> 702-329-4911(W)
Counter Defendant	E & E Fire Protection LLC	Stephen M. Dixon <i>Retained</i> 702-329-4911(W)
Counter Defendant	Executive Plastering Inc	Matthew G. Callister <i>Retained</i> <del>702-385-3343(W)</del>
Counter Defendant	EZA P.C.	Donald H Williams <i>Retained</i> 7023207755(W)
Counter Defendant	Fast Glass Inc	Michael T. Gebhart <i>Retained</i> 702-324-8341(W)
Counter Defendant	Fast Glass Inc	Michael T. Gebhart <i>Retained</i> 702-324-8341(W)
Counter Defendant	Ferguson Fire and Fabrication Inc	Dale B. Rycraft Jr. <i>Retained</i> 702-796-5555(W)
Counter Defendant	Gemstone Development West Inc	Greg S. Gilbert <i>Retained</i> <del>702-669-4600(W)</del>
Counter Defendant	Granite Construction Company	David R. Johnson <i>Retained</i> 702-789-3100(W)
Counter Defendant	Harsco Corporation	Donald H Williams <i>Retained</i> <del>7023207755(W)</del>
Counter Defendant	HD Supply Waterworks LP	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Heinaman Contract Glazing	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Helix Electric of Nevada LLC	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter	Hydropressure Cleaning Inc	

**Defendant**

<b>Counter Defendant</b>	<b>Inquipco</b>	<b>Jennifer R. Lloyd-Robinson</b> <i>Retained</i> 702-257-1483(W)
<b>Counter Defendant</b>	<b>Insulpro Projects Inc</b>	<b>Eric Dobberstein</b> <i>Retained</i> 702-806-6561(W)
<b>Counter Defendant</b>	<b>Interstate Plumbing &amp; Air Conditioning</b>	
<b>Counter Defendant</b>	<b>John Deere Landscape Inc</b>	
<b>Counter Defendant</b>	<b>Las Vegas Pipeline LLC</b>	<b>Pro Se</b>
<b>Counter Defendant</b>	<b>Masonry Group Nevada Inc</b>	<b>Becky Pintar</b> <i>Retained</i> 702-685-5255(W)
<b>Counter Defendant</b>	<b>Nevada Construction Services</b>	<b>Charles Vlasic</b> <i>Retained</i> 702-551-1178(W)
<b>Counter Defendant</b>	<b>Nevada Prefab Engineers</b>	<b>Mindy C. Fisher</b> <i>Retained</i> 7026997500(W)
<b>Counter Defendant</b>	<b>Nevada Prefab Engineers Inc</b>	<b>Christopher Craft</b> <i>Retained</i> 702-869-8801(W)
<b>Counter Defendant</b>	<b>Noord Sheet Metal Company</b>	<b>T. James Truman</b> <i>Retained</i> 702-256-0156(W)
<b>Counter Defendant</b>	<b>Noorda Sheet Metal Company</b>	<b>Stephen M. Dixon</b> <i>Retained</i> 702-329-4911(W)
<b>Counter Defendant</b>	<b>Northstar Concrete Inc</b>	<b>Jennifer R. Lloyd-Robinson</b> <i>Retained</i> 702-267-1483(W)
<b>Counter Defendant</b>	<b>Northstar Concrete Inc</b>	<b>Jennifer R. Lloyd-Robinson</b> <i>Retained</i> 702-267-1483(W)
<b>Counter Defendant</b>	<b>Pape Materials Handling</b>	<b>Christopher Craft</b> <i>Retained</i> 702-869-8801(W)
<b>Counter Defendant</b>	<b>Patent Construction Systems</b>	<b>Donald H Williams</b> <i>Retained</i> 7023207755(W)
<b>Counter Defendant</b>	<b>Professional Door and Mill Works LLC</b>	<b>Stephen M. Dixon</b> <i>Retained</i> 702-329-4911(W)



Counter Defendant	Professional Doors And Millworks LLC	
Counter Defendant	Ready Mix Inc	Brian Keith Berman <i>Retained</i> 7023820702(W)
Counter Defendant	Renaissance Pools & Spas Inc	Steven B. Scow <i>Retained</i> 702-318-5040(W)
Counter Defendant	Republic Crane Service LLC	Richard Allen Koch <i>Retained</i> 7024543000(W)
Counter Defendant	Scott Financial Corporation	Glenn F Meier <i>Retained</i> 702-791-0308(W)
Counter Defendant	Scott, Bradley J	Matthew S. Carter <i>Retained</i> 7023856000(W)
Counter Defendant	Selectbuild Nevada Inc	Robert E. Schumacher <i>Retained</i> 702-577-9300(W)
Counter Defendant	Steel Structures Inc	Christopher Craft <i>Retained</i> 702-869-8801(W)
Counter Defendant	Supply Network Inc	Philip T. Varricchio <i>Retained</i> 702-724-8300(W)
Counter Defendant	The Pressure Grout Company	
Counter Defendant	Tri City Drywall Inc	Jennifer R. Lloyd-Robinson <i>Retained</i> 702-257-1483(W)
Counter Defendant	WRG Design Inc	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Counter Defendant	Zitting Brothers Construction Inc	Reuben Cawley <i>Retained</i> 702-727-1400(W)
Cross Claimant	APCO Construction	Gwen Rutar Mullins <i>Retained</i> 702-257-1483(W)
Cross Defendant	Gemstone Development West Inc	
Defendant	Commonwealth Land Title Insurance Co	

**Defendant** First American Title Insurance Co

**Defendant** Gemstone Development West Inc

~~Monica Caffaratti~~  
~~Retained~~  
~~640-921-8456(W)~~

**Defendant** Scott Financial Corporation

Glenn F Meier  
*Retained*  
702-791-0308(W)

**Defendant** Scott, Bradley J

Jon Randall Jones  
*Retained*  
7023856000(W)

**Doing Business As** Apco Construction

~~Gwen Rutar Mullins~~  
~~Retained~~  
~~702-257-1483(W)~~

**Doing Business As** Helix Electric

**Doing Business As** Oz Architecture of Nevada Inc

Donald H Williams  
*Retained*  
7023207755(W)

**Doing Business As** Pape Rents

Christopher Craft  
*Retained*  
702-869-8801(W)

**Doing Business As** Pape Rents

William R. Urga  
*Retained*  
7026997500(W)

**Doing Business As** Power Plus!

**Doing Business As** Viking Supplynet

**Interpleader** Hydropressure Cleaning Inc

Gwen Rutar Mullins  
*Retained*  
702-257-1483(W)

**Intervenor** Cell Crete Fireproofing Of NV Inc

Robert C. Reade  
*Retained*  
702-794-4411(W)

**Intervenor** Custom Select Billing Inc

Gwen Rutar Mullins  
*Retained*  
702-257-1483(W)

**Intervenor** Dave Peterson Framing Inc

~~T. James Truman~~  
~~Retained~~  
~~702-256-0156(W)~~

**Intervenor** E & E Fire Protectiong LLC

T. James Truman  
*Retained*  
702-256-0156(W)

**Intervenor** EZA P C

Donald H Williams

		<i>Retained</i> 7023207755(W)
Intervenor	Granite Construction Company	David R. Johnson <i>Retained</i> 702-789-3100(W)
Intervenor	Insulpro Projects Inc	Eric Dobberstein <i>Retained</i> 702-806-6561(W)
Intervenor	National Wood Products, Inc.'s	Richard L Tobler <i>Retained</i> 702-256-6000(W)
Intervenor	Noord Sheet Metal Company	T. James Truman <i>Retained</i> 702-256-0156(W)
Intervenor	Patent Construction Systems	Donald H Williams <i>Retained</i> 7023207755(W)
Intervenor	Pressure Grout Co	T. James Truman <i>Retained</i> 702-256-0156(W)
Intervenor	Professional Doors & Millworks LLC	T. James Truman <i>Retained</i> 702-256-0156(W)
Intervenor	Tri-City Drywall Inc	Jennifer R. Lloyd-Robinson <i>Retained</i> 702-257-1483(W)
Intervenor Defendant	Camco Pacific Construction Co Inc	Steven L. Morris <i>Retained</i> 702-938-2244(W)
Intervenor	Camco Pacific Construction Co Inc	Steven L. Morris

**Defendant***Retained*  
702-938-2244(W)**Intervenor  
Defendant**      **Club Vista Financial Services LLC****Martin A. Muckleroy**  
*Retained*  
702-907-0097(W)**Intervenor  
Defendant**      **Club Vista Financial Services LLC****Martin A. Muckleroy**  
*Retained*  
702-907-0097(W)**Intervenor  
Defendant**      **Commonwealth Land Title Ins Co****Intervenor  
Defendant**      **Commonwealth Land Title Ins Co****Intervenor  
Defendant**      **Concrete Visions Inc****Intervenor  
Defendant**      **E & E Fire Protection LLC****Stephen M. Dixon**  
*Retained*  
702-329-4911(W)**Intervenor  
Defendant**      **Fidelity and Deposit Company of Maryland****Kurt C. Faux**  
*Retained*  
702-458-5790(W)**Intervenor  
Defendant**      **First American Title Insurance Co****Intervenor  
Defendant**      **First American Title Insurance Co**

Intervenor Defendant	Gemstone Development West Inc	Monica Caffaratti Retained 510-921-8155(W)
Intervenor Defendant	Gemstone Development West Inc	Monica Caffaratti Retained 510-921-8155(W)
Intervenor Defendant	Gemstone Development West Inc	
Intervenor Defendant	Gemstone Development West Inc	
Intervenor Defendant	Gemstone Development West Inc	Monica Caffaratti Retained 510-921-8155(W)
Intervenor Defendant	Jeff Helt Plumbing Co LLC	Keith E. Gregory Retained 7023823636(W)
Intervenor Defendant	Marshall, Kelly	
Intervenor Defendant	Nevada Construction Services	Phillip S. Aurbach Retained 7029422155(W)
Intervenor Defendant	Old Republic Surety	Keith E. Gregory Retained 7023823636(W)
Intervenor Defendant	Scott Financial Corporation	Glenn F Meier Retained 702-791-0308(W)
Intervenor Defendant	Tharaldson Motels II Inc	Martin A. Muckleroy Retained 702-907-0097(W)
Intervenor Defendant	Tharaldson Motels II Inc	Martin A. Muckleroy Retained 702-907-0097(W)

Intervenor Plaintiff	Arch Aluminum And Glass Co <i>Now Known As</i> Arch Aluminum and Glass LLC	Jeffrey R. Albrechts <i>Retained</i> 702-483-5026(W)
Intervenor Plaintiff	Cabinetec Inc	Justin L. Watkins <i>Retained</i> 702-562-6000(W)
Intervenor Plaintiff	Cactus Rose Construction Inc	Dallin T. Wayment <i>Retained</i> 7029907272(W)
Intervenor Plaintiff	Camco Pacific Construction Co Inc	Steven L. Morris <i>Retained</i> 702-938-2244(W)
Intervenor Plaintiff	Harsco Corporation	Donald H. Williams <i>Retained</i> 7023207755(W)
Intervenor Plaintiff	Interstate Plumbing & Air Conditioning Inc	Michael T. Gebhart <i>Retained</i> 702-324-8341(W)
Intervenor Plaintiff	Las Vegas Pipeline LLC	James E. Shapiro <i>Retained</i> 702-348-5033(W)
Intervenor Plaintiff	Northstar Concrete, Inc.	Jennifer R. Lloyd-Robinson <i>Retained</i> 702-257-1483(W)
Intervenor Plaintiff	Pape Material Handling	William R. Urga <i>Retained</i> 7026997500(W)
Intervenor Plaintiff	S R Bray Corp	Richard L. Peel <i>Retained</i> 7029907272(W)
Intervenor Plaintiff	Selectbuild Nevada Inc	Robert E. Schumacher <i>Retained</i> 702-577-9300(W)
Intervenor Plaintiff	Sunstate Companies Inc	Garry L. Hayes <i>Retained</i> 702-832-5592(W)
Intervenor Plaintiff	SWPPP Compliance Solutions LLC	Richard L. Peel <i>Retained</i> 7029907272(W)
Other	Graybar Electric Company	
Other	HD Supply Construction Supply LP <i>Doing Business As</i> White Cap Construction Supply Inc	
Other	PCI Group, LLC	
Other	RLMW Investments LLC	

Other	United Subcontractors Inc <i>Doing Business As Skyline Insulation</i>	
Other	Wiss, Janney, Elstner Associates, Inc.	Gwen Rutar Mullins <i>Retained</i> 702-257-1483(W)
Plaintiff	Apco Construction	Jack Chen Min Juan <i>Retained</i> 7023820711(W)
Special Master Hale, Floyd, ESQ		
Third Party Defendant	Camco Pacific Construction Co Inc	Steven L. Morris <i>Retained</i> 702-938-2244(W)
Third Party Defendant	Fidelity & Deposit Co Of Maryland	Kurt C. Faux <i>Retained</i> 7024585790(W)
Third Party Defendant	Fidelity & Deposit Co Of Maryland	Kurt C. Faux <i>Retained</i> 7024585790(W)
Third Party Plaintiff	Dave Peterson Framing Inc	T. James Truman <i>Retained</i> 702-256-0156(W)
Third Party Plaintiff	E & E Fire Protection LLC	T. James Truman <i>Retained</i> 702-256-0156(W)
Third Party Plaintiff	Insulpro Projects Inc	Eric Dobberstein <i>Retained</i> 702-806-8561(W)
Third Party Plaintiff	Noorda Sheet Metal Company	T. James Truman <i>Retained</i> 702-256-0156(W)
Third Party Plaintiff	Professional Doors & Millworks LLC	T. James Truman <i>Retained</i> 702-256-0156(W)

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**EVENTS & ORDERS OF THE COURT**

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**DISPOSITIONS**

05/28/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Walsh, Jessie)  
Debtors: Apco Construction (Plaintiff)  
Creditors: Nevada Construction Services (Defendant)  
Judgment: 05/28/2009, Docketed: 06/03/2009

07/15/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Denton, Mark R.)  
Debtors: Hydropressure Cleaning Inc (Interpleader)  
Creditors: Nevada Construction Services (Intervenor Defendant)  
Judgment: 07/15/2009, Docketed: 07/21/2009

07/15/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Denton, Mark R.)  
Debtors: Platte River Insurance Company (Intervenor Defendant)  
Creditors: Patent Construction Systems (Intervenor)  
Judgment: 07/15/2009, Docketed: 07/22/2009

10/21/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Zitting Brothers Construction Inc (Counter Defendant)  
Creditors: Club Vista Financial Services LLC (Counter Claimant), Tharaldson Motels II Inc (Counter Claimant), Gary D Tharaldson (Counter Claimant)  
Judgment: 10/21/2009, Docketed: 10/22/2009  
Comment: Certain Claim

11/10/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Camco Pacific Construction Co Inc (Counter Claimant)  
Creditors: Ferguson Fire and Fabrication Inc (Counter Defendant)  
Judgment: 11/10/2009, Docketed: 11/12/2009

11/13/2009 **Order of Dismissal Without Prejudice** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Camco Pacific Construction Co Inc (Intervenor Defendant), Camco Pacific Construction Co Inc (Counter Claimant)  
Creditors: Steel Structures Inc (Intervenor), Steel Structures Inc (Counter Defendant)  
Judgment: 11/13/2009, Docketed: 11/13/2009

01/11/2010 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Accuracy Glas & Mirror Company Inc (Intervenor Defendant), Employers Mutual Casualty Co (Intervenor Defendant), Gemstone Development West Inc (Intervenor Defendant)  
Creditors: Inquipco (Intervenor Plaintiff)  
Judgment: 01/11/2010, Docketed: 01/14/2010

02/12/2010 **Order of Dismissal Without Prejudice** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Nevada Construction Services (Defendant)  
Creditors: Apco Construction (Plaintiff)  
Judgment: 02/12/2010, Docketed: 02/16/2010

02/12/2010 **Order of Dismissal Without Prejudice** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Nevada Construction Services (Intervenor Defendant)  
Creditors: Hydropressure Cleaning Inc (Interpleader)  
Judgment: 02/12/2010, Docketed: 02/19/2010

04/05/2010 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Platte River Insurance Co (Intervenor Defendant)  
Creditors: HD Supply Waterworks LP (Consolidated Case Party)  
Judgment: 04/05/2010, Docketed: 04/09/2010

04/29/2010 **Voluntary Dismissal** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Accuracy Glass and Mirror Company Inc (Intervenor Defendant), Employers Mutual Casualty Company (Intervenor Defendant)  
Creditors: Pape Material Handling (Intervenor Plaintiff), Pape Rents (Doing Business As)  
Judgment: 04/29/2010, Docketed: 04/30/2010

05/04/2010 **Summary Judgment** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Alex Edelstein (Intervenor Defendant)  
Creditors: Ahern Rental Inc (Intervenor Plaintiff)  
Judgment: 05/04/2010, Docketed: 05/10/2010

06/10/2010 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Platte River Insurance Company (Intervenor Defendant)  
Creditors: Northstar Concrete, Inc. (Intervenor Plaintiff)  
Judgment: 06/10/2010, Docketed: 06/16/2010

06/18/2010 **Partial Summary Judgment** (Judicial Officer: Delaney, Kathleen E.)  
Debtors: Gemstone Development West Inc (Intervenor Defendant)  
Creditors: Arch Aluminum And Glass Co (Intervenor Plaintiff)  
Judgment: 06/18/2010, Docketed: 06/24/2010

09/12/2011 **Dismissal Pursuant to NRCP 41** (Judicial Officer: Scann, Susan)  
Debtors: Gemstone Development West Inc (Intervenor Defendant, Defendant)  
Creditors: Graybar Electric Company (Other)  
Judgment: 09/12/2011, Docketed: 09/26/2011

12/23/2011 **Order of Dismissal With Prejudice** (Judicial Officer: Scann, Susan)  
Debtors: HD Supply Construction Supply LP (Other)  
Creditors: Alexander Edelstein (Defendant), Alex Edelstein (Intervenor Defendant)  
Judgment: 12/23/2011, Docketed: 01/05/2012

03/07/2012 **Order of Dismissal Without Prejudice** (Judicial Officer: Scann, Susan)  
Debtors: Camco Pacific Construction Co Inc (Intervenor Plaintiff)  
Creditors: Alex Edelstein (Intervenor Defendant)



Judgment: 03/07/2012, Docketed: 03/23/2012

05/07/2012 **Partial Summary Judgment** (Judicial Officer: Scann, Susan)  
Debtors: Apco Construction (Plaintiff)  
Creditors: Scott Financial Corporation (Defendant)  
Judgment: 05/07/2012, Docketed: 05/18/2012

11/05/2012 **Order of Dismissal With Prejudice** (Judicial Officer: Scann, Susan)  
Debtors: APCO Construction (Intervenor Defendant), APCO Construction (Intervenor Defendant)  
Creditors: Granite Construction Company (Intervenor)  
Judgment: 11/05/2012, Docketed: 11/15/2012

01/24/2013 **Order of Dismissal With Prejudice** (Judicial Officer: Scann, Susan)  
Debtors: Ahern Rental Inc (Intervenor Plaintiff)  
Creditors: Alex Edelstein (Intervenor Defendant)  
Judgment: 01/24/2013, Docketed: 02/01/2013

05/25/2017 **Summary Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Uintah Investments LLC (Counter Defendant)  
Creditors: APCO Construction (Counter Claimant)  
Judgment: 05/25/2017, Docketed: 06/01/2017

06/19/2017 **Order of Dismissal With Prejudice** (Judicial Officer: Denton, Mark R.)  
Debtors: Insulpro Projects Inc (Counter Defendant)  
Creditors: APCO Construction (Counter Claimant)  
Judgment: 06/19/2017, Docketed: 06/20/2017

07/05/2017 **Order of Dismissal With Prejudice** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Co Inc (Third Party Defendant)  
Creditors: Insulpro Projects Inc (Third Party Plaintiff)  
Judgment: 07/05/2017, Docketed: 07/12/2017

12/29/2017 **Partial Summary Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: APCO Construction (Counter Claimant)  
Creditors: Zitting Brothers Construction Inc (Counter Defendant)  
Judgment: 12/29/2017, Docketed: 01/18/2018  
Total Judgment: 750,807.18  
Comment: Certain Cause

05/08/2018 **Order** (Judicial Officer: Denton, Mark R.)  
Debtors: APCO Construction (Counter Claimant)  
Creditors: Zitting Brothers Construction Inc (Counter Defendant)  
Judgment: 05/08/2018, Docketed: 05/08/2018  
Total Judgment: 185,443.95

05/16/2018 **Judgment Plus Interest** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Co Inc (Third Party Defendant)  
Creditors: E & E Fire Protection LLC (Third Party Plaintiff)  
Judgment: 05/16/2018, Docketed: 05/16/2018  
Total Judgment: 6,481,088.31

05/16/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Fidelity & Deposit Co Of Maryland (Third Party Defendant)  
Creditors: E & E Fire Protection LLC (Third Party Plaintiff)  
Judgment: 05/16/2018, Docketed: 05/16/2018  
Total Judgment: 50,000.00

05/23/2018 **Judgment Plus Interest** (Judicial Officer: Denton, Mark R.)  
Debtors: APCO Construction (Counter Claimant)  
Creditors: Zitting Brothers Construction Inc (Counter Defendant)  
Judgment: 05/23/2018, Docketed: 05/24/2018  
Total Judgment: 2,623,309.38

05/25/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Denton, Mark R.)  
Debtors: Nevada Prefab Engineers Inc (Intervenor), Steel Structures Inc (Intervenor), Gerdau Reinforcing Steel (Counter Defendant)  
Creditors: Apco Construction (Plaintiff)  
Judgment: 05/25/2018, Docketed: 05/25/2018

05/30/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Co Inc (Intervenor Defendant)  
Creditors: SWPPP Compliance Solutions LLC (Intervenor Plaintiff)  
Judgment: 05/30/2018, Docketed: 05/31/2018

05/30/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Co Inc (Counter Claimant)  
Creditors: Fast Glass Inc (Counter Defendant)  
Judgment: 05/30/2018, Docketed: 05/31/2018

05/30/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Company Inc (Counter Claimant)  
Creditors: Helix Electric of Nevada LLC (Counter Defendant), Helix Electric (Doing Business As)  
Judgment: 05/30/2018, Docketed: 05/31/2018

05/30/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Inc (Counter Defendant)  
Creditors: Cactus Rose Construction (Counter Claimant)

Judgment: 05/30/2018, Docketed: 05/31/2018

05/30/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Company Inc (Counter Claimant)  
Creditors: Heinaman Contract Glazing (Counter Defendant)  
Judgment: 05/30/2018, Docketed: 05/31/2018

05/31/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Helix Electric of Nevada LLC (Counter Defendant), National Wood Products, Inc.'s (Intervenor)  
Creditors: APCO Construction (Counter Claimant)  
Judgment: 05/31/2018, Docketed: 05/31/2018

06/04/2018 **Judgment** (Judicial Officer: Denton, Mark R.)  
Debtors: Camco Pacific Construction Co Inc (Third Party Defendant)  
Creditors: E & E Fire Protection LLC (Third Party Plaintiff)  
Judgment: 06/04/2018, Docketed: 06/06/2018  
Total Judgment: 66,421.16

**OTHER EVENTS AND HEARINGS**

02/24/2008 **Acceptance of Service**  
*ACCEPTANCE OF SERVICE*  
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09/09/2008 **Complaint**  
*COMPLAINT FILED Fee \$148.00*  
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09/09/2008 **Initial Appearance Fee Disclosure**  
*INITIAL APPEARANCE FEE DISCLOSURE NRS CHAPTER 19*  
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09/12/2008 **Peremptory Challenge**  
*PEREMPTORY CHALLENGE Williams CASE REASSIGNED TO Leavitt*  
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09/12/2008 **Notice of Department Reassignment**  
*NOTICE OF DEPARTMENT REASSIGNMENT ??????003146FC 003146??????*  
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12/08/2008 **Amended Complaint**  
*FIRST AMENDED COMPLAINT*  
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12/09/2008 **Lis Pendens**  
*NOTICE OF LIS PENDENS*  
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12/09/2008 **Notice**  
*NOTICE OF FORECLOSURE OF CLAIMS OF LIEN*  
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12/12/2008 **Certificate of Mailing**  
*CERTIFICATE OF MAILING*  
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12/17/2008 **Summons**  
*SUMMONS - FIRST AMERICAN TITLE INSURANCE COMPANY*  
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12/17/2008 **Summons**  
*SUMMONS - NEVADA CONSTRUCTION SERVICES*  
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12/17/2008 **Summons**  
*SUMMONS - GEMSTONE DEVELOPMENT WEST INC*  
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12/17/2008 **Summons**  
*SUMMONS - COMMONWEALTH LAND TITLE INSURANCE CO*  
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12/26/2008 **Affidavit of Publication**  
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01/05/2009 **Appearance**  
*HARSCO CORPORATION'S STATEMETN OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION*  
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01/05/2009 **Notice**  
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01/05/2009 **Initial Appearance Fee Disclosure**  
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01/05/2009 **Notice**  
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01/12/2009 **Answer**  
*ANSWER TO PLAINTIFFS AMENDED COMPLAINT*  
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01/12/2009 **Initial Appearance Fee Disclosure**  
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01/15/2009 **Appearance**  
*ARCH ALUMINUM AND GLASS CO'S STATEMENT OF FACTS CONSTITUTING ITS MECHANIC'S LIEN CLAIM*  
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01/15/2009 **Answer**

	<b>GEMSTONE DEVELOPMENT WEST INCS ANSWER TO COMPLAINT AND COUNTER CLAIMS</b> 08A5712280024.tif pages
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01/15/2009	<b>Initial Appearance Fee Disclosure</b> <b>INITIAL APPEARANCE FEE DISCLOSURE</b> 08A5712280027.tif pages
01/15/2009	<b>Summons</b> <b>SUMMONS- GEMSTONE DEVE WEST INC</b> 08A5712280028.tif pages
01/16/2009	<b>Answer</b> <b>ANSWER TO FIRST AMENDED COMPLAINT</b> 08A5712280015.tif pages
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01/16/2009	<b>Answer to Amended Complaint</b> <b>ANSWER TO FIRST AMENDED COMPLAINT</b> 08A5712280030.tif pages
01/22/2009	<b>Summons</b> <b>SUMMONS - COMMONWEALTH LAND TITLE INS CO</b> 08A5712280031.tif pages
01/22/2009	<b>Summons</b> <b>SUMMONS - FIRST AMERICAN TITLE INS CO</b> 08A5712280032.tif pages
01/22/2009	<b>Summons</b> <b>SUMMONS - PLATTER RIVER INSURANCE COMPANY</b> 08A5712280033.tif pages
01/23/2009	<b>Affidavit of Publication</b> <b>AFFIDAVIT OF PUBLICATION</b> 08A5712280034.tif pages
01/28/2009	<b>Appearance</b> <b>STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION</b> 08A5712280018.tif pages
01/28/2009	<b>Appearance</b> <b>STATEMENT OF FACTS CONSTITUTING A LIEN AND COMPLAINT IN INTERLEADER</b> 08A5712280019.tif pages
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01/28/2009	<b>Initial Appearance Fee Disclosure</b> <b>INITIAL APPEARANCE FEE DISCLOSURE</b> 08A5712280036.tif pages
02/04/2009	<b>Reply to Counterclaim</b> <b>APCO CONSTRUCTIONS REPLY TO GEMSTONES COUNTERCLAIM</b> 08A5712280038.tif pages
02/04/2009	<b>Summons</b> <b>SUMMONS- CONCRETE VISIONS INC</b> 08A5712280039.tif pages
02/04/2009	<b>Acceptance of Service</b> <b>ACCEPTANCE OF SERVICE</b> 08A5712280040.tif pages
02/06/2009	<b>Appearance</b> <b>CABINETEC INC'S STATEMENT OF FACTS CONSTITUTING LIEND CLIAM AND COMPLAINT IN INTERVENTION</b> 08A5712280026.tif pages
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02/12/2009	<b>Certificate of Mailing</b> <b>CERTIFICATE OF SERVICE</b> 08A5712280043.tif pages
02/13/2009	<b>Statement</b> <b>AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION</b> 08A5712280044.tif pages
02/19/2009	<b>Appearance</b> <b>AHERN RENTAL INC'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION</b> 08A5712280037.tif pages
02/19/2009	<b>Notice</b> <b>NOTICE TO LIEN CLAIMANTS TO FILE AND SERVE STATEMENTS OF FACTS CONSTITUTING THEIR LIENS</b> 08A5712280045.tif pages
02/19/2009	<b>Lis Pendens</b> <b>LIS PENDENS</b> 08A5712280046.tif pages
02/19/2009	<b>Initial Appearance Fee Disclosure</b> <b>INITIAL APPEARANCE FEE DISCLOSURE</b> 08A5712280047.tif pages
02/24/2009	<b>Statement of Facts Constituting Lien</b> <b>Ahern Rental inc's Statement of Facts Constituting Lien and Complaint in Intervention</b>
02/24/2009	<b>Summons</b> <b>SUMMONS - CAMCO PACIFIC CONSTRUCTION CO INC</b> 08A5712280048.tif pages
02/24/2009	<b>Lis Pendens</b> <b>LIS PENDENS</b>

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02/24/2009 **Initial Appearance Fee Disclosure**  
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02/24/2009 **Statement**  
STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION Tri City Drywall  
02/26/2009 **Lis Pendens**  
NOTICE OF PENDENCY OF ACTION  
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02/26/2009 **Statement**  
NOORDA SHEET METAL COMPANYS STATEMENT OF FACTS CONSTITUTING LIEN CLAIM COMPLAINT AND THIRD PARTY COMPLAINT  
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02/26/2009 **Initial Appearance Fee Disclosure**  
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03/03/2009 **Default**  
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03/03/2009 **Acceptance of Service**  
ACCEPTANCE OF SERVICE - APCO CONSTRUCITON  
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03/05/2009 **Certificate**  
CERTIFICATE OF SERVICE OF EMPLOYERS MUTUAL CASUALTY COMPANY  
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03/05/2009 **Certificate**  
CERTIFICATE OF SERVICE OF COMMONSWEALTH LAND TITLE INSURANCE COMPANY  
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03/09/2009 **Stipulation and Order**  
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03/09/2009 **Stipulation and Order**  
STIPULATION AND ORDER RE FILING AND SERVICE OF CABINETECS COMPLAINT IN INTERVENTION  
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03/10/2009 **Statement**  
GEMSTONE DEVELOPMENT WEST INCS ANSWER TO CABINETEX INCS STATEMENT OF FACTS CONSTITUTING LIEN CLAIM AND  
COMPLAINT INTERVENTION  
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03/10/2009 **Statement**  
GEMSTONE DEVELOPMENT WEST INCS ANSWER TO STEEL STRUCTURES INC AND NEVADA PREBABENGINEERS INCS AMENDED  
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03/11/2009 **Certificate of Mailing**  
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03/11/2009 **Affidavit of Publication**  
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03/12/2009 **Appearance**  
CELL CRETE FIREPROOFING OF NEVADA INC'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/12/2009 **Notice of Entry of Order**  
NOTICE OF ENTRY OF STIPULATION AND ORDER REGARDING FILING AND SERVICE OF STEEL STRUCTURES INC AND NEVADA  
PREFAB ENGINEERS INCS COMPLAINT IN INTERVENTION  
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03/12/2009 **Acceptance of Service**  
ACCEPTANCE OF SERVICE  
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03/12/2009 **Initial Appearance Fee Disclosure**  
CELL CRETE FIREPROOFING OF NEVADA INCS INITIAL APPEARANCE FEE DISCLOSURE  
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03/12/2009 **Answer**  
APCO CONSTRUCTIONS ANSWER TO STEEL STRUCTURES INC AND NEVADA PREFABENGINEERS INCS AMENDED STATEMENT OF  
FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION AND CROSS CLAIM  
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03/12/2009 **Amended**  
AMENDED SUMMONS CIVIL  
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03/12/2009 **Statement**  
CELL CRETE FIREPROOFING OF NEVADA INCS STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/16/2009 **Appearance**  
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03/16/2009 **Peremptory Challenge**  
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03/16/2009 **Notice of Department Reassignment**

NOTICE OF DEPARTMENT REASSIGNMENT 005949003605006310003146FC  
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03/16/2009 **Initial Appearance Fee Disclosure**  
CAMCO PACIFIC CDNSTRUCTION COMPANY INCS INITIAL APPEARANCE FEE DISCLOSURE NRS CHAPTER 19  
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03/16/2009 **Amended**  
AMENDED THIRD PARTY SUMMONS CIVIL  
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03/16/2009 **Answer**  
APCO CONSTRUCTIONS ANSWER TO CABINET INCS STATEMENT OF FACTS CONSTITUTING LIEN CLAIM AND COMPLAINT IN INTERVENTION  
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03/17/2009 **Statement**  
GEMSTONE DEVELOPMENT WESET INCS ANSWER TO AHERN RENTAL INCS STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/17/2009 **Stipulation and Order**  
STIPULATION AND ORDER  
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03/17/2009 **Stipulation and Order**  
STIPULATION AND ORDER ALLOWING AHERN RENTALS INC TO INTERVENE PURSUANT TO NRCP 24  
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03/18/2009 **Certificate**  
AMENDED CERTIFICATE OF SERVICE DF GEMSTONE DEVELOPMENT WEST INCS ANSWER TO CABINETEC INCS STATEMENT OF FACTS CONSTITUTING LIEN CLAIM AND COMPLAINT IN INTERVENTION  
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03/18/2009 **Certificate**  
AMENDED CERTIFICATE OF SERVICE OF GEMSTONE DEVELOPMENT WESTS INCS ANSWER TO STEEL STRUCTURES INC AND NEVADA PREFAB ENGINEERS INCS AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/18/2009 **Certificate of Mailing**  
CERTIFICATE OF MAILING OF STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/18/2009 **Disclaimer of Interest**  
COMMONWEALTH LAND TITLE INSURANCE COMPANY'S DISCLAIMER OF INTEREST  
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03/19/2009 **Notice of Entry of Order**  
NOTICE OF ENTRY OF ORDER  
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03/20/2009 **Stipulation and Order**  
STIPULATION AND ORDER RE FILING AND SERVICE OF STEEL STRUCTURES INC AND NEVADA PREFAB ENGINEERS INCS SECOND AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
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03/20/2009 **Answer**  
GEMSTONE DEVELOPMENT WEST INCS ANSWER TO NOORDA SHEET METAL COMPANY'S AMENDED STATEMENT OF FACTS CONSTITUTING LIEN CLAIM COMPLAINT AND THIRD PARTY COMPLAINT  
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03/20/2009 **Statement of Facts Constituting Lien**  
SECOND AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION Steel Structures Inc Nevada Prefab Engineers Inc

03/23/2009 **Motion**  
AHERN'S MOTION TO AMEND STATEMENT OF FACTS/1  
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03/24/2009 **Statement of Facts Constituting Lien**  
Insulpro Projects

03/24/2009 **Certificate of Mailing**  
CERTIFICATE OF MAILING  
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03/24/2009 **Notice**  
NOTICE OF LIS PENDENS  
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03/24/2009 **Notice of Entry of Order**  
NOTICE OF ENTRY OF STIPULATION AND ORDER  
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03/24/2009 **Initial Appearance Fee Disclosure**  
INITIAL APPEARANCE FEE DISCLOSURE NRS CHAPTER 19  
08A5712280099.tif pages

03/25/2009 **Amended**  
HARSCO CORPORATIONS AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
08A5712280097.tif pages

03/27/2009 **Appearance**  
E & E FIRE PROTECTION LLC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM COMPLAINT AND THIRD PARTY COMPLAINT  
08A5712280100.tif pages

03/27/2009 **Appearance**  
DAVE PETERSON FRAMING LLC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM COMPLAINT AND THIRD PARTY COMPLAINT  
08A5712280101.tif pages

03/27/2009 **Lis Pendens**  
NOTICE OF PENDENCY OF ACTION  
08A5712280102.tif pages

03/27/2009 **Appearance**  
PROFESSIONAL DOORS & MILLWORKS LLC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM COMPLAINT AND THIRD PARTY COMPLAINT  
08A5712280103.tif pages

03/27/2009 **Lis Pendens**

03/27/2009 **NOTICE OF PENDENCY OF ACTION**  
08A5712280104.tif pages

03/27/2009 **Initial Appearance Fee Disclosure**  
**INITIAL APPEARANCE FEE DISCLOSURE**  
08A5712280105.tif pages

03/27/2009 **Initial Appearance Fee Disclosure**  
**INITIAL APPEARANCE FEE DISCLOSURE**  
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03/27/2009 **Initial Appearance Fee Disclosure**  
**INITIAL APPEARANCE FEE DISCLOSURE**  
08A5712280107.tif pages

03/27/2009 **Notice**  
**NOTICE OF PENDENCY OF ACTION**  
08A5712280108.tif pages

03/27/2009 **Answer**  
**APCO CONSTRUCTION'S ANSWER TO AHERN RENTAL INC'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION**  
08A5712280109.tif pages

03/31/2009 **Amended Answer**  
**APCO CONSTRUCTION'S AMENDED ANSWER TO AHERN RENTAL INC'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION**  
08A5712280112.tif pages

04/01/2009 **Acceptance of Service**  
**ACCEPTANCE OF SERVICE**  
08A5712280113.tif pages

04/01/2009 **Acceptance of Service**  
**ACCEPTANCE OF SERVICE**  
08A5712280114.tif pages

04/01/2009 **Answer**  
**APCO CONSTRUCTIONS ANSWER TO STEEL STRUCTURES INC AND NEVADA PREFABENGINEERS INCS SECOND AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION**  
08A5712280115.tif pages

04/01/2009 **Certificate**  
**CERTIFICATE OF SERVICE**

04/01/2009 **Acceptance of Service**  
**ACCEPTANCE OF SERVICE - GEMSTONE DEVELOPMENT WEST INC**  
08A5712280119.tif pages

04/01/2009 **Acceptance of Service**  
**ACCEPTANCE OF SERVICE OF AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION - GEMSTONE DEVELOPMENT WEST INC**  
08A5712280120.tif pages

04/03/2009 **Appearance**  
**HYDROPRESSURE CLEANING INC'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION**  
08A5712280111.tif pages

04/03/2009 **Errata**  
**ERRATUM TO ANSWER TO PLTFS AMENDED COMPLAINT**  
08A5712280121.tif pages

04/03/2009 **Initial Appearance Fee Disclosure**  
**INITIAL APPEARANCE FEE DISCLOSURE NRS CHAPTER 19**  
08A5712280122.tif pages

04/03/2009 **Statement of Facts Constituting Lien**  
**STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION Hydropressure Cleaning Inc**

04/06/2009 **Appearance**  
**EZA PC DBA OZ ARCHITECTURE OF NEVADA INC'S STATEMENT OF FACTS CONSTITUTING LIEN**  
08A5712280116.tif pages

04/06/2009 **Appearance**  
**EZA PC DBA OZ ARCHITECTURE OF NEVADA INC'S STATEMENT OF FACTS CONSTITUTING LIEN**  
08A5712280117.tif pages

04/06/2009 **Initial Appearance Fee Disclosure**  
**EZA PC DBA OZ ARCHITECTURE OF NEVADA'S INITIAL APPEARANCE FEE DISCLOSURE NRS CHAPTER 19**  
08A5712280123.tif pages

04/06/2009 **Statement**  
**EZA PC DBA OZ ARCHITECTURE OF NV INCS STATEMENT OF FACTS CONSTITUTING LIEN**  
08A5712280126.tif pages

04/06/2009 **Lis Pendens**  
**EZA PC DBA OZ ARCHITECTURE OF NEVADA'S NOTICE OF LIS PENDENS**  
08A5712280127.tif pages

04/07/2009 **Third Party Summons**  
**THIRD PARTY SUMMONS CIVIL VIA US MAIL FIDELITY AND DEPOSIT CO OF MARYLAND**  
08A5712280124.tif pages

04/07/2009 **Summons**  
**SUMMONS - FIDELITY & DEPOSIT CO OF MARYLAND**  
08A5712280128.tif pages

04/07/2009 **Summons**  
**SUMMONS - CSC SERVICES VIA US MAIL**  
08A5712280132.tif pages

04/08/2009 **Affidavit of Service**  
**AFFIDAVIT OF SERVICE - KELLY MARSHALL**  
08A5712280129.tif pages

04/08/2009 **Affidavit of Service**  
**AFFIDAVIT OF SERVICE - ACCURCY OF GLASS AND MIRROR INC**  
08A5712280131.tif pages

04/09/2009 **Affidavit of Service**  
**AFFIDAVIT OF SERVICE - CONCRETE VISIONS INC**

08A5712280130.tif pages

04/09/2009 **Notice**  
NOTICE OF APPEARANCE  
08A5712280133.tif pages

04/14/2009 **Acceptance of Service**  
ACCEPTANCE OF SERVICE MISC DOCS 04-09-09  
08A5712280135.tif pages

04/14/2009 **Acceptance of Service**  
ACCEPTANCE OF SERVICE MISC DOCS 04-09-09  
08A5712280136.tif pages

04/14/2009 **Acceptance of Service**  
ACCEPTANCE OF SERVICE - CAMCO PACIFIC CONSTRUCTION COMPANY INC  
08A5712280137.tif pages

04/14/2009 **Supplemental**  
AHERN RENTAL INCS SUPPLEMENTAL MOTION TO AMEND STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION  
08A5712280138.tif pages

04/15/2009 **Conversion Case Event Type**  
DEFT'S MOTION TO INTERVENE /2  
08A5712280134.tif pages

04/15/2009 **Summons**  
SUMMONS - CAMCO PACIFIC CONSTRUCTION CO INC  
08A5712280139.tif pages

04/17/2009 **Three Day Notice of Intent to Default**  
NOORDA SHEET METAL COMPANYS THREE DAY NOTICE OF INTENT TO TAKE DEFAULT  
08A5712280140.tif pages

04/17/2009 **Three Day Notice of Intent to Default**  
NOORDA SHEET METAL COMPANYS THREE DAY NOTICE OF INTENT TO TAKE DEFAULT  
08A5712280141.tif pages

04/17/2009 **Reply to Counterclaim**  
APCO CONSTRUCTIONS ANSWER TO INSULPRO PROJECT INCS COUNTERCLAIM AGAINST APCO CONSTRUCTION  
08A5712280142.tif pages

04/20/2009 **Answer**  
Scott Financial Corporations Anser to Insulpro Projects Incs Statement of Facts Constituting Lien

04/21/2009 **Answer**  
Scott Financial Corps Answer to Insulpro Projects Incs's statement of Facts Constituting Lien

04/21/2009 **Motion to Consolidate**  
Apco Construction's Motion to Consolidate With Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, and A587168

04/22/2009 **Acceptance of Service**  
Acceptance of Service of Amended Statement of Facts Constituting Lien and Complaint in Intervention

04/22/2009 **Disclaimer of Interest**  
First American Title Ins Co Disclaimer of Interest

04/24/2009 **Statement of Facts Constituting Lien**  
Statement of Facts Constituting Lien and Complaint in Intervention-Pressure Groul Company

04/24/2009 **Three Day Notice of Intent to Default**  
E&E Fire Protection, LLC's Three Day Notice of Intent to Default

04/24/2009 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

04/24/2009 **Three Day Notice of Intent to Default**  
Dave Peterson Framing Inc's Three Day Notice of Intent to Take Default on Gemstone Development West Inc

04/24/2009 **Three Day Notice of Intent to Default**  
Professional Doors and Millworks LLCs Three Day Notice of Intent to Take Default

04/29/2009 **Opposition to Motion**  
Aherm Rental's Limited Opposition to Motion to consolidate

04/29/2009 **Answer**  
APCO Construction's Answer to Cell-Crete Fireproofing of Nevada, Inc's Statement of Facts Constituting Lien and Complaint in Intervention and Cross-Claim

04/29/2009 **Affidavit of Service**  
Affidavit of Service

04/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Professional Doors and Millworks, LLC's Statement of Facts Constituting lien Claim, Complaint and Third Party Complaint

04/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to E&E Fire Protection, LLC's Statement of Facts Constituting Lien Claim, Complaint and Third Party Complaint

04/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Dave Peterson Framing, Inc.'s Statement of Facts Constituting Lien Claim, Complaint and Third Party Complaint

04/30/2009 **Certificate of Mailing**

04/30/2009 **Certificate of Mailing**  
Certificate of Mailing

04/30/2009 **Summons**

05/01/2009 **Joinder**  
Scott Financial Corporation's Moinder in Motion to Consolidate with Case Nos. A574391, A574792, A579963, A583289, A584730 and A587168

05/01/2009 **Summons**  
Summons (Affidavit of Service of Summons, Statement of Facts, and Check #13594)- Fidelity and Deposit Company of Maryland

05/01/2009 **Summons**  
Summ-Apco Construction

05/01/2009 **Summons**  
Summons (Affidavit of Service of Summons and Statement of Facts) - Camco Pacific Construction Company, Inc

05/01/2009 **Three Day Notice of Intent to Default**  
Three Day Notice of Intent to Default

05/04/2009 **Default**  
Default - Concrete Visions Inc

05/04/2009 **Opposition**  
*Opposition to Motion to Consolidate*

05/04/2009 **Notice of Non Opposition**  
*Insulpro Projects, Inc's Motion of Non-Opposition to Apco Construction's Motion to Consolidate*

05/04/2009 **Certificate of Mailing**  
*Certificate of Mailing*

05/04/2009 **Notice of Lis Pendens**  
*Notice of Lis Pendens*

05/05/2009 **Motion to Intervene**  
*The Masonry Group Nevada Inc.'s Motion to Intervene*

05/05/2009 **Motion to Dismiss**  
*Camco Pacific Construction's and Fidelity and Deposit Company of Maryland's Motion to Dismiss the T*

05/05/2009 **Motion to Intervene**  
*Hydropressure Cleaning, Inc.'s Motion to Intervene*

05/05/2009 **Answer**  
*Answer to Noorda Sheet Metal Companys Third Party Complaint and Camco Pacific Constructions Counterclaim*

05/05/2009 **Answer to Third Party Complaint**  
*Answer to E&E Fire Protection LLC's Third Party Complaint and Camco Pacific Constructions Counterclaim*

05/05/2009 **Answer to Third Party Complaint**  
*Answer to Professional Doors and Millworks LLC's Third Party Complaint and Camco Pacific Construction's Counterclaim*

05/05/2009 **Answer to Counterclaim**  
*Answer to Cabinlec Inc's Complaint in Intervention and Camco Pacific Construction Company Inc's Counterclaim*

05/06/2009 **Certificate of Mailing**  
*Certificate of Mailing of Camco Pacific Constructions and Fidelity and Deposit Company of Marylands Motion to Dismiss the Third Party Complaint of Dave Peterson Framing Inc and Notice Thereof*

05/07/2009 **Reply to Counterclaim**  
*Noorda Sheet Metal Companys Reply to Camco Pacific Constructions Counterclaim*

05/07/2009 **Reply to Counterclaim**  
*Professional Doors and Millworks LLCs Reply to Camco Pacific Constructions Counterclaim*

05/07/2009 **Reply to Counterclaim**  
*E&E Fire Protection LLCs Reply to Camco Pacific Constructions Counterclaim*

05/08/2009 **Answer**  
*Scott Financial Corporation's Answer to Noorda Sheet Metal Company's Amended Statement of Facts Con*

05/08/2009 **Answer**  
*Scott Financial Corporation's Answer to Professional Doors and Millworks, LLC's Statement of Facts*

05/08/2009 **Answer**  
*Scott Financial Corporation's Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement of Fact*

05/08/2009 **Joinder**  
*Scott Financial Corporation's Amended Partial Joinder in Apco Construction's Motion to Consolidate*

05/08/2009 **Opposition**  
*Atlas Construction Supply, Inc.'s Limited Opposition to APCO Construction's Motion to Consolidate with Case Nos. A574391, A574792, A577623, A579963, A583289, A584730 and A587168*

05/11/2009 **Opposition to Motion**  
*Bradley J. Scott and Scott Financial Corporation's Opposition to APCO Construction's Motion to Cons*

05/11/2009 **Affidavit for Service by Publication**

05/11/2009 **Motion**  
*Ahern Rental Incs Second Supplemental Motion to Amend Statement of Facts Constituting Lien and Complaint-in-Intervention*

05/12/2009 **Motion to Amend (9:00 AM) (Judicial Officer Walsh, Jessie)**  
*AHERN'S MTN TO AMEND STATEMENT OF FACTS/1*

Minutes  
*05/13/2009 Reset by Court to 05/13/2009*  
*05/13/2009 Reset by Court to 05/12/2009*

Result: Motion Granted

05/12/2009 **Acceptance of Service**  
*Nevada Construction Services Acceptance of Service of Statement of Facts Constituting Lien and Complaint in Intervention*

05/12/2009 **Joinder to Opposition to Motion**  
*Joinder of Defendant Bank of Oklahoma, N.A. to Defendants Scott Financial Corporation and Bradley J. Scott's Opposition to Apco Construction's Motion to Consolidate With Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, and A587168*

05/12/2009 **Joinder To Motion**  
*Joinder in Hydropressure Cleaning Inc's Motion to Intervene & Tri-City Drywall Inc's Request to Intervene*

05/13/2009 **Certificate of Mailing**  
*Certificate of Mailing*

05/13/2009 **Answer**  
*Scott Financial Corporation's Answer to Nevada Prefab Engineers, Inc.'s Amended Statement of Facts*

05/13/2009 **Answer**  
*Scott Financial Corporation's Answer to Harsco Corporation's Amended Statement of Facts Constitutin*

05/13/2009 **Notice**  
*Notice of Withdrawal of Opposition to Motion to Consolidate*

05/13/2009 **Three Day Notice of Intent to Default**

05/14/2009 **Certificate of Mailing**  
*Certificate of Mailing of Joinder in Hydropressure Cleaning, Inc.'s Motion to Intervene and Tri-County Drywall, Inc.'s Request to Intervene*

05/15/2009 **Answer**  
*Scott Financial Corporation's Answer to Dave Peterson Framing, Inc.'s Statement of Facts Constituting Lien Claim, Complaint and Third Party Complaint*

05/15/2009 **Opposition to Motion**  
*Dave Peterson Framing Incs Opposition to Camco Pacific Constructions and Fidelity Deposit Company of Marylands Motion to Dismiss the Third Party Complaint of Dave Peterson Framing Inc*

05/15/2009 **Answer to Third Party Complaint**  
*Answer to Insulpro Projects Incs Third Party Complaint and Camco Pacific Constructions Counterclaim*

05/18/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Harsco Corporation's Amended Statement of Facts Constit*

05/19/2009 **Certificate of Service**



*Certificate of Service*

05/20/2009 **Motion to Intervene** (3:00 AM) (Judicial Officer Walsh, Jessie)  
*DEFT'S MOTION TO INTERVENE /2*  
Minutes  
 05/20/2009 *Reset by Court to 05/20/2009*  
 05/20/2009 *Reset by Court to 05/20/2009*  
 Result: Motion Granted

05/20/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to The Pressure Group Company's Statement of Facts Constituting Lien and Complaint in Intervention*

05/20/2009 **Reply**  
*APCO Construction's Reply in Support of Its Motion to Consolidate with Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, and A587168*

05/21/2009 **Notice**  
*Notice of Joinder in APCO Construction's Motion to Consolidate by Club Vista Financial Services LLC Tharaldson Motels II Inc and Gary D Tharaldson*

05/22/2009 **Answer**  
*Scott Financial Corporation's Answer to Insulpro Projects, Inc.'s Statement of Facts Constituting Lien*

05/22/2009 **Three Day Notice of Intent to Default**  
*Three Day Notice of Intent to Default*

05/26/2009 **Joinder to Opposition to Motion**  
*Joinder of Defendant Bank of Oklahoma, N.A. to Defendants Scott Financial Corporation and Bradley J. Scott's Opposition to Plaintiffs' Motion for Leave to Amend Complaint*

05/27/2009 **CANCELED Motion to Consolidate** (3:00 AM) (Judicial Officer Walsh, Jessie)  
*Vacated*  
*matter continued*  
 05/27/2009 *Reset by Court to 05/27/2009*

05/27/2009 **CANCELED Joinder** (3:00 AM) (Judicial Officer Walsh, Jessie)  
*Vacated*  
*matter continued*  
 05/27/2009 *Reset by Court to 05/27/2009*

05/27/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Insulpro Projects, Inc.'s Statement of Facts Constituting Lien*

05/28/2009 **Joinder To Motion**  
*Steel Structures, Inc. and Nevada Prefab Engineers Inc's Joinder to Apco Construction's Motion to Consolidate*

05/28/2009 **Stipulation and Order for Dismissal**  
*Stipulation and Order for Dismissal Without Prejudice of APCO Construction's Unjust Enrichment Claim Against Nevada Construction Services Only*

05/29/2009 **Statement of Facts Constituting Lien**  
*Statement of Facts Constituting Lien and Complaint in Intervention*

05/29/2009 **Initial Appearance Fee Disclosure**

05/29/2009 **Opposition**  
*Bradley J. Scott And Scott Financial Corporation's Opposition To APCO Construction's Supplement To Motion To Consolidate To Include Case No. A589195 in Consolidation*

06/01/2009 **Amended Certificate of Service**  
*Amended Certificate of Service*

06/02/2009 **Notice of Entry of Stipulation and Order**  
*Notice of Entry of Stipulation and Order*

06/02/2009 **Answer to Amended Complaint**  
*Gemstone Development West, Inc.'s Answer to Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Second Amended Statement of Facts Constituting Lien and Complaint in Intervention*

06/02/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Pape Material Handling dba Pape Rents' Statement of Facts Constituting Lien and Complaint in Intervention*

06/02/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Tri-City Drywall, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention*

06/02/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to EZA, P.C. dba Oz Architecture of Nevada, Inc.'s Statement of Facts Constituting Lien*

06/02/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention*

06/02/2009 **Answer**  
*Gemstone Development West, Inc.'s Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention*

06/02/2009 **Answer to Crossclaim**  
*Gemstone Development West, Inc.'s Answer to APCO Construction's Cross-Claim Contained in its Answer to Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Amended Statement of Facts Constituting Lien and Complaint in Intervention*

06/03/2009 **Motion to Consolidate** (9:00 AM) (Judicial Officer Walsh, Jessie)  
*Apco Construction's Motion to Consolidate With Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, and A587168*

06/03/2009 **Joinder** (9:00 AM) (Judicial Officer Walsh, Jessie)  
*Scott Financial Corporation's Joinder in Motion to Consolidate with Case Nos. A574391, A574792, A579963, A583289, A584730 and A587168*

06/03/2009 **All Pending Motions** (9:00 AM) (Judicial Officer Walsh, Jessie)  
Parties Present  
Minutes  
 Result: Granted in Part

06/03/2009 **Reply to Counterclaim**  
*Reply to Camco Pacific Construction's Counterclaim*

06/04/2009 **Answer to Counterclaim**  
*Counterdefendant CabINETec, Inc.'s Answer to Counterclaimant Camco Pacific Construction Company, Inc.'s Counterclaim*

06/04/2009 **Initial Appearance Fee Disclosure**

06/04/2009 **Notice of Lis Pendens**  
*Patent Construction Systems a Division of Harsco Corporations Notice of Lis Pendens*

06/04/2009 **Statement of Facts Constituting Lien**  
*Patent Construction Systems a Division of Harsco Corporations Statement of Facts Constituting Lien and Complaint in Intervention*

06/05/2009 **Reply**  
*Reply of Camco Pacific Construction and Fidelity and Deposit Company of Maryland to Dave Peterson Framing, Inc.'s Opposition to Motion to Dismiss the Third Party Complaint*

06/05/2009 **Proof of Service**  
*Proof of Service*

06/08/2009 **Motion for Default Judgment**  
*Motion for Default Judgment*

06/10/2009 **CANCELED Motion to Intervene (3:00 AM) (Judicial Officer Walsh, Jessie)**  
*Vacated*  
*06/10/2009 Reset by Court to 06/10/2009*

06/10/2009 **CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer Walsh, Jessie)**  
*Vacated*  
*06/10/2009 Reset by Court to 06/10/2009*

06/10/2009 **CANCELED Motion to Intervene (3:00 AM) (Judicial Officer Walsh, Jessie)**  
*Vacated*  
*06/10/2009 Reset by Court to 06/10/2009*

06/10/2009 **CANCELED Joinder (3:00 AM) (Judicial Officer Walsh, Jessie)**  
*Vacated*  
*06/10/2009 Reset by Court to 06/10/2009*

06/10/2009 **Notice of Motion**

06/10/2009 **Answer to Complaint**  
*APCO Construction's Answer to Zitting Brothers Construction, Inc.'s Complaint*

06/10/2009 **Affidavit of Service**

06/11/2009 **Notice of Department Reassignment**

06/11/2009 **Substitution of Attorney**  
*Substitution of Attorney*

06/11/2009 **Proof of Service**  
*Proof of Service of Summons and Complaint*

06/15/2009 **Statement of Facts Constituting Lien**  
*Statement of Facts Constituting Lien and Complaint Intervention*

06/15/2009 **Lis Pendens**

06/15/2009 **Initial Appearance Fee Disclosure**

06/15/2009 **Ex Parte Motion for Enlargement of Time**  
*Ex Parte Motion to Enlarge Time to Allow For Service of Summons and Complaint Upon Defendant Edelstein*

06/15/2009 **Acceptance of Service**  
*Acceptance of Service of Statement of Facts Constituting Lien and Complaint in Intervention*

06/16/2009 **Acceptance of Service**  
*Acceptance of Service of Statement of Facts Constituting Lien and Complaint in Intervention*

06/17/2009 **Summons**

06/17/2009 **Summons**

06/18/2009 **Re-Notice**  
*Re-Notice of Hearing of Camco Pacific Construction and Fidelity and Deposit Company of Maryland's Motion to Dismiss the Third Party Complaint of David Peterson Framing, Inc.*

06/19/2009 **Summons**

06/19/2009 **Order Granting**  
*Order Granting Ex Parte motion to Enlarge Time to Allow for Service of Summons and Complaint Upon Defendant Edelstein*

06/23/2009 **Certificate of Mailing**  
*Certificate of Mailing of Camco Pacific Constructions and Fidelity and Deposit Company of Marylands Re-Notice of Hearing of Motion to Dismiss the Third Party Complaint of Dave Peterson Framing Inc and Notice Thereof*

06/23/2009 **Initial Appearance Fee Disclosure**

06/23/2009 **Statement of Facts Constituting Lien**  
*Statement of Facts Constituting Lien and Complaint-in-Intervention*

06/23/2009 **Lis Pendens**

06/23/2009 **Acceptance of Service**  
*Scott Financial Corporations' Acceptance of Service of Statement of Facts Constituting Lien and Complaint in Intervention*

06/24/2009 **Lis Pendens**  
*Accuracy Glass & Mirror Company, Inc.'s Amended Notice of Lis Pendens*

06/24/2009 **Lis Pendens**  
*Bruin Painting Corporation's Amended Notice of Lis Pendens*

06/24/2009 **Statement**  
*Bruin Painting's Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint*

06/24/2009 **Lis Pendens**  
*HD Supply Waterworks, LP's Amended Notice of Lis Pendens*

06/24/2009 **Statement**  
*HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint*

06/24/2009 **Lis Pendens**  
*Helix Electric's Amended Notice of Lis Pendens*

06/24/2009 **Statement**  
*Helix Electric's Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint*

06/24/2009 **Lis Pendens**  
*Heinaman's Amended Notice of Lis Pendens*

06/24/2009 **Statement**  
*Heinaman Contract Glazing's Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint*

06/24/2009 **Lis Pendens**  
*WRG Design, Inc.'s Amended Notice of Lis Pendens*

06/24/2009 **Amended Complaint**  
*First Amended Complaint Re Foreclosure (A571792, A574391, A577623, A583289, A584730, A587168)*

06/24/2009 **Statement**

WRG Design, Inc.'s Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint (A571792, A574391, A577623, A583289, A584730, A587168)

06/26/2009 **Statement of Facts Constituting Lien**  
Ahern Rental Inc.'s First Amended Statement of Facts Constituting Lien and Complaint-in-Intervention

06/29/2009 **Order**  
Order to Consolidate this action with Case A574391, A574792, A577623, A583289, A584730, A587168, A580889 & A589195

06/30/2009 **Answer to Amended Complaint**  
Gemstone Development West, Inc.'s Answer to Ahern Rental, Inc.'s First Amended Statement of Facts Constituting Lien and Complaint in Intervention

06/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Patent Construction Systems, a Division of Harsco Corporation's Statement of Facts Constituting Lien and Complaint in Intervention

06/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Buchele, Inc.'s Statement of Facts Constituting Lien

06/30/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Statement of Facts Constituting Lien Claim by Creative Home Theatre, LLC

06/30/2009 **Affidavit of Due Diligence**

07/01/2009 **Affidavit for Service by Publication**

07/02/2009 **Notice of Entry of Order**  
Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A577623, A579963, A583289, A584730, A587168, A580889 and A589195

07/02/2009 **Answer**  
APCO Construction's Answer to Ahern Rentals Inc.'s First Amended Statement of Facts Constituting Lien and Complaint in Intervention

07/02/2009 **Answer**  
APCO Construction's Answer to Buchele, Inc.'s Statement of Facts Constituting Lien

07/02/2009 **Answer**  
APCO Construction's Answer to Selectbuild Nevada Inc.'s Statement of Facts Constituting Lien

07/02/2009 **Answer**  
APCO Construction's Answer to Las Vegas Pipeline, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention

07/02/2009 **Answer**  
APCO Construction's Answer to The Pressure Grout Company's Statement of Facts Constituting Lien and Complaint in Intervention

07/06/2009 **CANCELED All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Vacated - per Clerk  
Pending Motions separated and individually placed on calendar

07/06/2009 **Motion to Intervene** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Hydropressure Cleaning's Motion to Intervene

07/06/2009 **Motion to Intervene** (9:00 AM) (Judicial Officer Denton, Mark R.)  
The Masonry Group Nevada's Motion to Intervene

07/06/2009 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Tri-City Drywall's Joinder in Hydropressure Cleaning's Motion to Intervene and Tri-City Drywall's Request to Intervene

07/06/2009 **All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)  
All Pending Motions (07-06-09)

Parties Present

Minutes

Result: Matter Heard

07/07/2009 **Statement of Facts Constituting Lien**  
Masonry Group Nevada Inc Statement of Facts Constituting Lien and Complaint in Intervention

07/09/2009 **Statement of Facts Constituting Lien**  
Northstar Concrete Inc Statement of Facts Constituting Lien and Complaint -in-Intervention

07/09/2009 **Initial Appearance Fee Disclosure**

07/09/2009 **Lis Pendens**

07/09/2009 **Certificate of Service**

07/09/2009 **Acceptance of Service**

07/09/2009 **Summons**

07/10/2009 **Statement**  
Camco Pacific Construction Company, Inc.'s Statement of Facts and Complaint in Intervention

07/13/2009 **Summons**

07/13/2009 **Summons**

07/13/2009 **Summons**

07/14/2009 **Three Day Notice of Intent to Default**  
Three Day Notice of Intent to Take Default

07/14/2009 **Three Day Notice of Intent to Default**

07/15/2009 **Stipulation and Order for Dismissal**  
Stipulation and Order for Dismissal without Prejudice of Hydropressure Cleaning, Inc.'s Claim for Unjust Enrichment Against Nevada Construction Services Only

07/15/2009 **Notice of Dismissal**  
Patent Construction Systems a Division of Harsco Corporations Notice of Dismissal of Platte River Insurance Company

07/15/2009 **Notice of Voluntary Dismissal**  
Ahern Rentals' Notice of Voluntary Dismissal of Heinaman Contract Glazing and Neal Roffer Only

07/15/2009 **Order Granting**  
Order Granting Tri- City Drywall Inc's Request to Intervene

07/16/2009 **Notice of Entry of Order**  
Notice of Entry of Stipulation and Order

07/17/2009 **Statement of Facts Constituting Lien**  
Patent Construction Systems A Division of Harsco Corporation's Statement of Facts Constituting Lien and Amended Complaint in Intervention

07/20/2009 **Motion for Default Judgment** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Harsco Corp's Motion for Default Judgment

Parties Present

Minutes

Result: Off Calendar

07/20/2009 **Answer**  
Scott Financial Corporation's Answer to Patent Construction's Statement of Facts Constituting Lien

07/21/2009 **Order for Service by Publication**  
Order for Service by Publication

07/21/2009 **Affidavit of Service**

07/21/2009 **Consent to Service By Electronic Means**

07/21/2009 **Consent to Service By Electronic Means**

07/21/2009 **Consent to Service By Electronic Means**

07/21/2009 **Affidavit of Service**

07/21/2009 **Affidavit of Due Diligence**

07/22/2009 **Statement of Facts Constituting Lien**  
Granite Construction Company's Statement of Facts Constituting Lien Claim and Complaint in Intervention

07/22/2009 **Initial Appearance Fee Disclosure**

07/22/2009 **Notice of Entry of Order**  
Notice of Entry of Order Granting Tri-city Drywall Inc's Request to Intervene

07/22/2009 **Notice of Entry of Order**

07/23/2009 **Early Case Conference List of Witnesses & Production of Docs**  
Early Case Conference List of Witnesses and Production of Documents

07/23/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Atlas Construction Supply, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention

07/23/2009 **Response**  
Gemstone Development West, Inc.'s Answer to Supply Network, Inc. dba Viking Supplynet's Statement of Facts Constituting Lien and Complaint in Intervention

07/23/2009 **Three Day Notice of Intent to Default**

07/23/2009 **Three Day Notice of Intent to Default**  
Three Day Notice of Intent to Take Default and Default Judgment Against Gemstone Development West Inc

07/23/2009 **Certificate of Mailing**

07/23/2009 **Answer to Complaint**  
Gemstone Development West, Inc.'s Answer to Supply Network, Inc. dba Viking Supplynet's Statement of Facts Constituting Lien and Complaint in Intervention

07/23/2009 **Answer to Complaint**  
Gemstone Development West, Inc.'s Answer to Supply Network, Inc. dba Viking Supplynet's Statement of Facts Constituting Lien and Complaint in Intervention

07/27/2009 **CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Vacated - On In Error  
Duplicate Entry

07/27/2009 **Motion to Dismiss (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
Third Party Defts Camco Pacific Construction and Fidelity and Deposit Co of Maryland's Motion to Dismiss the Third Party Complaint of David Peterson Framing  
Parties Present  
Minutes  
07/06/2009 Reset by Court to 07/27/2009  
Result: Denied

07/27/2009 **Notice of Entry of Order**  
Notice of Entry of Order Denying Motion to Clarify and to Reconsider April 6, 2009 Ruling re: Executive Plastering, Inc.'s Application for Prejudgment Writ of Attachment

07/28/2009 **Notice of Change of Address**  
Notice of Change of Firm's Address

07/29/2009 **Answer**  
Gemstone Development West, Inc.'s Answer to Las Vegas Pipeline, LLC's Statement of Facts Constituting Lien and Complaint in Intervention

07/30/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Statement of Facts and Complaint in Intervention

07/30/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to the Masonry Group Nevada, Inc.'s Statement of Facts Constituting Lien Claim and Complaint in Intervention

07/30/2009 **Acceptance of Service**  
Acceptance of Service of Statement of Facts Constituting Lien and Amended Complaint in Intervention

07/30/2009 **Acceptance of Service**  
Acceptance of Service of Statement of Facts Constituting Lien and Amended Complaint in Intervention

07/30/2009 **Answer**  
Answer

07/31/2009 **Summons**  
Summons - Apco Construction

08/03/2009 **Summons**  
Summons (Amended Complaint)

08/03/2009 **Proof of Service**

08/03/2009 **Summons**  
Summons (Amended Complaint)

08/03/2009 **Voluntary Dismissal**  
Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only From Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third- Party Complaint Without Prejudice

08/04/2009 **Proof of Service**

08/04/2009 **Proof of Service**

08/05/2009 **Answer**  
APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint

08/05/2009 **Answer**  
APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure

08/05/2009 **Answer**  
APCO Construction's Answer to Creative Home Theatre, LLC's State of Facts Constituting Lien

08/05/2009 **Answer**  
APCO Construction's Answer to Granite Construction Company's Statement of Facts Constituting Lien Claim and Complaint in Intervention

08/05/2009 **Answer**  
APCO Construction's Answer to The Masonry Group Nevada, Inc.'s Statement of Facts Constituting a Notice of Lien and Complaint in Intervention

08/05/2009 **Answer**  
APCO Construction's Answer to HD Supply Waterwork's Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint

08/06/2009 **Answer**  
APCO Construction's Answer to WRG Design Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint

08/08/2009 **Answer**  
APCO Construction's Answer to Tri-City Drywall, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention

08/08/2009 **Acceptance of Service**  
Acceptance of Service of Executive Plastering Inc's First Amended Complaint on Gemstone Development West Inc's Behalf

08/07/2009 **Initial Appearance Fee Disclosure**

08/07/2009 **Answer**  
Defendants Answer to HD Supply Waterworks' Amended Statement of Facts and Third-Party Complaint

08/11/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Patent Construction Systems, a Division of Harsco Corporation's Statement of Facts Constituting Lien and Amended Complaint in Intervention

08/11/2009 **Notice**  
Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228

08/11/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Granite Construction Company's Statement of Facts Constituting Lien Claim and Complaint in Intervention

08/11/2009 **Summons**  
- Accuracy Glass & Mirror Company Inc.

08/11/2009 **Summons**  
- Gemstone Development West Inc.

08/11/2009 **Summons**  
- Camco Pacific Construction Company Inc.

08/11/2009 **Summons**  
- Gemstone Development West Inc.

08/11/2009 **Summons**  
- Concrete Visions Inc.

08/13/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Hydropressure Cleaning, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention

08/13/2009 **Summons**  
Summons (Amended Complaint) -Richard Thornton

08/14/2009 **Answer**  
Scott Financial Corporation's Answer to Supply Network dba Vking Supplynet's Statement of Facts Constituting Lien and Complaint in Intervention

08/14/2009 **Answer**  
Scott Financial Corporation's Answer to Creative Home Theatre, LLC's Statement of Facts Constituting Lien

08/14/2009 **Answer**  
Scott Financial Corporation's Answer to The Pressure Grout Company's Statement of Facts Constituting Lien and Complaint in Intervention

08/14/2009 **Answer**  
Scott Financial Corporation's Answer to Pape Material Handling dba Pape Rents' Statement of Facts Constituting Lien and Complaint in Intervention

08/14/2009 **Acceptance of Service**  
Acceptance of Service of Zitting Brothers Constratuion, Inc.'s Complaint Re: Foreclosure

08/18/2009 **Initial Appearance Fee Disclosure**

08/18/2009 **Answer**  
Club Vista Financial Services, LLC and Tharaldson Motels II, Inc's Answer to Camco Pacific Construction Company, Inc's Statement of Facts and Complaint in Intervention and Counterclaim

08/18/2009 **Answer**  
Scott Financial Corporation's Answer to Statement of Facts Constituting Lien on Behalf of Buchele, Inc.

08/18/2009 **Order**  
Order on Camco Pacific Construction's and Fidelity Deposit Company of Maryland's Motion to Dismiss the Third Party Complaint of Dave Peterson Framing Inc

08/19/2009 **Answer**  
Scott Financial Corporation's Answer to The Masonry Group Nevada, Inc.'s Statement to Facts Constituting Lien and Complaint in Intervention

08/20/2009 **Affidavit of Publication**

08/21/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Fast Glass, Inc.'s Statement of Facts Constituting Lien

08/21/2009 **Notice**  
Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228

08/21/2009 **Notice**  
Defendant Gemstone Development West Incs Notice of Consolidation With Case No 08-A571228

08/24/2009 **Notice of Bankruptcy**  
Selectbuild Nevada, Inc.'S Notice Of Bankruptcy Filing And Automatic Stay

08/25/2009 **Notice**  
Notice of Consolidation with Case Numbers A571228, A574391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195

08/25/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Executive Plastering, Inc.'s Statement of Facts Constituting Lien Claim

08/25/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Zitting Brothers Construction, Inc.'s Complaint re: Foreclosure

08/25/2009 **Answer to Interpleader**  
Gemstone Development West, Inc.'s Answer to Executive Plastering, Inc.'s First Amended Complaint

08/26/2009 **Answer**  
Defendant, Nevada Construction Services' Answer to Camco Pacific Construction Company, Inc.'s Statement of Facts and Complaint in Intervention

08/26/2009 **Initial Appearance Fee Disclosure**  
Ferguson Fire and Fabrication, Inc's Initial Appearance Fee Disclosure

08/26/2009 **Answer**  
Answer of Mechanic's Lien Counter-Defendant Ferguson Fire and Fabrication, Inc to Counterclaim of Club Vista Financial Services LLC; Tharidson Motels II Inc ; and Gary D Tharaldson

08/28/2009 **Statement of Facts Constituting Lien**  
Custom Select Billing, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention

08/28/2009 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

09/02/2009 **Answer to Counterclaim**  
Masonry Group Nevada Inc's Answer to Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim

09/03/2009 **Three Day Notice of Intent to Default**

09/08/2009 **Motion to Dismiss**  
Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels, II, Inc.'s Counterclaim

09/08/2009 **Answer to Interpleader**  
Alex Edelstein's Answer to Ahern Rental, Inc.'s First Amended Statement of Facts Constituting Lien and Complaint in Intervention

09/09/2009 **Motion**  
Motion to Designate this Action as Complex Pursuant to NRCP 16.1(f), and Motion to Set a Discovery Conference Pursuant to NRCP 16

09/09/2009 **Answer and Counterclaim**  
Answer to Las Vegas Pipeline, LLC's Statement of Facts Constituting Lien and Complaint in Intervention and Camco Pacific Construction Company Inc.'s Counterclaim

09/10/2009 **Initial Appearance Fee Disclosure**

09/10/2009 **Answer**  
Answer to Tri-City Drywall Inc's Statement of Facts Constituting Lien and Complaint in Intervention and Camco Pacific Construction Company's Inc's Counterclaim

09/10/2009 **Answer**  
Answer to Dave Peterson Framing Inc's Statement of Facts Constituting Lien and Complaint in Intervention and Camco Pacific Construction Company's Inc's Counterclaim

09/10/2009 **Answer**  
Answer to Northstar Concrete Inc's Statement of Facts Constituting Lien and Complaint in Intervention and Camco Pacific Construction Company's Inc's Counterclaim

09/10/2009 **Answer**  
Answer to Fast Glass Inc's Statement of Facts Constituting Lien and Camco Pacific Construction Company Inc's Counterclaim

09/10/2009 **Answer**  
Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc's Counterclaim

09/10/2009 **Answer to Complaint**  
Answer to Selectbuild Nevada Inc's Complaint in Intervention and Camco Pacific Construction Company Inc's Counterclaim

09/10/2009 **Initial Appearance Fee Disclosure**

09/10/2009 **Initial Appearance Fee Disclosure**

09/11/2009 **Answer**  
Answer to WRG Desing Inc's Statement of Facts Constituting Lien Third Party Complaint and Camco Pacific Construction Inc's Counterclaim

09/11/2009 **Answer to Complaint**  
Answer to Accuracy Glass & Mirror Company Inc's Complaint and Camco Pacific Construction Inc's Counterclaim

09/11/2009 **Answer to Complaint**  
Answer to Bruin Painting Corporation's Statement of Facts Constituting Lien Third Party Complaint and Camco Pacific Construction Inc's Counterclaim

09/11/2009 **Answer to Third Party Complaint**  
Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien Third Party Complaint and Camco Pacific Construction's Counterclaim

09/18/2009 **Motion for Sanctions**  
Motion for Sanctions Pursuant to NRCP 11

09/18/2009 **Reply to Counterclaim**  
Dave Peterson Framing Inc's Reply to Camco Pacific Construction's Counterclaim

09/18/2009 **Default**

09/18/2009 **Default**

09/23/2009 **Motion to Dismiss**  
Plaintiff Zitting Brothers Construction, Inc.'s Partial Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, Inc.'s Counterclaim or, in the Alternative, Motion for a More Definite Statement

09/23/2009 **Motion for Clarification**  
Renewed Motion for Clarification Or Reconsideration of April 6, 2009 Ruling Re: Executive Plastering Inc.'s Application For Order To Show Cause Why Prejudgment Writ of Attachment and Writ Of Garnishment Should Not Issue After Notice

09/23/2009 **Amended Summons**  
Amended Summons - APCO Construction

09/23/2009 **Amended Summons**  
Amended Summons - APCO Construction (as defendant ?? claim)

09/23/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Amended Summons**  
Amended Summons

09/24/2009 **Certificate of Mailing**

09/25/2009 **Opposition to Motion to Dismiss**  
Opposition to Scott Financial Corporation Motion to Dismiss Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim

09/25/2009 **Answer**  
Answer to Steel Structures, Inc. Second Amended Statement of Facts Constituting Lien and Complaint in Intervention

09/25/2009 **Answer**  
Answer to Nevada Prefab Engineers, Inc.'s Second Amended Statement of Facts Constituting Lien and Complaint in Intervention

09/25/2009 **Answer**  
Answer to the Masonry Group Nevada, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention and Camco Pacific Construction Inc.'s Counterclaim

09/25/2009 **Answer to Complaint**  
Answer to Buchele, Inc.'s Complaint for Damages and to Foreclosure Mechanic's Lien and Camco Pacific Construction Company Inc.'s Counterclaim

09/25/2009 **Answer**  
Answer to Ferguson Fire & Fabrication, Inc.'s Statement of Facts Constituting Lien and Complaint-in-Intervention and Camco Pacific Construction Company Inc.'s Counterclaim

09/25/2009 **Reply to Counterclaim**

09/28/2009 **Reply to Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim**  
 09/28/2009 **Opposition to Motion to Dismiss**  
 Opposition to Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, Inc.'s Counterclaim  
 09/28/2009 **Response**  
 Response of Club Vista Financial Services, Inc., Tharaldson to Motion to Designate this Action as Complex Pursuant to NRCP 16.1(F), and Motion to Set a Discovery Conference Pursuant to NRCP 16  
 09/29/2009 **Reply**  
 Fast Glass, Inc.'s Reply to Camco Pacific Construction Company, Inc.'s Counterclaim  
 09/29/2009 **Opposition**  
 Apco Construction's Limited Opposition to Scott Financial Corporation's Motion to Designate as Complex and Set a Rule 16 Conference  
 09/29/2009 **Reply to Counterclaim**  
 Tri-City Drywall, Inc.'s Reply to Club Vista Financial Services LLC and Tharaldson Motels II, Inc.'s Counterclaim  
 09/29/2009 **Reply to Counterclaim**  
 Inquipco's Reply to Club Vista Financial Services LLC and Tharaldson Motel II, Inc.'s Counterclaim  
 09/29/2009 **Reply to Counterclaim**  
 Northstar Concrete, Inc.'s Reply to Club Vista Financial Services LLC and Tharaldson Motels II, Inc.'s Counterclaim  
 09/29/2009 **Notice of Change of Firm Name**  
 Notice of Change of Firm Name and Address  
 09/30/2009 **Opposition**  
 Camco Pacific Construction Company, Inc.'s Opposition to Nevada Construction Services' Motion for Sanctions Pursuant to NRCP 11  
 09/30/2009 **Answer to Amended Complaint**  
 Answer to first amended complaint and counterclaim  
 10/01/2009 **Answer to Complaint**  
 Gemstone Development West Inc's Answer to Complaint for Damages and to Foreclose Mechanic's Lien  
 10/01/2009 **Answer**  
 Gemstone Development West, Inc.'s Answer to Custom Select Billing, Inc.'s Statement of Facts constitution Lien and Complaint in Intervention  
 10/02/2009 **Motion to Associate Counsel**  
 Motion to Associate Counsel Christine R. Taradesh  
 10/02/2009 **Motion to Associate Counsel**  
 Motion to Associate Counsel John T. Moshier  
 10/05/2009 **Motion to Associate Counsel**  
 Motion to Associate Counsel Martin A. Aronson  
 10/06/2009 **Reply**  
 Reply in Support of Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim  
 10/06/2009 **Answer to Counterclaim**  
 Plaintiff/Counter-Defendant's Answer to Defendant's First Amended Counterclaim  
 10/09/2009 **Initial Appearance Fee Disclosure**  
 Initial Appearance Fee Disclosure Statement  
 10/09/2009 **Joinder**  
 Bradley J. Scott's Joinder to Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, Inc.'s Counterclaim  
 10/09/2009 **Notice of Change of Address**  
 10/09/2009 **Notice of Change of Address**  
 10/12/2009 **Motion to Dismiss (9:00 AM) (Judicial Officer Bonaventure, Joseph T.)**  
 10/12/2009, 10/26/2009  
 DEFT SCOTT FINANCIAL CORPORATION'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II'S COUNTERCLAIM  
 Result: Matter Continued  
 10/12/2009 **Motion (9:00 AM) (Judicial Officer Bonaventure, Joseph T.)**  
 DEFT SCOTT FINANCIAL CORP'S MOTION TO DESIGNATE THIS ACTION AS COMPLEX PURSUANT TO NRCP 16.1(f), AND MOTION TO SET A DISCOVERY CONFERENCE PURSUANT TO NRCP 16  
 Result: Granted  
 10/12/2009 **All Pending Motions (9:00 AM) (Judicial Officer Bonaventure, Joseph T.)**  
 DEFT SCOTT FINANCIAL CORPORATION'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II'S COUNTERCLAIM...DEFT SCOTT FINANCIAL CORP'S MOTION TO DESIGNATE THIS ACTION AS COMPLEX PURSUANT TO NRCP 16.1(f), AND MOTION TO SET A DISCOVERY CONFERENCE PURSUANT TO NRCP 16  
 Parties Present  
 Minutes  
 Result: Matter Heard  
 10/12/2009 **Joinder**  
 Notice of Joinder to Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, Inc.'s Counterclaim  
 10/12/2009 **Answer to Counterclaim**  
 Masonry Group Nevada Inc's Answer to Camco Pacific Construction Inc's Counterclaim  
 10/12/2009 **Answer to Counterclaim**  
 Cell-Crete Fireproofing of Nevada Inc's Answer to Club Vista Financial Services LLC Tharaldson Motels II Inc and Gary D Tharaldson's Counterclaim  
 10/12/2009 **Summons**  
 10/13/2009 **Certificate of Mailing**  
 Errata to Certificate of Mailing  
 10/14/2009 **Joinder**  
 Plaintiff/Counterdefendant Buchele, Inc.'s Joinder to Zitting Brothers Construction, Inc.'s Partial Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim, or, in the Alternative, Motion for a More Definite Statement  
 10/14/2009 **Notice**  
 Fast Glass, Inc.'s Notice of Joinder in Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim  
 10/14/2009 **Reply**  
 Reply in Support of NCS' Motion for Sanctions Pursuant to NRCP 11  
 10/14/2009 **Answer to Complaint**  
 Answer to Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim  
 10/15/2009 **Joinder**

*Ahern Rental Inc.'s Joinder to Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services LLC and Tharaldson Motel II, Inc.'s Counterclaim*

10/15/2009 **Motion to Withdraw As Counsel**  
*Richard A Koch's Motion to Withdraw as Counsel*

10/15/2009 **Reply to Counterclaim**  
*Plaintiff in Intervention Northstar Concrete Incs Reply to Camco Pacific Company Incs Counterclaim*

10/15/2009 **Reply to Counterclaim**  
*Plaintiff in Intervention Tri-City Drywall Incs Reply to Camco Pacific Company Incs Counterclaim*

10/15/2009 **Reply to Counterclaim**  
*Eza PC dba Oz Architecture of Nevada Inc, Harsco Corporation and Patent Construction Systems a Division of Harsco Corporation's Reply to Counterclaim of Club Vista Financial Services LLC and Tharaldson Motels II Inc*

10/16/2009 **Acceptance of Service**  
*Scott Financial Corporation's Acceptance of Service of Custom Select Billing, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention*

10/16/2009 **Answer**  
*Las Vegas Pipeline's Answer to Camco Pacific Construction Company, Inc.'s Counterclaim*

10/16/2009 **Notice**  
*Plaintiff, Wlss, Janney, Elstner Associates, Inc.'s Notice of Consolidation With Case Numbers A571228, A574391, A574792, A577623, A583289, A584730, A587168, A580889, A589195 and A597089*

10/16/2009 **Answer to Counterclaim**  
*Utintah Investments, LLC's Reply to Club Vista Financial Services, LLC's, Tharaldson Motels II, Inc.'s and Gary D. Tharaldson's Counterclaim*

10/16/2009 **Notice**  
*Noorda Sheet Metal Company's Notice of Joinder In Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim*

10/16/2009 **Reply to Counterclaim**  
*Counterdefendant Granite Construction Company's Reply to Club Vista Financial Services, LLC's Counterclaim*

10/16/2009 **Joinder To Motion**  
*Dave Peterson Framing Inc's Notice of Joinder in Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim*

10/16/2009 **Joinder To Motion**  
*E & E Fire Protection LLC's Notice of Joinder in Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim*

10/16/2009 **Joinder To Motion**  
*Professional Doors and Millworks LLC's Notice of Joinder in Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim*

10/16/2009 **Joinder**  
*Renaissance Pools & Spas, Inc.'s Joinder to Zitting Brothers Construction, Inc.'s Partial Motion to Dismiss Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim, or In the Alternative, Motion for a More Definite Statement*

10/19/2009 **Motion for Sanctions (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
**DEFT NEVADA CONSTRUCTION SERVICES MOTION FOR SANCTIONS PURSUANT TO NRCP 11**  
Parties Present  
Minutes  
Result: Denied

10/19/2009 **Answer to Counterclaim**  
*Republic Crane Service LLC's Answer to Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim*

10/19/2009 **Answer to Counterclaim**  
*Republic Crane Service LLC's Answer to Club Vista Financial Services LLC and Tharaldson Motels II Inc's Counterclaim*

10/19/2009 **Amended Notice**  
*Amended Notice of Scott financial Corporation's Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, INC's Counterclaim*

10/21/2009 **Stipulation for Dismissal**  
*Stipulation for Dismissal Without Prejudice of Count Nine (Acting in Concert/Civil Conspiracy) Against Zitting Brothers Construction Inc*

10/21/2009 **Opposition to Motion**  
*Opposition to Renewed Motion to Clarify and to Reconsider April 6 2009 Ruling Re Executive Plastering Incs Application for Prejudgment Writ of Attachment*

10/21/2009 **Reply to Counterclaim**

10/21/2009 **Reply**  
*Reply of Counterdefendant John Deere Landscape Inc to Counterclaim of Club Vista Financial Services LLC Tharaldson Motels II Inc and Gary D. Tharaldson*

10/21/2009 **Certificate of Service**  
*Certificate of Service of Reply of Counterdefendant Supply Network, Inc to Counterclaim of Club Vista Financial Services LLC Tharaldson Motels II Inc and Gary D Tharaldson*

10/21/2009 **Certificate of Service**  
*Certificate of Service of Reply of Counterdefendant John Deere Landscape Inc to Counterclaim of Club Vista Financial Services LLC, Tharaldson Motels II Inc, and Gary D Tharaldson*

10/23/2009 **Acceptance of Service**

10/26/2009 **CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*Vacated - per Stipulation and Order*  
*Stip and Order received 10/19/09*

10/26/2009 **Motion (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
**10/26/2009, 11/03/2009**  
**DEFT CAMCO'S RENEWED MTN FOR CLARIFICATION OR RECONSIDERATION OF APRIL 6, 2009 RULING RE. EXECUTIVE PLASTERING'S APPLICATION FOR ORDER TO SHOW CAUSE WHY PREJUDGMENT WRIT OF ATTACHMENT & WRIT OF GARNISHMENT SHOULD NOT ISSUE AFTER NOTICE (CONSOLIDATED CASE)**  
Parties Present  
Minutes  
*10/26/2009 Reset by Court to 10/26/2009*  
Result: Matter Continued

10/26/2009 **Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*Bradley J. Scott's Joinder to Scott Financial Corporation's Motion to Dismiss Club Vista Financial Services, L.L.C. and Tharaldson Motels II, Inc.'s Counterclaim*



Result: Granted  
 10/26/2009 Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 LIEN CLAIMANT REPUBLIC CRANE'S JOINDER IN SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II'S COUNTERCLAIM  
 Result: Granted  
 10/26/2009 Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 PLTF AHERN RENTAL'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTEL II'S COUNTERCLAIM  
 10/26/2009 Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 LIEN CLAIMANT DAVE PETERSON FRAMING INC'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM  
 Result: Granted  
 10/26/2009 Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 LIEN CLAIMANT E&E FIRE PROTECTION'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM  
 Result: Granted  
 10/26/2009 Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 LIEN CLAIMANT DOORS AND MILLWORKS' JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM  
 10/26/2009 CANCELED Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 Vacated - per Stipulation and Order  
 Stip and Order received 10/19/09  
 10/26/2009 CANCELED Joinder (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 Vacated - per Stipulation and Order  
 Stip and Order received  
 10/26/2009 All Pending Motions (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 BRADLEY J. SCOTT'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES, LLC AND THARALDSON MOTELS II, INC'S COUNTERCLAIM...LIEN CLAIMANT REPUBLIC CRANE'S JOINDER IN SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II'S COUNTERCLAIM...PLTF AHERN RENTAL'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTEL II'S COUNTERCLAIM...LIEN CLAIMANT DAVE PETERSON FRAMING INC'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM...LIEN CLAIMANT E&E FIRE PROTECTION'S JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM...LIEN CLAIMANT DOORS AND MILLWORKS' JOINDER TO SCOTT FINANCIAL CORP'S MOTION TO DISMISS CLUB VISTA FINANCIAL SERVICES AND THARALDSON MOTELS II' COUNTERCLAIM...DEFT SCOTT FINANCIAL CORPORATION'S MOTION TO DISMISS CLUB VISTA  
Parties Present  
Minutes  
 Result: Matter Heard  
 10/29/2009 Reply to Opposition  
 Camco's Reply to Opposition to Renewed Motion for Clarification and Reconsideration  
 11/02/2009 CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 Vacated  
 Order signed  
 11/02/2009 CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 Vacated  
 Order signed  
 11/02/2009 Order Granting Motion  
 Order Granting Motion to Associate Counsel John Moshier  
 11/02/2009 Order Granting Motion  
 Order Granting Motion to Associate Counsel Christine Taradash  
 11/02/2009 Order Granting Motion  
 Order Granting Motion to Associate Counsel Martin A Aronson  
 11/04/2009 Reply  
 Counterdefendant Cabinetec Inc.'s Reply to Club Vista Financial Services LLC's Counterclaim  
 11/04/2009 Motion to Withdraw As Counsel  
 Motion to Withdraw as Counsel  
 11/04/2009 Answer to Interpleader  
 Gemstone Development West, Inc.'s Answer to Complaint for Damages and to Foreclose Mechanic's Lien (Buchele, Inc.)  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228  
 11/04/2009 Answer to Interpleader  
 Gemstone Development West, Inc.'s Answer to Uintah Investments, LLC Complaint  
 11/04/2009 Answer to Interpleader  
 Gemstone Development West, Inc.'s Answer to Ready Mix, Inc.'s Statement of Facts Constituting Lien and Complaint for Foreclosure of Mechanics' Lien  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228 (HA Fabricators, Inc.)  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228 (Graybar Electric Company, Inc.)  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 06-A571228 (PCI Group, LLC)  
 11/04/2009 Answer  
 Scott Financial Corporation's Answer to Custom Select Billing, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228  
 11/04/2009 Notice  
 Defendant Gemstone Development West, Inc.'s Notice of Consolidation with Case No. 08-A571228  
 11/04/2009 Motion to Withdraw As Counsel

11/05/2009 **Answer**  
*Scott Financial Corporation's Answer to Hydropressure Cleaning, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention*

11/06/2009 **Motion to Amend Complaint**  
*Harsco Corporation's Proposed Second Amended Complaint in Intervention*

11/10/2009 **Order Granting**

11/10/2009 **Order**  
*Order Setting Rule 16 Conference, Designating the Case as Complex Pursuant to NRCP 16.1(f), and Continuing the Hearing on Defendant Scott Financial Corporation's Motion to Dismiss Co-Defendants Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim*

11/10/2009 **Order**

11/10/2009 **Notice of Motion**

11/11/2009 **Notice of Entry**  
*Notice of Entry of Order Setting Rule 16 Conference, Designating the Case as Complex Pursuant to NRCP 16.1(f), and Continuing the Hearing on Defendant Scott Financial Corporation's Motion to Dismiss Co-Defendants Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Counterclaim*

11/12/2009 **Notice of Entry of Order**

11/13/2009 **Stipulation and Order for Dismissal**  
*Stipulation and Order for Dismissal of Steel Structures, INC.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, INC.*

11/16/2009 **CANCELED Motion to Associate Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*Vacated*  
*Order signed*

11/16/2009 **Notice of Entry of Order**  
*Notice of Entry of Order for Dismissal of Steel Structures Complaint against Camco Pacific Construction and Camco's Counterclaim Against Steel Structures*

11/16/2009 **Reply**  
*Nevada Prefab's Reply to Camco's Counterclaim*

11/17/2009 **Notice of Entry of Order**

11/18/2009 **Answer**  
*Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint*

11/19/2009 **Mandatory Rule 16 Conference (10:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
Parties Present  
Minutes  
 Result: Matter Heard

11/23/2009 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*KOCH'S MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR REPUBLIC CRANE SERVICES LLC*  
Parties Present  
Minutes  
 11/16/2009 Reset by Court to 11/23/2009  
 Result: Granted

11/23/2009 **Answer to Interpleader**  
*Gemstone Development West Inc's Answer to PCI Group LLC's Complaint*

11/23/2009 **Errata**  
*Errata to Motion to Withdraw as Counsel*

11/25/2009 **Order Granting Motion**  
*Order Granting Motion to Withdraw as Counsel*

11/25/2009 **Order Granting Motion**  
*Order Granting Motion to Withdraw as Counsel*

12/01/2009 **Substitution of Attorney**  
*Substitution of Attorneys*

12/07/2009 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*WATKINS' MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR INTERVENOR/LIEN CLAIMANT CABINETEC, INC*  
Parties Present  
Minutes  
 Result: Granted

12/07/2009 **Errata**  
*Errata to Affidavit in Support of Motion to Withdraw as Counsel*

12/07/2009 **Notice of Entry**  
*Notice of Entry of Order*

12/08/2009 **Motion to Amend Complaint (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*HARSCO CORP'S MOTION FOR SECOND AMENDED COMPLAINT IN INTERVENTION*  
Parties Present  
Minutes  
 Result: Granted

12/09/2009 **Motion to Withdraw As Counsel**

12/09/2009 **Notice of Hearing**  
*Notice of Hearing Re Motion to Withdraw as Counsel on an Order Shortening Time*

12/16/2009 **Order Granting Motion**  
*Order Granting Harsco Corporation's Motion to Amend Complaint in Intervention*

12/18/2009 **Summons**  
*Substitution of Attorney*

12/21/2009 **Order Granting Motion**  
*Order Granting Motion to Withdraw as Counsel*

12/21/2009 **Notice of Entry of Order**

12/23/2009 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*CALLISTER'S MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR PLTF EXECUTIVE PLASTERING INC*  
Parties Present  
Minutes

12/23/2009 **Result: Conditionally Granted**  
 12/23/2009 **Motion to Withdraw As Counsel**  
     *Motion to Withdraw As Counsel*  
 12/23/2009 **Amended Complaint**  
     *Harsco Corporations Second Amended Complaint in Intervention*  
 12/28/2009 **Notice of Entry of Order**  
 12/29/2009 **Errata**  
     *Errata to Motion to Withdraw as Counsel on an Order Shortening Time*  
 01/08/2010 **Answer to Counterclaim**  
     *Plaintiff/Counter-Defendant HA Fabricators, Inc.'s Answer to APCO Construction's Counterclaim*  
 01/11/2010 **Notice of Dismissal**  
     *Plaintiff In Intervention inquitco's Notice of Dismissal*  
 01/11/2010 **Notice of Bankruptcy**  
     *Notice of Chapter 7 Bankruptcy Filing and Automatic Stay as to the Masonry Group Nevada Inc*  
 01/11/2010 **Release of Lis Pendens**  
     *Plaintiff in Intervention Inquitco's Release of Lis Pendens*  
 01/19/2010 **Order**  
     *Order Re Motion to Withdraw as Counsel on an Order Shortening Time*  
 01/22/2010 **Notice of Entry of Order**  
     *Notice of Entry of Order Re Motion to Withdraw as Counsel on an Order Shortening Time*  
 01/25/2010 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
     **GILBERT AND THUESON'S MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DEFTS GEMSTONE DEVELOPMENT WEST INC, GEMSTONE DEVELOPMENT LLC, AND EDELSTEIN**  
     Parties Present  
     Minutes  
 01/26/2010 **Result: Granted**  
 01/26/2010 **Amended Certificate of Mailing**  
     *Amended Certificate of Mailing Re Notice of Entry of Order Re Motion to Withdraw as Counsel on an Order Shortening Time*  
 01/28/2010 **Order**  
     *Case Management Order*  
 01/29/2010 **Notice**  
     *Notice of Entry of Case Management Order*  
 02/01/2010 **Certificate**  
     *Amended Certificate of Service*  
 02/02/2010 **Order**  
     *Order Granting Motion to Withdraw as Counsel for Gemstone Development West, Inc.; Gemstone Devement, LLC; and Alexander Edelstein*  
 02/03/2010 **Consent to Service By Electronic Means**  
     *Pape Rents' Consent to Service by Electronic Means*  
 02/03/2010 **Notice of Entry**  
     *Notice of Entry of Order Granting Motion to Withdraw as Counsel for Gemstone Development West, Inc., Gemstone Development, LLC, and Alexander Edelstein*  
 02/04/2010 **Consent**  
     *Harsco Corporation and EZ, P.C. dba Oz Architecture of Nevada, Inc.'s Consent to Service by Electronic Means*  
 02/05/2010 **Substitution of Attorney**  
     *Substitution of Attorney for The Pressure Grout Company*  
 02/12/2010 **Stipulation and Order**  
     *Stipulation and Order of Dismissal of Defendant Nevada Construction Services Without Prejudice*  
 02/12/2010 **Stipulation and Order for Dismissal**  
     *Stipulation and Order for Dismissal without Prejudice of Hydropressure Cleaning, Inc.'s Claims Against Nevada Construction Services Only*  
 02/12/2010 **Suggestion of Bankruptcy**  
     *Suggestion of Bankruptcy Petition Amicus Curlae*  
 02/17/2010 **Consent to Service By Electronic Means**  
     *Consent to Service By Electronic Means*  
 02/22/2010 **Status Check (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
     **STATUS CHECK: CONFIRMATION OF COUNSEL FOR DEFTS GEMSTONE DEVELOPMENT WEST INC, GEMSTONE DEVELOPMENT LLC, AND EDELSTEIN**  
     Minutes  
 02/23/2010 **Result: Matter Heard**  
 02/23/2010 **Interrogatories**  
     *Lenders' Standard Interrogatories to Lien Claimants*  
 02/23/2010 **Consent to Service By Electronic Means**  
     *Consent to Service by Electronic Means*  
 02/26/2010 **Motion for Partial Summary Judgment**  
     *Plaintiff Ahern Rentals, Inc's Motion for Partial Summary Judgment Against Defendant Alex Edelstein Only*  
 03/01/2010 **Motion for Partial Summary Judgment**  
     *Atlas Construction Supply, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*  
 03/02/2010 **Notice of Hearing**  
     *Notice of Hearing on Ahern Rental Inc's Motion for Partial Summary Judgment Against Defendant Alex Edelstein Only*  
 03/02/2010 **Certificate of Service**  
     *Certificate of Service of Notice of Motion for Partial Summary Judgment of Atlas Construction Supply, Inc. Against Gemstone Development West, Inc.*  
 03/04/2010 **Ex Parte Motion**  
     *Ex Parte Motion for Order to Show Cause on Order Shortening Time*  
 03/05/2010 **Errata**  
     *Errata To Order To Show Cause*  
 03/05/2010 **Notice of Intent to Take Default**  
     *Three Day Notice of Intent to Enter Default Against HA Fabricators, Inc. on Counterclaim Asserted by APCO Construction*  
 03/05/2010 **Notice of Intent to Take Default**  
     *Three Day Notice of Intent to Take Default Against Gemstone Development West, Inc. on Third-Party Complaint Asserted by APCO Construction Against Gemstone Development West, Inc.*  
 03/08/2010 **Substitution of Attorney**  
     *Substitution of Attorney*

03/08/2010 **Objection***Scott Financial Corporation's Objection To Written Discovery Requests To Gemstone Development West., Inc.*03/09/2010 **Show Cause Hearing (9:00 AM)** (Judicial Officer Delaney, Kathleen E.)*HEARING RE: SHOW CAUSE WHY LIENHOLDERS NOT PARTICIPATING IN CONSOLIDATED ACTION SHOULD NOT BE HELD IN CONTEMPT*Parties PresentMinutes

Result: Granted in Part

03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit of Service***Affidavit of Service*03/09/2010 **Affidavit of Service***Affidavit of Due Diligence*03/09/2010 **Affidavit of Service***Affidavit of Due Diligence*03/09/2010 **Affidavit of Service***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit***Affidavit of Due Diligence*03/09/2010 **Affidavit of Service***Affidavit of Due Diligence*03/09/2010 **Affidavit of Service***Affidavit of Due Diligence*03/09/2010 **Affidavit of Due Diligence***Affidavit of Due Diligence*03/09/2010 **Affidavit***Affidavit of Service*03/09/2010 **Affidavit of Service***Affidavit of Service*03/09/2010 **Affidavit of Service***Affidavit of Service*03/09/2010 **Errata***Errata To Order To Show Cause*03/09/2010 **Joinder***Zitting Brothers Construction, Inc.'s Joinder to APCA Construction's Objection to Lenders' Standard Interrogatories to Lien Claimants*03/09/2010 **Affidavit***Affidavit of Service re: Arch Aluminum c/o The Corporation trust Company of Nevada as Resident Agent*03/10/2010 **Affidavit**

03/10/2010 **Affidavit of Service**  
 Affidavit  
 Affidavit of Service  
 03/10/2010 **Early Case Conference Disclosure Statement**  
 Early Case Conference Disclosure Statement  
 03/10/2010 **Notice of Change of Address**  
 Plaintiff HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Notice of Change of Address, Telephone and Facsimile Numbers  
 03/17/2010 **Opposition**  
 Scott Financial Corporation's Opposition To Atlas Construction Supply, Inc.'s Motion For Partial Summary Judgment Against Gemstone Development West, Inc.  
 03/17/2010 **Opposition**  
 Scott Financial Corporation's Opposition To Ahern Rentals, Inc.'s Motion For Partial Summary Judgement Against Defendant Alex Edelstein  
 03/19/2010 **Opposition to Motion For Summary Judgment**  
 Defendant's Opposition to Ahern Rental Inc.'s Motion For Partial Summary Judgment Against Alex Edelstein Only  
 03/22/2010 **Errata**  
 Third Errata to Order to Show Cause  
 03/23/2010 **Answer to Third Party Complaint**  
 Scott Financial Corporation's Answer to Northstar Concrete, Inc.'s Statement of Facts Constituting Lien and Complaint in Intervention  
 03/23/2010 **Substitution of Attorney**  
 Substitution of Counsel  
 03/25/2010 **Joinder**  
 Zitting Brothers Construction, Inc.'s Joinder to Scott Financial corporation's Opposition to Atlas Supply, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.  
 03/25/2010 **Reply to Opposition**  
 Reply to Scott Financial Corporation's Opposition to Ahern's Motion for Partial Summary Judgment  
 03/25/2010 **Reply to Opposition**  
 Reply to Defendant Edelstein's Opposition to Ahern's Motion for Partial Summary Judgment  
 03/25/2010 **Answer to Crossclaim**  
 Scott Financial Corporation's Answer to Renaissance Pools & Spas, Inc.'s Statement of Facts Constituting Lien Claim  
 03/26/2010 **Certificate of Mailing**  
 Certificate of Mailing  
 03/26/2010 **Default**  
 Default Against Gemstone Development West, Inc. on Third-Party Complaint Asserted by APCO Construction in Case No. A-09-596924-C which was Consolidated into A571228  
 03/26/2010 **Default**  
 (set aside 04-28-10) Default Against HA Fabricators, Inc. on Counterclaim Asserted by APCO Construction  
 03/29/2010 **Order Granting**  
 Order Granting Defendant Scott Financial Corporation's Application for Order to Show Cause  
 03/30/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 Pltf. Ahern Rentals Inc.'s Motion for Partial Summary Judgment Against Deft. Edelstein Only  
Parties Present  
Minutes  
 Result: Granted in Part  
 03/30/2010 **Reply**  
 Atlas Construction Supply, Inc.'s Reply Brief In Support of Its Motion for Partial Summary Judgment Against Gemstone Development West, Inc.  
 03/31/2010 **Motion for Substitution**  
 Arch Aluminum's Motion to Substitute Proper Party Pursuant to NRCP 25  
 04/01/2010 **Notice of Lis Pendens**  
 Cactus Rose Construction's Notice of Lis Pendens  
 04/01/2010 **Statement of Facts Constituting Lien**  
 A587168 Cactus Rose Construction's Statement of Facts Constituting Notice of Lien and Complaint  
 04/02/2010 **Certificate of Service**  
 Certificate of Service of Arch Aluminum's Motion to Substitute Proper Party Pursuant to NRCP 25  
 04/05/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
 04/05/2010, 04/13/2010  
 Pltf. Atlas Construction Supply, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.  
Parties Present  
Minutes  
 Result: Matter Continued  
 04/05/2010 **Notice of Lis Pendens**  
 Interstate Plumbing & Air Conditioning's Notice of Lis Pendens  
 04/05/2010 **Statement of Facts Constituting Lien**  
 A587168 Interstate Plumbing & Air Conditioning's Statement of Facts Constituting Notice of Lien and Complaint  
 04/05/2010 **Consent to Service By Electronic Means**  
 Consent to Service by Electronic Means  
 04/05/2010 **Voluntary Dismissal**  
 HD Supply Waterworks LLP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice  
 04/05/2010 **Response**  
 Atlas Construction Supply, Inc.'s Answers to Lenders' Standard Interrogatories to Lien Claimants  
 04/07/2010 **Early Case Conference Disclosure Statement**  
 Early Case Conference Disclosure Statement  
 04/07/2010 **Consent to Service By Electronic Means**  
 Consent for Service by Electronic Means  
 04/07/2010 **Consent to Service By Electronic Means**  
 Consent to Service by Electronic Means  
 04/07/2010 **Notice of Compliance**  
 Insulpro Projects, Inc.'s First Notice of Compliance  
 04/07/2010 **Miscellaneous Filing**  
 APCO Construction's Designation of Documents Supporting the Perfection of Lien, Commencement of Construction and Lien Priority  
 04/07/2010 **Response**  
 Ferguson Fire & Fabrication, Inc.'s Responses to Lenders' Standard Interrogatories to Lien Claimants

04/07/2010 **Production of Documents**  
*Scott Financial Corporation's Production of Documents Pursuant to Case Management Order*

04/07/2010 **Response**  
*Scott Financial Corporation's Responses to Lien Claimant's Standard Interrogatories*

04/07/2010 **Response**  
*Scott Financial Corporation's Responses to Lien Claimant's Standard Interrogatories*

04/07/2010 **Response**  
*Scott Financial Corporation's Responses to Lien Claimant's Standard Request for Admissions*

04/08/2010 **Disclosure of Documents and Witnesses Pursuant to NRCP 16.1**  
*Lien Claimant Cell-Crete Fireproofing's Initial Disclosure of Documents and Witnesses*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/08/2010 **Affidavit of Service**  
*Affidavit of Service*

04/09/2010 **Consent to Service By Electronic Means**  
*Consent to Service by Electronic Means*

04/09/2010 **Early Case Conference Disclosure Statement**  
*Early Case Conference Disclosure Statement*

04/09/2010 **Notice of Intent to Take Default**  
*Notice of Intent to Default*

04/13/2010 **Show Cause Hearing (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*Hearing Re: Show Cause Why Liens Should Not Be Expunged (Jensen Enterprises Inc., Paramount Scaffold Inc., Carpets-N-More, Nedco Supply, Anthony Viz/SWPPP Compliance Solutions LLC, Sacramento Insulation Contractors Inc., Eastridge Personnel of Las Vegas, Westward Ho LLC, Larry Methvin Installation Inc., Interstate Plumbing & Air Conditioning, S R Bray Corp Power Plus, Sunstate Equipment Company LLC, Sunstate Companies Inc., Towey Equipment Company Inc., Geotek Inc., Superior Traffic Services, Summit Sand & Gravel Inc., K & G Construction Inc., Tiberti Company, and Design Space Modular Buildings Inc.)*  
**Result: Matter Heard**

04/13/2010 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

04/13/2010 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

04/13/2010 **Acceptance of Service**  
*Acceptance of Service by Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland*

04/13/2010 **Acceptance of Service**  
*Acceptance of Service by Asphalt Products Corp. and APCO Construction*

04/13/2010 **Acceptance of Service**  
*Acceptance of Service by Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland*

04/13/2010 **All Pending Motions (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**  
*Hearing Re: Show Cause Why Liens Should Not Be Expunged (Jensen Enterprises Inc., Paramount Scaffold Inc., Carpets-N-More, Nedco Supply, Anthony Viz/SWPPP Compliance Solutions LLC, Sacramento Insulation Contractors Inc., Eastridge Personnel of Las Vegas, Westward Ho LLC, Larry Methvin Installation Inc., Interstate Plumbing & Air Conditioning, S R Bray Corp Power Plus, Sunstate Equipment Company LLC, Sunstate Companies Inc., Towey Equipment Company Inc., Geotek Inc., Superior Traffic Services, Summit Sand & Gravel Inc., K & G Construction Inc., Tiberti Company, and Design Space Modular Buildings Inc.)...Pltf. Atlas Construction Supply, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*  
**Parties Present**  
**Minutes**  
**Result: Matter Heard**

04/13/2010 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure (NRS Chapter 19)*

04/13/2010 **Notice of Appearance**  
*Notice of Appearance and Response to Order Granting Defendant Scott Financial Corporation's Application for Order to Show Cause*

04/13/2010 **Answer and Counterclaim**  
*A587168 Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc's Counterclaim*

04/13/2010 **Answer and Counterclaim**  
*A587168 Answer to Interstate Plumbing & Air Conditioning's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc's Counterclaim*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/13/2010 **Affidavit of Due Diligence**  
*Affidavit of Due Diligence*

04/13/2010 **Affidavit of Service**  
*Affidavit of Service*

04/14/2010 **Verification**  
*Verification of Lien Claimant, Wiss, Janney, Elstner Associates, Inc.'s Response to Lenders' Standard Interrogatories to Lien Claimants*

04/14/2010 **Verification**  
*Verification of Scott Financial Corporation's Responses to Lien Claimant's Standard Interrogatories*

04/14/2010 **Affidavit of Service**  
*Affidavit of Service Re: Westward Ho, LLC*

04/14/2010 **Affidavit of Service**  
*Affidavit of Service Re: Jensen Enterprises, Inc.*

04/14/2010 **Receipt of Copy**  
*Receipt of Copy*

04/15/2010 **Amended**  
*E&E Fire Protection, LLC's Amended Notice of Pendency of Action*

04/15/2010 **Amended**  
*Noorda Sheet Metal Company's Second Amended Notice of Pendency of Action*

04/15/2010 **Amended**  
*Professional Doors and Millworks, LLC's Amended Notice of Pendency of Action*

04/15/2010 **Amended**  
*The Pressure Grout Company's Amended Notice of Pendency of Action*

04/15/2010 **Amended**  
*Dave Peterson Framing, Inc.'s Amended Notice of Pendency of Action*

04/15/2010 **Motion for Summary Judgment**  
*Lien Claimant Fast Glass, Inc.'s Motion for Summary Judgment Against Gemstone Development West, Inc.*

04/15/2010 **Answer to Counterclaim**  
*Accuracy Glas & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim*

04/15/2010 **Answer to Counterclaim**  
*Buchele, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim*

04/15/2010 **Answer to Counterclaim**  
*WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim*

04/15/2010 **Answer to Counterclaim**  
*Heinaman Contract Glazing's Answer to Camco Pacific Construction Company, Inc.'s Counterclaim*

04/16/2010 **Statement of Facts Constituting Lien**  
*Sunstate Companies, Inc.'s Statement of Facts Constituting Lien*

04/19/2010 **Consent to Service By Electronic Means**  
*Consent to Service by Electronic Means*

04/19/2010 **Notice**  
*Notice to All Parties*

04/20/2010 **Stipulation and Order**  
*Stipulation and Order*

04/20/2010 **Stipulation and Order**  
*Stipulation and Order*

04/21/2010 **Consent to Service By Electronic Means**  
*Ahern Rentals, Inc.'s Consent to Service by Electronic Means*

04/21/2010 **Notice of Entry**  
*Notice of Entry of Stipulation and Order*

04/21/2010 **Order to Show Cause**  
*Order to Show Cause*

04/21/2010 **Notice of Entry**  
*Notice of Entry of Stipulation and Order*

04/21/2010 **Answer to Third Party Complaint**  
*Answer to Harsco Corporation's Second Amended Complaint*

04/22/2010 **Reply to Counterclaim**  
*Selectbuild Nevada, Inc.'s Reply to Counterclaim of Camco Pacific Construction Company, Inc.*

04/22/2010 **Miscellaneous Filing**  
*Hydropressure Cleaning, Inc.'s Designation of Documents Supporting the Perfection of Lien, Commencement of Construction and Lien Priority*

04/22/2010 **Miscellaneous Filing**  
*Custom Select Billing, Inc.'s Designation of Documents Supporting the Perfection of Lien, Commencement of Construction and Lien Priority*

04/23/2010 **Statement of Facts Constituting Lien**  
*S.R. Bray Corp.'s Statement of Facts and Complaint in Intervention*

04/23/2010 **Statement**  
*SWPPP Compliance Solutions, LLC's Statement of Facts and Complaint*

04/23/2010 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

04/23/2010 **Verification**  
*Verification of Tri-City Drywall, Inc.'s Responses to Lenders' Standard Interrogatories to Lien Claimants*

04/26/2010 **Answer to Third Party Complaint**  
*Answer to HD Supply & Waterworks' LPs Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc's Counterclaim*

04/26/2010 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

04/27/2010 **Stipulation and Order**  
*Stipulation and Order for Extension of Time*

04/27/2010 **Response**

**Defendant's Response to Order to Show Cause**

04/28/2010 **Answer and Counterclaim**  
APCO Construction's Answer to Interstate Plumbing & Air Conditioning's Statement of Facts Constituting Notice of Lien and Complaint; Counterclaim and Cross-Claim

04/28/2010 **Amended Answer**  
Camco's Amended Answer to HD Supply & Waterworks' LP's Statement of Facts Constituting Lien and Third Party-Complaint

04/28/2010 **Stipulation and Order**  
Stipulation and Order Setting Aside Default Against HA Fabricators, Inc. on Counterclaim Asserted by APCO Construction

04/29/2010 **Notice of Voluntary Dismissal With Prejudice**  
Notice of Voluntary Dismissal of Accuracy Glass & Mirror Company and Employers Mutual Casualty Company With Prejudice

04/29/2010 **Notice of Change of Address**  
Notice of Change of Address

04/30/2010 **Motion to Consolidate**  
APCO Construction's Motion to Consolidate Case No. A-10-608717 with Pending Action

05/03/2010 **Motion for Substitution** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
LIEN CLAIMANT ARCH ALUMINUM AND GLASS COMPANY'S MOTION TO SUBSTITUTE PROPER PARTY PURSUANT TO NRCP 25  
Parties Present  
Minutes  
Result: Granted

05/04/2010 **Order**  
Order Partially Granting Plaintiff/Lien Claimant Ahern Rentals, Inc.'s Motion for Partial Summary Judgment Against Alex Edelstein Only

05/04/2010 **Motion to Consolidate**  
Defendant/Counterclaimant Camco Pacific Construction Inc. and Fidelity and Deposit Company of Maryland's Motion to Consolidate Case No. A09-606730 and Case No. A10-608716 With Pending Action

05/04/2010 **Notice of Entry of Order**  
Notice of Entry of Order

05/04/2010 **Motion for Partial Summary Judgment**  
Interstate Plumbing & Air Conditioning, LLC's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
Buchele, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
Accuracy Glass & Mirror Company, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
Bruin Painting Corporation's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
Cactus Rose Construction, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
S.R. Bray Corp. D/B/A Power Plus' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
Heinaman Contract Glazing's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/04/2010 **Motion for Partial Summary Judgment**  
HD Supply Waterworks, LP's Motion for Summary Judgment Against Gemstone Development West, Inc.

05/05/2010 **Show Cause Hearing** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
05/05/2010, 05/17/2010  
Hearing Re: Show Cause Why Default Judgment Should Not be Entered Against Gemstone Development West Inc. Pursuant to EDCR 7.60, for Failure to Give Reasonable Attention to Matters, and for Failure to Obtain New Counsel Pursuant to EDCR 7.42(b)  
Parties Present  
Minutes  
Result: Matter Continued

05/05/2010 **Consent to Service By Electronic Means**  
Consent to Service by Electronic Means

05/05/2010 **Motion for Partial Summary Judgment**  
WRG Design Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/05/2010 **Motion for Partial Summary Judgment**  
Helix Electric's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/06/2010 **Notice of Entry**  
Notice of Entry of Findings of Fact, Conclusions of Law, and Partial Summary Judgment In Favor of Atlas Construction Supply, Inc. and Against Gemstone Development West, Inc.

05/06/2010 **Motion for Partial Summary Judgment**  
Harsco Corporation's Motion for Partial Summary Judgment

05/06/2010 **Errata**  
Errata to Accuracy Glass & Mirror Company, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/06/2010 **Errata**  
Errata to Helix Electric's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/06/2010 **Errata**  
Errata to HD Supply Waterworks, LP's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/06/2010 **Joinder To Motion**  
Patent Construction Systems, A Division of Harsco Corporation's Joinder to Harsco Corporation's Motion for Partial Summary Judgment

05/06/2010 **Joinder To Motion**  
EZA, P.C. dba Oz Architecture of Nevada, Inc.'s Joinder to Harsco Corporation's Motion for Partial Summary Judgment

05/06/2010 **Motion for Partial Summary Judgment**  
SWPP Compliance Solutions' Motion for Partial Summary Judgment against Gemstone Development West, Inc.

05/07/2010 **Opposition**  
Scott Financial Corporation's Opposition to Fast Glass, Inc.'s Motion for Summary Judgment against Gemstone Development, West, Inc.

05/07/2010 **Statement of Facts Constituting Lien**  
S.R. Bray Corp.'s Amended Statement of Facts and Complaint in Intervention

05/07/2010 **Notice of Lis Pendens**  
S.R. Bray Corp.'s Notice of Lis Pendens

05/08/2010 **Substitution of Attorney**  
Substitution of Attorney A571228

05/10/2010 **Notice of Lis Pendens**  
SWPP Compliance Solutions, LLC's Notice of Lis Pendens



05/10/2010 **Statement of Facts Constituting Lien**  
SWPPP Compliance Solutions, LLC's Amended Statement of Facts and Complaint

05/10/2010 **Order Shortening Time**  
Application for Order Shortening Time for Hearings on Certain Motions for Partial Summary Judgment

05/10/2010 **Motion for Partial Summary Judgment**  
Renaissance Pools and Spas, Inc.'s Motion for Partial Summary Judgment

05/11/2010 **Order Granting Motion**  
Order Granting Arch Aluminum & Glass Company's Motion to Substitute Proper Party Pursuant to NRCP 25

05/11/2010 **Ex Parte Motion for Enlargement of Time**  
Ex Parte Motion for Enlargement of Time to Serve Defendant Selin Cisneros and Petition for Service by Publication

05/12/2010 **Notice of Entry**  
Notice of Entry of Order Granting Arch Aluminum & Glass Company's Motion to Substitute Proper Party Pursuant to NRCP 25

05/13/2010 **Notice of Entry of Stipulation and Order**  
Notice of Entry of Stipulation and Order Setting Aside Default Against HA Fabricators, Inc. on Counterclaim Asserted by APCO Construction

05/13/2010 **Motion for Partial Summary Judgment**  
Arch Aluminum and Glass, LLC's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/13/2010 **Motion for Partial Summary Judgment**  
Arch Aluminum And Glass, LLC's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/13/2010 **Motion for Partial Summary Judgment**  
Selectbuild Nevada, Inc.'s Motion for Partial Summary Judgment Against Defendant Gemstone Development West, Inc.

05/13/2010 **Order**  
Order Deconsolidating and Remanding Case No. A584960

05/13/2010 **Ex Parte Motion**  
Ex Parte Motion for Order Shortening Time Re: Harsco Corporatio's Motion for Partial Summary Judgment and Joinders Thereto

05/14/2010 **Application**  
Application for Order Shortening Time for Hearing on Renaissance Pools and Spas, Inc.'s Motion for Partial Summary Judgment (and Order Granting Application)

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Accuracy Glass & Mirror Company, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Bruin Painting Corporation's Motion for Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Buchelle, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Cactus Rose Construction, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to HD Supply Waterworks LP's Motion for Partial Summary Judgment West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Heinaman Contract Glazing's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Helix Electric's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to Interstate Plumbing & Air Conditioning LLC's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to S.R. Bray Corp.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to SWPPP's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/14/2010 **Opposition to Motion**  
Scott Financial Corporation's Opposition to WRG Design, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.

05/17/2010 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Lien Claimant Fast Glass Inc.'s Motion for Summary Judgment Against Gemstone Development West Inc.  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Interstate Plumbing & Air Conditioning LLC's Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Buche Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Accuracy Glass & Mirror Company Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Bruin Painting Corporation's Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Cactus Rose Construction Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
S.R. Bray Corp's Motion for Partial Summary Judgment Against Gemstone Development West Inc.  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part

- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Heinaman Contract Glazing's Motion for Partial Summary Judgment Against Gemstone Development West Inc.*  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*HD Supply Waterworks LP's Motion for Summary Judgment Against Gemstone Development West Inc.*  
06/07/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*WRG Design Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc.*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Helix Electric's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Harsco Corporation's Motion for Partial Summary Judgment as to Causes of Action I, III, and IV Only*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Joinder** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Patent Construction Systems' Joinder to Harsco Corporation's Motion for Partial Summary Judgment*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Joinder** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*EZA, P.C.'s Joinder to Harsco Corporation's Motion for Partial Summary Judgment*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*SWPP Compliance Solutions' Motion for Partial Summary Judgment against Gemstone Development West Inc.*  
06/08/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Renaissance Pools and Spas, Inc.'s Motion for Partial Summary Judgment*  
06/14/2010 Reset by Court to 05/17/2010  
Result: Granted in Part
- 05/17/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Arch Aluminum and Glass LLC's Motion for Partial Summary Judgment Against Gemstone Development West Inc.*  
Result: Granted in Part
- 05/17/2010 **CANCELED Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Vacated - On In Error duplicate*
- 05/17/2010 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Lien Claimant Fast Glass Inc.'s Motion for Summary Judgment Against Gemstone Development West Inc...Interstate Plumbing & Air Conditioning LLC's Motion for Partial Summary Judgment Against Gemstone Development West Inc...Buchele Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc...Accuracy Glass & Mirror Company Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc...SWPP Compliance Solutions' Motion for Partial Summary Judgment against Gemstone Development West Inc...Bruin Painting Corporation's Motion for Partial Summary Judgment Against Gemstone Development West Inc...Cactus Rose Construction Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West Inc...HD Supply Waterworks LP's Motion for Summary Judgment Against Gemstone Development West Inc...Heinaman Contract Glazing's Motion for Partial Summary Judgment Against Gemstone Development West Inc...S.R. Bray Corp's Motion for Partial Summary Judgment Against Gemstone Development West Inc.*  
Parties Present  
Minutes  
Result: Matter Heard
- 05/17/2010 **Opposition**  
*Limited Opposition to Motion to Consolidate Case No. A-10-608717 with Pending Action*
- 05/17/2010 **Answer**  
*Scott Financial Corporation's Answer to Interstate Plumbing & Air Conditioning's Statement of Facts Constituting Lien Claim*
- 05/17/2010 **Answer**  
*Scott Financial Corporation's Answer to Cactus Rose Construction's Statement of Facts Constituting Lien Claim*
- 05/18/2010 **Motion for Summary Judgment**  
*Custom Select Billings, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. or, Alternatively, Motion for Permanent Writ of Possession and for Certification of Final Judgment Pursuant to NRCP 54(B)*
- 05/18/2010 **Motion for Summary Judgment**  
*Hydropressure Cleaning, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(B)*
- 05/19/2010 **Document Filed**  
*Insulpro Projects, Inc.'s Designation of Documents Supporting The Perfection of Lien, Commencement of Construction and Lien Priority*
- 05/20/2010 **Certificate of Service**  
*Certificate of Service of Hydropressure Cleaning, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(B)*
- 05/20/2010 **Certificate of Service**  
*Certificate of Service of Custom Select Billing, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. or, Alternatively, Motion for Permanent Writ of Possession and for Certification of Final Judgment Pursuant to NRCP 54(B)*
- 05/21/2010 **Certificate of Mailing**  
*Certificate of Mailing*
- 05/21/2010 **Order Granting Motion**  
*Order Granting Harsco's Ex Parte Motion for Enlargement of Time to Serve Defendant Selina Cisneros and Petition for Service By Publication*

05/21/2010	<b>Opposition</b> <i>Limited Opposition to Camco Pacific Construction, Inc. and Fidelity and Deposit Company of Maryland's Motion to Consolidate Case No. A-09-606730 and Case No. A-10-608718 with Pending Action</i>
05/21/2010	<b>Errata</b> <i>Errata to SWPPP Compliance Solutions' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.</i>
05/21/2010	<b>Errata</b> <i>Errata to S.R. Bray Corp. d/b/a Power Plus' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.</i>
05/24/2010	<b>Miscellaneous Filing</b> <i>Plaintiff HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Designation of Documents In Support of the Perfection of Lien, Commencement of Construction and Lien Priority</i>
05/25/2010	<b>Notice of Entry of Order</b> <i>Notice of Entry of Order</i>
05/26/2010	<b>Certificate of Service</b> <i>Certificate of Service</i>
05/26/2010	<b>Order</b> <i>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaims, and Entering Default</i>
05/28/2010	<b>Motion for Summary Judgment</b> <i>Zitting Brothers Construction, Inc.'s Motion for Summary Judgment Against Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(B)</i>
06/01/2010	<b>Stipulation and Order</b> <i>Stipulation and Order to Continue Hearing on APCO Construction's Motion to Consolidate Case No. A-10-608717 with Pending Action</i>
06/02/2010	<b>Notice of Entry</b> <i>Notice of Entry of Stipulation and Order to Continue Hearing on APCO Construction's Motion to Consolidate Case No. A-10-608717 with Pending Action</i>
06/03/2010	<b>Stipulation and Order to Amend</b> <i>Stipulation and Order For Leave For Camco Pacific Construction, Inc. To File An Amended Answer and Counterclaim To Nevada Prefab Engineers Second Amended Statement of Facts Constituting Lien and Complaint in Intervention</i>
06/03/2010	<b>Miscellaneous Filing</b> <i>Pape Matrial Handling Designation of Documents Supporting Petfection of Lien</i>
06/03/2010	<b>Miscellaneous Filing</b> <i>Steel Structures Designation of Documents Supporting Perfection of Lien</i>
06/03/2010	<b>Miscellaneous Filing</b> <i>Nevada Prefab Engineers Designation of Documents Supporting Perfection of Lien</i>
06/08/2010	<b>Amended Answer</b> <i>Second Amended Answer to Nevada Prefab Engineers' Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company's Counterclaim</i>
06/08/2010	<b>Notice of Entry of Stipulation and Order</b> <i>Notice of Entry of Stipulation and Order</i>
06/08/2010	<b>Motion for Summary Judgment</b> <i>Atlas Construction Supply, Inc.'s Motion For Summary Judgment Regarding The Commencement Of Work And Priority Of Its Mechanic's Lien</i>
06/09/2010	<b>Miscellaneous Filing</b> <i>Plaintiff, Wiss, Janney, Elstner Associates, Inc.'s Designation of Documents Supporting the Perfection of Lien, Commencement of Construction and Lien Priority</i>
06/10/2010	<b>Certificate of Service</b> <i>Certificate Of Service Of Notice Of Motion</i>
06/10/2010	<b>Memorandum of Costs and Disbursements</b> <i>Graybar Electric Company's Memorandum of Costs and Disbursements</i>
06/10/2010	<b>Notice of Dismissal Without Prejudice</b> <i>Northstar Concrete, Inc.'s Notice of Dismissal Without Prejudice as to Platte River Insurance Company Only</i>
06/10/2010	<b>Motion for Partial Summary Judgment</b> <i>Ferguson Fire &amp; Fabrication, Inc's Motion for Partial Summary Judgment Regarding Perfection, Validity, and Priority of its Mechanic's Lien</i>
06/10/2010	<b>Motion for Partial Summary Judgment</b> <i>Insulpro Project, Inc.'s Motion for Partial Summary Against Gemstone Development, Inc., Apco Construction and Camco Pacific Construction Co., Inc.</i>
06/10/2010	<b>Motion for Summary Judgment</b> <i>Plaintiff Ahern Rentals, Inc.'s (1) Motion for Summary Judgment Against Defendant Gemstone Development, LLC; (2) Renewed Motion for Summary Judgment as to Amounts Due Against Defendant Alex Edelstein; and 3) Motion for Default Judgment Against Gemstone Development West, Inc.</i>
06/10/2010	<b>Motion for Partial Summary Judgment</b> <i>Lien Claimant/Plaintiff Cell Crete Fireproofing of Nevada, Inc's Motion for Partial Summary Judgment Against Gemstone Development West Inc., on Issue of Lien Perfection</i>
06/10/2010	<b>Motion for Summary Judgment</b> <i>Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens</i>
06/10/2010	<b>Motion for Summary Judgment</b> <i>Plaintiff-In-Intervention, Tri-City Drywall, Inc.'s Motion For Summary judgment Against Gemstone Development West, Inc.</i>
06/10/2010	<b>Motion for Summary Judgment</b> <i>Las Vegas Pipeline's Motion for Summary Judgment Against Gemstone Development West, Inc.</i>
06/11/2010	<b>Errata</b> <i>Errata to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens</i>
06/11/2010	<b>Notice of Hearing</b> <i>Notice of Hearing On Plaintiff Ahern Rentals, Inc.'s 1) Motion for Summary Judgment Against Defendant Gemstone Development, LLC; 2) Renewed Motion for Summary Judgment as to Amounts Due Against Defendant Alex Edelstein; and 3) Motion for Default Judgment Against Gemstone Development West, Inc.</i>
06/11/2010	<b>Opposition to Motion For Summary Judgment</b> <i>Scott Financial Corporation's Opposition to Custom Select Billing, Inc.'s Motion for Summary Judgment Against Gemstone Development West, Inc. or, In the Alternative, Motion for Permanent Writ of Possession and for Certification of Final Judgment Pursuant to NRCP 54(b)</i>
06/11/2010	<b>Opposition to Motion For Summary Judgment</b> <i>Scott Financial Corporation's Oppositoin to Hydropressure Cleaning, Inc.s Motion for Summary Against Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(b)</i>
06/11/2010	<b>Opposition to Motion</b> <i>Scott Financial Corporation's Opposition to Selectbulld Nevada, Inc.'s Motion for Partial Summary Judgment against Defendant Gemstone Development West, Inc.</i>
06/14/2010	<b>Motion for Partial Summary Judgment</b> (9:00 AM) (Judicial Officer Delaney, Kathleen E.) <b>06/14/2010, 06/16/2010, 07/27/2010</b>

*Pltf. Selectbuild Nevada Inc.'s Motion for Partial Summary Judgment Against Defendant Gemstone Development West Inc.*

Parties Present

Minutes

07/12/2010 *Reset by Court to 07/12/2010*

07/12/2010 *Reset by Court to 07/27/2010*

Result: Matter Continued

06/14/2010 **Acceptance of Service**

*Acceptance of Service by Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland*

06/15/2010 **Supplement**

*Scott Financial Corporation's Omnibus Supplement to its Opposition to the Motions for Summary Judgment against Gemstone Development West, Inc.*

06/16/2010 **Motion to Consolidate** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

*Pltf. APCO Construction's Motion to Consolidate A608717 Into A571228*

06/01/2010 *Reset by Court to 06/16/2010*

Result: Granted

06/16/2010 **Motion to Consolidate** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

*Defendant/Counterclaimant Camco Pacific Construction Inc. and Fidelity and Deposit Company of Maryland's Motion to Consolidate Case No. A09-606730 and Case No. A10-608718 With Pending Action*

06/07/2010 *Reset by Court to 06/16/2010*

Result: Granted

06/16/2010 **Status Check** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

*Status Check: Set Date Certain*

Result: Matter Heard

06/16/2010 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

*Pltf. APCO Construction's Motion to Consolidate A608717 Into A571228...Defendant/Counterclaimant Camco Pacific Construction Inc. and Fidelity and Deposit Company of Maryland's Motion to Consolidate Case No. A09-606730 and Case No. A10-608718 With Pending Action...Status Check: Set Date Certain...Pltf. Selectbuild Nevada Inc.'s Motion for Partial Summary Judgment Against Defendant Gemstone Development West Inc.*

Parties Present

Minutes

Result: Matter Heard

06/16/2010 **Notice of Hearing**

*Amended Notice of Motion for Partial Summary Judgment as to Priority of Liens*

06/18/2010 **Notice**

*Notice of Change of Address, Telephone Number and Facsimile Number*

06/18/2010 **Certificate of Mailing**

*Certificate of Mailing*

06/18/2010 **Affidavit in Support**

*Affidavit of Brian K. Walters in Support of Application for Default Against Defendant Gemstone Development West, Inc.*

06/18/2010 **Application for Entry of Default**

*Plaintiff/Lien Claimant Selectbuild Nevada, Inc.'s Application for Entry of Default Against Defendant Gemstone Development West, Inc.*

06/18/2010 **Findings of Fact, Conclusions of Law and Order**

*Findings of Fact, Conclusions of Law and Order Granting, in Part, Arch Aluminum and Glass LLC's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

06/18/2010 **Notice of Change of Hearing**

*Notice of Change of Hearing*

06/18/2010 **Motion for Partial Summary Judgment**

*Arch Aluminum and Glass LLC's Motion for Partial Summary Judgment Regarding Priority Among Lien Claimants Order Shortening Time*

06/21/2010 **Joinder to Motion For Partial Summary Judgment**

*Harsco Corporation, EZA, P.C., dba Oz Architecture of Nevada, and Patent Construction Systems, a Division of Harsco Corporation's Joinder to Apco's Motion for Summary Judgment on Priority*

06/21/2010 **Order Granting**

*Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West*

06/22/2010 **Motion for Summary Judgment**

*Apco's Motion for Summary Judgment on Priority*

06/22/2010 **Joinder to Motion For Summary Judgment**

*Atlas Construction Supply, Inc.'s Joinder To APCO's Motion For Summary Judgment On Priority*

06/22/2010 **Order Granting**

*Order Granting Scott Financial Corporation's Order to Show Cause*

06/22/2010 **Joinder To Motion**

*Insulpro Projects, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*

06/23/2010 **Notice of Entry of Order**

*Notice of Entry of Joint Order Granting, In Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West*

06/23/2010 **Affidavit of Publication**

*Affidavit of Publication*

06/23/2010 **Joinder to Motion For Summary Judgment**

*Granite Construction Company's Joinder to APCO's Motion for Summary Judgment on Priority*

06/24/2010 **Certificate of Service**

*Certificate of Service of Arch Aluminum and Glass LLC's Motion for Partial Summary Judgment Regarding Priority Among Lien Claimants Order Shortening Time*

06/24/2010 **Notice of Entry of Order**

*Notice of Entry of Order Granting Scott Financial Corporation's Order to Show Cause*

06/24/2010 **Notice of Entry of Order**

*Notice of Entry of Order*

06/24/2010 **Joinder to Motion For Summary Judgment**

*Plaintiff/Lien Claimant HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*

06/24/2010 **Joinder to Motion For Summary Judgment**

*Ferguson Fire And Fabrication, Inc.'s Joinder To APCO's Motion For Summary Judgment On Priority*

06/25/2010 **Order**

*Order Consolidating Cases A-10-608718 and A-10-606730 into Case Number A-08-571228*

06/26/2010 **Joinder to Motion For Summary Judgment**  
*Plaintiff/Lien Claimant Selectbulid Nevada, Inc.'s Joinder to Apco Construction's Motion for Summary Judgment on Priority*

06/28/2010 **Notice of Entry of Order**  
*Notice of Entry of Order*

06/28/2010 **Opposition to Motion For Summary Judgment**  
*Camco's Opposition to Insulpro's Motion for Summary Judgment*

06/28/2010 **Joinder to Motion For Summary Judgment**  
*Fast Glass, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*

06/28/2010 **Joinder to Motion For Summary Judgment**  
*Las Vegas Pipeline's Joinder in Apco's Motion for Summary Judgment on Priority*

06/28/2010 **Joinder to Motion For Summary Judgment**  
*Camco's Joinder to Apco's Motion for Summary Judgment on Priority*

06/28/2010 **Joinder to Motion For Summary Judgment**  
*Lien Claimant/Plaintiff Cellcrete Fireproofing of Nevada Inc.'s Joinder to Plaintiff Apco Construction Inc.'s Motion for Partial Summary Judgment on Lien Priority as against All Lender Parties*

06/28/2010 **Opposition to Motion**  
*Club Vista Financial Services, LLC, Tharaldson Motels II, Inc. and Gary D. Tharaldsons' Response to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens*

06/28/2010 **Joinder To Motion**  
*Granite Construction Company's Joinder to APCO and Scott Financial Corporation's Joint Motion for Continuation of Hearing on Motions for Summary Judgment on Priority on Order Shortening Time (First Request)*

06/29/2010 **Summons**  
*Summons - Civil*

06/29/2010 **Summons**  
*Summons - Civil*

06/29/2010 **Summons**  
*Summons - Civil*

06/29/2010 **Summons**  
*Summons - Civil*

06/29/2010 **Acceptance of Service**  
*Acceptance of Service by Scott Financial Corporation*

06/29/2010 **Acceptance of Service**  
*Acceptance of Service by Scott Financial Corporation*

06/29/2010 **Acceptance of Service**  
*Acceptance of Service by Scott Financial Corporation*

06/29/2010 **Acceptance of Service**  
*Acceptance of Service by Scott Financial Corporation*

06/29/2010 **Acceptance of Service**  
*Acceptance of Service by Scott Financial Corporation*

06/29/2010 **Joinder to Motion For Summary Judgment**  
*Plaintiff, Wiss, Janney, Elstner Associates, Inc.'s Joinder to Apco's Motion for Summary Judgment on Priority*

06/29/2010 **Opposition to Motion For Summary Judgment**  
*Scott Financial Corporation's Opposition to Cell-Crete Fireproofing of Nevada, Inc.'s Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

06/29/2010 **Opposition to Motion For Summary Judgment**  
*Scott Financial Corporation's Opposition to Tri-City Drywall, Inc.'s Motion for Summary Judgment Against Gemstone Development West, Inc.*

06/29/2010 **Opposition to Motion For Summary Judgment**  
*Scott Financial Corporation's Opposition to Ferguson Fire & Fabrication, Inc.'s Motion for Partial Summary Judgment Regarding Perfection, Validity, and Priority of its Mechanic's Lien*

06/29/2010 **Answer to Third Party Complaint**  
*Camco's Answer to SWPPP's Amended Complaint*

06/29/2010 **Opposition to Motion For Summary Judgment**  
*Scott Financial Corporation's Opposition to Las Vegas Pipeline, LLC's Motion for Summary Judgment Against Gemstone Development West, Inc.*

07/01/2010 **Stipulation and Order for Dismissal With Prejudice**  
*Stipulation and Order for Dismissal With Prejudice Of Claims Asserted By Select Build Nevada, Inc. Against APCO Construction*

07/01/2010 **Notice of Entry of Stipulation & Order for Dismissal**  
*Notice of Entry of Stipulation & Order for Dismissal with Prejudice of Claims Asserted by Select Build Nevada, Inc. Against APCO Construction*

07/01/2010 **Joinder to Opposition to Motion**  
*Granite Construction Company's Joinder to APCO's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens*

07/01/2010 **Joinder to Opposition to Motion**  
*Las Vegas Pipeline's Joinder in Apco's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens*

07/01/2010 **Joinder to Motion For Summary Judgment**  
*Graybar Electric Company's Joinder to Apco's Motion for Summary Judgment on Priority*

07/01/2010 **Joinder to Motion For Summary Judgment**  
*Northstar Concrete, Inc.'s Joinder to Apco's Motion for Summary Judgment on Priority*

07/01/2010 **Opposition to Motion For Summary Judgment**  
*APCO's Opposition to Scott Financial's Motion For Partial Summary Judgment as to Priority of Liens*

07/02/2010 **Reply**  
*Reply to Scott's Opposition to Motions for Partial Summary Judgment Filed on Behalf of All Lien Claimants*

07/02/2010 **Joinder to Opposition to Motion**  
*Lien Claimant/Plaintiff Cellcrete Fireproofing of Nevada's Joinder in Plaintiff Apco Construction Inc's Opposition to Defendant Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens*

07/02/2010 **Order**  
*Order Re-Setting Hearing Dates*

07/02/2010 **Joinder to Motion For Summary Judgment**  
*Dave Peterson Framing, Inc., E&E Fire Protection, LLC, Noorda Sheet Metal Company, the Pressure Grout Company and Professional Doors and Millworks, LLC's Notice of Joinder in Apco's Motion for Summary Judgment on Priority*

07/02/2010 **Joinder to Motion For Partial Summary Judgment**  
*Graybar Electric Company's, Tri-City Drywall, Inc.'s, and Northstar Concrete, Inc.'s Joinder in Apco's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens*

07/02/2010 **Response**  
*Club Vista Financial Services, LLC, Tharaldson Motels II, Inc. and Gary D. Tharaldsons' Response to APCO's Motion for Summary Judgment on Priority*

07/02/2010 **Reply to Motion**

**Lien Claimant/Plaintiff Cellcrete Fireproofing of Nevada's Reply in Support of its Motion for Partial Summary Judgment against Gemstone Development West Inc. on issue of Lien Perfection**

07/06/2010 **Brief**  
Defendant Scott Financial Corporation's Brief on Lender Standing to Dispute Mechanic's Lien Claims and Exclusivity of Remedy Set Forth in NRS 108.2275

07/06/2010 **Reply**  
Selectbuild Nevada, Inc.'s Reply Brief in Support of Motion for Partial Summary Judgment against Defendant Gemstone Development West, Inc.

07/07/2010 **Joinder to Opposition to Motion**  
Dave Peterson Framing, Inc., E&E Fire Protection, Lic, Noorda Sheet Metal Company, the Pressure Grout Company and Professional Doors and Millworks, Lic's Notice of Joinder in Apco's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens

07/07/2010 **Joinder to Opposition to Motion**  
Plaintiff/Lien Claimant Selectbuild Nevada, Inc.'s Joinder to APCO Construction's Opposition to Scott Financial Corp.'s Motion for Partial Summary Judgment as to Priority of Liens

07/07/2010 **Counter Motion For Partial Summary Judgment**  
APCO's Opposition to Insulpro Projects, Inc.'s Motion for Partial Summary Judgment and Counter Motion for Summary Judgment

07/08/2010 **Consent to Service By Electronic Means**  
Steel Structures Consent to Service by Electronic Means

07/08/2010 **Consent to Service By Electronic Means**  
Nevada Prefab Consent to Service by Electronic Means

07/08/2010 **Notice**  
Fast Glass, Inc.'s Notice of Joinder in APCO's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens

07/08/2010 **Joinder to Opposition to Motion**  
Harsco Corporation, EZA, P.C. dba Oz Architecture of Nevada, and Patent Construction Systems, A Division of Harsco Corporation's Joinder to Apco's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens

07/08/2010 **Joinder to Opposition to Motion**  
Plaintiff/Lien Claimant HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Joinder in APCO's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens

07/09/2010 **Joinder**  
Plaintiff/Lien Claimant HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Joinder in APCO's Reply to Scott Financial's Motion for Partial Summary Judgment as to Priority Liens

07/09/2010 **Order Granting Motion**  
Order Granting Apco Construction's Motion to Consolidate Case No. A10-608717 with Pending Action

07/11/2010 **Reply to Opposition**  
Insulpro Project, Inc.'s Reply to Camco's Opposition to Insulpro's Motion for Partial Summary Judgment

07/11/2010 **Reply to Opposition**  
Insulpro Project, Inc.'s Reply to Apco's Opposition to Insulpro's Motion for Partial Summary Judgment

07/13/2010 **Notice of Entry of Order**  
Notice of Entry of Order Granting APCO Construction's Motion to Consolidate Case No. A-10-608717 with Pending Action

07/14/2010 **Notice**  
Notice to Vacate and Continue Only the Hearing on Plaintiff Ahern Rentals, Inc.'s (1) Motion for Summary Judgment Against Defendant Gemstone Development, LLC (2) Renewed Motion for Summary Judgment as to Amounts Due Against Defendant Alex Edelstein; and (3) Motion for Default Judgment Against Gemstone Development West, Inc.

07/16/2010 **Default**  
Default on Defendant-In-Intervention Gemstone Development West, Inc.

07/16/2010 **Default**  
Default on Defendant-In-Intervention Concrete Visions, Inc.

07/16/2010 **Joinder**  
Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Joinder to Apco Construction's Motion for Summary Judgment on Priority

07/16/2010 **Joinder**  
Steel Structures, Inc. and Nevada Prefab Engineers Inc.'s Joinder to Apco's Opposition to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens

07/19/2010 **Answer to Amended Complaint**  
Scott Financial Corporation's Answer to S.R. Bray dba Power Plus' Amended Statement of Facts and Complaint in Intervention

07/19/2010 **Joinder to Motion For Summary Judgment**  
Renaissance Pools And Spas's Joinder To Apco's Motion For Summary Judgment On Priority

07/19/2010 **Joinder**  
Atlas Construction Supply, Inc.'s Joinder To APCO's Opposition To Scott Financial Corporation's Motion For Partial Summary Judgment As to Priority Of Liens

07/19/2010 **Joinder**  
Ferguson Fire And Fabrication, Inc.'s Joinder To APCO's Opposition To Scott Financial Corporation's Motion For Partial Summary Judgment As to Priority Of Liens

07/19/2010 **Notice of Entry of Default**  
Notice of Entry of Default on Defendant-In-Intervention Concrete Visions, Inc.

07/19/2010 **Notice of Entry of Default**  
Notice of Entry of Default on Defendant-In-Intervention Gemstone Development, Inc.

07/20/2010 **Reply to Opposition**  
APCO's Reply to Insulpro Projects, Inc.'s Opposition to APCO's Counter Motion for Summary Judgment

07/20/2010 **Joinder to Opposition to Motion**  
Custom Select Billing, Inc.'s Joinder to APCO's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority Lien and to APCO's Motion for Partial Summary Judgment on Priority

07/20/2010 **Joinder to Opposition to Motion**  
Hydropressure Cleaning, Inc.'s Joinder to APCO's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority Lien and to APCO's Motion for Partial Summary Judgment on Priority

07/20/2010 **Reply in Support**  
Custom Select Billing, Inc.'s Reply in Support of Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. or, Alternatively, Motion for Permanent Writ of Possession and for Certification of Final Judgment Pursuant to NRCP 54(b)

07/20/2010 **Reply**  
Ferguson Fire & Fabrication, Inc.'s Reply In Support Of Motion For Partial Summary Judgment Regarding Perfection, Validity, And Priority Of Its Mechanic's Lien

07/21/2010 **Memorandum of Costs and Disbursements**  
Northstar Concrete, Inc.'s Memorandum of Costs and Disbursements

07/21/2010 **Joinder to Opposition to Motion**  
Plaintiff, Wiss, Janney, Elstner Associates, Inc.'s Joinder to Apco's Opposition to Scott Financial's Motion for Partial Summary Judgment as to Priority of Liens

- 07/21/2010 **Reply in Support**  
Scott Financial Corporation's Reply Brief in Support of the Motion for Partial Summary Judgment as to Priority of Liens
- 07/21/2010 **Reply in Support**  
Reply in Support of APCO's Motion for Summary Judgment on Priority
- 07/21/2010 **Joinder**  
Arch Aluminum and Glass, LLC's Joinder to APCO's Opposition to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens
- 07/21/2010 **Joinder**  
Zitting Brothers Construction, Inc.'s Joinder to Reply to Scott Financial's Opposition to Motions for Partial Summary Judgment
- 07/21/2010 **Joinder**  
Zitting Brothers Construction, Inc.'s Joinder to APCO's Opposition to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens
- 07/22/2010 **Joinder**  
The Masonry Group Nevada, Inc's Joinder to Apco's Opposition to Scott Financial Corporation's Motion for Priority and Joinder to Apco's Motion for Priority of Liens
- 07/22/2010 **Joinder to Motion For Partial Summary Judgment**  
Zitting Brothers Constructin, inc.'s Joinder to APCO Construction's Motion for Partial Summary Judgment as to Priority of Liens
- 07/22/2010 **Joinder to Opposition to Motion**  
RENAISSANCE POOLS AND SPAS' JOINDER TO APCO'S OPPOSITION TO SCOTT FINANCIAL CORPORATION'S MOTION FOR SUMMARY JUDGMENT ON PRIORITY
- 07/22/2010 **Response**  
Arch Aluminum and Glass, LLC's Response to APCO's Motion for Summary Judgment on Priority
- 07/23/2010 **Stipulation and Order**  
Stipulation and Order to Continue Ahern Rentals, Inc's : (1) Motion for Summary Judgment Against Defendant Gemstone Development, LLC; (2) Renewed Motion for Summary Judgment as to Amounts Due Against Defendant Alex Edelstein; and (3) Motion for Default Judgment Against Gemstone Development West, Inc.
- 07/26/2010 **Reply to Counterclaim**  
Nevada Prefab Engineers Reply to Camco Pacific Construction's Second Amended Answer and Counterclaim
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Custom Select Billings, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. or, Alternatively, Motion for Permanent Writ of Possession and for Certification of Final Judgment Pursuant to NRCP 54(B)  
06/21/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Hydropressure Cleaning, Inc.'s Motion for Summary Judgment Against Defendant Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(B)  
06/21/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Zitting Brothers Construction, Inc.'s Motion for Summary Judgment Against Gemstone Development West, Inc. and for Certification of Final Judgment Pursuant to NRCP 54(B)  
06/29/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Atlas Construction Supply, Inc.'s Motion For Summary Judgment Regarding The Commencement Of Work And Priority Of Its Mechanic's Lien  
07/12/2010 Reset by Court to 07/27/2010  
07/13/2010 Reset by Court to 07/12/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Ferguson Fire & Fabrication, Inc's Motion for Partial Summary Judgment Regarding Perfection, Validity, and Priority of its Mechanic's Lien  
07/12/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Insulpro Projects, Inc.'s Motion for Partial Summary Against Gemstone Development, Inc., Apco Construction and Camco Pacific Construction Co., Inc.  
07/12/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Lien Claimant/Plaintiff Cell Crete Fireproofing of Nevada, Inc's Motion for Partial Summary Judgment Against Gemstone Development West Inc., on Issue of Lien Perfection  
07/12/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens  
07/12/2010 Reset by Court to 07/12/2010  
07/12/2010 Reset by Court to 07/27/2010  
Result: Under Advisement
- 07/27/2010 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Plaintiff-In-Intervention, Tri-City Drywall, Inc.'s Motion For Summary judgment Against Gemstone Development West, Inc.  
07/12/2010 Reset by Court to 07/12/2010

07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Las Vegas Pipeline's Motion for Summary Judgment Against Gemstone Development West, Inc.*  
 07/12/2010 *Reset by Court to 07/12/2010*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Motion for Partial Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Arch Aluminum and Glass LLC's Motion for Partial Summary Judgment Regarding Priority Among Lien Claimants Order Shortening Time*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Harsco Corporation, EZA, P.C., dba Oz Architecture of Nevada, and Patent Construction Systems, a Division of Harsco Corporation's Joinder to Apco's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Motion for Summary Judgment** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Apco's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Atlas Construction Supply, Inc.'s Joinder To APCO's Motion For Summary Judgment On Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Granite Construction Company's Joinder to APCO's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Ferguson Fire And Fabrication, Inc.'s Joinder To APCO's Motion For Summary Judgment On Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Plaintiff/Lien Claimant Selectbuild Nevada, Inc.'s Joinder to Apco Construction's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Plaintiff/Lien Claimant HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Fast Glass, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Las Vegas Pipeline's Joinder in Apco's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Camco's Joinder to Apco's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Lien Claimant/Plaintiff Cellcrete Fireproofing of Nevada Inc.'s Joinder to Plaintiff Apco Construction Inc.'s Motion for Partial Summary Judgment on Lien Priority as against All Lender Parties*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Plaintiff, Wiss, Janney, Elstner Associates, Inc.'s Joinder to Apco's Motion for Summary Judgment on Priority*  
 07/12/2010 *Reset by Court to 07/27/2010*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Graybar Electric Company's Joinder to Apco's Motion for Summary Judgment on Priority*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Northstar Concrete, Inc.'s Joinder to Apco's Motion for Summary Judgment on Priority*

07/27/2010 **Result: Under Advisement**  
**Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Dave Peterson Framing, Inc., E&E Fire Protection, LLC, Noorda Sheet Metal Company, the Pressure Grout Company and Professional Doors and Millworks, LLC's Notice of Joinder in Apco's Motion for Summary Judgment on Priority*

07/27/2010 **Result: Under Advisement**  
**CANCELED Joinder** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Vacated - per Secretary*  
*Vacated on in error*

07/27/2010 **CANCELED Joinder** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)



Vacated - per Secretary  
Vacated on in error

07/27/2010 **Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Renaissance Pools And Spas's Joinder To Apco's Motion For Summary Judgment On Priority*  
Result: Under Advisement

07/27/2010 **Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Ziffing Brothers Constructin, Inc.'s Joinder to APCO Construction's Motion for Partial Summary Judgment as to Priority of Liens*  
Result: Under Advisement

07/27/2010 **Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Insulpro Projects, Inc.'s Joinder to APCO's Motion for Summary Judgment on Priority*  
Result: Under Advisement

07/27/2010 **Joinder** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Joinder to Apco Construction's Motion for Summary Judgment on Priority*  
Result: Under Advisement

07/27/2010 **Opposition and Countermotion** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*APCO's Opposition to Insulpro Projects, Inc.'s Motion for Partial Summary Judgment and Countermotion for Summary Judgment*  
Result: Under Advisement

07/27/2010 **Status Check** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
**STATUS CHECK: PRIOR HEARINGS**  
Result: Under Advisement

07/27/2010 **Joinder to Opposition to Motion**  
*Joinder to Apco's Opposition to Scott Financial Corporation's Motion for Partial Summary Judgment as to Priority of Liens*

07/27/2010 **Supplement to Motion for Summary Judgment**  
*Lien Claimant/Plaintiff Cell-Crete Fireproofing of Nevada, Inc's First Supplement In Support of its Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

07/27/2010 **All Pending Motions** (10:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Parties Present  
Minutes  
Result: Matter Heard

07/28/2010 **Notice of Entry of Order**  
*Notice of Entry of Order*

07/28/2010 **Motion to Associate Counsel**  
*Layne K Morrill Esq*

07/28/2010 **Motion to Associate Counsel**  
*Stephanie L Samuelson Esq*

08/02/2010 **Default**  
*Lien Claimant/Plaintiff-in-Intervention Selectbuild Nevada, Inc.'s Default Against Defendant Gemstone Development West, Inc.*

08/03/2010 **Notice of Entry of Default**  
*Lien Claimant/Plaintiff-in-Intervention Selectbuild Nevada, Inc.'s Notice of Entry of Default Against Defendant Gemstone Development West, Inc.*

08/04/2010 **Supplement**  
*Insulpro Project, Inc.'s Supplemental Exhibit to Motion for Partial Summary Judgment*

08/04/2010 **Motion for Partial Summary Judgment**  
*Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

08/04/2010 **Motion for Partial Summary Judgment**  
*Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

08/10/2010 **Certificate of Mailing**  
*Certificate of Service*

08/10/2010 **Certificate of Service**  
*Certificate of Service*

08/10/2010 **Claim**  
*Granite Construction Company's Statement of Claim*

08/18/2010 **Certificate of Mailing**  
*Certificate of Mailing*

08/18/2010 **Certificate**  
*Certificate of Mailing*

08/19/2010 **Consent to Service By Electronic Means**  
*Consent to Service by Electronic Means*

08/25/2010 **Release**  
*Release of Notice of Pendency of Action (Lis Pendens)*

08/30/2010 **Motion to Associate Counsel** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Club Vista Financial Services, Tharaldson Motels II Inc and Gary D. Tharaldsons Motion to Associate Counsel*  
Result: Granted

08/30/2010 **Motion to Associate Counsel** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Result: Granted

08/30/2010 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Data Entry Error*  
Parties Present  
Minutes  
Result: Matter Heard

09/03/2010 **Opposition to Motion For Summary Judgment**  
*Scott Financial's Corporation's Opposition to E & E Fire Protections' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

09/08/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*E&E Fire Protection's Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

09/08/2010 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Professional Doors and Millworks' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*

09/08/2010 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*E&E Fire Protection's Motion for Partial Summary Judgment Against Gemstone Development West, Inc...Professional Doors and Millworks' Motion for Partial Summary Judgment Against Gemstone Development West, Inc.*  
Minutes  
Result: Under Advisement

09/15/2010 **CANCELED Motion for Summary Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Vacated - per Stipulation and Order*  
 07/12/2010 *Reset by Court to 07/12/2010*  
 07/12/2010 *Reset by Court to 07/27/2010*  
 07/27/2010 *Reset by Court to 09/15/2010*

09/16/2010 **Stipulation and Order**  
*Stipulation and Order to Vacate Ahern Rentals, Inc.'s: (1) Motion for Summary Judgment Against Defendant Gemstone Development, LLC; (2) Renewed Motion for Summary Judgment as to Amounts Due Against Defendant Alex Edelstein; and (3) Motion for Default Judgment Against Gemstone Development West, Inc.*

09/20/2010 **Order**  
*Order Admitting Stephanie L. Samuelson, Esq. To Practice*

09/20/2010 **Order**  
*Order Admitting Layne K. Morrill, Esq. To Practice*

09/23/2010 **Notice of Entry of Stipulation and Order**  
*Notice of Entry of Order*

09/23/2010 **Notice of Entry of Order**  
*Notice of Entry of Order*

09/23/2010 **Notice of Entry of Order**  
*Notice of Entry of Order*

09/30/2010 **Motion to Stay**  
*Scott Financial Corporation's Motion to Stay Further Activity in This Case Until the Issue of Priority Issue Has Been Resolved*

10/04/2010 **Notice of Hearing**  
*Notice of Hearing of Scott Financial Corporation's Motion to Stay Further Activity in This Case Until the Issue of Priority Issue Has Been Resolved*

10/11/2010 **Joinder**  
*Insulpro Projects Inc's Joinder to Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue Has Been Resolved*

10/15/2010 **Non Opposition**  
*Notice of APCO Construction's Non-Opposition to Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue has been Resolved*

10/15/2010 **Non Opposition**  
*Custom Select Billing, Inc.'s Non-Opposition to Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue has been Resolved*

10/15/2010 **Non Opposition**  
*Hydropressure Cleaning, Inc.'s Non-Opposition to Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue has been Resolved*

10/20/2010 **Motion to Withdraw As Counsel**  
*Shumway Van & Hansen's Motion to Withdraw as Attorney of Record*

10/22/2010 **Certificate of Service**  
*Certificate of Service*

11/02/2010 **Motion to Stay** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue has Been Resolved*  
 Result: Granted

11/02/2010 **Joinder** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Insulpro Projects Inc's Joinder to Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue Has Been Resolved*  
 Result: Granted

11/02/2010 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
Parties Present  
Minutes  
 Result: Matter Heard

11/22/2010 **Motion to Withdraw as Counsel** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Shumway Van & Hansen's Motion to Withdraw as Attorney of Record*  
Minutes  
 Result: Granted

11/22/2010 **Order to Withdraw as Attorney of Record**  
*Order Granting Shumway Van & Hansen's Motion to Withdraw as Attorney of Record*

11/30/2010 **Notice of Entry of Order**  
*Notice of Entry of Order Granting Shumway Van & Hansen's Motion to Withdraw as Attorney of Record*

12/09/2010 **Status Conference** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)  
*Scheduling*  
Parties Present  
Minutes  
 Result: Matter Heard

12/13/2010 **Order Granting Motion**  
*Order Granting Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue has been Resolved*

12/14/2010 **Notice of Entry of Order**  
*Notice of Entry of Order Granting Scott Financial Corporation's Motion to Stay Further Activity in this Case Until the Issue of Priority Issue Has Been Resolved*

01/04/2011 **Order**  
*Order Granting Motion to Withdraw as Attorney of Record*

02/02/2011 **Notice of Compliance**  
*Insulpro Projects, Inc.'s Third Notice of Compliance*

02/02/2011 **Notice of Compliance**  
*Insulpro Projects, Inc.'s Fourth Notice of Compliance*

03/18/2011 **Change of Address**  
*Notice of Change of Address Effective April 11, 2011*

04/23/2011 **Stipulation and Order**  
*Stipulation and Order to Set Aside Lien Expungement of Insulpro Projects, Inc., d/b/a Sacramento Insulation Contractors, Inc., for Non-Appearance*

04/27/2011 **Notice of Entry of Stipulation and Order**

*Notice of Entry of Stipulation and Order to Set Aside Lien Expungement of Insulpro Projects, Inc. D/b/a Sacramento Insulation Contractors, Inc., for Non-Appearance*

05/11/2011 **Substitution of Attorney**  
*Substitution of Attorneys*

05/16/2011 **Substitution of Attorney**  
*Substitution of Attorney*

06/24/2011 **Case Reassigned to Department 29**  
*Case reassigned from Judge Kathleen E. Delaney*

06/29/2011 **Notice of Change of Firm Name**  
*Notice of Change of Firm Name*

08/29/2011 **Substitution of Attorney**  
*Substitution of Attorney*

09/12/2011 **Notice of Dismissal**  
*Notice of Dismissal*

09/12/2011 **Release of Lis Pendens**  
*Release of Lis Pendens*

11/04/2011 **Motion for Order**  
*APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/04/2011 **Certificate of Electronic Service**  
*Certificate of Service of APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/04/2011 **Ex Parte Order**  
*Ex Parte Application for Order Shortening Time on APCO Construction's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Motion to Consolidate**  
*APCO Construction's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder To Motion**  
*Hydropressure Cleaning, Inc.'s Joinder to APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Joinder To Motion**  
*Custom Select Billing, Inc.'s Joinder to APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Joinder To Motion**  
*Tri-City Drywall, Inc. and Northstar Concrete, Inc.'s Joinder in Apco's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Opposition to Motion**  
*Defendant Scott Financial Corporation's Opposition to APCO Construction's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Joinder To Motion**  
*Lien Claimant/Plaintiff Cell-Crete Fireproofing of Nevada, Inc.'s Joinder in Support of Plaintiff APCO Construction Inc.'s Motion for an Order of Priority on Order Shortening Time*

11/07/2011 **Notice of Non Opposition**  
*Granite Construction Company's Notice of Non-Opposition to Apco's Motion for Issuance of an Order on Priority on an Order Shortening Time*

11/07/2011 **Joinder To Motion**  
*Arch Aluminum and Glass, LLC's Joinder in Apco's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Joinder**  
*The Masonry Group Nevada, Inc.'s Joinder to APCO's Motion for Issuance of Order on Priority*

11/07/2011 **Joinder To Motion**  
*Joinder to APCO's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder To Motion**  
*Custom Select Billing, Inc.'s Joinder to APCO Construction's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder To Motion**  
*Hydropressure Cleaning, Inc.'s Joinder to APCO Construction's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder**  
*Arch Aluminum and Glass, LLC's Joinder in Apco's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder**  
*Insulpro Projects, Inc.'s Joinder in APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/07/2011 **Joinder**  
*The Masonry Group Nevada, Inc.'s Joinder to APCO's Renewed Motion to Consolidate Case No. A579963*

11/07/2011 **Joinder**  
*Wiss Janney Elstner Associates, Inc.'s Joinder in APCO's Motion For Issuance Of AN Order On Priority On Order Shortening Time*

11/07/2011 **Joinder**  
*Wiss Janney Elstner Associates, Inc.'s Joinder in APCO's Renewed Motion To Consolidate Case No. A579963*

11/08/2011 **Opposition**  
*Opposition To APCO Construction's Renewed Motion To Consolidate Case No. A579963*

11/08/2011 **Joinder**  
*Atlas Construction Supply, Inc.'s Joinder To Apco's Motion For Issuance Of An Order On Priority On Order Shortening Time*

11/08/2011 **Joinder To Motion**  
*Harsco Corporation, EZA, P.c. dba OZ Architecture of Nevada, and Patent Construction Systems, a Division of Harsco Corporatio's Joinder to Apco's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/08/2011 **Joinder To Motion**  
*SelectBuild Nevada, Inc.'s Joinder to APCO Construction's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/08/2011 **Joinder to Opposition to Motion**  
*Joinder to Scott Financial Corporation and Bradley J. Scott's Opposition to APCO Construction's Motion to Consolidate Case No. A579963*

11/08/2011 **Joinder**  
*Unitah Investments, LLC dba Sierra Reinforcing's Joinder to APCO Construction's Motion for Issuance of an Order on Priority on Order Shortening Time*

11/08/2011 **Joinder**  
*Zitting Contruction, Inc.'s Joinder to APCO Construction's Motino for Issuance of an Order on Priority on Order Shortening Time*

11/09/2011 **Motion (9:00 AM) (Judicial Officer Scann, Susan)**  
**11/09/2011, 11/15/2011**  
*APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*  
Result: Matter Continued

11/09/2011 **Motion to Consolidate (9:00 AM) (Judicial Officer Scann, Susan)**  
*APCO construction's Renewed Motion to consolidate Case No. A579963*  
Result: Granted in Part

11/09/2011 **Joinder (9:00 AM) (Judicial Officer Scann, Susan)**  
**11/09/2011, 11/15/2011**  
*Hydropressure Cleaning, Inc.'s Joinder to APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*

Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*Custom Select Billing, Inc.'s Joinder to APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*Tri-City Drywall, Inc. and Northstar Concrete, Inc.'s Joinder in Apco's Motion for Issuance of an Order on Priority on Order Shortening Time*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*Lien Claimant/Plaintiff Cell-Crete Fireproofing of Nevada, Inc.'s Joinder in Support of Plaintiff APCO Construction Inc.'s Motion for an Order of Priority on Order Shortening Time*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*Arch Aluminum and Glass, LLC's Joinder in Apco's Motion for Issuance of an Order on Priority on Order Shortening Time*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*The Masonry Group Nevada, Inc.'s Joinder to APCO's Motion for Issuance of Order on Priority*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Joinder to APCO's Renewed Motion to Consolidate Case No. A579963*  
 Result: Granted in Part  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Custom Select Billing, Inc.'s Joinder to APCO Construction's Renewed Motion to Consolidate Case No. A579963*  
 Result: Granted in Part  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Hydropressure Cleaning, Inc.'s Joinder to APCO Construction's Renewed Motion to Consolidate Case No. A579963*  
 Result: Granted in Part  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Arch Aluminum and Glass, LLC's Joinder in Apco's Renewed Motion to Consolidate Case No. A579963*  
 Result: Granted in Part  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
 11/09/2011, 11/15/2011  
*Insulpro Projects, Inc.'s Joinder in APCO's Motion for Issuance of an Order on Priority on Order Shortening Time*  
 Result: Matter Continued  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*The Masonry Group Nevada, Inc.'s Joinder to APCO's Renewed Motion to Consolidate*  
 Result: Granted in Part  
 11/09/2011 **All Pending Motions** (9:00 AM) (Judicial Officer Scann, Susan)  
Parties Present  
Minutes  
 Result: Matter Heard  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Wiss Janney Elstner Associates, Inc.'s Joinder in APCO's Motion For Issuance Of AN Order On Priority On Order Shortening Time*  
 11/09/2011 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Wiss Janney Elstner Associates, Inc.'s Joinder in APCO's Renewed Motion to Consolidate Case No. A579963*  
 11/11/2011 **Application for Default Judgment**  
*Application for Judgment by Default Against Defendant Selina Cicneros*  
 11/11/2011 **Substitution of Attorney**  
*Substitution of Counsel*  
 11/14/2011 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements*  
 11/15/2011 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Scann, Susan)  
*ZITTING BROTHERS CONSTRUCTION, INC'S MOTION FOR SUMMARY JUDGMENT*  
 11/15/2011 **All Pending Motions** (10:00 AM) (Judicial Officer Scann, Susan)  
 11/15/11  
Parties Present  
Minutes  
 Result: Matter Heard  
 11/21/2011 **Findings of Fact, Conclusions of Law and Order**  
*Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority*  
 11/21/2011 **Order Granting Motion**  
*Order Granting APCO Construction's Renewed Motion to Consolidate Case No A579963, In Part*  
 11/22/2011 **Notice of Entry of Order**  
*Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority*  
 11/22/2011 **Notice of Entry of Order**  
*Notice of Entry of Order Granting APCO Construction's Renewed Motion to Consolidate Case No. A579963, In Part*  
 12/01/2011 **Mandatory Rule 16 Conference** (9:30 AM) (Judicial Officer Scann, Susan)  
Parties Present  
Minutes  
 Result: Matter Heard  
 12/12/2011 **Motion to Reconsider**  
*Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing*  
 12/13/2011 **Joinder To Motion**  
*Brad J. Scott's Joinder To Scott Financial Corporation's Motion For Reconsideration Or In The Alternative, Motion For Re-Hearing*

12/14/2011 **Consent to Service By Electronic Means**  
Camco Pacific Construction Co., Inc.'s Consent to Service by Electronic Means

12/14/2011 **Change of Address**  
Notice of Change of Address and Firm Affiliation

12/15/2011 **Notice of Hearing**  
Notice of Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

12/16/2011 **Answer**  
Defendant Alexander Edelstein's Answer to Ready Mix Inc.'s First Amended Complaint

12/19/2011 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

12/21/2011 **Case Management Order**  
Second Amended Case Agenda Dates and Deadlines

12/21/2011 **Order**  
Order Lifting Stay of any Further Activity in this Case

12/23/2011 **Stipulation and Order**  
Stipulation and Order for Dismissal with Prejudice

12/27/2011 **Notice of Entry**  
Notice of Entry of Stipulation and Order for Dismissal with Prejudice

12/27/2011 **Notice of Entry of Order**  
Notice of Entry of Order Lifting Stay of any Further Activity in this Case

12/30/2011 **Opposition to Motion**  
APCO Construction's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

01/03/2012 **Joinder to Opposition to Motion**  
Steel Structures, Inc.'s and Nevada Prefab Engineers, Inc.'s Joinder to Opposition Filed by APCO Construction In Response to Motion for Reconsideration Filed by Scott Financial Corporation

01/03/2012 **Opposition**  
Opposition to Defendant Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative Motion for Rehearing

01/04/2012 **Joinder**  
Atlas Construction Supply, Inc.'s Joinder To APCO's Opposition To Scott Financial Corporation's Motion For Reconsideration

01/04/2012 **Joinder to Opposition to Motion**  
Las Vegas Pipeline's Joinder in APCO Construction's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for Rehearing

01/04/2012 **Joinder To Motion**  
Tri-City Drywall, Inc. and Northstar Concrete, Inc.'s Joinder in Apco Construction's Opposition to Motion for Reconsideration of Findings of Facts, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-hearing

01/04/2012 **Joinder To Motion**  
Tri-City Drywall, Inc. and Northstar Concrete, Inc.'s Joinder in Apco Construction's Opposition to Motion for Reconsideration of Findings of Facts, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-hearing

01/04/2012 **Joinder**  
Granite Construction Company's Joinder to Apco's Opposition to Scott Financial Corporation's Motion for Reconsideration

01/04/2012 **Joinder**  
Plaintiff Zitting Brothers Construction, Inc.'s Joinder to APCO Construction's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for Rehearing

01/04/2012 **Joinder to Opposition to Motion**  
Lien Claimant/Plaintiff Cell-Crete Fireproofing of Nevada, Inc.'s Joinder in Support of Plaintiff Apco Construction, Inc.'s Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Lien Property and Denying Scott Financial Corporation's Motion for Priority or in the Alternative Motion for Hearing

01/05/2012 **Joinder to Opposition to Motion**  
Joinder to APCO's Opposition to Scott Financial Corporation's Motion for Reconsideration

01/05/2012 **Joinder**  
Harsco Corporation, EZA, P.C. dba OZ Architecture of Nevada and Patent Construction Systems, a Division of Harsco Corporation's Joinder to APCO Construction's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for Rehearing

01/06/2012 **Joinder**  
Wiss Janney Elstner Associates, Inc.'s Joinder To APCO Construction's Opposition To Motion For Reconsideration Of Findings Of Fact, Conclusions Of Law And Order Granting APCO Construction's Motion For Summary Judgment On Priority; And Denying Scott Financial Corporation's Motion For Priority Or, in The Alternative, Motion For Rehearing

01/06/2012 **Joinder to Opposition to Motion**  
APCO Construction's Joinder to Insulpro Projects, Inc.'s Opposition to Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

01/06/2012 **Joinder to Opposition to Motion**  
Custom Select Billing, Inc.'s Joinder to APCO Construction's and Insulpro Projects, Inc.'s Oppositions to Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

01/06/2012 **Joinder to Opposition to Motion**  
Hydropressure Cleaning, Inc.'s Joinder to APCO Construction's and Insulpro Projects, Inc.'s Oppositions to Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

01/06/2012 **Substitution of Attorney**  
Substitution of Counsel

01/09/2012 **Joinder**  
The Masonry Group Nevada, Inc.'s Joinder to Apco Construction's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting Apco Construction's Motion for Summary judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing

01/09/2012 **Joinder to Opposition to Motion**  
*Unitah Investments, LLC, dba Sierra Reinforcing's Joinder to APCO Construction, Inc.'s Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction, Inc.'s Motion for Summary Judgment on Lien Priority and Denying Scott Financial Corporation's Motion for Priority or in the Alternative Motion for Hearing*

01/10/2012 **Joinder**  
*Zitting Brothers Construction, Inc.'s Joinder to Insulpro Projects, Inc.'s Opposition to Defendant Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for Re-Hearing*

01/11/2012 **Status Check** (10:00 AM) (Judicial Officer Scann, Susan)  
**01/11/2012, 02/15/2012**  
**STATUS CHECK: PARTIES WITH MATTERS UNDER SUBMISSION**  
Parties Present  
Minutes  
 Result: Matter Continued

01/11/2012 **Substitution of Attorney**  
*Notice of Substitution of Attorneys for Plaintiff/Counter-Defendant United Subcontractors, Inc. dba Skyline Insulation*

01/11/2012 **Joinder to Opposition to Motion**  
*Arch Aluminum and Glass, LLC's Joinder in APCO's Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Rehearing*

01/12/2012 **Motion to Dismiss**  
*Defendant Alexander Edelstein's Motion to Dismiss*

01/12/2012 **Reply to Motion**  
*Scott Financial Corporation's Reply in Support of Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing*

01/12/2012 **Joinder to Opposition to Motion**  
*E&E Fire Protection, LLC, Noorda Sheef Metal Company, The Pressure Grout Company and Professional Doors and Millworks, LLC's Notice of Joinder in Apco Construction's and Insulpro Projects, Inc.'s Respective Opposition to Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting Apco Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-hearing*

01/12/2012 **Statement**  
*United Subcontractors, Inc. dba Skyline Insulation's Statement of Claims*

01/13/2012 **Statement**  
*Ready Mix, Inc.'s Statement Of Claim*

01/13/2012 **Joinder to Opposition to Motion**  
*Selectbuild Nevada, Inc.'s Joinder to Apco Construction and Insulpro Projects, Inc.'s Oppositions to Scott Financial Corporation's Motion for Reconsideration of Findings of Fact, Conclusions of Law and order Granting Apco Construction's Motion for Summary Judgment on Priority and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for Rehearing*

01/18/2012 **Statement**  
*Insulpro Projects, Inc.'s Statement of Claim*

01/19/2012 **Notice of Hearing**  
*Notice of Hearing on Motion For Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing*

01/25/2012 **Motion For Reconsideration** (9:00 AM) (Judicial Officer Scann, Susan)  
*Defendant's Motion for Reconsideration of Findings of Fact, Conclusions of Law and Order Granting APCO Construction's Motion for Summary Judgment on Priority; and Denying Scott Financial Corporation's Motion for Priority or in the Alternative, Motion for a Re-Hearing*  
 01/19/2012 Reset by Court to 01/25/2012

01/25/2012 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
*Brad J. Scott's Joinder To Scott Financial Corporation's Motion For Reconsideration Or In The Alternative, Motion For Re-Hearing*  
 01/19/2012 Reset by Court to 01/25/2012

01/25/2012 **All Pending Motions** (9:00 AM) (Judicial Officer Scann, Susan)  
Parties Present  
Minutes  
 Result: Matter Heard

01/31/2012 **Affidavit**  
*Affidavit of Attorneys Fees*

01/31/2012 **Notice**  
*Notice of Name Change*

01/31/2012 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements*

02/01/2012 **Hearing** (9:00 AM) (Judicial Officer Scann, Susan)  
**HEARING: COURT'S DECISION**  
Minutes  
 Result: Decision Made

02/01/2012 **Certificate of Service**  
*Certificate of Service*

02/01/2012 **Certificate of Service**  
*Certificate of Service*

02/06/2012 **Motion for Partial Summary Judgment**  
*Steel Structures, Inc.'s Motion for Partial Summary Judgment*

02/06/2012 **Motion for Partial Summary Judgment**  
*Nevada Prefab Engineers, Inc.'s Motion for Partial Summary Judgment*

02/14/2012 **Transcript of Proceedings**  
*Transcript of Proceedings: Motions*

02/14/2012 **Business Court Order**  
*Amended Business Court Scheduling Order Re-Setting Civil Jury Trial, Pre-Trial Conference And Calendar Call*

02/14/2012 **Substitution of Attorney**  
*Substitution of Counsel*

02/15/2012 **Supplement**

02/17/2012 **Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens**

02/17/2012 **Motion to Intervene**  
National Wood Products Incs Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support thereof

02/17/2012 **Declaration**  
Declaration of S Judy Hirahara in Support of National Wood Products Incs Motion to Intervene Filed Concurrently herewith

02/28/2012 **Affidavit in Support**  
Supplemental Affidavit of Matthew W. Treu in Support of Plaintiff Ahern Rental, Inc.'s Claim for Attorney's Fees

03/05/2012 **Order Shortening Time**  
APCO's Objection to and Motion to Strike Scott Financial's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 25, 2012, and Request for Order Shortening Time

03/06/2012 **Joinder**  
Joinder to APCO's Objection to and Motion to Strike Scott Financial's Supplement to Motion for Summary Judgment as to Priority of Liens, filed February 15, 2012, and Request for Order Shortening Time

03/06/2012 **Opposition to Motion**  
Scott Financial Corporation's Opposition to APCO's Objection and Motion to Strike Scott's Supplement to Motion for Summary Judgment on Order Shortening Time

03/06/2012 **Joinder**  
Granite Construction Company's Joinder to APCO's Objection to and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 15, 2012, and Request for Order Shortening Time

03/06/2012 **Certificate of Mailing**  
Certificate of Mailing National Wood Products Incs Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support thereof

03/06/2012 **Certificate of Mailing**  
Certificate of Mailing Declaration of S Judy Hirahara in Support of National Wood Products Incs Motion to Intervene filed Concurrently herewith

03/06/2012 **Opposition to Motion to Dismiss**  
Camco's Limited Opposition to Alexander Edelstein's Motion to Dismiss

03/06/2012 **Joinder**  
Joinder to APCO's Objection and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 15, 2012, and Request for Order Shortening Time

03/06/2012 **Joinder**  
Zitting Brothers Construction, Inc.'s Joinder to APCO Construction's Objection to and Motion to Strike Scott Financial's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 15, 2012, and Request for Order Shortening Time

03/07/2012 **Motion to Dismiss** (9:00 AM) (Judicial Officer Scann, Susan)  
Defendant Alexander Edelstein's Motion to Dismiss  
02/14/2012 Reset by Court to 03/07/2012

03/07/2012 **Result: Granted Without Prejudice**

03/07/2012 **Objection** (9:00 AM) (Judicial Officer Scann, Susan)  
APCO's Objection to and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 15, 2012, and Request for Order Shortening Time  
Result: Denied

03/07/2012 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
Joinder to APCO's Objection to and Motion to Strike Scott Financial's Supplement to Motion for Summary Judgment as to Priority of Liens, filed February 15, 2012, and Request for Order Shortening Time  
Result: Denied

03/07/2012 **Joinder** (9:00 AM) (Judicial Officer Scann, Susan)  
Granite Construction Company's Joinder to APCO's Objection to and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens, Filed February 15, 2012, and Request for Order Shortening Time  
Result: Denied

03/07/2012 **All Pending Motions** (9:00 AM) (Judicial Officer Scann, Susan)  
Parties Present  
Minutes  
Result: Matter Heard

03/07/2012 **Order Granting Motion**  
Order Granting Defendant Alexander Edelstein's Motion to Dismiss

03/07/2012 **Notice of Entry**  
Notice of Entry of Order Granting Defendant Alexander Edelstein's Motion to Dismiss

03/07/2012 **Joinder**  
Harsco Corporation, EZA, P.C. dba OZ Architecture of Nevada, and Patent Construction Systems, A Division of Harsco Corporation's Joinder to APCO's Objection to and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens, filed February 15, 2012

03/14/2012 **Amended Certificate of Service**  
First Amended Certificate of Mailing National Wood Products Incs Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support thereof

03/14/2012 **Amended Certificate of Service**  
First Amended Certificate of Mailing Declaration of S Judy Hirahara in Support of National Wood Products Incs Motion to Intervene Filed Concurrently herewith

03/14/2012 **Notice of Rescheduling**  
Rescheduling Hearing

03/15/2012 **Opposition to Motion For Summary Judgment**  
APCO's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Lien

03/15/2012 **Order Denying**  
Order Denying APCO's Objection and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment on Order Shortening Time

03/16/2012 **Notice of Compliance**  
United Subcontractors, Inc. dba Skyline Insulation's Notice of Compliance Regarding Document Production

03/16/2012 **Notice of Entry of Order**  
Notice of Entry of Order Denying APCO's Objection and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment on Order Shortening Time

03/16/2012 **Joinder to Opposition to Motion**  
Las Vegas Pipeline's Joinder in Apco's Construction's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/19/2012 **Joinder to Opposition to Motion**

Uintah Investments, LLC, dba Sierra Reinforcing's Joinder in APCO Construction's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/19/2012 **Joinder**  
Granite Construction Company's Joinder to Apco's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/19/2012 **Reply in Support**  
Scott Financial Corporation's Reply in Support of Supplement To Motion for Summary Judgment as to Priority of Liens

03/20/2012 **Joinder to Opposition to Motion**  
Northstar Concrete, Inc.'s Joinder to Apco's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/20/2012 **Joinder to Opposition to Motion**  
Tri-City Drywall, Inc.'s Joinder to Apco's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/20/2012 **Joinder to Opposition to Motion**  
Hydropressure Cleaning, Inc.'s Joinder to APCO Construction's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Lien

03/20/2012 **Joinder**  
Zitting Brothers Construction, Inc.'s Joinder to APCO Construction's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/20/2012 **Joinder to Opposition to Motion**  
SelectBuild Nevada, Inc.'s Joinder to Apco Construction's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens

03/20/2012 **Joinder to Opposition to Motion**  
Trulite Glass & Aluminum Solutions, LLC, f/k/a Arch Aluminum & Glass Co., LLC's Joinder in Apco's Opposition to Scott Financial Corporation's Supplement to Motion for Summary Judgment As To Priority of Liens

03/21/2012 **Hearing (10:00 AM) (Judicial Officer Scann, Susan)**  
**HEARING: ARGUMENT - MOTION FOR SUMMARY JUDGMENT**  
03/13/2012 Reset by Court to 03/21/2012  
03/14/2012 Reset by Court to 03/13/2012  
Result: Continued for Chambers Decision

03/21/2012 **Motion for Partial Summary Judgment (10:00 AM) (Judicial Officer Scann, Susan)**  
Steel Structures, Inc.'s Motion for Partial Summary Judgment  
03/13/2012 Reset by Court to 03/21/2012  
Result: Granted

03/21/2012 **Motion for Partial Summary Judgment (10:00 AM) (Judicial Officer Scann, Susan)**  
Nevada Prefab Engineers, Inc.'s Motion for Partial Summary Judgment  
03/13/2012 Reset by Court to 03/21/2012  
Result: Granted

03/21/2012 **All Pending Motions (10:00 AM) (Judicial Officer Scann, Susan)**  
Parties Present  
Minutes  
Result: Matter Heard

03/22/2012 **Motion to Intervene (3:00 AM) (Judicial Officer Scann, Susan)**  
National Wood Products Inc's Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support thereof  
Minutes  
Result: Granted

03/27/2012 **Motion to Withdraw As Counsel**  
Motion to Withdraw as Attorney of Record for Atlas Construction Supply, Inc. and Order Shortening Time

03/29/2012 **Errata**  
Errata to Motion to Withdraw as Attorney of Record for Atlas Construction Supply, Inc. and Order Shortening Time

03/30/2012 **Findings of Fact, Conclusions of Law and Order**  
Findings of Fact, Conclusions of Law and Order Granting Nevada Prefab Engineers, Inc.'s Motion for Partial Summary Judgment

03/30/2012 **Findings of Fact, Conclusions of Law and Order**  
Findings of Fact, Conclusions of Law and Order Granting Steel Structure, Inc.'s Motion for Partial Summary Judgment

03/30/2012 **Notice of Hearing**  
Notice of Hearing

03/30/2012 **Notice of Entry of Order**  
Notice of Entry of Order

03/30/2012 **Notice of Entry of Order**  
Notice of Entry of Order

04/04/2012 **Decision (11:00 AM) (Judicial Officer Scann, Susan)**  
Court's Decision  
Parties Present  
Minutes  
Result: Decision Made

04/05/2012 **Motion to Withdraw as Counsel (3:00 AM) (Judicial Officer Scann, Susan)**  
Craig S. Newman, Esq.'s Motion to Withdraw as Attorney of Record for Atlas Construction Supply, Inc. and Order Shortening Time  
Minutes  
04/11/2012 Reset by Court to 04/05/2012  
Result: Minute Order - No Hearing Held

04/12/2012 **Order Granting Motion**  
Order Granting Motion to Withdraw as Attorney of Record for Atlas Construction Supply, Inc.

04/12/2012 **Order Granting Motion**  
Order Granting National Wood Products Inc's Motion to Intervene

04/16/2012 **Recorders Transcript of Hearing**  
Recorder's Transcript Re: Court's Decision

04/16/2012 **Notice of Entry of Order**  
Notice of Entry of Order Granting Motion to Withdraw as Attorney of Record for Atlas Construction Supply, Inc.



04/16/2012 **Attorney Lien**  
Fennemore Craig, P.C.'s Notice of Attorney's Lien

04/18/2012 **CANCELED Motion for Default Judgment** (10:00 AM) (Judicial Officer Scann, Susan)  
Vacated - per Judge

04/23/2012 **Transcript of Proceedings**  
Transcript Re: Defendant Alexander Edelstein's Motion to Dismiss; Apco's Objection to and Motion to Strike Scott Financial Corporation's Supplement to Motion for Summary Judgment as to Priority of Liens Filed February 15, 2012 and Request for Order Shortening Time

04/23/2012 **Transcript of Proceedings**  
Transcript Re: Hearing: Argument -- Motion for Summary Judgment; Nevada Prefab Engineers' Motion for Partial Summary Judgment; Steel Structures, Inc.'s Motion for Partial Summary Judgment

05/04/2012 **Certificate of Mailing**  
Certificate of Mailing

05/04/2012 **Notice of Entry of Order**  
Notice of Entry of Order Granting National Wood Products, Inc.'s Motion to Intervene

05/07/2012 **Decision**  
Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens

05/07/2012 **Notice of Entry of Decision and Order**  
Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens

05/09/2012 **Status Check: Status of Case** (10:00 AM) (Judicial Officer Scann, Susan)  
Status Check: Status of Case  
Parties Present  
Minutes  
Result: Matter Continued

05/29/2012 **Motion**  
Motion To Lift Stay, Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order, And For Posting Of Bond On Order Shortening Time

05/30/2012 **Judgment By Default**  
A571228

05/31/2012 **Receipt of Copy**  
Receipt Of Copy

05/31/2012 **Receipt of Copy**  
Receipt Of Copy

05/31/2012 **Certificate of Service**  
Certificate Of Service

05/31/2012 **Receipt of Copy**  
Receipt Of Copy

06/01/2012 **Order Shortening Time**  
Supplement Affidavit in Support of Application for Order Shortening Time

06/01/2012 **Certificate of Service**  
Certificate Of Service

06/01/2012 **Opposition to Motion**  
Opposition to Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending further Court Order, and for Posting of Bond on Order Shortening Time

06/04/2012 **Joinder to Opposition to Motion**  
Joinder to Opposition to Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed With Deposit of Funds Pending Further Court Order, and For Posting of Bond on Order Shortening Time

06/05/2012 **Joinder to Opposition to Motion**  
Hydropressure Cleaning, Inc.'s Joinder to PB Lien Claimants' Opposition to Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time

06/05/2012 **Joinder to Opposition to Motion**  
Tri-City Drywall, Inc. and Northstar Concrete, Inc.'s Joinder in Lien Claimants' Opposition to Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed With Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time

06/06/2012 **Motion** (9:00 AM) (Judicial Officer Scann, Susan)  
Defendant Scott Financial Corp.'s Motion to Lift Stay, Allow Sale to Proceed with deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time  
Parties Present  
Minutes  
06/13/2012 Reset by Court to 06/06/2012  
Result: Hearing Set

06/11/2012 **Joinder to Opposition to Motion**  
SelectBuild Nevada, Inc.'s Joinder to PB Lien Claimants' Opposition to Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time

06/26/2012 **Transcript of Proceedings**  
Transcript Re: Hearing

06/26/2012 **Order Granting Motion**  
Order Granting Scott Financial Corporation's Motion to Reconsider

06/27/2012 **Notice of Entry of Order**  
Notice of Entry of Order Granting Scott Financial Corporation's Motion to Reconsider

06/27/2012 **Reply in Support**  
Reply In Support Of Motion To Lift Stay, Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order, And For Posting Of Bond On Order Shortening Time

06/27/2012 **Appendix**  
Appendix Of Exhibits To Reply in Support Of Motion To Lift Stay, Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order, And For Posting Of Bond On Order Shortening Time

06/29/2012 **Joinder To Motion**  
Tharaldson Defendants' Joinder to Scott Financial Corporation's Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for the Posting of Bond on Order Shortening Time

07/02/2012 **Evidentiary Hearing** (9:30 AM) (Judicial Officer Scann, Susan)  
07/02/2012, 07/09/2012, 07/10/2012  
Evidentiary Hearing  
Parties Present

Minutes

07/03/2012 Reset by Court to 07/09/2012

Result: Matter Heard

07/02/2012 **Objection***Defendant Scott Financial Corporation's Evidentiary Objection to Presentation of Evidence from Representative of Clark County Department of Development Services*07/03/2012 **CANCELED Evidentiary Hearing (1:00 PM)** (Judicial Officer Scann, Susan)*Vacated - per Clerk*07/03/2012 **Notice of Lis Pendens***WRG Design, Inc.'s Second Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***SWPPP Compliance Solutions LLC's Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Interstate Plumbing and Air Conditioning's Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Helix Electric of Nevada, LLC's Second Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Hainaman Contract Glazing's Second Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***HD Supply Waterworks LP's Second Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Fast Glass Inc.'s Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Cactus Rose Construction's Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Bruin Painting Corp.'s Second Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Buchele Inc.'s Amended Notice of Lis Pendens*07/03/2012 **Notice of Lis Pendens***Accuracy Glass & Mirror Co. Inc.'s Second Amended Notice of Lis Pendens*07/05/2012 **NRCP 16.1 Disclosure Statement***NRAP 26.1(A) Disclosure*07/10/2012 **CANCELED Evidentiary Hearing (2:00 PM)** (Judicial Officer Scann, Susan)*Vacated - On In Error*07/11/2012 **Order to Show Cause***Order to Show Cause re: Summary Determination of Lien Amounts; and the Possible Sale of the Property*07/12/2012 **Notice of Entry of Order***NOTICE OF ENTRY OF ORDER TO SHOW CAUSE RE: SUMMARY DETERMINATION OF LIEN AMOUNTS; and THE POSSIBLE SALE OF THE PROPERTY*07/18/2012 **Show Cause Hearing (2:00 PM)** (Judicial Officer Scann, Susan)*Show Cause Hearing Re: Summary Determination of Lien Amounts; and the Possible Sale of the Property*Parties PresentMinutes

Result: Matter Heard

07/23/2012 **Notice of Change of Address***Notice of Change of Address and Telephone Number*07/31/2012 **Hearing (2:00 PM)** (Judicial Officer Scann, Susan)*Hearing Re: Sale of Property*Parties PresentMinutes

07/26/2012 Reset by Court to 07/31/2012

Result: Matter Heard

08/09/2012 **Order***Order Granting In Part And Denying In Part Scott Financial Corporation's Motion To Lift Stay, Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order, And For Posting Of Bond On Order Shortening Time*08/10/2012 **Notice of Entry of Order***Notice Of Entry Of Order*08/16/2012 **Status Check: Status of Case (3:00 PM)** (Judicial Officer Scann, Susan)*Status Check: Status of Case*Parties PresentMinutes

08/10/2012 Reset by Court to 08/16/2012

Result: Matter Heard

08/21/2012 **Telephonic Conference (10:00 AM)** (Judicial Officer Scann, Susan)Parties PresentMinutes

Result: Matter Heard

08/29/2012 **Order***Order for Mediation*08/29/2012 **Notice of Entry of Order***Notice of Entry of Order for Mediation*08/29/2012 **Substitution of Attorney***Substitution of Attorneys*09/04/2012 **Receipt of Copy***Receipt of Copy*09/26/2012 **Telephonic Conference (2:00 PM)** (Judicial Officer Scann, Susan)Parties Present

Minutes

09/21/2012 Reset by Court to 09/26/2012

Result: Matter Heard

10/02/2012 **Order Vacating**

Order Vacating the Auction Set for October 9, 2012; and Order to Show Cause re: Sale of the Property

10/04/2012 **Notice of Entry of Order**

Notice of Entry of Order Vacating the Auction Set for October 9, 2012; and Order to Show Cause re: Sale of the Property

10/09/2012 **CANCELED Hearing** (1:30 PM) (Judicial Officer Scann, Susan)

Vacated - per Judge

HEARING: MANHATTAN WEST AUCTION SALE

10/09/2012 **Hearing** (1:30 PM) (Judicial Officer Scann, Susan)

10/09/2012, 10/16/2012

Re: Order

Parties PresentMinutes

Result: Matter Continued

10/16/2012 **Change of Address**

Notice of Change of Address

10/16/2012 **Change of Address**

Notice of Change of Address

10/16/2012 **Change of Address**

Notice of Change of Address

10/17/2012 **Consent to Service By Electronic Means**

Consent to Service By Electronic Means

10/23/2012 **Status Check** (1:30 PM) (Judicial Officer Scann, Susan)

10/23/2012, 11/06/2012, 12/06/2012, 02/07/2013, 03/01/2013, 03/07/2013

Status Check: Re: Sale of Property

Parties PresentMinutes

Result: Matter Continued

10/24/2012 **Calendar Call** (10:30 AM) (Judicial Officer Scann, Susan)Parties PresentMinutes

Result: Matter Heard

10/25/2012 **Motion to Withdraw As Counsel**

Motion to Withdraw as Counsel of Record for Dave Peterson Framing, Inc.; Notice of Attorneys' Lien; Motion to Foreclose Attorneys' Lien and Reduce Lien to Judgment Against Dave Peterson Framing, Inc.

10/26/2012 **Pre-trial Memorandum**

Ready Mix, Inc.'s Pre-Trial Memorandum

10/29/2012 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Scann, Susan)

Vacated

10/29/2012 **Pre-trial Memorandum**

APCO Construction's Pre-Trial Memorandum for the Ready Mix, Inc. Trial

10/30/2012 **Bench Trial** (1:30 PM) (Judicial Officer Scann, Susan)

Bench Trial: Apco Construction and Ready Mix, Inc.

Parties PresentMinutes

Result: Matter Heard

10/30/2012 **Pre-trial Memorandum**

Scott Financial Corporation's Pre-Trial Memorandum

10/30/2012 **Certificate of Service**

Certificate of Service of Motion to Withdraw as Counsel of Record for Dave Peterson Framing, Inc.; Notice of Attorneys' Lien; Motion to Foreclose Attorneys' Lien and Reduce Lien to Judgment Against Dave Peterson Framing, Inc.

11/05/2012 **Stipulation and Order for Dismissal With Prejudice**

Stipulation and Order to Dismiss With Prejudice

11/06/2012 **Notice of Entry of Order**

Notice of Entry of Order

11/29/2012 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Scann, Susan)

T. James Truman, Esq.'s Motion to Withdraw as Counsel of Record for Dave Peterson Framing, Inc.; Notice of Attorneys' Lien; Motion to Foreclose Attorneys' Lien and Reduce Lien to Judgment Against Dave Peterson Framing, Inc.

Minutes

Result: Granted in Part

11/29/2012 **Order**

Order Staying the Case, Except for the Sale of the Property, Pending Resolution of the Writ Petition Before the Nevada Supreme Court

11/30/2012 **Notice of Entry of Order**

Notice of Entry of Order Staying the Case, Except for the Sale of the Property, Pending Resolution of the Writ Petition Before the Nevada Supreme Court

12/14/2012 **Stipulation and Order for Dismissal With Prejudice**

(A577623) Stipulation and Order for Dismissal with Prejudice as to Defendant Alexander Edelstein Only

12/17/2012 **Notice of Entry of Stipulation and Order**

Notice of Entry of Stipulation and Order for Dismissal With Prejudice as to Defendant Alexander Edelstein Only

12/19/2012 **Transcript of Proceedings**

Transcript of Proceedings: Status Hearing, May 9, 2012

12/19/2012 **Transcript of Proceedings**

Transcript of Proceedings: Status Hearing, August 16, 2012

12/19/2012 **Transcript of Proceedings**

Transcript of Proceedings: Apco Construction's Order to Show Cause Re: Summary Determination of Lien Amounts; Possible Sale of the Property, October 9, 2012

12/19/2012 **Transcript of Proceedings**  
*Transcript of Proceedings: Status Check Re: Sale of Property, November 6, 2012*

12/19/2012 **Transcript of Proceedings**  
*Transcript of Proceedings: Hearing Re: Sale of Property, October 16, 2012*

12/19/2012 **Transcript of Proceedings**  
*Transcript of Proceedings: Status Check Re: Sale of Property, December 6, 2012*

12/27/2012 **Motion**  
*Motion to Set Hearing to Discuss Order Approving Private Sale, Purchase and Sale Agreement and Related Issues*

01/02/2013 **Order Granting**  
*Order Granting In Part Motion to Withdraw as Counsel of Record for Dave Peterson Framing, Inc.*

01/02/2013 **Joinder**  
*Joinder to Motion to Set Hearing to Discuss Order Approving Private Sale Agreement and Related Issues*

01/03/2013 **Motion (1:30 PM) (Judicial Officer Scann, Susan)**  
**01/03/2013, 01/16/2013**  
*Intervenor's Motion to Set Hearing to Discuss Order Approving Private Sale, Purchase and Sale Agreement and Related Issues*  
Parties Present  
Minutes  
*01/03/2013 Reset by Court to 01/03/2013*

01/03/2013 **Result: Matter Continued**

01/03/2013 **Notice of Entry of Order**  
*Notice of Entry of Order Granting in Part Motion to Withdraw As Counsel of Record for Dave Peterson Framing, Inc.*

01/03/2013 **Request**  
*Lien Claimant/Plaintiff Cellcrete Fireproofing of Nevada Inc's Request and Notice for CourtCall Telephonic Appearance*

01/23/2013 **Order**  
*Order*

01/24/2013 **Stipulation and Order for Dismissal With Prejudice**  
*Stipulation and Order for Dismissal with Prejudice as to Defendant Alexander Edelstein Only*

01/25/2013 **Notice of Entry of Stipulation & Order for Dismissal**  
*Notice of Entry of Stipulation and Order for Dismissal With Prejudice as to Defendant Alexander Edelstein Only*

01/28/2013 **Notice of Entry of Order**  
*Notice of Entry of Order*

01/29/2013 **Application**  
*Defendant Scott Financial Corporation's Ex Parte Application For Order To Show Cause On Order Shortening Time*

01/29/2013 **Order to Show Cause**  
*Order to Show Cause*

01/29/2013 **Order to Show Cause**  
*Order To Show Cause Regarding Possible Sale Of The Property*

01/30/2013 **Notice of Entry**  
*Notice of Entry of Order Shortening Time*

01/30/2013 **Errata**  
*Errata to Defendant Scott Financial Corporation's Ex Parte Application for Order to Show Cause on Order Shortening Time*

01/31/2013 **Notice of Entry of Order**  
*Notice Of Entry Of Order To Show Cause Regarding Possible Sale Of Property*

01/31/2013 **Notice of Entry of Order**  
*Notice of Entry of Order to Show Cause*

02/05/2013 **Show Cause Hearing (10:00 AM) (Judicial Officer Scann, Susan)**  
*Defendant Scott Financial Corporation's Ex Parte Application for Order to Show Cause on OST*  
Parties Present  
Minutes  
**Result: Motion Granted**

02/05/2013 **Motion to Dismiss**  
*Defendant Scott Financial Corporation's Motion To Dismiss And Expunge Liens On Order Shortening Time*

02/05/2013 **Notice of Hearing**  
*Notice Of Hearing On Defendant Scott Financial Corporation's Motion To Dismiss And Expunge Liens On Order Shortening Time*

02/06/2013 **Declaration**  
*Declaration Of Bradley J. Scott, In Anticipation Of Evidentiary Hearing*

02/07/2013 **Evidentiary Hearing (10:00 AM) (Judicial Officer Scann, Susan)**  
**02/07/2013, 03/01/2013, 03/07/2013, 03/12/2013**  
**EVIDENTIARY HEARING: REAL ESTATE COMMISSION FOR THE PRIVATE SALE**  
Parties Present  
Minutes  
**Result: Matter Continued**

02/07/2013 **All Pending Motions (10:00 AM) (Judicial Officer Scann, Susan)**  
Parties Present  
Minutes  
**Result: Matter Heard**

02/07/2013 **Order to Show Cause**  
*Order To Show Cause*

02/08/2013 **Notice of Entry of Order**  
*Notice of Entry Of Order To Show Cause*

02/12/2013 **Receipt of Copy**  
*Receipt Of Copy*

02/12/2013 **Receipt of Copy**  
*Receipt of Copy*

02/12/2013 **Receipt of Copy**  
*Receipt of Copy*

02/12/2013 **Receipt of Copy**  
*Receipt of Copy*

02/13/2013 **Transcript of Proceedings**

Transcript Re: Show Cause Hearing Re: Summary Determination of Lien Amounts; and The Possible Sale of Property

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Hearing Re: Sale of Property, July 31, 2012

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Telephonic Conference, August 21, 2012

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Telephonic Conference, September 26, 2012

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Hearing Re: Sale of Property, October 23, 2012

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Evidentiary Hearing: Real Estate Commission for the Private Sale, February 7, 2013

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Intervenor's Motion to Set Hearing to Discuss Order Approving Private Sale, Purchase and Sale Agreement and Related Issues, January 3, 2013

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Defendant Scott Financial Corporation's Ex Parte Application for Order to Show Cause, February 5, 2013

02/13/2013 **Transcript of Proceedings**  
Transcript Re: Intervenor's Motion to Set Hearing to Discuss Order Approving Private Sale, Purchase and Sale Agreement and Related Issues, January 16, 2013

02/13/2013 **Receipt of Copy**  
Receipt Of Copy Of The Notice Of Hearing On Defendant Scott Financial Corporation's Motion To Dismiss And Expunge Liens On Order Shortening Time

02/13/2013 **Affidavit of Service**  
Affidavit of Service

02/14/2013 **Motion to Dismiss** (9:00 AM) (Judicial Officer Scann, Susan)  
Defendant Scott Financial Corporation's Motion to Dismiss and Expunge Liens on Order Shortening Time  
Result: Granted

02/14/2013 **Show Cause Hearing** (9:00 AM) (Judicial Officer Scann, Susan)  
Order To Show Cause  
Result: Granted

02/14/2013 **All Pending Motions** (9:00 AM) (Judicial Officer Scann, Susan)  
Parties Present  
Minutes  
Result: Matter Heard

02/14/2013 **Order**  
Order Expunging Lien

02/14/2013 **Order**  
Order On Defendant Scott Financial Company's Motion To Dismiss And Expunge Liens

02/14/2013 **Order**  
Order Regarding Show Cause Hearing

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Notice of Entry of Order**  
Notice Of Entry Of Order Expunging Lien

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Notice of Entry of Order**  
Notice Of Entry Of Order Regarding Show Cause Hearing

02/15/2013 **Notice of Entry of Order**  
Notice Of Entry Of Order On Defendant Scott Financial Company's Motion To Dismiss And Expunge Liens

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Affidavit of Service**  
Affidavit of Service

02/15/2013 **Order**  
Order Expunging Liens

02/19/2013 **Transcript of Proceedings**  
Partial Transcript: (Testimony of Bradley Scott and Doug Schuster) Hearing Re: Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order and for Posting of Bond, July 2, 2012

02/20/2013 **Notice of Entry of Order**  
Notice Of Entry Of Order Expunging Liens

02/25/2013 **Brief**  
Peel Brimley Lien Claimants' Pre-Hearing Brief and Disclosures

02/25/2013 **Brief**  
Scott Financial Corporation And Bradley J. Scott's Evidentiary Hearing Brief

02/25/2013 **Brief**  
Tharaldson Parties' Evidentiary Hearing Brief and Limited Joinder to Peel Brimley Lien Claimants' Pre-hearing Brief and Disclosures

02/26/2013 **Joinder**  
APCO Construction's Joinder to Peel Brimley Lien Claimants' Pre-Hearing Brief and Disclosures

02/26/2013 **Errata**  
Errata To Scott Financial Corporation And Bradley J. Scott's Evidentiary Hearing Brief

03/01/2013 **All Pending Motions** (9:00 AM) (Judicial Officer Scann, Susan)

Parties PresentMinutes

Result: Matter Heard

03/05/2013 **Motion to Withdraw As Counsel***Motion to Withdraw as Attorney of Record for Harsco Corporation*03/07/2013 **Transcript of Proceedings***Transcript of Proceedings: Excerpt of Status Check: RE: Sale of Property, Evidentiary Hearing: Real Estate Commission for the Private Sale (Testimony of Bradley Scott) March 1, 2013*03/07/2013 **All Pending Motions** (1:00 PM) (Judicial Officer Scann, Susan)Parties PresentMinutes

Result: Matter Heard

03/12/2013 **Transcript of Proceedings***Transcript of Proceedings: Status Check: RE: Sale of Property, Evidentiary Hearing: Real Estate Commission for the Private Sale, March 1, 2013*03/12/2013 **Transcript of Proceedings***Transcript of Proceedings: Status Check: RE: Sale of Property, Evidentiary Hearing: Real Estate Commission for the Private Sale, March 7, 2013*03/26/2013 **Decision** (10:00 AM) (Judicial Officer Scann, Susan)**03/26/2013, 04/03/2013**Minutes

Result: Continued

04/03/2013 **CANCELED Calendar Call** (10:30 AM) (Judicial Officer Scann, Susan)*Vacated - Superseding Order*04/03/2013 **Decision and Order***Decision and Order*04/03/2013 **Notice of Entry of Decision and Order***Notice of Entry of Decision and Order on Motion to Set Hearing*04/04/2013 **Stipulation and Order for Dismissal***A587168 Stipulation and Order to Dismiss E&E Fire Protection, LLC Only Pursuant to the Terms Stated Below*04/04/2013 **Amended Notice***Amended Notice of Entry of Decision and Order on Motion to Set Hearing*04/08/2013 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer Scann, Susan)*Vacated - Superseding Order*04/08/2013 **Notice of Entry of Stipulation and Order***A587168*04/10/2013 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Scann, Susan)*Donald H. Williams, Esq's Motion to Withdraw as Attorney of Record for Harsco Corporation*Minutes

Result: Granted

04/23/2013 **Order***Order Approving Sale of Property*04/25/2013 **Notice of Entry of Order***Notice of Entry of Order Approving Sale of Property*04/25/2013 **Motion to Set Aside***Notice Of Motion And Motion To Set Aside Order Or Judgment*04/25/2013 **Release***Ahern Rentals, Inc.'s Partial Release of Judgment Lien*04/30/2013 **Ex Parte Application***Defendant Scott Financial Corporation's Ex Parte Application for Order To Show Cause on Order Shortening Time*05/02/2013 **Order to Show Cause***Order to Show Cause*05/07/2013 **Order Granting Motion***Order Granting Donald H. Williams, Esq.'s Motion to Withdraw as Attorney of Record for Harsco Corporation*05/08/2013 **CANCELED Pre Trial Conference** (10:30 AM) (Judicial Officer Scann, Susan)*Vacated - per Judge*05/08/2013 **Affidavit of Service***Affidavit of Service*05/09/2013 **CANCELED Show Cause Hearing** (10:00 AM) (Judicial Officer Scann, Susan)*Vacated - per Judge**Show Cause Hearing*05/09/2013 **Notice of Entry of Order***Notice of Entry of Order*05/15/2013 **CANCELED Calendar Call** (10:30 AM) (Judicial Officer Scann, Susan)*Vacated - per Judge*05/17/2013 **Release***PCI Group, LLC's Partial Release of Judgment Lien*05/20/2013 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Scann, Susan)*Vacated - per Judge*05/22/2013 **Release***PCI Group LLC's Partial Release of Judgment Lien*05/23/2013 **CANCELED Show Cause Hearing** (10:00 AM) (Judicial Officer Scann, Susan)*Vacated - per Judge**Defendant Scott Financial Corporation's Ex Parte Application for Order to Show Cause on Order Shortening Time*05/30/2013 **Motion to Set Aside** (9:00 AM) (Judicial Officer Scann, Susan)*Defendant Selina Cisneros' Motion To Set Aside Order or Judgment*Parties PresentMinutes

Result: Off Calendar

06/06/2013 **Motion for Judgment***(1) APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only; and (2) Request for Order Shortening Time*

06/12/2013 **Opposition to Motion**  
*Scott Financial Corporation's Opposition to (1) Apco Construction, Inc's Limited Motion to Lift Stay (2) Motion for Judgment Against Gemstone only; and (3) Request for Order Shortening Time*

06/13/2013 **Motion** (10:00 AM) (Judicial Officer Scann, Susan)  
*(1) APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against GEMSTONE Only; and (3) Request for Order Shortening Time*  
Parties Present  
Minutes  
 Result: Granted

06/13/2013 **Stipulation**  
*Stipulation Regarding Reconveyance of Deeds of Trust Encumbering Property*

01/09/2014 **Miscellaneous Filing**  
*Notice of Screening Device*

03/18/2014 **Consent to Service By Electronic Means**  
*Consent to Service By Electronic Means*

03/18/2014 **Notice**  
*Notice of Change of Handling Attorney*

04/22/2014 **Notice of Substitution of Parties**  
*Substitution of Real Party in Interest*

04/30/2014 **Transcript of Proceedings**  
*Portion of Transcript: Scott Defendants' Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond, July 2, 2012*

04/30/2014 **Transcript of Proceedings**  
*Transcript of Proceedings: Evidentiary Hearing, July 9, 2012*

04/30/2014 **Transcript of Proceedings**  
*Transcript of Proceedings: Evidentiary Hearing, July 10, 2012*

05/28/2014 **Motion**  
*Insulpro Projects, Inc.'s Motion to Lift Stay*

06/16/2014 **Opposition to Motion**  
*APCO Construction's Opposition to Insulpro Project, Inc.'s Motion to Lift Stay*

06/18/2014 **Stipulation and Order**  
*Stipulation and Order to Continue the Hearing on Insulpro Projects Inc.'s Motion to Lift Stay*

06/19/2014 **Notice of Entry of Order**  
*Notice of Entry of Stipulation and Order to Continue Hearing on Insulpro Projects Inc.'s Motion to Lift Stay*

06/20/2014 **Reply to Opposition**  
*Insulpro Projects, Inc.'s Reply to Apco Construction's Opposition to Motion to Lift Stay*

06/20/2014 **Opposition**  
*Opposition of Scott Financial Corporation to Insulpro Project, Inc.'s Motion to Lift Stay*

06/23/2014 **Opposition**  
*Camco Pacific Construction Company, Inc.'s Opposition to Insulpro Projects, Inc.'s Motion to Lift Stay*

07/02/2014 **Reply to Opposition**  
*Insulpro Projects, Inc.'s Reply to Camco Pacific Construction Company, Inc.'s Opposition to Motion to Lift Stay*

07/15/2014 **Motion** (9:00 AM) (Judicial Officer Scann, Susan)  
*Insulpro Projects, Inc.'s Motion to Lift Stay*  
Parties Present  
Minutes  
 07/01/2014 Reset by Court to 07/15/2014  
 Result: Denied

07/28/2014 **Order Denying**  
*Order Denying Insulpro Projects Inc.'s Motion to Lift Stay*

07/29/2014 **Notice of Entry of Order**  
*Notice of Entry of Order Denying Insulpro Projects Inc.'s Motion to Lift Stay*

03/11/2015 **Opposition**  
*Opposition to Affidavit of Renewal of Judgment*

07/13/2015 **Motion to Withdraw As Counsel**  
*Motion to Withdraw as Counsel of Record For Northstar Concrete, Inc.*

08/19/2015 **Motion to Withdraw as Counsel** (3:00 AM) (Judicial Officer Scann, Susan)  
*The Law Firm of Pezzillo Lloyd's Motion to Withdraw as Counsel of Record For Northstar Concrete, Inc.*  
Minutes  
 Result: Minute Order - No Hearing Held

08/31/2015 **Order Granting Motion**  
*Order Granting Motion to Withdraw as Counsel of Record For Northstar Concrete, Inc.*

08/31/2015 **Notice of Entry of Order**  
*Notice of Entry of Order Granting Motion to Withdraw as Counsel of Record for Northstar Concrete Inc.*

10/07/2015 **Notice of Hearing**  
*Notice of Hearing for Status Check*

10/21/2015 **Status Check** (9:30 AM) (Judicial Officer Scann, Susan)  
 10/21/2015, 04/21/2016  
*Status Check: Disbursement of Sale Proceeds & any other Matters Remaining following the S. CT. Decision 131Nev., Adv. Op. 70*  
Minutes  
 04/20/2016 Reset by Court to 04/21/2016  
 Result: Matter Continued

11/05/2015 **Substitution of Attorney**  
*Substitution of Attorney*

03/14/2016 **Case Reassigned to Department 15**  
*Reassigned From Judge Susan Scann - Dept 29*

03/14/2016 **Notice of Department Reassignment**  
*Notice of Department Reassignment*

03/28/2016 **Motion**  
*Motion for Order Shortening Time for Hearing on Joint Motion to Release Sale Proceeds from Court-Controlled Escrow Account*

03/28/2016 **Motion**  
*Joint Motion to Release Sale Proceeds from Court Controlled Escrow Account on Order Shortening Time*

04/05/2016 **Notice of Appearance**  
*Notice of Appearance*

04/14/2016 **Motion to Release Funds** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Club Vista Financial Services, LLC. and Tharaldson Motels II, Inc.'s Motion for Order Shortening Time for Hearing on Joint Motion to Release Sale Proceeds from Court-Controlled Escrow Account*  
Parties Present  
Minutes  
Result: Matter Resolved

04/14/2016 **Order**  
*Order Releasing Sale Proceeds from Court-Controlled Escrow Account*

04/14/2016 **Notice of Entry of Order**  
*Notice of Entry of Order Releasing Sale Proceeds from Court-Controlled Escrow Account*

05/06/2016 **Order**  
*Order RE: Status Check*

05/09/2016 **Motion**  
*Motion to Appoint Special Master*

05/18/2016 **Motion to Withdraw As Counsel**  
*Motion to Withdraw*

05/18/2016 **Motion for Summary Judgment**  
*Renewed Motion for Partial Summary Judgment*

05/18/2016 **Opposition to Motion**  
*Insulpro Project's Limited Opposition to Apco Construction's Motion to Appoint Special Master*

05/18/2016 **Application**  
*Application for Order Shortening Time Re: Motion to Withdraw*

05/20/2016 **Order Shortening Time**  
*Order Granting Movant's Application for Order Shortening Time on its Motion to Withdraw*

05/23/2016 **Notice of Entry of Order**  
*Notice of Entry of Order Granting Movant's Application for Order Shortening Time on its Motion to Withdraw*

05/24/2016 **Certificate of Service**  
*Certificate of Service - Notice of Entry of Order Granting Movant's Application for Order Shortening Time on its Motion to Withdraw*

05/25/2016 **Opposition to Motion**  
*Peel Brimley Lien Claimants' Limited Opposition to APCO's Motion to Appoint Special Master*

05/31/2016 **Opposition to Motion**  
*Zitting Brothers Construction, Inc.'s Joinder to Peel Brimley Lien Claimants' Limited Opposition to APCO's Motion to Appoint Special Master*

05/31/2016 **Reply in Support**  
*APCO Construction's Reply in Support of Motion to Appoint Special Master*

05/31/2016 **Joinder to Motion For Partial Summary Judgment**  
*Zitting Brothers Construction, Inc.'s Joinder to Insulpro Projects, Inc.'s Renewed Motion for Partial Summary Judgment*

05/31/2016 **Joinder**  
*Joinder to Peel Brimley Lien Claimants' Limited Opposition to APCO's Motion to Appoint Special Master*

06/01/2016 **Initial Appearance Fee Disclosure**  
*Fee Disclosure for Zitting Brothers Construction, Inc.'s Joinder to Insulpro Projects, Inc.'s Renewed Motion for Partial Summary Judgment*

06/02/2016 **Status Check** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Result: Matter Heard

06/02/2016 **Motion to Withdraw as Counsel** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Smith & Shapiro, PLLC's Motion to Withdraw*  
*06/20/2016 Reset by Court to 06/02/2016*  
Result: Granted

06/02/2016 **Order to Withdraw as Attorney of Record**  
*Order Granting Movant's Motion to Withdraw*

06/02/2016 **Notice of Entry of Order**  
*Notice of Entry of Order Granting Movant's Motion to Withdraw*

06/02/2016 **Opposition to Motion For Summary Judgment**  
*Scott Financial Corporation's Limited Opposition to Lien Claimant Insulpro's Projects, Inc.'s Renewed Motion for Partial Summary Judgment*

06/02/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Minutes  
Result: Matter Heard

06/06/2016 **Opposition**  
*Camco's Opposition to Insulpro's Renewed Motion for Partial Summary Judgment*

06/06/2016 **Opposition and Countermotion**  
*APCO's Opposition to Renewed Motion for Partial Summary Judgment and Joinder thereto; and Countermotion to Dismiss and/or for Summary Judgment Against Insulpro*

06/07/2016 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

06/09/2016 **Motion** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Plaintiff's Motion to Appoint Special Master*  
Minutes  
Result: Motion Granted

06/09/2016 **Order Appointing Special Master**  
*Order: Appointing Special Master*

06/13/2016 **Notice of Entry of Order**  
*Notice of Entry of Order*

06/15/2016 **Reply in Support**  
*Reply in Support of Renewed Motion for Partial Summary Judgment Re: Apco Opposition*

06/15/2016 **Reply in Support**  
*Reply in Support of Renewed Motion for Partial Summary Judgment re: Camco Opposition*

06/20/2016 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Renewed Motion for Partial Summary Judgment*  
Result: Referred



06/20/2016 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Zitting Brothers Construction, Inc.'s Joinder to Insulpro Projects, Inc.'s Renewed Motion for Partial Summary Judgment*  
 Result: Referred

06/20/2016 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*APCO's Opposition to Renewed Motion for Partial Summary Judgment and Joinder Thereto: and Countermotion to Dismiss and/or for Summary Judgment Against Insulpro*  
 Result: Referred

06/20/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Matter Heard

06/22/2016 **Notice of Special Master Hearing**  
*Notice of Special Master Hearing*

06/28/2016 **Notice of Special Master Hearing**  
*Notice of Rescheduled Special Master Hearing*

07/01/2016 **Order Denying Motion**

07/01/2016 **Notice of Entry of Order**  
*Notice of Entry of Order*

07/11/2016 **Recorders Transcript of Hearing**  
*Recorder's Transcript of Proceedings Bench Trial: APCO Construction and Ready Mix, Inc., October 30, 2012*

08/02/2016 **Notice of Special Master Hearing**  
*Notice of Special Master Hearing*

08/08/2016 **Special Master Recommendation and District Court Order**  
*Special Master Report, Recommendation, and District Court Order*

08/23/2016 **Notice of Appearance**  
*Notice of Appearance of Counsel for Plaintiff Uintah Investments, LLC dba Sierra Reinforcing*

08/31/2016 **Disclosure of Documents and Witnesses Pursuant to NRCP 16.1**  
*Camco's 16.1 Disclosure*

09/01/2016 **Special Master Order**  
*Special Master Order Requiring Completion of Questionnaire*

09/22/2016 **Notice of Compliance**  
*E&E Fire Protection, LLC's Notice of Compliance*

09/23/2016 **Response**  
*National Wood Products Inc's Response to Special Master Questionnaire*

09/26/2016 **Response**  
*United Subcontractors, Inc. DBA Skyline Insulation's Special Master Questionnaire Response*

09/27/2016 **Disclosure of Documents and Witnesses Pursuant to NRCP 16.1**  
*United Subcontractors, Inc. DBA Skyline Insulation's Consolidated Disclosure Pursuant to NRCP 16.1 and Special Master Order*

09/30/2016 **Request**  
*Request for Leave to Special Master for Approval of Late Filing and Service of Rule 16.1 Disclosures by National Wood Products, Inc., Judgment Creditor and Intervenor of Claimant Cabinetec, Inc.*

10/03/2016 **Special Master Order**  
*Special Master Order authorizing NATIONAL WOOD PRODUCTS, INC., Intervenor of Cabinetec, Inc. to File and Serve its NRCP 16.1 Disclosures within Ten Days*

10/07/2016 **Special Master Recommendation and District Court Order**  
*Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amending Case Agenda*

10/07/2016 **Special Master Order**  
*Special Master Order Authorizing United Subcontractors, Inc. dba Skyline Insulation to File and Serve NRCP 16.1 Disclosures*

10/12/2016 **Disclosure of Documents and Witnesses Pursuant to NRCP 16.1**  
*United Subcontractors, Inc. DBA Skyline Insulation's Re-filed, Supplemented and Consolidated Disclosure Pursuant to NRCP 16.1 and Special Master Order*

01/06/2017 **Substitution of Attorney**  
*Substitution of Attorney*

01/09/2017 **Proof of Service**  
*Proof of Service*

01/13/2017 **Motion for Order to Show Cause**  
*Motion for Order to Show Cause Why Grubb & Ellis, Now Known As Newmark Grubb, Should Not be Held in Contempt of Court*

01/24/2017 **Certificate of Service**  
*Certificate of Service (United Subcontractors, Inc. dba Skyline Insulation's Responses to APCO Construction's First Request for Production of Documents)*

01/30/2017 **Certificate of Service**  
*Certificate of Service (United Subcontractors, Inc. dba Skyline Insulation's Responses to APCO Construction's First Set of Interrogatories)*

01/30/2017 **Order Setting Civil Non-Jury Trial**  
*Order Setting Civil Non-Jury Trial And Calendar Call*

02/02/2017 **Motion to Associate Counsel**  
*Motion to Associate Counsel*

02/03/2017 **Proof of Service by Mail**  
*Certificate of Service*

02/14/2017 **Stipulation and Order**  
*Stipulation and Order for Amended Briefing Schedule and to Continue Hearing on Motion for Order to Show Cause*

02/15/2017 **Motion to Withdraw As Counsel**  
*Motion to Withdraw*

02/16/2017 **Notice of Entry of Stipulation and Order**  
*Notice of Entry of Stipulation and Order for Amended Briefing Schedule and to Continue Hearing on Motion for Order to Show Cause*

02/16/2017 **Notice of Special Master Hearing**  
*Notice of Special Master Hearing*

02/21/2017 **Certificate of Service**  
*Certificate of Service*

02/23/2017 **Opposition**  
*Opposition to Motion for Order to Show Cause*

02/27/2017 **Special Master Order**  
*Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status*

02/28/2017 **Notice of Motion**

02/28/2017 **Notice of Motion for Hearing**  
 02/28/2017 **Motion**  
 03/01/2017 **Plaintiff Motion to Set Aside Judgment**  
 03/01/2017 **Reply in Support**  
 03/06/2017 **Reply in Support of Motion for Order to Show Cause why Grubb & Ellis, now known as Newmark Grubb, Should not be Held in Contempt of Court**  
 03/06/2017 **Motion for Order (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 03/06/2017 **Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Motion for Order to Show Cause Why Grubb & Ellis, Now Known As Newmark Grubb, Should Not be Held in Contempt of Court**  
 03/06/2017 **02/21/2017 Reset by Court to 03/06/2017**  
 03/06/2017 **Result: Denied**  
 03/06/2017 **Motion to Associate Counsel (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 03/06/2017 **Plaintiff's Motion to Associate Counsel - Jonathan S. Dabbieri, Esq.**  
 03/06/2017 **Result: Granted**  
 03/06/2017 **All Pending Motions (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 03/06/2017 **Minutes**  
 03/06/2017 **Result: Matter Heard**  
 03/15/2017 **Decision and Order**  
 03/15/2017 **Decision and Order**  
 03/15/2017 **Decision (11:45 AM) (Judicial Officer Denton, Mark R.)**  
 03/15/2017 **Minutes**  
 03/15/2017 **Result: Decision Made**  
 03/17/2017 **Motion for Summary Judgment**  
 03/17/2017 **Plaintiff APCO Construction's Motion for Summary Judgment Against Uintah Investments LLC dba Sierra Reinforcing**  
 03/20/2017 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 03/20/2017 **Monica J. Caffaratti, Esq.'s Motion to Withdraw**  
 03/20/2017 **Minutes**  
 03/20/2017 **Result: Granted**  
 03/29/2017 **Notice of Entry**  
 03/29/2017 **Notice of Entry of Decision and Order**  
 03/29/2017 **Order Admitting to Practice**  
 03/29/2017 **Order admitting to Practice**  
 03/29/2017 **Request**  
 03/29/2017 **Request to Submit proposed Order**  
 03/30/2017 **Notice of Entry of Order**  
 03/30/2017 **Notice of Entry of Order Approving Motion to Associate Counsel**  
 04/03/2017 **Motion (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 04/03/2017 **Notice of Motion for Hearing on Motion to Set Aside**  
 04/03/2017 **Minutes**  
 04/03/2017 **Result: Denied**  
 04/03/2017 **CANCELED Status Check (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 04/03/2017 **Vacated**  
 04/03/2017 **Status Check Re: SCR 42 Compliance (Jonathan S. Dabbieri, Esq.)**  
 04/03/2017 **Opposition to Motion For Summary Judgment**  
 04/03/2017 **Uintah Investments LLC dba Sierra Reinforcing's Opposition to APCO Construction's Motion for Summary Judgment**  
 04/07/2017 **Reply in Support**  
 04/07/2017 **Plaintiff APCO Construction's Reply In Support of its Motion for Summary Judgment Against Uintah Investments LLC dba Sierra Reinforcing**  
 04/14/2017 **Stipulation and Order**  
 04/14/2017 **Stipulation and Order to Continue Hearing on APCO Construction's Motion for Summary Judgment Against Uintah Investments, LLC dba Sierra Reinforcing**  
 04/17/2017 **Notice of Entry of Order**  
 04/17/2017 **Notice of Entry of Stipulation and Order to Continue Hearing on APCO Construction's Motion for Summary Judgment Against Uintah Investments, LLC dba Sierra Roofing**  
 04/18/2017 **Minute Order (2:00 PM) (Judicial Officer Denton, Mark R.)**  
 04/18/2017 **Minutes**  
 04/18/2017 **Result: Decision Made**  
 04/20/2017 **Notice of Bankruptcy**  
 04/20/2017 **Notice of Bankruptcy of Accuracy Glass & Mirror Co.**  
 04/27/2017 **Motion to Associate Counsel**  
 04/27/2017 **Motion to Associate Counsel**  
 04/27/2017 **Notice of Deposition**  
 04/27/2017 **United Subcontractors, Inc. d/b/a Skyline Insulation's Notice of 30(b)(6) Deposition of APCO Construction**  
 04/27/2017 **Notice of Deposition**  
 04/27/2017 **United Subcontractors, Inc. d/b/a Skyline Insulation's Notice of 30(b)(6) Deposition of CAMCO Pacific Construction Co. Inc.**  
 04/28/2017 **Motion for Withdrawal**  
 04/28/2017 **Motion to Withdraw as Counsel for Accuracy Glass & Mirror Co. and for Order Shortening Time**  
 05/01/2017 **Notice of Deposition**  
 05/01/2017 **United Subcontractors, Inc. d/b/a Skyline Insulation's Amended Notice of 30(b)(6) Deposition of APCO Construction**  
 05/08/2017 **Special Master Order**  
 05/08/2017 **Special Master Order**  
 05/08/2017 **Special Master Order**  
 05/08/2017 **Special Master Report Regarding Discovery Status**  
 05/11/2017 **Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer Denton, Mark R.)**  
 05/11/2017 **Eric B. Zimbelman, Esq.'s Motion to Withdraw as Counsel for Accuracy Glass & Mirror Co and for order Shortening Time**  
 05/11/2017 **Minutes**  
 05/11/2017 **Result: Granted**  
 05/11/2017 **Order to Withdraw as Attorney of Record**  
 05/11/2017 **Order Granting Motion to Withdraw as Counsel for Accuracy Glass & Mirror Co. and for Order Shortening Time**  
 05/12/2017 **Notice of Entry of Order**  
 05/12/2017 **Notice of Entry of Order**  
 05/15/2017 **Motion for Summary Judgment (9:00 AM) (Judicial Officer Denton, Mark R.)**

*Plaintiff APCO Construction's Motion for Summary Judgment Against Uintah Investments LLC dba Sierra Reinforcing*  
Minutes

04/17/2017 *Reset by Court to 05/15/2017*

Result: Granted

05/25/2017 **Order**  
*Order*

05/25/2017 **Notice of Entry of Order**  
*Notice of Entry of Order*

05/30/2017 **Motion to Associate Counsel** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Intervenor, National Wood Products INC's Motion to Associate Counsel*  
Minutes

Result: Granted

06/09/2017 **Substitution of Attorney**  
*Substitution of Attorneys*

06/14/2017 **Order Denying**  
*Order Denying Defendant's Motion to Set Aside Judgment*

06/16/2017 **Order Admitting to Practice**  
*Order Admitting to Practice*

06/19/2017 **Stipulation and Order for Dismissal With Prejudice**  
*Stipulation and Order for Dismissal With Prejudice of Insulpro Projects, Inc.*

06/20/2017 **Notice of Entry of Stipulation & Order for Dismissal**  
*Notice of Entry of Stipulation and Order*

06/21/2017 **Order Denying Motion**  
*Order Denying Defendant's Motion to set aside Judgment*

06/26/2017 **Notice of Entry of Order**  
*Notice of Entry of Order*

06/26/2017 **Motion To Dismiss - Alternative Motion For Summary Judgment**  
*APCO Construction's Motion to Dismiss or for Summary Judgment on Lien Claimants' NRS Ch 108 Claim for Foreclosure of Mechanic's Lien*

06/26/2017 **Motion**  
*Motion to Substitute*

06/28/2017 **Order to Withdraw as Attorney of Record**  
*Order Granting Monica Caffaratti's Motion to Withdraw as Attorney*

07/05/2017 **Stipulation and Order for Dismissal With Prejudice**  
*Stipulation and Order for Dismissal With Prejudice of Insulpro Projects, Inc.*

07/14/2017 **Motion to Continue**  
*Joint Motion to Continue Hearing on APCO Construction's Motion to Dismiss or for Summary Judgment on Lien Claimant's NRS CH 108 Claim for Foreclosure of Mechanics Lien on Order Shortening Time (First Request)*

07/24/2017 **Motion to Continue** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Joint Motion to Continue Hearing on APCO Cosntructions Motion to Dismiss or for Summary Judgment on Lien Claimants NRS Ch 108 Claim for Foreclosure of Mechanics's Lien on Order Shortening Time*

Minutes

Result: Granted

07/25/2017 **Minute Order** (5:35 PM) (Judicial Officer Denton, Mark R.)  
Minutes

Result: Minute Order - No Hearing Held

07/26/2017 **Opposition to Motion For Summary Judgment**  
*Peel Brimley Lien Claimants' Opposition to APCO's Motion for Summary Judgment Re: Lien Claims*

07/26/2017 **Joinder to Opposition to Motion**  
*1. Joinder of Interstate Plumbing & Air Conditioning, LLC to Opposition of Helix Electrical of Nevada, LLC to APCO Construction's Motion to Dismiss or for Summary Judgment on Lien Claimants NRS CH 108 Claim for Foreclosure of Mechanic's Lien*

07/26/2017 **Opposition**  
*Zitting Brothers Construction, Inc.'s Opposition to APCO Construction's Motion to Dismiss or For Summary Judgment on Lien Claimant's NRS CH 108 Claim For Foreclosure of Mechanic's Lien*

07/27/2017 **CANCELED Motion** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Vacated - per Judge*

07/31/2017 **Status Check** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Status Check Re: SCR 42 Complaine (S. Judy Hirahara, Esq.)*

Minutes

Result: Matter Heard

07/31/2017 **Motion for Partial Summary Judgment**  
*Zitting Brothers Construction, Inc.'s Motion For Partial Summary Judgment Against APCO Construction*

08/01/2017 **Order Granting Motion**  
*Order Granting Gerdau Reinforcing Steel's Motion to Substitute*

08/01/2017 **Reply In Support**  
*Apco Construction's Reply in Support of Motion to Dismiss or for Summary Judgment on Lien Claimants' NRS Ch. 108 Claim for Foreclosure of Mechanic's Lien*

08/01/2017 **Notice of Entry**  
*Notice of Entry of Order Granting Gerdau Reinforcing Steel's Motion to Substitute*

08/02/2017 **Motion for Partial Summary Judgment**  
*Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and Ex-Parte Application for Order Shortening Time*

08/03/2017 **Joinder to Motion For Partial Summary Judgment**  
*Zitting Brothers Construction, Inc.'s Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*

08/03/2017 **Joinder**  
*Joinder to Peel Brimley Lien Claimants' Opposition to Apco's Motion for Summary Judgment Re: Lien Claims*

08/03/2017 **Joinder**  
*Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If\_Paid Agreements and Ex Parte Application for Order Shortening Time*

08/04/2017 **Initial Appearance Fee Disclosure**

Initial Appearance Fee Disclosure  
08/04/2017 **Joinder to Motion For Partial Summary Judgment**  
Joinder of Interstate Plumbing & Air Conditioning, LLC to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

08/07/2017 **Notice**  
Pro Hac Vice Applicant S. Judy Hirahara's Notice of Compliance with SCR 42

08/07/2017 **Notice of Entry of Order**  
Notice of Entry of Order

08/07/2017 **Joinder to Motion For Partial Summary Judgment**  
Zitting Brothers Construction, Inc.' Joinder to Peel Brimley Lien Claimants' Opposition to APCO's Motion for Summary Judgment

08/07/2017 **Motion to Associate Counsel**  
Motion to Associate Counsel

08/07/2017 **Joinder**  
National Wood Products, Inc.'s Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements and Ex Parte Application Shortening Time; and Memorandum of Points and Authorities in Support Thereof

08/08/2017 **Joinder**  
E & E Fire Protection, LLC's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

08/09/2017 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure

08/09/2017 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure to Join Motion for Partial Summary Judgment

08/10/2017 **Motion to Dismiss** (9:00 AM) (Judicial Officer Denton, Mark R.)  
APCO Construction's Motion to Dismiss or for Summary Judgment on Lien Claimants' NRS Ch 108 Claim for Foreclosure of Mechanic's Lien

Minutes  
07/27/2017 Reset by Court to 08/10/2017  
Result: Denied Without Prejudice

08/10/2017 **Initial Appearance Fee Disclosure**  
Initial Appearance Fee Disclosure (NRS Chapter 19)

08/11/2017 **Pre-Trial Disclosure**  
Pre-Trial Disclosures of Interstate Plumbing & Air Conditioning, LLC Pursuant to Rule 16(a)(3) of the Nevada Rules of Civil Procedure

08/11/2017 **Pre-Trial Disclosure**  
Amended Pre-Trial Disclosures of Interstate Plumbing & Air Conditioning, LLC Pursuant to Rule 16(a)(3) of the Nevada Rules of Civil Procedure

08/11/2017 **Joinder to Motion For Partial Summary Judgment**  
United Subcontractors, Inc. dba Skyline Insulation's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

08/11/2017 **Joinder to Motion For Partial Summary Judgment**  
United Subcontractors, Inc. dba Skyline Insulation's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

08/11/2017 **Pre-Trial Disclosure**  
Plaintiff in Intervention National Wood Products, Inc.'s Pre-Trial Disclosure Pursuant to NRCP 16.1(a)(3)

08/17/2017 **Opposition**  
Camco's Opposition to Lien Claimants' Motion for Partial Summary Judgment

08/21/2017 **Notice**  
Notice of Scheduling Settlement Conference

08/21/2017 **Opposition**  
APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay if Paid Agreements

08/21/2017 **Opposition to Motion**  
APCO Construction's Opposition to Zitting Brothers Construction Inc.'s Partial Motion for Summary Judgment

08/22/2017 **Ex Parte Application**  
Ex Parte Application for Order Shortening Time on Motion to Associate Counsel

08/30/2017 **Order Denying Motion**  
Order Denying APCO Construction's Motion for Partial Summary Judgment re: Lien Foreclosure Claims

08/30/2017 **Notice of Entry of Order**  
Notice of Entry of Order

08/31/2017 **Order Shortening Time**  
Order Shortening Time on Hearing for Motion to Associate Counsel

08/31/2017 **Stipulation and Order**  
Stipulation and Order to Continue September 5, 2017 Hearing on Motions for Partial Summary Judgment

09/01/2017 **Notice of Entry of Stipulation and Order**  
Notice of Entry of Stipulation and Order to Continue September 5, 2017 Hearing on Motions for Partial Summary Judgment

09/05/2017 **Calendar Call** (2:00 PM) (Judicial Officer Denton, Mark R.)  
Minutes  
Result: Vacate

09/05/2017 **Motion to Associate Counsel** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Intervening Plaintiff, National Wood Products, Inc.'s Order Shortening Time on Hearing for Motion to Associate Counsel (John B. Taylor)

Minutes  
Result: Granted

09/06/2017 **Notice of Entry of Order**  
Notice of Entry of Order

09/06/2017 **Order Admitting to Practice**  
Order Admitting to Practice

09/06/2017 **Notice of Entry of Order**  
Notice of Entry of Order Shortening Time on Hearing for Motion to Associate Counsel

09/06/2017 **Notice of Entry of Order**  
Notice of Entry of Order Admitting to Practice

09/07/2017 **Pre-trial Memorandum**  
United Subcontractors, Inc. d/b/a Skyline Insulation's Pre-Trial Statement/Memorandum

09/11/2017 **CANCELED Motion to Associate Counsel** (9:00 AM) (Judicial Officer Denton, Mark R.)  
Vacated - Duplicate Entry  
National Wood Products Inc Motion to Associate Counsel

09/11/2017 **Hearing** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Oral Motion to Dismiss*  
Minutes  
 Result: Granted

09/12/2017 **CANCELED Bench Trial** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Vacated - per Judge*

09/20/2017 **Order Granting Motion**  
*Order Granting Plaintiff's Motion to Dismiss*

09/20/2017 **Notice of Compliance**  
*Pro Hac Vice Applicant John B. Taylor's Notice of Compliance with SCR 42*

09/20/2017 **Stipulation and Order for Dismissal**  
*Stipulation and Order of Dismissal of All Claims Relating to Cardno WRG, Inc.*

09/21/2017 **Settlement Conference** (9:00 AM) ()  
Minutes  
 Result: Not Settled

09/21/2017 **Notice of Entry of Order**  
*Notice of Entry of Order*

09/21/2017 **Notice of Entry of Stipulation & Order for Dismissal**  
*Notice of Entry of Stipulation and Order for Dismissal*

09/28/2017 **Reply to Opposition**  
*Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*

09/29/2017 **Notice of Association of Counsel**  
*Notice of Association of Counsel*

09/29/2017 **Notice of Appearance**  
*Notice of Appearance and Request for Notice*

09/29/2017 **Reply in Support**  
*Zitting Brothers Construction, Inc.'s Reply in Support of Motion for Partial Summary Judgment Against APCO Construction*

10/05/2017 **Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*Zitting Brothers Construction Inc's Motion for Partial Summary Judgement Against APCO Construction*  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements and Ex Parte Application for Order Shortening time*  
 08/24/2017 Reset by Court to 09/05/2017  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*Zitting Brothers Construction, Inc.'s Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*  
 08/24/2017 Reset by Court to 09/05/2017  
 09/05/2017 Reset by Court to 10/05/2017  
 10/16/2017 Reset by Court to 11/16/2017  
 Result: Continued

10/05/2017 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*Steel Structures, Inc., Nevada Prefab Engineering, and Gerdau Reinforcing Steel's Joinder to Peel Brimley Lien Claimants' Opposition to Apco's Motion for Summary Judgment Re: Lien Claims*  
 08/24/2017 Reset by Court to 09/05/2017  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*William A. Leonard, Jr.'s Joinder of Interstate Plumbing and Air Conditioning LLC to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*  
 08/24/2017 Reset by Court to 09/05/2017  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*National Wood Products Inc's Joinder to Peel Brimley Lien Claimants Motion for Partial Summary Judgment Precluding Defenses Based on Pay If Paid Agreements and Ex Parte Application Shortening Time; and Memorandum of Point and Authorities in Support Thereof*  
 08/24/2017 Reset by Court to 09/05/2017  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017  
*E & E Fire Protection, LLC's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements*  
 09/05/2017 Reset by Court to 10/05/2017  
 Result: Continued

10/05/2017 **Joinder** (9:00 AM) (Judicial Officer Denton, Mark R.)  
 10/05/2017, 11/16/2017

*United Subcontractors, Inc. dba Skyline Insulation's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*  
 09/05/2017 Reset by Court to 10/05/2017

Result: Continued

10/05/2017 Joinder (9:00 AM) (Judicial Officer Denton, Mark R.)

10/05/2017, 11/16/2017

*United Subcontractors, Inc. dba Skyline Insulation's Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements*  
 09/05/2017 Reset by Court to 10/05/2017

Result: Continued

10/05/2017 Status Check (9:00 AM) (Judicial Officer Denton, Mark R.)

Status Check Re: Reselling Trial

Result: Matter Heard

10/05/2017 CANCELED Status Check (9:00 AM) (Judicial Officer Denton, Mark R.)

Vacated

Status Check Re: SCR 42 Compliance (John B. Taylor, Esq.)

10/05/2017 All Pending Motions (9:00 AM) (Judicial Officer Denton, Mark R.)

Minutes

Result: Matter Heard

10/13/2017 Order Setting Civil Non-Jury Trial and Calendar Call

Order Setting Civil Non-Jury Trial and Calendar Call

10/26/2017 Motion to Withdraw As Counsel

Motion to Withdraw as Counsel for Buchele, Inc. and for Order Shortening Time

10/26/2017 Order

Order

10/30/2017 Notice of Entry of Order

Notice of Entry of Order

11/06/2017 Supplement to Opposition

Supplemental Briefing in Opposition to Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against Apco Construction, Inc.

11/06/2017 Motion in Limine

Helix Electric of Nevada's Motions in Limine Nos. 1-4 (Against APCO Construction)

11/06/2017 Motion in Limine

Zitting Brothers Construction, Inc.'s Motion in Limine To Limit The Defenses of APCO Construction To The Enforceability of Pay-If-Paid Provision

11/06/2017 Omnibus Motion in Limine

APCO Construction Inc.'s Omnibus Motion in Limine

11/06/2017 Notice of Hearing

Notice of Hearing on Helix Electric of Nevada's Motions in Limine Nos. 1-4 (Against APCO Construction)

11/06/2017 Notice of Hearing

Notice of Hearing on Peel Brimley Lien Claimants' Motions in Limine Nos. 1-6 (Against Camco Pacific Construction, Inc.)

11/06/2017 Motion in Limine

Peel Brimley Lien Claimants' Motions in Limine Nos. 1-6 (Against Camco Pacific Construction, Inc.)

11/06/2017 Motion in Limine

Plaintiff in Intervention, National Wood Products, Inc.'s Motion in Limine to Exclude Evidence Testimony, Documents and Things not Properly Produced by Defendant APCO Construction in Discovery; Declaration of S. Judy Hirahara; and Memorandum of Points and Authorities in Support Thereof

11/07/2017 Notice of Hearing

Notice of Hearing on Plaintiff-In-Intervention, National Wood Products, Inc.'s Motion in Limine to Exclude Evidence, Testimony, Documents and Things Not Properly Produced by Defendant APCO Construction in Discovery; Declaration of S. Judy Hirahara; and Memorandum of Points and Authorities in Support Thereof

11/13/2017 Notice of Deposition

Plaintiff in Intervention National Wood Products, Inc.'s Notice of Deposition of Deposition of Nicholas Cox, Cabinetec's Representative

11/13/2017 Notice of Deposition

Notice of Deposition of Kurt Micek, National Wood Products, Inc.'s Person Most Knowledgeable

11/14/2017 Objection

Apco Construction's Objections to National Wood Products, Inc.'s November 13, 2017 Notices of Depositions

11/14/2017 Notice of Change of Address

Notice of Change of Address

11/14/2017 Opposition to Motion in Limine

National Wood Products, Inc.'s Opposition to APCO Construction's Omnibus Motion in Limine Nos. 3, 6 and 7A

11/14/2017 Opposition

Apco Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4 (Against Apco Construction)

11/14/2017 Opposition

Apco Construction's Opposition to Zitting Brothers Construction, Inc.'s Motion in Limine to Limit the Defenses of Apco Construction to the Enforceability of a Pay-If-Paid Provision

11/14/2017 Opposition

Apco Construction, Inc.'s Opposition to Plaintiff-In-Intervention, National Wood Products, Inc.'s Motion in Limine to Exclude Evidence, Testimony, Documents and things not Properly Produced by Defendant Apco Construction in Discovery

11/14/2017 Opposition to Motion

Zitting Brothers Construction, Inc.'s Opposition to APCO Construction's Omnibus Motion in Limine

11/14/2017 Joinder

Peel Brimley Lien Claimants' Joinder to Oppositions to APCO Construction's Omnibus Motion in Limine

11/14/2017 Opposition to Motion in Limine

Buchele, Inc.'s Opposition to APCO Construction's Omnibus Motion in Limine

11/14/2017 Opposition to Motion in Limine

Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine

11/14/2017 Joinder

Camco's Joinder to Apco's Objections to National Wood Products, Inc.'s Notices of Deposition

11/14/2017 Opposition to Motion in Limine

Camco's Opposition to Lien Claimants' Motions in Limine Nos. 1-6

11/15/2017 Reply in Support

Apco Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine

11/15/2017 Joinder

11/15/2017 **Zitting Brothers Construction, Inc.'s Joinder To Other Lien Claimants' Opposition To APCO Construction's Omnibus Motion In Limine Joinder**  
*Zitting Brothers Construction, Inc.'s Joinder To Other Lien Claimants' Motions In Limine Against APCO Construction*

11/16/2017 **Motion to Withdraw as Counsel (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Eric B. Zimbelman, Esq.'s Motion to Withdraw as Counsel for Buchele, Inc. and for Order Shortening Time*  
 Result: Granted

11/16/2017 **Motion in Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Zitting Brothers Construction, Inc.'s Motion in Limine to Limit the Defenses of Apco Construction to the Enforceability of Pay-If-Paid Provision*  
 Result: Granted

11/16/2017 **Omnibus Motion in Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Apco Construction, Inc.'s Omnibus Motion in Limine*  
 Result: Granted In Part

11/16/2017 **Motion in Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Helix Electric of Nevada's Motions in Limine Nos. 1-4 (Against APCO Construction)*  
 Result: Granted In Part

11/16/2017 **Motion in Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Peel Brimley Lien Claimants' Motions in Limine Nos. 1-6 (Against Camco Pacific Construction, Inc.)*  
 Result: Granted

11/16/2017 **Motion in Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Plaintiff In Intervention, Natohnal Wood Products, Inc's Motion in Limine to Exclude Evidence Testimony, Documents and Things not Properly Produced by Defendant APCO Construction in Discovery; Declaration of S.Judy Hirahara; and Memorandum of Points and Authorities in Support Thereof*  
 Result: Granted

11/16/2017 **Motion In Limine (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Helix Electric of Nevada's Motion in Limine Nos. 1-4 Against APCO Construction*

11/16/2017 **Supplement to Response and Opposition**  
*Zitting Brothers Construction, Inc. s Response To APCO Construction s Supplemental Opposition To Zitting Brothers Construction, Inc. s Motion For Partial Summary Judgment*

11/16/2017 **Reply In Support**  
*Zitting Brothers Construction, Inc s Reply In Support Of Motion In Limine To Limit The Defenses Of APCO Construction ( APCO ) To The Enforceability Of Pay-If-Paid Provision*

11/16/2017 **All Pending Motions (9:00 AM)** (Judicial Officer Denton, Mark R.)  
Parties Present  
Minutes  
 Result: Matter Heard

11/20/2017 **Calendar Call (2:00 PM)** (Judicial Officer Denton, Mark R.)  
Parties Present  
Minutes  
 Result: Vacated and Reset

11/27/2017 **Decision**  
Decision

11/27/2017 **Decision**  
Decision

11/28/2017 **CANCELED Bench Trial (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Vacated - per Judge

11/29/2017 **CANCELED Motion to Compel (9:30 AM)** (Judicial Officer Bulla, Bonnie)  
 Vacated - On In Error  
*Plaintiff's Second Motion to Compel Discovery*

11/30/2017 **Order Setting Civil Non-Jury Trial**  
*Order Setting Civil Non-Jury Trial and Calendar Call*

12/05/2017 **Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Minute Order - No Hearing Held

12/05/2017 **Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Minute Order - No Hearing Held

12/05/2017 **Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Minute Order - No Hearing Held

12/05/2017 **Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Minute Order - No Hearing Held

12/05/2017 **Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
Minutes  
 Result: Minute Order - No Hearing Held

12/05/2017 **CANCELED Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
 Vacated - Duplicate Entry

12/06/2017 **Motion**  
*Apco Construction, Inc.'s Motion to Request Buchele, Inc. Comply with EDCR 7.42 on Order Shortening Time*

12/07/2017 **CANCELED Minute Order (5:03 PM)** (Judicial Officer Denton, Mark R.)  
 Vacated

12/18/2017 **Certificate of Service**  
*Certificate of Service*

12/21/2017 **Motion (9:00 AM)** (Judicial Officer Denton, Mark R.)  
*Apco Construction, Inc.'s Motion to Request Buchele, Inc. Comply with EDCR 7.42 on Order Shortening Time*  
Parties Present  
Minutes  
 Result: Granted

12/28/2017 **Order Granting Motion**  
Order Granting Peel Brimley Lien Claimants' Motions in Limine Nos. 1-6 (Against Camco Pacific Construction, Inc.)

12/28/2017 **Order**  
Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motions in Limine (Against APCO Construction)

12/28/2017 **Order**  
Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion in Limine

12/29/2017 **Notice of Entry of Order**  
Notice of Entry of Order

12/29/2017 **Notice of Entry of Order**  
Notice of Entry of Order

12/29/2017 **Notice of Entry of Order**  
Notice of Entry of Order

12/29/2017 **Findings of Fact, Conclusions of Law and Order**  
Findings of Fact, Conclusion of Law, and Order Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against Apco

01/02/2018 **Calendar Call (2:00 PM) (Judicial Officer Denton, Mark R.)**  
Parties Present  
Minutes  
Result: Trial Date Set

01/02/2018 **Recorders Transcript of Hearing**  
Recorders Transcript of Hearing Re: All Pending Motions, October 5, 2017

01/02/2018 **Recorders Transcript of Hearing**  
Recorder's Transcript of Hearing Re: All Pending Motions, November 16, 2017

01/02/2018 **Order Granting Motion**  
Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

01/02/2018 **Notice of Entry**  
Notice of Entry of Findings of Fact, Conclusion of Law, and Order Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against Apco Construction

01/03/2018 **Notice of Entry of Order**  
Notice of Entry of Order

01/04/2018 **Amended Order**  
Amended Nunc Pro Tunc Order Regarding Apco Construction, Inc.'s Omnibus Motion in Limine - Motion in Limine No. 7

01/04/2018 **Motion**  
Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay if Paid Provisions on an Order Shortening Time

01/04/2018 **Notice of Entry of Order**  
Notice of Entry of Order on Amended Nunc Pro Tunc Order Regarding Apco Construction, Inc.'s Omnibus Motion in Limine - Motion in Limine No. 7

01/08/2018 **Joinder To Motion**  
Camco's Joinder in Apco's Motion for Reconsideration

01/08/2018 **Notice of Attorney Lien**  
Notice of Attorney's Lien

01/08/2018 **Motion**  
Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment and Ex Parte Application for Order Shortening Time and to Exceed Page Limit

01/09/2018 **CANCELED Non-Jury Trial (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Vacated - per Judge

01/09/2018 **Opposition to Motion**  
Plaintiff in Intervention, National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Reconsideration of the Court's Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment to Preclude Defenses of Pay if Paid Provisions

01/09/2018 **Opposition to Motion**  
Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements

01/09/2018 **Order Granting Motion**  
Order Granting Plaintiff In Intervention, National Wood Products, Inc.'s Motion in Limine

01/10/2018 **Reply in Support**  
Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-If-Paid Provisions on an Order Shortening Time

01/10/2018 **Opposition to Motion**  
Zitting Brothers Construction, Inc.'s Opposition to APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction's Partial Motion for Summary Judgment

01/10/2018 **Notice of Entry of Order**  
Notice of Entry of Order Granting Plaintiff In Intervention National Wood Products, Inc.'s Motion in Limine

01/11/2018 **Motion For Reconsideration (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Plaintiff's Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants Partial Motion for Summary Judgment to Preclude Defenses Based on Pay if Paid Provisions on and Order Shortening Time  
Result: Denied

01/11/2018 **Joinder (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Camco's Joinder to APCO's Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimant's Partial Motion for Summary Judgment to Preclude Defenses Based on Pay if Paid Provisions  
Result: Denied

01/11/2018 **Motion For Reconsideration (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Plaintiff's Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment and Ex Parte Application for Order Shortening Time and to Exceed Page Limit  
Result: Denied

01/11/2018 **Motion to Stay**  
Plaintiff's Motion to Stay Pending Entry of Final Judgment Pursuant to NRCP 62(B) and (62(H) on Order Shortening Time

01/11/2018 **Pre-trial Memorandum**  
E&E Fire Protection, LLC's Pretrial Memorandum

01/11/2018 **All Pending Motions (9:00 AM) (Judicial Officer Denton, Mark R.)**  
Parties Present  
Minutes  
Result: Matter Heard



01/12/2018 **Joint Pre-Trial Memorandum**  
*Joint Pre-Trial Memorandum (for APCO Construction, Inc., the Peel Brimley Lien Claimants, and National Wood Products, LLC Only)*

01/16/2018 **Motion to Stay** (9:00 AM) (Judicial Officer Denton, Mark R.)  
**01/16/2018, 01/19/2018**  
*Plaintiff's Motion to Stay Pending Entry of Final Judgment Pursuant to NRCP 62(B) and (62(H) on Order Shortening Time*  
Parties Present  
Minutes  
Result: Continued

01/16/2018 **Order Granting**  
*Order Granting Apco Construction, Inc.'s Motion to Request Buchele, Inc. Comply with EDCR 7.42 on Order Shortening Time*

01/16/2018 **Notice of Entry**  
*Notice of Entry of Order Granting Apco Construction, Inc.'s Motion to Request Buchele, Inc. Comply with EDCR 7.42 on Order Shortening Time*

01/16/2018 **Trial Brief**  
*Apco Construction, Inc.'s Trial Brief*

01/17/2018 **Bench Trial** (10:00 AM) (Judicial Officer Denton, Mark R.)  
**01/17/2018, 01/18/2018, 01/19/2018, 01/23/2018, 01/24/2018, 02/06/2018**  
Parties Present  
Minutes  
Result: Trial Continues

01/17/2018 **Trial Brief**  
*Plaintiff in Intervention National Wood Products, Inc.'s Trial Brief*

01/18/2018 **Opposition**  
*Zitting Brothers Construction, Inc.'s Opposition To Motion To Stay Pending Entry Of Final Judgment Pursuant To NRCP 62(B) and 62(H)*

01/18/2018 **Stipulation and Order**  
*Stipulation and Order Regarding Trial Exhibits Admitted into Evidence*

01/18/2018 **Notice of Entry of Stipulation and Order**  
*Notice of Entry of Stipulation and Order Regarding Trial Exhibits Admitted into Evidence*

01/19/2018 **Order Denying Motion**  
*Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements*

01/19/2018 **Notice of Entry of Order**  
*Notice of Entry of Order*

01/19/2018 **Minute Order** (3:00 AM) (Judicial Officer Williams, Timothy C.)

01/25/2018 **Notice of Change**  
*Notice of Change of Firm Affiliation and Address*

01/25/2018 **Order Denying Motion**  
*Order Denying APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment*

01/29/2018 **Memorandum of Costs and Disbursements**  
*Zitting Brothers Construction, Inc.'s Verified Memorandum of Costs*

01/29/2018 **Memorandum**  
*Memorandum in Support of APCO Construction, Inc.'s Payment of Attorneys' Fees, Costs, and Interest to Zitting Brothers Construction, Inc.*

01/31/2018 **Notice of Entry of Order**  
*Notice of Entry of Order Denying APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment*

01/31/2018 **Recorders Transcript of Hearing**  
*Recorders Transcript of Hearing Re: Bench Trial - Day One, January 17, 2018*

01/31/2018 **Recorders Transcript of Hearing**  
*Recorders Transcript of Hearing Re: Bench Trial - Day Two, January 18, 2018*

01/31/2018 **Recorders Transcript of Hearing**  
*Recorders Transcript of Hearing Re: Bench Trial - Day Three, January 19, 2018*

01/31/2018 **Recorders Transcript of Hearing**  
*Recorders Transcript of Hearing Re: Bench Trial - Day Five, January 24, 2018*

02/06/2018 **Stipulation and Order for Dismissal**  
*Stipulation and Order to Dismiss Third Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against Apco Construction, Inc. with Prejudice*

02/15/2018 **Recorders Transcript of Hearing**  
*Recorders Transcript of Hearing Re: Bench Trial - Day Six, February 6, 2018*

02/16/2018 **Notice of Appeal**  
*Notice of Appeal*

02/16/2018 **Case Appeal Statement**  
*Case Appeal Statement*

02/16/2018 **Opposition**  
*Apco Construction, Inc.'s Opposition to Zitting Brothers, Inc.'s Memorandum in Support of Apco Construction, Inc.'s Payment of Attorneys' Fees, Costs and Interest to Zitting Construction Brothers, Inc.*

02/26/2018 **Reply in Support**  
*Zitting Brothers Construction, Inc.'s Reply in Support of Its Memorandum in Support of APCO Construction, Inc.'s Payment of Attorneys' Fees, Costs, and Interest*

02/28/2018 **Stipulation and Order**  
*Stipulation and Order to Extend Deadline to file Proposed Findings of Fact, Conclusions of Law and Post-Trial Briefs*

02/28/2018 **Finding of Fact and Conclusions of Law**  
*(Proposed) E&E Fire Protections, LLC's Findings of Facts and Conclusions of Law - Proposed*

02/28/2018 **Notice of Entry of Stipulation and Order**  
*Notice of Entry of Stipulation and Order to Extend Deadline to File Proposed Findings of Fact, Conclusions of Law and Post-Trial Briefs*

03/01/2018 **Hearing** (9:00 AM) (Judicial Officer Denton, Mark R.)  
*Hearing Re: ZBCI Attorney's Fees and Costs*  
Parties Present  
Minutes  
01/18/2018 Reset by Court to 03/01/2018  
Result: Under Advisement

03/08/2018 **Trial Brief**  
*Plaintiff in Intervention, National Wood Products, Inc.'s Post Trial Brief*

03/08/2018 **Trial Brief**  
*Apco Construction, Inc.'s Post-Trial Brief*

03/08/2018 **Trial Brief**  
*Camco's Post Trial Brief*

03/23/2018 **Respondent's Answering Brief**  
*Plaintiff in Intervention, National Wood Products, Inc.'s Response to CAMCO Pacific Construction Company, Inc.'s Post-Trial Brief*

03/23/2018 **Respondent's Answering Brief**  
*Plaintiff in Intervention, National Wood Products, Inc.'s Response to APCO Construction, Inc.'s Post-Trial Brief*

03/23/2018 **Response**  
*Helix Electric of Nevada, LLC's Response to APCO Construction's Post-Trial Brief*

03/23/2018 **Response**  
*Peel Brimley Lien Claimants' Response to Camco's Post-Trial Brief*

03/23/2018 **Opposition to Motion**  
*APCO Construction, Inc.'s Opposition to Camco Pacific Construction Company's Post-Trial Brief*

03/27/2018 **Decision**  
*Decision*

04/25/2018 **Findings of Fact, Conclusions of Law and Order**  
*Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusion of Law Re Camco*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusions of Law as to the Claims of Fast Glass, INC.*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction CO., INC.*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction Inc.*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*E&E Fire Protection, LLC'S Findings of Fact and Conclusions of Law*

04/26/2018 **Finding of Fact and Conclusions of Law**  
*Findings of Fact and Conclusions of Law as to the Claims of SW/PPP Compliance Solutions Inc.*

04/26/2018 **Order**  
*Order Re Submission of Proposed Judgments*

05/01/2018 **Memorandum of Costs and Disbursements**  
*E&E Fire Protection's Memorandum of Costs and Disbursements*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements (Heinaman Contract Glazing)*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements (Fast Glass, Inc.)*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements (Cactus Rose Construction, Inc.)*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Memorandum of Costs and Disbursements (SWPPP Compliance Solutions, LLC)*

05/03/2018 **Memorandum of Costs and Disbursements**  
*Apco Construction, Inc.'s Memorandum of Costs and Disbursements (Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, LLC)*

05/04/2018 **Order**  
*Order Regarding Plaintiff's Motion to Stay Pending Entry of Final Judgment Pursuant to NRCP 62(B) and 62(H) on Order Shortening Time*

05/04/2018 **Motion for Attorney Fees**  
*E&E Fire Protection's Motion for Attorney Fees Against Camco Pacific Construction Company*

05/08/2018 **Order**  
*Order Determining Amount of Zitting Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interest*

05/08/2018 **Motion to Retax**  
*Plaintiff in Intervention, National Wood Products, Inc.'s Notice of Motion and Motion to Relax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements Against Plaintiff in Intervention National Wood Products, Inc.*

05/08/2018 **Joinder To Motion**  
*Plaintiff in Intervention National Wood Products, Inc.'s, Joinder to Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements*

05/08/2018 **Motion to Retax**  
*Helix Electric of Nevada, LLC's Motion to Retax Costs re: Defendant APCO Construction's Memorandum of Costs and Disbursements*

05/08/2018 **Joinder To Motion**  
*Helix Electric of Nevada, LLC's Joinder to National Wood's Motion to Retax Costs re: Defendant APCO Construction's Memorandum of Costs and Disbursements*

05/08/2018 **Motion for Attorney Fees and Costs**  
*Apco Construction, Inc.'s Motion for Attorney's Fees and Costs against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.*

05/11/2018 **Notice of Entry of Order**  
*Notice of Entry of Order Determining Amount of Zitting Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interest*

05/16/2018 **Judgment**  
*Judgment in Favor of E&E Fire Protection and Against CAMCO Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland*

05/17/2018 **Notice of Entry of Judgment**  
*Notice of Entry of Judgment in Favor of E&E Fire Protection and Against Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland*

05/21/2018 **Notice of Appearance**  
*Notice of Appearance*

05/23/2018 **Judgment**  
*Judgment in Favor of Zitting Brothers Construction, Inc.*

05/24/2018 **Notice of Entry of Judgment**

Notice of Entry of Judgment in Favor of Zitting Brothers Construction, Inc.  
 05/25/2018 **Stipulation and Order for Dismissal With Prejudice**  
 Stipulation and Order for Dismissal with Prejudice  
 05/25/2018 **Notice of Entry of Stipulation and Order**  
 Notice of Entry of Stipulation and Order  
 05/25/2018 **Motion to Withdraw As Counsel**  
 Motion to Withdraw as Counsel of Record And For Entry of Final Judgment for Fees and Costs  
 05/26/2018 **Supplemental Points and Authorities**  
 APCO Construction, Inc.'s Supplement to its Motion for Attorneys Fees and Costs Against Helix Electric of Nevada, LLC and National Wood Products, Inc.  
 05/29/2018 **Substitution of Attorney**  
 Substitution of Attorneys  
 05/30/2018 **Stipulation and Order**  
 Stipulation and Order to Continue Hearings and Extend Briefing Deadlines  
 05/30/2018 **Notice of Entry of Stipulation and Order**  
 Notice of Entry of Stipulation and Order  
 05/30/2018 **Judgment**  
 Judgment [As to the Claims of SWPPP Compliance Solutions, Inc. Against Camco Construction Co., Inc.]  
 05/30/2018 **Judgment**  
 Judgment [As to the Claims of Fast Glass, Inc. Against Camco Construction Co., Inc.]  
 05/30/2018 **Judgment**  
 Judgment [As to the Claims of Helix Electric of Nevada Against Camco Construction Co., Inc.]  
 05/30/2018 **Judgment**  
 Judgment [As to the Claims of Cactus Rose Construction Co., Inc. Against Camco Construction Co., Inc.]  
 05/30/2018 **Judgment**  
 Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]  
 05/30/2018 **Order Shortening Time**  
 Order Shortening Time for Hearing on Motion to Withdraw  
 05/31/2018 **Judgment**  
 Judgment  
 05/31/2018 **Notice of Entry of Judgment**  
 Notice of Entry of Judgment  
 05/31/2018 **Notice of Entry of Judgment**  
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 05/31/2018 **Notice of Entry of Judgment**  
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 05/31/2018 **Notice of Entry of Judgment**  
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 05/31/2018 **Notice of Entry of Judgment**  
 Notice of Entry of Judgment  
 05/31/2018 **Opposition to Motion**  
 Peel Brimley Lien Claimants' Limited Opposition to Motion of Camco Counsel to Withdraw and for Judgment on Attorney's Lien  
 05/31/2018 **Motion to Enforce**  
 United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment  
 05/31/2018 **Opposition and Countermotion**  
 Fidelity and Deposit Company of Maryland's Opposition to Motion to Withdraw as Counsel of Record and for Entry of Final Judgment For Fees & Costs and Countermotion for Sanctions  
 06/01/2018 **Notice of Entry of Judgment**  
 Notice of Entry of Judgment  
 06/01/2018 **Motion for Attorney Fees and Costs**  
 Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs  
 06/01/2018 **Motion for Attorney Fees and Costs**  
 Heinaman Contract Glazing's Motion for Attorney's Fees, Interest and Costs  
 06/01/2018 **Motion for Attorney Fees and Costs**  
 SWPPP Compliance Solution Inc.'s Motion for Attorney's Fees, Interest and Costs  
 06/01/2018 **Motion for Attorney Fees and Costs**  
 Fast Glass, Inc.'s Motion for Attorney's Fees, Interest and Costs  
 06/01/2018 **Motion for Attorney Fees and Costs**  
 Cactus Rose Construction Co., Inc.'s Motion for Attorney's Fees, Interest and Costs  
 06/04/2018 **Motion for Attorney Fees (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 E&E Fire Protection's Motion for Attorney Fees Against Camco Pacific Construction Company  
 Result: Granted  
 06/04/2018 **Motion to Withdraw as Counsel (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Motion to Withdraw as Counsel of Record And For Entry of Final Judgment for Fees and Costs  
 07/02/2018 Reset by Court to 06/04/2018  
 Result: Granted in Part  
 06/04/2018 **Opposition and Countermotion (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Fidelity and Deposit Company of Maryland's Opposition to Motion to Withdraw as Counsel of Record and for Entry of Final Judgment For Fees & Costs and Countermotion for Sanctions  
 Result: Denied  
 06/04/2018 **Order Granting Motion**  
 Order Granting E&E Fire Protection's Motion for Attorney Fees Against CAMCO Pacific Construction Company, Inc.  
 06/04/2018 **Notice of Entry of Order**  
 Notice of Entry of Order Granting E&E Fire Protection's Motion for Attorney Fees Against Camco Pacific Construction Company  
 06/04/2018 **All Pending Motions (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 07/02/2018 **Motion to Enforce (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment  
 07/02/2018 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs  
 07/02/2018 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Heinaman Contract Glazing's Motion for Attorney's Fees, Interest and Costs  
 07/02/2018 **Motion for Attorney Fees and Costs (9:00 AM)** (Judicial Officer Denton, Mark R.)  
 Swapp Compliance Solution Inc's Motion for Attorney's Fees and Costs

07/02/2018	<b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Fast Glass, Inc.'s Motion for Attorney's Fees, Interest and Costs</i>
07/02/2018	<b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Cactus Rose Construction Co., Inc.'s Motion for Attorney's Fees, Interest and Costs</i>
07/05/2018	<b>CANCELED Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Vacated - On in Error</i> <i>Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs</i>
07/19/2018	<b>Motion to Retax</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Plaintiff in Intervention, National Wood Products, Inc.'s Notice of Motion and Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements Against Plaintiff in Intervention National Wood Products, Inc.</i> <i>06/11/2018 Reset by Court to 07/19/2018</i>
07/19/2018	<b>Motion to Retax</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Helix Electric of Nevada, LLC's Motion to Retax Costs re: Defendant APCO Construction's Memorandum of Costs and Disbursements</i> <i>06/11/2018 Reset by Court to 07/19/2018</i>
07/19/2018	<b>Joinder</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Helix Electric of Nevada, LLC's Joinder to National Wood's Motion to Retax Costs re: Defendant APCO Construction's Memorandum of Costs and Disbursements</i> <i>06/11/2018 Reset by Court to 07/19/2018</i>
07/19/2018	<b>Joinder</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Plaintiff in Intervention, National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements</i> <i>06/11/2018 Reset by Court to 07/19/2018</i>
07/19/2018	<b>Motion for Attorney Fees and Costs</b> (9:00 AM) (Judicial Officer Denton, Mark R.) <i>Apco Construction, Inc.'s Motion for Attorney's Fees and Costs against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</i> <i>06/11/2018 Reset by Court to 07/19/2018</i>

**FINANCIAL INFORMATION**

<b>Consolidated Case Party Newmark Grubb Knight Frank</b>			
	Total Financial Assessment		7.00
	Total Payments and Credits		7.00
	<b>Balance Due as of 06/07/2018</b>		<b>0.00</b>
02/23/2017	Transaction Assessment		3.50
02/23/2017	File Payment	Receipt # 2017-18224-CCCLK	(3.50)
03/30/2017	Transaction Assessment		3.50
03/30/2017	File Payment	Receipt # 2017-30219-CCCLK	(3.50)
<b>Conversion Extended Connection Type No Convert Value @ 08A571228</b>			
	Total Financial Assessment		2,192.00
	Total Payments and Credits		2,192.00
	<b>Balance Due as of 06/07/2018</b>		<b>0.00</b>
09/09/2008	Transaction Assessment		2,192.00
09/09/2008	Conversion Payment	Receipt # 01459792	(148.00)
12/10/2008	Conversion Payment	Receipt # 01477769	(3.00)
01/05/2009	Conversion Payment	Receipt # 01481783	(104.00)
01/12/2009	Conversion Payment	Receipt # 01483373	(104.00)
01/15/2009	Conversion Payment	Receipt # 01484070	(104.00)
01/16/2009	Conversion Payment	Receipt # 01484284	(104.00)
01/16/2009	Conversion Payment	Receipt # 01484354	(104.00)
02/09/2009	Conversion Payment	Receipt # 01488844	(151.00)
02/19/2009	Conversion Payment	Receipt # 01490591	(104.00)
02/19/2009	Conversion Payment	Receipt # 01490592	(3.00)
02/24/2009	Conversion Payment	Receipt # 01491429	(151.00)
02/24/2009	Conversion Payment	Receipt # 01491465	(3.00)
02/26/2009	Conversion Payment	Receipt # 01491996	(3.00)
02/26/2009	Conversion Payment	Receipt # 01491998	(151.00)
03/12/2009	Conversion Payment	Receipt # 01494924	(104.00)
03/16/2009	Conversion Payment	Receipt # 01495513	(104.00)
03/20/2009	Conversion Payment	Receipt # 01496542	(17.00)
03/24/2009	Conversion Payment	Receipt # 01497184	(151.00)
03/24/2009	Conversion Payment	Receipt # 01497249	(3.00)
03/27/2009	Conversion Payment	Receipt # 01498177	(107.00)
03/27/2009	Conversion Payment	Receipt # 01498180	(107.00)
03/27/2009	Conversion Payment	Receipt # 01498181	(107.00)
04/03/2009	Conversion Payment	Receipt # 01498512	(151.00)
04/06/2009	Conversion Payment	Receipt # 01499770	(104.00)
<b>Counter Claimant Camco Pacific Construction Co Inc</b>			
	Total Financial Assessment		423.00
	Total Payments and Credits		423.00
	<b>Balance Due as of 06/07/2018</b>		<b>0.00</b>

# **EXHIBIT C**



Electronically Filed  
Feb 27 2018 01:58 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 **NOAS**  
2 **SPENCER FANE LLP**  
3 John H. Mowbray, Esq. (Bar No. 1140)  
4 John Randall Jefferies, Esq. (Bar No. 3512)  
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12 [MBacon@spencerfane.com](mailto:MBacon@spencerfane.com)

13 -and-

14 **MARQUIS AURBACH COFFING**  
15 Jack Chen Min Juan, Esq. (NV Bar No. 6367)  
16 Micah Echols, Esq. (NV Bar No. 8437)  
17 Cody S. Mounteer, Esq. (NV Bar No. 11220)  
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23 [CMounteer@maclaw.com](mailto:CMounteer@maclaw.com)

24 *Attorneys for Apco Construction, Inc.*

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 **APCO CONSTRUCTION, a Nevada**  
28 corporation,

Plaintiff,

v.

**GEMSTONE DEVELOPMENT WEST,**  
**INC., A Nevada corporation,**

Defendant.

**AND ALL RELATED MATTERS**

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718;  
and A590319

**NOTICE OF APPEAL**

**NOTICE IS HEREBY GIVEN** that APCO Construction, Inc. ("APCO") by and

1 through its undersigned counsel of record, the law firms of SPENCER FANE LLP and  
2 MARQUIS AURBACH COFFING, appeals to the Supreme Court of Nevada from: (1) the  
3 Findings of Fact, Conclusions of Law, and Order Granting Zitting Brothers Construction,  
4 Inc.'s Motion for Partial Summary Judgment Against APCO Construction entered on  
5 January 2, 2018,<sup>1</sup> attached as **Exhibit A**, and (2) the Order Denying APCO Construction,  
6 Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction,  
7 Inc.'s Partial Motion for Summary Judgment entered on January 25, 2018,<sup>2</sup> attached as  
8 **Exhibit B**.

9  
10 DATED: February 16th, 2018.

11 **SPENCER FANE**

12 By: /s/ Mary E. Bacon, Esq.  
13 John H. Mowbray, Esq. (Bar No. 1140)  
14 John Randall Jefferies, Esq. (Bar No.  
15 3512)  
16 Mary E. Bacon, Esq. (Bar No. 12686)  
17 300 S. Fourth Street, Suite 950  
18 Las Vegas, NV 89101  
19 Telephone: (702) 408-3400  
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21 *Attorneys for Apco Construction, Inc.*

22 **MARQUIS AURBACH COFFING**

23 By: /s/ Cody S. Munteer, Esq.  
24 Jack Chen Min Juan, Esq. (Bar No. 6367)  
25 Micah Echols, Esq. (Bar No. 8437)  
26 Cody S. Munteer, Esq. (Bar No. 11220)  
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*Attorneys for Apco Construction, Inc.*

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<sup>1</sup> Notice of Entry of Order was on January 2, 2018.

<sup>2</sup> Notice of Entry of Order was on January 31, 2018.

# **EXHIBIT D**





**Marquis Aurbach Coffing**  
Jack Chen Min Juan, Esq.  
Nevada Bar No. 6367  
Cody S. Mounteer, Esq.  
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jjuan@maclaw.com  
cmounteer@maclaw.com  
*Attorneys for APCO Construction*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

Case No.: A571228  
Dept. No.: 13

*Consolidated with:*

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

Hearing Date: September 5, 2017  
Hearing Time: 9:00 a.m.

AND ALL RELATED MATTERS

**APCO CONSTRUCTION'S OPPOSITION TO ZITTING BROTHERS  
CONSTRUCTION INC.'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

Plaintiff APCO Construction ("APCO"), by and through its counsel of record, Marquis Aurbach Coffing, hereby submits its Opposition to Zitting Brothers Construction Inc.'s ("Zitting") Motion for Partial Summary Judgment against APCO Construction.

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1 This Opposition is made and based on the papers and pleadings on file herein, the  
2 attached Memorandum of Points and Authorities, and any oral argument the Court may choose  
3 to entertain at the time of hearing.

4 Dated this 21<sup>st</sup> day of August, 2017.

5 MARQUIS AURBACH COFFING

6  
7 By   
8 Jack Chen-Min Juan, Esq.  
9 Nevada Bar No. 6367  
10 Cody S. Mounteer, Esq.  
11 Nevada Bar No. 11220  
12 10001 Park Run Drive  
13 Las Vegas, Nevada 89145  
14 Telephone: (702) 382-0711  
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16 jjuan@maclaw.com  
17 cmounteer@maclaw.com  
18 Attorneys for APCO Construction

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Zitting asserts it is entitled to summary judgment on (1) its breach of contract cause of  
22 action, and (2) its NRS 108 claim. It has been a long standing policy of Nevada courts to hear  
23 cases on the merits, and not to grant summary judgment where there are clear issues of  
24 materially disputed facts. Here, Zitting's purported statement of undisputed material facts is not  
25 only riddled with disputed facts, but is also full of nothing more than misdirection and smoke  
26 and mirror tactics in an effort to try to get the Court to grant its Motion prior to trial. As detailed  
27 herein, when the smoke clears the Court will see that denying Zitting's Motion in its entirety and  
28 hearing the case on the merits — weighing the creditability of Zitting's witnesses and document  
— is really the only option.

Furthermore, the Court recently conducted a lengthy hearing on August 10, 2017  
regarding the Lien Claimants' — including Zitting — NRS 108 claims as it relates to the Project,  
whereat the Court determined that "there are some genuine issues that need to be further

developed . . ." and denied APCO's motion to dismiss or for summary judgment without prejudice.<sup>1</sup> Consequently, for this reason alone, the Court should deny Zitting's Motion with regard to its request for summary judgment on Zitting's NRS 108 claims.<sup>2</sup>

## II. APCO'S CONTROVERTED FACTS

Zitting's assertion that "there is no triable issue of APCO's breach of contract . . ." cannot be farther from the truth and is quite disingenuous, as there are numerous material issues of fact that must be presented at trial.<sup>3</sup> The following facts are in direct contravention to those presented by Zitting and, which, require denial of Zitting's Motion:<sup>4</sup>

Zitting's Purported Undisputed Motion in Fact	Court's Own Undisputed Motion in Fact
"APCO would pay Zitting the retention amount for work on a building once the building is "complete." Motion at 3:24-25; (Ex. D to Motion at APC000044595). "The subcontract deemed Zitting's work on a building to be "complete" as soon as "drywall [for the building] is completed." Motion at 3:25-27; ( <i>Id.</i> )	By Zitting's own admission a "building" is considered to be "complete" pursuant to the subcontract as soon as "drywall [for the building] is completed." Thus, Zitting's admission in and of itself defeats its own Motion, as the drywall in the buildings were, in fact, <b>not complete</b> . <b>Exhibit 1</b> at ¶ 3 & <b>Exhibit 2</b> (photographs of the Project taken on 8/20/2008 & 11/20/08). Moreover, Camco's Application for Payment dated 9/30/2008, at line 478 for building #8, only evidences a 77% completion of the drywall in building #8, and at line 632 only an 84% completion of the drywall for building #9. <b>See Exhibit 6</b> at 00250 and 00253. The photos and Application for Payment clearly

<sup>1</sup> See Court's Minute Order from hearing conducted on 08/10/2017 regarding APCO's Motion to Dismiss or for Summary Judgment on Lien Claimants' NRS 108 Claims for Foreclosure of Mechanic's Lien on file with the Court.

<sup>2</sup> Due to the Court having recently denied APCO's motion for summary judgment regarding NRS 108 issues related to the Parties in the instant action without prejudice, and the same having been asserted by Zitting through its instant Motion that was filed prior to the 08/10/2017 hearing, APCO, out of an abundance of caution, only provides a brief summation of the argument and reserves the right to fully brief and present the issue to the Court during trial pursuant to this Court's holding at the 08/10/2017 hearing regarding NRS 108 issues.

<sup>3</sup> Motion at 3:14.

<sup>4</sup> For judicial efficiency, the following list addresses the primary purported undisputed facts to evidence that there are a vast number of triable issues of material fact and, likewise, the absence of any mention of asserted purported facts or contravening evidence is not to be considered as waiver of any provided statement from Zitting, and APCO specifically reserves the right to address such facts at hearing or trial on the issues.

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Zitting's Subcontract Unlawful Material Facts	Continued Material Facts
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>* Continued *</p> <p>evidences that the drywall was not complete at the subject buildings on any of the aforementioned dates, or at a minimum, there is an issue of material fact as to the percent of the completion and Zitting's scope of work when APCO stopped work for nonpayment and Camco assumed responsibility for the Project.</p> <p>Thus, if the "drywall" was not "complete" — which the pictures and pay application evidence it was not — Zitting is not owed its retention pursuant to the language of the subcontract that Zitting specifically cited to in its Motion. This is yet another reason that stands alone to substantiate denying Zitting's Motion in its entirety.</p> <p>Zitting did not invoice APCO after 6/30/2008. <b>Exhibit 1</b> at ¶ 4. Zitting's invoices and payment applications contradict each other and were prepared and executed long after APCO was no longer in control of the Project and Zitting was conducting work under Camco. Specifically, Zitting's invoice dated "6-30-08" evidences the balance due Zitting on 6-30-08 was \$180,231.35, <b>not</b> the \$423,654.85 Zitting claims APCO owes it. <b>Exhibit 1</b> at ¶ 6, and <b>Exhibit 3</b>.</p> <p>Further, all approved change orders for Zitting were paid through August 2008 prior to APCO stopping work at the Project. <b>Exhibit 1</b> at ¶ 5. Zitting's purported pay application (from Zitting's own production in the instant case) for the period to "6/30/2008" also claims the current payment due is \$347,441.67 — contradicting the prior invoice provided to APCO. <b>Exhibit 4</b>. APCO also never received the 6/30/2008 pay application as Zitting alleges. <b>Exhibit 1</b> at ¶ 7. This is evidenced by the pay application being executed on "01/30/09" — a significant time subsequent to APCO stopping work and turning the Project over to Camco. If that were not enough, Zitting is similarly trying to pass off the "11/30/2008" pay application in the same disingenuous fashion as the prior June pay app, which was also not executed until "01/30/09."</p>

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Zitting's Denial That It Was a Minor	Continued
	<p>* Continued *</p> <p>Given the above contradicting dates and values of Zitting's invoices and pay applications, the authenticity and credibility of the amount Zitting claims to be owed is called into question, and clearly creates an issue of disputed material fact defeating Zitting's Motion.</p>
<p>"Zitting began its work under the subcontract around November 19, 2007, and continued its work until approximately December 15, 2008, when Zitting received notice that the Project was shutting down." Motion at 4:3-5; (Ex. A (Zitting Decl.) at ¶ 6).</p>	<p>Zitting admits it conducted work at the Project "until approximately December 15, 2008." Zitting also admits that APCO was off the Project "in August 2008." Motion at 4:15. It is undisputed that Camco took over the Project from APCO in August 2008. Consequently, it is further undisputed that Zitting conducted work under Camco's control of the Project and, likewise, if Zitting was owed anything - which it is not - it would be owed from its time and work conducted under Camco's supervision, not APCO's tenure. Hence, should Zitting deny it is owed any amount from the time Camco controlled the Project, and that everything is owed from APCO, then Zitting's own denial to the assertion raises an issue of material fact between the Parties defeating its Motion.</p> <p>Of particular note, while Zitting clearly conducted work under Camco, it fails to make any mention of the value of its work or claim for retention under the work it conducted under Camco's control of the Project. Thus, due to Zitting's own admission of the scope of time it conducted work at the Project, the issue of the value of work conducted under Camco's tenure is a whole separate set of issues of material fact, that by themselves, defeat Zitting's Motion.</p>
<p>"By the time the Project shut down, Zitting completed its contracted work that cost \$4,033,654.85, including \$423,654.85 in owner-requested change orders that was approved by operation of law." Motion at 4:5-7; (<u>Id.</u> at 11 10.)</p>	<p>The value of Zitting's work is clearly in dispute as address above. Moreover, the application of law toward the approval of purported change orders is a disputed fact, as there is a dispute as to who Zitting provided the change orders to, e.g., APCO, Camco or the Owner, and whether they were ever approved by the Owner.</p>
<p>"The completed work included Zitting's entire scope of work for Buildings 8 and 9 of the Project." Motion at 4:7-8; (<u>Id.</u> at 117.)</p>	<p>This assertion by Zitting is clearly disputed, as when APCO left the Project in August 2008 Zitting had remaining issues with its work to be completed, otherwise Zitting would not have continued to work for Camco.</p>

Zitting's Imposed Unlawful Materiality	Continued Materiality
	<p>* Continued *</p> <p>Moreover, any purported payment Zitting claims to be owed is clearly in dispute as addressed above. It is also in dispute whether Zitting is owed anything according to its own admissions, as the buildings were not "complete" pursuant to the contract language Zitting itself added to the subcontract.</p>
<p>"The drywall was completed in those two buildings, and Zitting had submitted close-out documents for its work, including as-built drawings." Motion at 4:8-10; (<i>Id.</i> at ¶¶ 7-8.)</p>	<p>As clearly evidenced by the photographs attached as <b>Exhibit 2</b> and Camco's Application for Payment dated 9/30/2008 attached as <b>Exhibit 6</b>, this assertion by Zitting is completely fabricated, utterly false, and calls into the question the credibility of Zitting and its other sworn statements. Further, if the drywall were complete, where are the inspection certificates stating the buildings passed their respective inspections evidencing their stage of completion?</p>
<p>"APCO refused to pay Zitting \$750,807.16 of the amount remaining owed for Zitting's work completed prior to APCO's departure from the Project, including \$347,441.67 in unpaid change orders and \$403,365.49 in unpaid retention amount." Motion at 4:11-14; (<i>Id.</i> ¶¶ 12-13, 15; Ex. F at ZBC1002037; Ex. G at ZBC1002032).</p>	<p>As detailed above, due to the inconsistent dates and values in Zitting's invoices and pay applications, it makes the entirety of any value claimed by Zitting questionable and an issue of disputable material fact between the Parties.</p>
<p>"Zitting never received a written notice of termination for cause from APCO." Motion at 4:16-17; (Ex. A at ¶ 16.)</p>	<p>Zitting was served with APCO's notice of stop work and associated correspondence dated August 21, 2008. <b>Exhibit 1</b> at ¶ 9 and <b>Exhibit 5</b>. Further, Zitting admitted it knew APCO was off the Project and had turned control of the Project over to Camco. Motion at 4:15.</p>

### III. LEGAL STANDARDS.

"Summary judgment ... is properly regarded not as a disfavored procedural shortcut, but rather an integral part of the [procedural] rules as a whole, which are designed to 'secure the just, speedy and inexpensive determination of every action.'" Wood v. Safeway, Inc., 121 Nev. 724 121 P.3d 1026 (2005). Summary judgment is appropriate when the pleadings, depositions, answer to interrogatories, admissions, and affidavits that are before the court demonstrates that

1 no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter  
2 of law. Wood, 121 Nev. 724, 121 P.3d 1026.

3 NRCP 56 outlines Nevada's procedural mechanism of summary judgment. NRCP 56. A  
4 genuine issue of material fact exists when "a reasonable jury could return a verdict for the non-  
5 moving party." Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-43 (1993). A  
6 fact is material only if "might affect the outcome of the suit under the governing law." Anderson  
7 v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986).<sup>5</sup> Once the moving party  
8 has met its burden, by demonstrating to the court that there is an absence of evidence to support  
9 the non-moving party's case, the burden shifts to the respondent to set forth specific facts  
10 demonstrating that there is a genuine issue of material fact for trial. Celotex Corp. v. Catrett, 477  
11 U.S. 317, 330, 106 S. Ct. 2548, 2556 (1986).

12 While the pleadings and other proof must be construed in a light most favorable to the  
13 non-moving party, the non-moving party bears the burden to "do more than simply show that  
14 there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment  
15 being entered in the moving party's favor. Wood, 121 Nev. at 732, 121 P.3d at 1031 (quoting  
16 Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). The non-  
17 moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence  
18 of a genuine issue for trial or have summary judgment entered against him. Collins v. Union Fed.  
19 Savings & Loan, 99 Nev. 284, 294, 662 P.2d 610, 618-19 (1983). Accordingly, the non-moving  
20 party's documentation must be admissible evidence; the non-moving party "is not entitled to  
21 build a case on the gossamer threads of whimsy, speculation and conjecture." Id. at 302 (quoting  
22 Hahn v. Sargent 523 F.2d 461, 467 (1st Cir.1975), cert. denied, 425 U.S. 904, 96 S.Ct. 1495  
23 (1976)).

24 ...  
25 ...  
26 <sup>5</sup> See Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 63, 309 P.3d 1017 (2013) ("Federal  
27 cases interpreting a rule of civil procedure that contains similar language to an analogous Nevada rule are  
28 strong persuasive authority in the interpretation of the Nevada rule.").

#### 1 IV. LEGAL ARGUMENT

##### 2 A. **APCO DID NOT BREACH ITS CONTRACT WITH ZITTING.**

3 In order to maintain a breach of contract action in Nevada, a plaintiff must prove (1) the  
4 existence of a valid contract,<sup>6</sup> (2) an unexcused breach by the defendant, and (3) damage as a  
5 result of the breach.” See Brown v. Kinross Gold U.S.A., Inc., 531 F. Supp. 2d 1234, 1240 (D.  
6 Nev. 2008). When interpreting the provision of a contract, courts are required to give effect to  
7 the intent of the parties, determined in the light of the surrounding circumstances when the intent  
8 of the parties is not clear from the contract itself. NGA #2 Liab. Co. v. Rains, 113 Nev. 1151,  
9 1158, 946 P.2d 163, 167 (1997).

10 Here, the evidence clearly demonstrates triable, genuine issues of material fact exist that  
11 must be weighed by this Court at trial with respect to Zitting’s breach of contract claim. While  
12 Zitting cogently outlines the principles of Nevada contract theory relevant to this matter, Zitting  
13 not only predictably characterizes the facts in a manner most favorable to Zitting, but also  
14 completely, and in an uncreditable manner, makes sworn statements to the Court that are  
15 contradicted by the provided evidence attached to APCO’s Opposition. Consequently, Zitting’s  
16 characterization of said facts is questionable at best, misguided, and incomplete in many  
17 instances.

18 Specifically, and as more fully addressed above, (1) Zitting’s invoicing is inconsistent  
19 and questionable at best, (2) the Project was not “complete” pursuant to the Subcontract as  
20 Zitting represents, and (3) significant and material questions of fact remain with regard to the  
21 timeline of events and who Zitting conducted work under, e.g. APCO or Camco.

##### 22 B. **NEVADA LAW DOES ALLOW FOR PAY-IF-PAID PROVISIONS 23 UNDER SOME CIRCUMSTANCES.**

24 Under NRS 624.626, subcontractors may stop work if a higher-tiered contractor fails to  
25 make timely payments, “even if the higher-tiered contractor has not been paid and the agreement

26 <sup>6</sup> A valid contract requires offer, acceptance, meeting of the minds, and consideration. Certified Fire  
27 Protection, Inc. v. Precision Constr., Inc., 128 Nev. Adv. Op. 35, 283 P.3d 250, 255 (2012).



1 contains a provision which requires the higher-tiered contractor to pay the lower-tiered  
2 subcontractor only if or when the higher-tiered contractor is paid." The next statutory  
3 subsection, NRS 624.628, provides additional guidance regarding pay-if-paid provisions. In  
4 particular, it provides that:

5 3. A condition, stipulation or provision in an agreement which:

6 ...  
7 c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim  
8 or right for damages or an extension of time that the lower-tiered subcontractor  
9 may otherwise possess or acquire as a result of delay, acceleration, disruption or  
10 an impact event that is unreasonable under the circumstances, that was not  
11 within the contemplation of the parties at the time the agreement was entered  
12 into, or for which the lower-tiered subcontractor is not responsible, is against  
13 public policy and is void and unenforceable. (Emphasis added).

14 Thus, while both of these provisions provide certain limitations regarding payment of  
15 subcontractors, Nevada's statutory law does not outright prohibit pay-if-paid clauses.

16 Unfortunately, the Supreme Court of Nevada's decisions in Lehrer McGovern Bovis, Inc.  
17 v. Bullock Insulation, Inc., 124 Nev. \_\_\_, 185 P.3d 1055 (June 2008) ("Lehrer I"), and Lehrer  
18 McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032 (Oct. 2008)  
19 ("Lehrer II"), caused significant confusion over this otherwise straight-forward statute.

20 Both Lehrer cases centered on a subcontract between subcontractor Bullock Insulation  
21 ("Bullock") and general contractor Lehrer McGovern Bovis ("Bovis") in which Bullock agreed  
22 to provide firestopping work needed for the construction of the Venetian hotel and casino. See  
23 Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1035. The subcontract  
24 incorporated several terms from the Construction Management Agreement, including a lien  
25 waiver clause and pay-if-paid provision. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107-  
26 08, 197 P.3d at 1036. After much of the work on the project had been completed, an inspection  
27 revealed that Bullock had not properly installed putty pads in accordance with the subcontract.  
28 Lehrer I, 185 P.3d at 1059; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1036. In order to correct the  
mistake, Bullock had to complete significant retrofit work. Lehrer I, 185 P.3d at 1059; Lehrer II,  
124 Nev. at 1108, 197 P.3d at 1036. When the retrofitting was complete Bullock recorded a

1 mechanic's lien for the total value of the retrofit and initiated litigation. Lehrer I, 185 P.3d at  
2 1059; Lehrer II, 124 Nev. at 1108, 197 P.3d at 1036.

3 The case proceeded to trial and a jury found in favor of Bullock. Lehrer I, 185 P.3d at  
4 1057; Lehrer II, 124 Nev. at 1109, 197 P.3d at 1036-37. But, because the jury gave  
5 contradictory responses to special interrogatories regarding the subcontract, Bovis moved for a  
6 new trial. Lehrer I, 185 P.3d at 1060; Lehrer II, 124 Nev. at 1110, 197 P.3d at 1037. In both  
7 cases, "the primary issue [was] whether a new trial [wa]s required when the district court creates  
8 special interrogatories upon issues of fact and the jury's answers to those interrogatories are  
9 inconsistent." Lehrer I, 185 P.3d at 1057; Lehrer II, 124 Nev. at 1105-06, 197 P.3d at 1034. As  
10 secondary issues, Bovis questioned whether the district court erred by holding that the lien  
11 waiver and pay-if-paid provisions which were incorporated into the subcontract were  
12 unenforceable under Nevada law. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1106, 197  
13 P.3d at 1035.

14 In both decisions, the Supreme Court held that remand was necessary because the general  
15 verdict was irreconcilable with the interrogatory answers. Lehrer I, 185 P.3d at 1062; Lehrer II,  
16 124 Nev. at 1113, 197 P.3d at 1039. *The Court's position with regard to pay-if-paid clauses*  
17 *shifted, however, from the first decision to the second.*

18 In the first Lehrer decision, the Supreme Court noted that the parties entered into the  
19 subcontract before the Legislature "proclaimed pay-if-paid provision unenforceable." Lehrer I,  
20 185 P.3d at 1063. In a footnote, the Court further clarified that the Legislature amended NRS  
21 Chapter 624 in 2001 to include "prompt payment provisions . . . which make pay-if-paid  
22 provisions entered into subsequent to the Legislature's amendments unenforceable." Id. at 1063  
23 n.33. Nevertheless, while new statutory language did not apply to parties' subcontract, the  
24 Supreme Court determined that the pay-if-paid provision in the parties' subcontract was  
25 unenforceable because "a pay-if-paid provision limits a subcontractor's ability to be paid for  
26 work already performed," and effectively "impair[ed] the [Bullock's] statutory right to place a  
27 mechanic's lien on the construction project." Id. at 1064.

1 The Supreme Court issued a second, amended opinion a few months later in order to  
2 clarify a portion of its decision that “could be misconstrued as being contrary to this court’s  
3 precedent.” Lehrer II, 124 Nev. at 1105, 197 P.3d at 1034. In the revised opinion, the Supreme  
4 Court again noted that the parties entered into the subcontract before the Legislature “proclaimed  
5 pay-if-paid provisions unenforceable.” Id. at 1117, 197 P.3d at 1042. But, in the related  
6 footnote, the Court altered its explanation of the statutory amendment by stating, “[p]ay-if-paid  
7 provisions entered into subsequent to the Legislature’s amendments are enforceable only in  
8 limited circumstances and are subject to the restrictions laid out in [the statute].” Id. at 1117  
9 n.50, 197 P.3d at 1042 n.50. Then, as in the previous decision, the Court held that the  
10 subcontract between Bullock and Bovis was unenforceable because it effectively impaired  
11 Bullock’s right to place a mechanic’s lien on the project. Id. at 1117, 197 P.3d at 1042.

12 In the aftermath of the Lehrer decisions, scholars and attorneys understandably expressed  
13 confusion.<sup>7</sup> In particular, confusion remains regarding the actual impact of the Supreme Court’s  
14 remarks regarding pay-if-paid clauses because the Court’s decision turned on the issue of  
15 inconsistent verdicts and all other matters were purely dictum.<sup>8</sup> In addition, it remains unclear  
16 how the Court reached its decision, given that NRS 624 does not contain any direct references to  
17 pay-of-paid clauses. And, by the same token, it is unclear why the Supreme Court revised its  
18 dicta regarding pay-if-paid clauses when the supposed purpose of the amended opinion was to  
19 clarify confusion regarding inconsistent verdicts.

20 Thus, to summarize, there remain many questions regarding Nevada’s law on pay-if-paid  
21 provisions. But, under existing law there is no reason to believe that such provisions are *per se*

22  
23 <sup>7</sup> See, e.g., Leon F. Mead II, Nevada Supreme Court Rules Pay-If-Paid Clause Unenforceable, June 2008,  
24 available at: [http://www.swlaw.com/assets/pdf/publications/2008/06/16/NevadaSupremeCourtRules\\_6.08](http://www.swlaw.com/assets/pdf/publications/2008/06/16/NevadaSupremeCourtRules_6.08indd.pdf)  
25 [indd.pdf](https://www.hollandhart.com/16931); Gregory S. Gilbert, Pay-if-Paid Clauses: Still Alive in Nevada, Mar. 2009, available at:  
26 <https://www.hollandhart.com/16931>; Greg Gledhill, Nevada Supreme Court Declares Pay-If-Paid Clauses  
27 Unenforceable – Or Did It?, available at: [http://www.gcila.org/publications/files/pub\\_en\\_97.pdf](http://www.gcila.org/publications/files/pub_en_97.pdf).

28 <sup>8</sup> Argentina Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish, 125 Nev. 527, 536, 216 P.3d  
779, 785 (2009) (“A statement in a case is dictum when it is “unnecessary to a determination of the  
questions involved.” (Quoting Stanley v. Levy & Zentner Co., 60 Nev. 432, 448, 112 P.2d 1047, 1054  
(1941)).

unenforceable because Supreme Court of Nevada simply would not have revised its opinion in Lehrer if its intent was disallow pay-if-paid clauses under all circumstances.<sup>9</sup> Further, the Supreme Court would not have noted the value of case-by-case assessments if pay-if-paid provisions were never permissible.<sup>10</sup> So, for purposes of this litigation, this Court should consider whether the pay-if-paid provisions are appropriate under the unique circumstances of this case and reject any empty attempt by Helix, or the Joining Subcontractors, to impose a *per se* limitation that simply does not exist — especially when no facts or authenticated contracts have been presented to the Court for consideration.

1. With there being clear issues of material fact, there is no way the Court could conduct the proper analysis required to determine the application of the pay-if-paid provisions in the contract.

First, dicta is not controlling law, Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 282, 21 P.3d 16, 22 (2001) and, as such, there is a fair argument that the Lehrer decisions actually have no bearing on the instant matter. Nevertheless, even if this Court is inclined to treat the Supreme Court's reasoning as persuasive,<sup>11</sup> it is best to consider the pay-if-paid clause under the unique facts and circumstances in this case. Indeed, while the Supreme Court has yet to address how to assess the enforceability of a pay-if-paid clause, it has stated that a case-by-case assessment is appropriate where a contract includes a lien waiver provision. Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041 ("The enforceability of each lien waiver clause must be resolved on a case-by-case basis"). And, while the applicable law regarding liens differs from the prompt payment provisions in Chapter 624, the Supreme Court has indicated that its concerns regarding pay-if-

<sup>9</sup> See NRAP 40(c)(2) (providing that rehearing is only warranted "[w]hen it appears that [the Supreme Court] has overlooked or misapprehended a material matter in the record or otherwise, or . . . in such other circumstances as will promote substantial justice."); Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (a rehearing is proper "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached").

<sup>10</sup> Vegas Franchises, Ltd. v. Culinary Workers Union, Local No. 226, 83 Nev. 422, 424, 433 P.2d 263, 265 (1967) (stating the Supreme Court will not perpetuate error); Nevada-California Transp. Co. v. Pub. Serv. Comm'n, 60 Nev. 310, 108 P.2d 850, 852 (1941) (holding that it is the Supreme Court's duty "to correct rather than perpetuate [ ] errors.").

<sup>11</sup> Humphrey's Ex'r v. United States, 295 U.S. 602, 627, 55 S. Ct. 869, 874 (1935) (holding that "dicta [ ] may be followed if sufficiently persuasive" even though it is "not controlling").

1 paid provisions stem from the same public policy concerns regarding secure payment for  
2 contractors. Id. at 1116-18, 197 P.3d at 1041-42.

3 Here, Zitting, while providing its recitation of the purported current state of pay-if-paid  
4 law in Nevada, has failed — in the same way it's joinder to Helix's motion for summary  
5 judgment on the pay-if-paid issues — to provide the Court with any language or analysis toward  
6 granting its Motion. Thus, while Zitting has attached a contract to its Motion, it has failed to  
7 provide the Court with any specific language or analysis as to what language is purported to be  
8 pay-if-paid and how said language is applicable to the cited law and factual relationship between  
9 Zitting and APCO. Further, Zitting's failure to cite to contract language and provide the Court  
10 with any analysis in its Motion cannot be rectified in its Reply, as it would be procedurally  
11 improper to allow facts and analysis to be considered outside the scope of the original motion on  
12 a dispositive motion such as this.

13 Consequently, it is impossible for the Court to conduct ANY analysis on a case-by-case  
14 basis and offer anything more than an advisory opinion, which the Court should refrain from.<sup>12</sup>  
15 Moreover, to further evidence this point, NRS 624.628 provides guidance regarding pay-if-paid  
16 provisions, wherein subsection (c) directs the analysis to determine whether the clause is: (1)  
17 unreasonable under the circumstances, (2) was not within the contemplation of the parties at the  
18 time the agreement was entered into, or (3) for which the lower-tiered subcontractor is not  
19 responsible. Zitting has failed to provide the Court with any analysis of facts for the Court to  
20 consider the above factors in this case.

21 Further, public policy concerns weigh in favor of APCO rather than Zitting. As the  
22 Supreme Court stated in Lehrer, public policy favors secure payment for contractors. The

23  
24 <sup>12</sup> It has long been held that decisions may be rendered only where actual controversies exist. Applebee v.  
25 Applebee, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981). Likewise, "a controversy must be present through  
26 all stages of the proceeding, and even though a case may present a live controversy at its beginning,  
27 subsequent events may render the case moot." Solid v. Eighth Judicial Dist. Court of State in & for Cty.  
28 of Clark, 393 P.3d 666, 670 (Nev. 2017). Moreover, the Nevada Supreme Court has always been reluctant  
to establish laws or give advisory opinions, especially when unnecessary and broad in scope. Natl Union  
Fire Ins. Co. of Pittsburgh, Pa. v. Pratt & Whitney Canada, Inc., 107 Nev. 535, 546, 815 P.2d 601, 608  
(1991).

1 rationale for this public policy is easy to understand, as "contractors are generally in a vulnerable  
2 position because they extend large blocks of credit; invest significant time, labor, and materials  
3 into a project; and have any number of workers vitally depend upon them for eventual payment."  
4 Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041. Here, following Zitting's rationale would do  
5 nothing more than turn APCO into a *de facto* lender to the Owner in the event the project goes  
6 under and there becomes a situation of non-payment or insolvency — which is exactly what  
7 occurred in this case, but while the Project was under the control of Camco, not APCO.

8 Nonetheless, Zitting has failed to provide any evidence for the Court to conduct its  
9 analysis and, therefore, must deny the Motion in its entirety.<sup>13</sup>

10 **C. ZITTING IS NOT ENTITLED TO SUMMARY JUDGMENT UNDER**  
11 **CHAPTER 108 OF THE NRS.<sup>14</sup>**

12 Zitting is not entitled to summary judgment against APCO pursuant to Chapter 108 of the  
13 Nevada Revised Statutes. First, the Court already ruled at the hearing conducted on August 10,  
14 2017 regarding APCO's Motion to Dismiss or for Summary Judgment on Lien Claimants' NRS

15  
16  
17  
18  
19 <sup>13</sup> In the alternative, and when properly before the court, should the Court rule that the subject contract  
20 language is in fact pay-if-paid language against public policy, the Court should still allow evidence of the  
21 contract language to support the intent and interactions between the Parties. Zitting has asserted a borage  
22 of claims sounding in NRS 108, contract law, breach of the covenant of good faith and fair dealing, and  
23 unjust enrichment, to name a few. If the Court, when the pay-if-paid issue is properly before it, were to  
24 consider the contractual language to be a pay-if-paid provision against public policy — which we believe  
25 it will not when the Court conducts the case-by-case analysis — then alternatively the Court must still  
26 allow testimony and evidence at trial with regard to the contract language as it relates to the intentions  
27 and interactions between the Parties. Here, the instant case is set for a bench trial. Likewise, there is no  
28 threat of confusing or contaminating a jury with regard to the ultimate determination by the Court on the  
application of pay-if-paid language, as the Court can rightfully discern the application of the language and  
how it affected the interactions of the Parties.

<sup>14</sup> As further detailed above, due to the Court's finding on 08/10/2017 regarding APCO's Motion to  
Dismiss or for Summary Judgment on Lien Claimants' NRS 108 Claims for Foreclosure of Mechanic's  
Lien, the following is merely a brief summation of APCO's NRS 108 argument, APCO specifically  
incorporates all facts and arguments heard by the Court at the aforementioned hearing, and specially  
reserves its rights to argue and present the issue at trial or when otherwise properly before the Court.

1 108 Claims for Foreclosure of Mechanic's Lien that "there are some genuine issues that need to  
2 be further developed . . ." and denied APCO's NRS 108 motion without prejudice.<sup>15</sup>

3 With that said, it is important to note that the purpose of Nevada's mechanics lien statute  
4 is to provide contractors, laborers, and materialmen rights against an improved property (and, by  
5 extension, the property owner) when the owner fails to ensure that the contractors, laborers, and  
6 materialmen have been paid for their work on the improved property. Chapter 108 is not, and  
7 never was, intended to give a subcontractor rights against a general contractor. Consequently,  
8 any rights Zitting may have had against the Property (and/or the Property owner) pursuant to  
9 Chapter 108 were extinguished at time of the foreclosure sale and when the Nevada Supreme  
10 Court determined that lenders for Project had first priority over any of the parties who provided  
11 work at the Project, including, but not limited to APCO and Zitting.

12 **1. The provisions of Chapter 108's are intended to provide rights and**  
13 **claims against the owner of an improved property – not the general**  
14 **contractor.**

15 The purpose of a mechanics' lien is to ensure that a contractor who performs work to  
16 improve a parcel of real property has a legal avenue to seek compensation *even if the landowner*  
17 *refuses to pay.* Southern Cross Const., In. v. Enclave Court, LLC, 2011 WL 13067632. As "a  
18 mechanic's lien is directed at a specific property,"<sup>16</sup> and represents a claim against said property  
19 and not a general contractor. See Brewer Corp. v. Point Ctr. Fin., Inc., 223 Cal. App. 4th 831,  
20 839, 167 Cal. Rptr. 3d 555, 560 (2014), as modified on denial of reh'g (Feb. 27, 2014). Again,  
21 the purpose of a mechanics' lien is to prevent unjust enrichment of a property owner at the  
22 expense of laborers or material suppliers. Basic Modular Facilities, Inc. v. Ehsanipour, 70 Cal.  
23 App. 4th 1480, 1483, 83 Cal. Rptr. 2d 462, 464 (1999) (citing Abbett Electric Corp. v. California  
24 Fed. Savings & Loan Assn., 230 Cal.App.3d 355, 360, 281 Cal.Rptr. 362 (1991)). The Nevada

25 <sup>15</sup> See Court's Minute Order from hearing conducted on 08/10/2017 regarding APCO's Motion to  
26 Dismiss or for Summary Judgment on Lien Claimants' NRS 108 Claims for Foreclosure of Mechanic's  
Lien on file with the Court.

27 <sup>16</sup> Simmons Self-Storage v. Rib Roof, Inc., 130 Nev. Adv. Op. 57, 331 P.3d 850, 853 (2014), as modified  
28 on denial of reh'g (Nov. 24, 2014).

1 Supreme Court has even gone as far as characterizing a mechanic's lien as a "taking" in that the  
2 property owner is deprived of a significant property interest. J.D. Constr. v. IBEX Int'l Grp., 126  
3 Nev. 366, 376, 240 P.3d 1033, 1040 (2010).

4 While Chapter 108 alludes to a lien claimant's right to maintain a civil action to recover  
5 that debt against the person liable (see NRS 108.238), this provision does not afford a lien-  
6 claimant with the same remedies against a general contractor as they would have again the  
7 property owner. This is the only reasoning that makes sense considering the general contractor  
8 has no legal title to the property that could be subjected to foreclosure pursuant to the mechanics  
9 lien. Similarly, while NRS 108.227(12) affords a party whose claim is not completely satisfied  
10 at a foreclosure sale the right to a "personal judgment for the residue against the party legally  
11 liable for the residue amount," NRS 108.227(12) does not provide the subcontractor with the  
12 rights to attorneys fees, costs, and interests against a general contract.

13 **2. Any perceived claims Zitting believes it has pursuant to Chapter 108**  
14 **were extinguished at the foreclosure sale.**

15 In Nevada, "any mechanics' liens that may arise out of the construction of the intended  
16 improvements are junior and subordinate to the earlier recorded mortgage or deed of trust."  
17 Erickson Const. Co. v. Nevada Nat. Bank, 89 Nev. 350, 353, 513 P.2d 1236, 1238 (1973).  
18 Therefore, when a mechanic's lien is subject to a prior recorded deed of trust and said deed of  
19 trust is foreclosed, the subordinate mechanic's lien is extinguished. Id. Here, while Zitting's filed  
20 a complaint to foreclose on its mechanics' lien under NRS Chapter 108, any and all of Zitting's  
21 claims, rights, and privileges under Chapter 108 were extinguished at the time that the subject  
22 Property was foreclosed upon and when the Nevada Supreme Court determined that the lenders  
23 for the Project had superior liens to the Property.

24 Thus, any protections, rights, or privileges afforded to Zitting by Chapter 108 no longer  
25 apply.

26 ...  
27 ...  
28 ...



1 V. CONCLUSION

2 Accordingly, based on the foregoing, APCO respectfully request that this Court Deny  
3 Zitting's Motion for Summary Judgment in its entirety.

4 Dated this 21<sup>st</sup> day of August, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APCO CONSTRUCTION'S OPPOSITION TO  
ZITTING BROTHERS CONSTRUCTION INC.'S MOTION FOR PARTIAL SUMMARY**

**JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1 day of August, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>17</sup>

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<sup>17</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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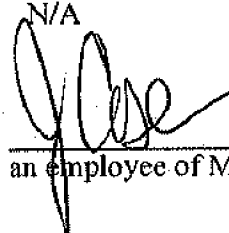
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DEPARTMENT XIII  
NOTICE OF HEARING  
DATE 1/11/18 TIME 9:00 AM  
APPROVED BY AF

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 APCO CONSTRUCTION, a Nevada  
25 corporation,

26 Plaintiff,

27 v.

28 GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

**MOTION FOR RECONSIDERATION OF**  
**COURT'S ORDER GRANTING ZITTING**  
**BROTHERS CONSTRUCTION, INC.'S**  
**PARTIAL MOTION FOR SUMMARY**  
**JUDGMENT**  
**AND EX PARTE APPLICATION FOR**  
**ORDER SHORTENING TIME AND TO**  
**EXCEED PAGE LIMIT**

29 AND ALL RELATED MATTERS

30 APCO Construction, Inc. ("APCO"), by and through its undersigned counsel of record, the  
31 law firms of SPENCER FANE LLP and MARQUIS AURBACH COFFING, submits the

RECEIVED


JAN 05 2018

DISTRICT COURT DEPT#13

1 following Motion for Reconsideration of the Court's Order Granting Zittings Brothers  
2 Construction, Inc.'s ("Zitting") Partial Motion for Summary Judgment. The Motion for  
3 Reconsideration should be granted because: (1) APCO's original opposition confirmed no less  
4 than eight material facts that remain in dispute, (2) Zitting's Reply did not meaningfully address  
5 any of those eight material facts and did not accurately represent APCO's affirmative defenses, (3)  
6 this Court authorized and Zitting agreed to additional discovery, which, as reflected in APCO's  
7 supplemental briefing, resulted in new evidence confirming Zitting misrepresented several key  
8 facts, (4) Zitting's Surreply contained many inaccuracies, none of which account for the material  
9 facts that are in dispute, (5) because inaccurate statements regarding the critical *Padilla v. Big-D*  
10 *Construction* case were made at the hearing on this matter, and (6) when the Nevada Supreme  
11 Court has analyzed pay-if-paid provisions without a mechanic's lien waiver, it has found such  
12 provisions to be valid conditions precedent to a general contractor's obligation to pay a  
13 subcontractor. These new facts and considerations require reconsideration and a denial of Zitting's  
14 Motion. APCO is entitled to a trial on the merits.

15 DATED: January 5<sup>th</sup>, 2018.

16 SPENCER FANE LLP

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**ORDER SHORTENING TIME AND TO EXCEED PAGE LIMIT**

The Court having reviewed APCO Construction, Inc.'s Motion for Reconsideration on Order Shortening Time and good cause appearing:

It is HEREBY ORDERED that the time may be shortened and the Motion shall be set for hearing on the 11<sup>th</sup> day of January, 2018, at 9:00 a.m., in Department XIII.


It is also HEREBY ORDERED that APCO can exceed the 30 page limit set forth in EDCR 2.20. APCO's Motion may be 39 pages (including its table of contents and table of authorities).

Dated this 8<sup>th</sup> day of January, 2018.

  
for District Court Judge   
MARK R. DENTON

Submitted by:

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- *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990)

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- NRCP 15(b)
- Fed.R.Civ.P. 16(e)
- NRCP 30(b)
- NRS 624
- NRS 624.624
- NRS 624.626

#### **I. PROCEDURAL HISTORY**

This case's procedural history is fraught with complexity. Zitting filed its complaint against APCO asserting lien claims, breach of contract, and other causes of action more than eight

1 years ago on April 30, 2009.<sup>1</sup> On June 10, 2009, APCO filed its answer to Zitting's complaint.<sup>2</sup>  
2 APCO asserted 20 affirmative defenses in its answer, including Zitting's failure to meet conditions  
3 precedent to payment.<sup>3</sup> All related actions were consolidated and APCO took the lead in pursuing  
4 its claims against Gemstone.<sup>4</sup> This enured to Zitting's benefit because it was simply able to join a  
5 significant amount of APCO's briefing.<sup>5</sup> The bank who financed the Project filed a motion for  
6 summary judgment as to lien priority, and the court granted the bank's motion.<sup>6</sup> This had the  
7 practical effect of granting all residual funds from the Project to the bank. APCO spearheaded *and*  
8 financed the related appeal, which Zitting joined. The appeal was denied in September 2015, and a  
9 special master was appointed in June 2016 to oversee discovery.<sup>7</sup> Just last year, in August 2016,  
10 the special master scheduled discovery and requested that parties submit answers to a  
11 questionnaire about their respective claims.<sup>8</sup> Just last year, Zitting filed its *initial* list of witnesses  
12 and production of documents on September 1, 2016, and responded to the special master  
13 questionnaire on September 23, 2016.<sup>9</sup> On September 29, 2016, the special master held a hearing  
14 to confirm which parties were asserting claims in the instant matter since it was not clear.<sup>10</sup> So  
15 discovery with respect to Zitting's claims against APCO and APCO's defenses really only started  
16 in September 2016.

17  
18 <sup>1</sup> Exhibit 1, Zitting Complaint against APCO.

19 <sup>2</sup> Exhibit 2, APCO's Answer to Zitting's Complaint.

20 <sup>3</sup> Exhibit 2, APCO's Answer to Zitting's Complaint.

21 <sup>4</sup> See Docket Entries at: 2010-03-08 (APCO files Objections to Lenders' Standard Interrogatories to the Lien  
22 Claimants); 2010-03-09 (Zitting's Joins APCO's Objections to Lenders' Standard Interrogatories to the Lien  
23 Claimants); 2010-05-28 (Zitting files a Motion for Summary Judgment Against Gemstone and for Certification of  
24 Final Judgment Pursuant to NRC 54(B)); 2010-07-01 (APCO files an Opposition to Bank's Motion for Partial  
25 Summary Judgment as to Priority of Liens); 2010-07-21 (Zitting files a Joinder to APCO's Opposition to Bank's  
26 Motion for Partial Summary Judgment as to Priority of Liens); 2010-07-22 (Zitting files a Joinder to APCO's Motion  
for Partial Summary Judgment as to Priority of Liens); 2011-11-04 (APCO files a Motion for Issuance of Order on  
Priority on Order Shortening Time); 2011-11-08 (Zitting files a Joinder to APCO's Motion for Issuance of Order on  
Priority on Order Shortening Time); 2011-12-12 (APCO files Opposition to Motion for Reconsideration or Re-  
Hearing); 2012-01-04 (Zitting files a Joinder to APCO's Opposition to Motion for Reconsideration or Re-Hearing);  
2012-03-15 (APCO files an Opposition to SFC's Supplement to Summary Judgment as to Priority of Liens); 2012-03-  
20 (Zitting files a Joinder to APCO's Opposition to SFC's Supplement to Summary Judgment as to Priority of Liens);  
2012-06-25 (APCO files Appeal); (Zitting joined the appeal and APCO carries the cost of the Appeal); 2015-09-24  
(Unfortunately, the Appeal is Denied).

27 <sup>5</sup> *Id.*

28 <sup>6</sup> Exhibit 3, Notice of Entry of Order Granting the Bank's Motion for Summary Judgment.

<sup>7</sup> See Exhibit 4, Order Appointing Special Master.

<sup>8</sup> Exhibit 5, Special Master Order.

<sup>9</sup> See Docket.

<sup>10</sup> See Special Master Hearing Order.

1 And while APCO noticed Zitting's deposition on March 29, 2017,<sup>11</sup> APCO and Zitting  
2 agreed to continue the deposition to permit the parties to spend less on attorneys fees, and more  
3 time engaging in settlement discussions.<sup>12</sup> Three months later, APCO noticed Zitting's deposition  
4 for June 28, 2017.<sup>13</sup> Once again, APCO and Zitting agreed to continue the deposition.<sup>14</sup> Then on  
5 July 31, 2017, Zitting filed its partial motion for summary judgment against APCO. APCO  
6 opposed the motion, and Zitting replied in September 2017.

7 The Court had a calendar call on September 5, 2017.<sup>15</sup> Tellingly, the parties noted  
8 confusion regarding which parties were still in the case at the calendar call.<sup>16</sup> And parties that did  
9 not timely comply with their mandatory pre-trial disclosure requirements were given more time to  
10 comply.<sup>17</sup> The remaining parties participated in a settlement conference on September 29, 2017,  
11 which was not fruitful. The Court was scheduled to hear Zitting's Partial Motion for Summary  
12 Judgment on October 5, 2017. At that hearing, APCO's counsel requested that discovery be  
13 extended 45 days to allow the parties to complete depositions that had been intentionally delayed  
14 per the mutual agreement of the parties.<sup>18</sup> This Court authorized and the parties agreed to reopen  
15 deposition discovery until the end of the month.<sup>19</sup> Tellingly, while the parties came prepared to  
16 argue the dispositive motions before the Court, the Court delayed hearing the pending dispositive  
17 motions until after the depositions would be completed.<sup>20</sup>

18 On October 27, 2017, *less than 2 months ago*, Zitting's NRCP 30(b)(6) witness was  
19 deposed for the first time.<sup>21</sup> That Court authorized deposition occurred after all initial briefing in  
20

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21 <sup>11</sup> See Exhibit 17, March 29, 2017 Notice of Deposition to Zitting.

22 <sup>12</sup> See Exhibit 6, Declaration of Cody Munteer, Esq.

23 <sup>13</sup> See Exhibit 26, June 28, 2017 Notice of Deposition to Zitting.

24 <sup>14</sup> Exhibit 6, Declaration of Cody Munteer, Esq.

25 <sup>15</sup> See docket.

26 <sup>16</sup> See Exhibit 27, Minutes from September 5, 2017 Hearing ("Mr. Johnson noted confusion with the number of parties  
in the case, knowing what's going on procedurally, and the Motion for Summary Judgment and Joinders being moved  
to October.").

27 <sup>17</sup> See Minutes from September 5, 2017 Hearing ("COURT ORDERED deadline for parties who have not complied  
with the Special Master's questionnaire and have not filed their pretrial disclosures SET Friday, September 8, 2017 by  
5:00 pm and FURTHER ORDERED hearing SET Monday, September 11, 2017 on Plt's Oral Motion to Dismiss  
Pursuant to Rule 7(b).").

28 <sup>18</sup> See Minutes from October 5, 2017 Hearing.

<sup>19</sup> See Exhibit 30, Order from October 5, 2017 Hearing.

<sup>20</sup> See Exhibit 28, Transcript from October 5, 2017 hearing at 10-12.

<sup>21</sup> See Exhibit 7, Deposition of S. Zitting.

1 Zitting's original Motion.

2 Zitting's deposition revealed a significant amount of new information that contradicted  
3 Zitting evidence submitted with its motion. As such, APCO filed a supplemental brief on  
4 November 6, 2017 to make the Court aware of this new critical evidence.<sup>22</sup> Critically, Zitting did  
5 not timely object to the supplement because of the order allowing new discovery. The next day,  
6 APCO supplemented its interrogatory responses to Zitting to account for the defenses APCO was  
7 able to clarify through Zitting's deposition.<sup>23</sup> Then on November 15, 2017, Zitting filed  
8 supplemental briefing to respond to APCO's supplemental brief.<sup>24</sup> The Court held an abbreviated  
9 hearing on the matter on November 16, 2017, and then the Court issued a minute order granting  
10 Zitting's Partial Motion for Summary Judgment on November 27, 2017 despite the documented  
11 factual disputes.<sup>25</sup>

12 Following issuance of the Court's minute order, APCO followed up with counsel for  
13 Zitting to acquire a draft order on Zitting's motion for Partial Summary Judgment. Zitting finally  
14 provided the order on Wednesday, December 20, 2017. Subsequent to receiving the draft order, it  
15 became apparent that the Parties fundamentally disagreed with regard to the interpretation of the  
16 language in the Decision. Specifically, the minute order states that "the Court still has before it  
17 the question of whether there are genuine issues going to breach of the contract related to Zitting's  
18 performance of the same."<sup>26</sup> Yet, then provides that "the subject Motion is GRANTED in its  
19 entirety."<sup>27</sup> As the Court's Decision reads, it is APCO's position that the Court specifically found  
20 "genuine issues" of material fact remain as to Zitting's "performance" and breach of the contract  
21 that must be presented at trial. Conversely, Zitting asserts that regardless of the above finding, the  
22 Court granted the Motion in its entirety and, as such, Zitting is effectively removed from the case  
23 and there are no issues of fact to present at trial. As evidenced by the instant Motion, it is clear  
24 that the Court, in fact, "still has before it the question of whether there are genuine issues going to

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25  
26 <sup>22</sup> See Docket at November 6, 2017.

27 <sup>23</sup> See Exhibit 8, APCO's Supplemental Responses to Zitting's First Set of Interrogatories.

28 <sup>24</sup> See Docket at November 15, 2017.

<sup>25</sup> See Exhibit 9, Court's November 27, 2017 Minute Order.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

1 breach of the contract related to Zitting's performance of the same."<sup>28</sup> Lastly, Zitting's order is  
2 materially flawed, as it contains language from Helix's motion for partial summary judgment that  
3 was not presented by Zitting in any form or fashion.

## 4 II. LEGAL STANDARD.

5 The Nevada Supreme Court has held that "[u]nless and until an order is appealed,  
6 the district court retains jurisdiction to reconsider the matter."<sup>29</sup> In Clark County, a motion for  
7 rehearing must be filed within 10 days after service of written notice of entry of the order  
8 following the original hearing.<sup>30</sup> Rehearings are appropriate only when "substantially different  
9 evidence is subsequently introduced or the decision is clearly erroneous."<sup>31</sup> This Court has  
10 discretion on the question of rehearing. *See Harvey's Wagon Wheel, Inc. v. MacSween*,<sup>32</sup>  
11 (reconsideration of previously denied motion for summary judgment approved as the "judge  
12 was more familiar with the case by the time the second motion was heard, and he was persuaded  
13 by the rationale of the newly cited authority").

14 In addition, a motion for reconsideration of summary judgment may be brought under  
15 both *NRCP 59(e)* and *NRCP 60(b)*. Rehearings are justified when a party seeks to reargue a point  
16 of law and provides a convincing legal basis for doing so. *See Gibbs v. Giles*,<sup>33</sup> (holding trial court  
17 did not err in granting motion for rehearing in order to permit a party to reargue the law).

18 APCO submits that the unique procedural history of this case requires this Court to  
19 entertain this Motion for Reconsideration because new facts became available with the late  
20 discovery ordered by the Court and after briefing on Zitting's Motion was completed. In light of  
21 those new facts, the application of law mandates reconsideration and the denial of Zitting's  
22 Motion. There are triable issues of fact that entitle APCO to a trial on the merits. Reconsideration  
23 now will save the parties significant time and money associated with an appeal.

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24  
25 <sup>28</sup> *Id.*

26 <sup>29</sup> *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980); accord *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d  
537, 543 (2003).

27 <sup>30</sup> *See EDCR 2.24(b)*.

28 <sup>31</sup> *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
489 (1997)

<sup>32</sup> 96 Nev. 215, 217-18, 606 P.2d 1095, 1097 (1980)

<sup>33</sup> 96 Nev. 243, 244-45, 607 P.2d 118, 119 (1980)

1           **III.    APCO's original Opposition raised Material Issues of Fact.**

2               **1.   APCO disputed eight material facts necessary for summary judgment, and**  
3               **Zitting did not adequately address these material facts.**

4           Zitting's Motion for Summary Judgment asked for summary judgment on its breach of  
5 contract and NRS 108 claims.<sup>34</sup> APCO cited admissible evidence directly disputing no less than  
6 eight material facts in its opposition to Zitting's Motion. Those facts included: whether the drywall  
7 was complete as required per the subcontract for a release of retention, whether Zitting invoiced  
8 APCO after 06/30/08 (and whether Zitting's purported pay applications were inconsistent or ever  
9 received by APCO), whether Zitting segregated the amount of work it allegedly completed under  
10 APCO or Camco, the value of Zitting's completed work (and whether or not it was ever  
11 submitted, approved, or rejected by APCO or Camco), whether Zitting ever submitted close-out  
12 documents, and whether Zitting received a notice of stop work.<sup>35</sup> APCO's rebuttal of these points  
13 was based on the affidavits of Mary Jo Allen, APCO's PMK. Resolving these critical facts was  
14 necessary for the Court to decide in Zitting's favor. As explained below, Zitting's Reply did not  
15 adequately address these material facts. As such, this Court was necessarily weighing the  
16 credibility of the evidence and witnesses. "[A] district court cannot make findings concerning the  
17 credibility of witnesses or weight of evidence in order to resolve a motion for summary  
18 judgment."<sup>36</sup> "[T]he trial judge may not in granting summary judgment pass upon the credibility  
19 or weight of the opposing affidavits or evidence. That function is reserved for the trial. On a  
20 summary judgment motion the court is obligated to accept as true all evidence favorable to the  
21 party against whom the motion is made."<sup>37</sup>

22           Thus, any award of a breach of contract action would be error since Zitting's Reply did not  
23 sufficiently address the eight genuine issues of material fact that APCO presented and the Court  
24 was mandated to accept as true.

25           **IV.    Zitting's subsequent deposition testimony undermined the basis of Zitting's**  
26           **Motion.**

27           <sup>34</sup> Exhibit 10, Zitting's Motion for Summary Judgment.

28           <sup>35</sup> See APCO's Opposition at 3-6, on file herein.

<sup>36</sup> *Borgerson v. Scanlon*, 117 Nev. 216, 220, 19 P.3d 236, 238 (2001)

<sup>37</sup> *Hidden Wells Ranch v. Strip Realty*, 83 Nev. 143, 145, 425 P.2d 599, 601 (1967)



1 Notably, Zitting's original Reply did not even address four of APCO's disputed facts.<sup>38</sup>  
2 And of the four disputed material facts that Zitting did address, all were later directly contradicted  
3 by its own deposition testimony. More specifically, Zitting addressed: (1) Camco's responsibility  
4 for the amount owed to Zitting, (2) Zitting's failure to submit the pay applications at issue, (3) the  
5 fact that the change orders at issue were never approved, and (4) completion of the drywall for  
6 Buildings 8 and 9, which was the milestone per the retention payment schedule.<sup>39</sup>

7 Addressing amounts allegedly owed by Camco, Zitting's Reply claimed it "never had any  
8 relationship" with Camco on the Project.<sup>40</sup> Zitting's deposition confirmed differently. Zitting  
9 admitted that it performed change order work under Camco's direction:

10 Q. (By Mr. Jefferies) Okay. So it's my understanding that, by at  
11 least September 6 of '08, Zitting was doing work for CAMCO.  
Would you agree with that?

12 A. It appears that way, yes.

13 Q. Okay. And tell me what the first page of Exhibit 4 is.

14 A. It appears to be an accounting of hours spent by Zitting  
employees doing change order work that was signed off by  
somebody with CAMCO, it looks like.<sup>41</sup>

15 ...  
Would you agree, sir, that what you're showing is Change Order  
Request 22, 23, 24, and 25 in Exhibit 3 were actually performed  
for CAMCO?

16 A. Performed under their direction.<sup>42</sup>

17 Zitting's Reply also alleges that APCO does not have any admissible proof that Zitting  
18 worked on the Project after APCO's departure.<sup>43</sup> As represented above, Zitting's own accounting  
19 records and its deposition testimony confirm this statement is not accurate.<sup>44</sup> Further, Zitting's  
20 Reply also represented that the amount it sought from this Court was only for approved and  
21 completed work on Buildings 8 and 9, completed *before* APCO left the Project.<sup>45</sup> As quoted  
22 above, Zitting admitted its employees were on the Project doing change order work for Camco in  
23

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24 <sup>38</sup> Zitting's Reply failed to address four disputed facts listed in APCO's opposition: whether Zitting's pay applications  
25 were inconsistent, the value of Zitting's completed work, whether its work was ever approved by APCO or Camco,  
and whether Zitting submitted close out documents.

26 <sup>39</sup> See Zitting's Reply at 11-13, on file herein.

27 <sup>40</sup> Reply at 11:19-23, on file herein.

28 <sup>41</sup> Zitting Deposition at 42.

<sup>42</sup> Zitting Deposition at 54.

<sup>43</sup> Reply at 11:23-24.

<sup>44</sup> See Zitting deposition at 42, 54.

<sup>45</sup> Reply at 11:25-27.

1 September 2009, which was *after* APCO left the Project in August 2008. Those amounts are  
2 incorrectly included in the amount Zitting was just awarded by the Court's granting of Zitting's  
3 Motion.<sup>46</sup>

4 Among other things, Zitting was not entitled to retention until the drywall was completed  
5 in Buildings 8 and 9. APCO's original opposition included photos of the Project in August and  
6 November of 2008 confirming the drywall was not complete.<sup>47</sup> And then, in Zitting's Court  
7 authorized deposition, Zitting not only acknowledged the drywall requirement but confirmed it  
8 had no evidence to satisfy that precondition of the retention payment schedule:

9 Q Okay. So as you sit here today, are you able to testify as to  
10 whether the drywall was complete prior to the time you stopped  
working for APCO on the project?

11 A. I can testify that the first layer, if you will, of drywall was  
12 complete and the only thing that was, to my knowledge, not  
13 complete was some soffits in the kitchens, that there was an issue  
14 with the assembly -- the fire assembly or something. So they  
15 were not done, but they had done flooring under them and they had  
even done some cabinets in some areas. And so there was some  
open soffits that they were still waiting for clarification or design  
on. And to my knowledge, that's the only thing that was not  
complete, in terms of drywall.<sup>48</sup>

16 ...  
17 Q. Okay. Go to page 27 [of Exhibit 15]. And, again, I've got a head  
start on you. Mine's highlighted, but if you look under Buildings 8  
and 9, you'll see references to drywall.

18 A. Okay.

19 Q. And there's some percentages complete for the various floors in  
those two buildings, 8 and 9.

20 A. Okay.

21 Q. Continuing on to the next page, 28, under Building 9, it says,  
22 **Corridors, drywall has not started.** First floor corridor lid framing  
is 70 percent complete and then the drywall itself is shown as  
23 being 55 to 70 percent complete depending upon the building.  
My question to you is: Sitting here as the corporate designee for  
24 Zitting, do you have any facts documents, or information to rebut  
these purported percentages of completion for the drywall on  
Buildings 8 and 9?

25 A. I don't.<sup>49</sup>

26  
27 <sup>46</sup> See Zitting Deposition at 42 and 54.

28 <sup>47</sup> See Exhibit 11, Photos of Buildings 8 and 9 confirming the drywall was not completed.

<sup>48</sup> Zitting Brother's NRCP 30(b)(6) deposition at 27:21-29:2.

<sup>49</sup> Zitting Deposition at 93:6-94:15.

1 Lastly, Zitting's Reply argues APCO never denied certain change orders in its Reply.  
2 Zitting's deposition confirmed the opposite:

3 Q. Okay. Isn't it true, sir, that as the corporate representative for  
4 Zitting today, that APCO – whether you agreed or not, APCO did  
5 reject some change order requests. Correct?

6 A. It appears that they had.<sup>50</sup>

7 APCO's original Opposition and newly authorized evidence raised genuine issues of  
8 material fact. As such, the only way the Court could have decided in Zitting's favor was to weigh  
9 the credibility of the evidence at this summary judgment stage.

10 **A. All of APCO's Opposition exhibits were admissible.**

11 Zitting Reply takes issue with Ms. Allen's affidavit arguing that most of it is  
12 inadmissible.<sup>51</sup> Zitting's objections are unfounded. As Zitting admitted, Ms. Allen acted as  
13 APCO's NRCP 30(b)(6) designee. Accordingly, Ms. Allen had not only the opportunity but the  
14 mandate to inform herself to speak for APCO.<sup>52</sup>

15 Zitting insisted Ms. Allen needed to have personal knowledge for her affidavit.<sup>53</sup> Zitting is  
16 wrong. "The testimony of a Rule 30(b)(6) designee represents the knowledge of the corporation,  
17 not of the individual deponents." *Great Am. Ins. Co. of New York v. Vegas Const. Co.*,<sup>54</sup>  
18 (providing an exhaustive overview of the principles behind a Rule 30(b)(6) deposition). As such, a  
19 Rule 30(b)(6) designee need not have any personal knowledge of the designated subject matter.<sup>55</sup>  
20 This is true even of affidavits submitted by 30(b)(6) designees.<sup>56</sup>

21 <sup>50</sup> Zitting Deposition at 51:22-52:1.

22 <sup>51</sup> See Zitting's Reply at 3-5.

23 <sup>52</sup> See *NRCP 30(b)(6)* (Under NRCP 30(b)(6), an organization must designate individuals to "testify as to matters  
24 known or reasonably available to the organization.")

25 <sup>53</sup> Zitting's Reply at 3-5.

26 <sup>54</sup> 251 F.R.D. 534, 538 (D. Nev. 2008) (internal quotation marks omitted).

27 <sup>55</sup> *Id.*

28 <sup>56</sup> *Sunbelt Worksite Mktg. v. Metro. Life Ins. Co.*, No. 8:09-cv-02188-EAK-MAP, 2011 U.S. Dist. LEXIS 87387, at  
\*5-6 (M.D. Fla. Aug. 8, 2011) (collecting cases) and citing *Atlantic Marine Florida, LLC v. Evanston Ins. Co.*, 2010  
U.S. Dist. LEXIS 56067, 2010 WL 1930977 (M.D. Fla. May 13, 2010) (where the Court refused to strike an  
authorized corporate representative's filed affidavit in support of the corporation's motion for summary judgment on  
the grounds of insufficient *personal* knowledge, because the court found that it is not necessary for a corporate  
representative designated as a Rule 30(b)(6) witness to have direct, personal knowledge of each and every fact  
discussed in an affidavit or deposition because a Rule 30(b)(6) representative or designee can be inferred to have  
knowledge on the behalf of the corporation as the corporation is meant to appear vicariously through them); *ABN*  
*Amro Mortgage Group, Inc. v. Maximum Mortgage, Inc., et al*, No. 1:04cv492, 2006 U.S. Dist. LEXIS 64455, 2006  
WL 2598034, \*7 (N.D.Ind. Sept.8, 2006) (finding a corporate representative's knowledge is inferred regarding the

To prepare, a 30(b)(6) designee must, if necessary, "use documents, past employees, and other resources."<sup>57</sup> Here, Ms. Allen, as APCO's NRCP 30(b)(6) designee, educated herself in the topics of her affidavit, spoke with APCO employees, utilized documents at APCO's disposal, and reviewed APCO's NRS 51.135 business records in making her affidavit.<sup>58</sup> *Cf. Theriault v. State*,<sup>59</sup> (NRS 51.135 provides that business records are admissible in any form). The chart below summarizes why each of Zitting's alleged objections to Ms. Allen's NRCP 30(b)(6) affidavit is without merit.

<u>Exhibit in APCO's Opposition</u>	<u>Zitting's Objection to Exhibit</u>	<u>Why it is admissible.</u>
Exhibit 1, paragraph 3 of Ms. Allen declaration ("Attached as Exhibit 2 to the Opposition are photographs of buildings 8 and 9 at the Project, and that were taken by APCO during its ordinary course of business.")	Ms. Allen cannot authenticate the photos.	As APCO's NRCP 30(b)(6) designee, Ms. Allen familiarized herself with APCO's business records to make her affidavit. She was able to confirm that the photos in question were taken by Brian Benson in the regular course of business. <sup>60</sup>
Exhibit 1, paragraph 5. "All of Zitting's approved change orders that APCO was responsible for were paid through August 2008."	Ms. Allen's statement calls for a legal conclusion, and a lack of foundation.	Ms. Allen's statement was never intended to make a legal conclusion. Her factual statement was simply that APCO paid for the approved change orders it received through August 2008. Further, there is foundation for Ms. Allen's statement. Ms. Allen is APCO's accounts payable clerk. She is responsible for processing and paying approved change orders. <sup>61</sup>
Exhibit 1 at paragraph 7. "APCO was never	Foundation and alleged contrary	Ms. Allen's statement is admissible. As stated above, Ms. Allen confirmed that APCO was

matters she attests to and does not have to a demonstrated "personal knowledge"); *Hijec v. Menlo Logistics, Inc.*, No. 3:07-cv-0530-G, 2008 U.S. Dist. LEXIS 12886, 2008 WL 465274, \*4 (N.D.Tex. Feb.21, 2008) (acknowledging a corporate representative does not have to have direct personal knowledge of each and every fact discussed in affidavit or deposition but can be subjective beliefs and opinions of the corporation).

<sup>57</sup> *Bridell v. Saint Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D. Mass. 2005).

<sup>58</sup> Exhibit 13, Declaration of Mary Jo Allen.

<sup>59</sup> 92 Nev. 185, 547 P.2d 668, 1976 Nev. LEXIS 561 (Nev. 1976), overruled, *Alford v. State*, 111 Nev. 1409, 906 P.2d 714, 111 Nev. Adv. Rep. 163, 1995 Nev. LEXIS 161 (Nev. 1995), overruled as stated in *Hill v. State*, 114 Nev. 169, 953 P.2d 1077, 114 Nev. Adv. Rep. 21, 1998 Nev. LEXIS 24 (Nev. 1998), overruled in part, *Bigpond v. State*, 128 Nev. 108, 270 P.3d 1244, 128 Nev. Adv. Rep. 10, 2012 Nev. LEXIS 27 (Nev. 2012).

<sup>60</sup> Exhibit 13, Declaration of Mary Jo Allen.

<sup>61</sup> See Declaration of Mary Jo Allen.

1 provided or received 2 Zitting's alleged pay 3 applications dated 4 06/30/2008 and 5 11/30/2008 that are 6 collectively attached to 7 the Opposition as 8 Exhibit 4."	deposition statement.	never provided or received the referenced pay applications by reviewing Project documents, and speaking with APCO employees.
9 Exhibit 1 at paragraph 7. 10 "Zitting still had a 11 remaining part of its 12 scope of work to 13 complete at the Project 14 when APCO stopped 15 work and turned the 16 Project over to Camco in 17 August 2008."	No personal knowledge of the Project's construction	Ms. Allen made herself aware of these facts as the NRCP 30(b)(6) representative through speaking with Joe Pelan and Brian Benson and reviewing the Project's records, including the drywallers' billings. <sup>62</sup> And as cited above, 30(b)(6) designees do not need to have personal knowledge for their declarations on behalf of the company.
18 Exhibit 2 (photographs 19 of buildings 8 and 9).	Authentication and admissibility, APCO didn't have personal knowledge of the construction since it left the project before November 2008 when the photos were taken	As APCO's NRCP 30(b)(6) designee, Ms. Allen familiarized herself with APCO's business records to make her affidavit. She was able to confirm that the photos in question were taken by Brian Benson in the regular course of business. <sup>63</sup>
22 Exhibit 6 (Camco's 23 Payment Application)	Authentication and admissibility, no evidence documents are what they claim to be, no declaration to authenticate, no personal knowledge.	These were documents produced by Camco, a party to this litigation. "[D]ocuments provided to a party during discovery by an opposing party are presumed to be authentic, shifting the burden to the producing party to demonstrate that the evidence that they produced was not authentic." <i>Lorraine v. Markel Am. Ins. Co.</i> , <sup>64</sup> citing <i>Indianapolis Minority Contractors Ass'n.</i> , <sup>65</sup> ("The act of production is an implicit authentication of documents produced...").

24 Notably, the Court's minute entry granting Zitting's Motion did not address these  
25 evidentiary issues, and the Court's order found Zitting's evidentiary objections to be "moot."<sup>66</sup>

26 **B. Zitting was on notice of APCO's defenses eight years ago when APCO filed its**  
27 **answer.**

28 <sup>62</sup> Exhibit 13, Declaration of Mary Jo Allen.

<sup>63</sup> Exhibit 13, Declaration of Mary Jo Allen.

<sup>64</sup> 241 F.R.D. 534, 552 (D. Md. 2007)

<sup>65</sup> 1998 U.S. Dist. LEXIS 23349, 1998 WL 1988826, at \*6

<sup>66</sup> Exhibit 29, Findings of Fact and Conclusions of Law and Order Granting Zitting's Motion.

1 Zitting's Reply claims that APCO is precluded from opposing Zitting's Motion on any  
2 other basis than a pay-if-paid defense because APCO only listed a pay-if-paid defense in its  
3 interrogatories.<sup>67</sup> Zitting argued that "[d]uring the seven years of litigation, APCO has consistently  
4 refused payment based solely on the void pay-if-paid provision."<sup>68</sup> This is completely inaccurate,  
5 and quite frankly, lacks candor to this Court. APCO filed its answer to Zitting's complaint on June  
6 1, 2009 and specifically asserted 20 affirmative defenses, including the following.<sup>69</sup>

7 **SECOND AFFIRMATIVE DEFENSE**

8 The claims of the ZBCI have been waived as a result of their  
9 respective acts and conduct.

10 **THIRD AFFIRMATIVE DEFENSE**

11 No monies are due ZBCI at this time as APCO has not received  
12 payment for ZBCI's work from Gemstone, the developer of the  
13 Manhattan West Project.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 At the time and place under the circumstances alleged by the ZBCI,  
16 ZBCI had full and complete knowledge and information with regard  
17 to the conditions and circumstances then and there existing, and  
18 through ZBCI's own knowledge, conduct, acts and omissions,  
19 assumed the risk attendant to any condition there or then present.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 The damages alleged by ZBCI were caused by and arose out of the  
22 risk which ZBCI had knowledge and which ZBCI assumed.

23 **TENTH AFFIRMATIVE DEFENSE**

24 APCO's obligations to ZBCI have been satisfied or excused.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 The claim for breach of contract is barred as a result of  
27 ZBCI's failure to satisfy conditions precedent.

28 **SIXTEENTH AFFIRMATIVE DEFENSE**

Any obligations or responsibilities of APCO under the subcontract  
with ZBCI, if any, have been replaced, terminated, voided, canceled  
or otherwise released by the ratification entered into between ZBCI,  
Gemstone and CAMCO and APCO no longer bears any liability  
thereunder.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

ZBCI has failed to comply with the requirements of NRS 624.<sup>70</sup>

So Zitting has been on notice of APCO's defenses since June 1, 2009.

<sup>67</sup> Reply at 5.

<sup>68</sup> Reply at 7:16-17.

<sup>69</sup> Exhibit 2, APCO's Answer to Zitting's Complaint.

1 APCO also testified about its multiple affirmative defenses at its NRCP 30(b)(6)  
2 deposition. Zitting's July 17, 2017 NRCP 30(b)(6) deposition notice specifically requested that  
3 APCO's designee be prepared to testify to "[a]ll facts related to your defenses against ZBCI's  
4 claims as alleged in ZBCI's complaint in this case."<sup>71</sup> On July 19, 2017, APCO's NRCP 30(b)(6)  
5 designee, Mary Jo Allen, testified about several of APCO's defenses, including that Zitting did not  
6 meet the conditions of the subcontract's retention payment schedule:

7 Q. What is your understanding of a retention?

8 A. Retention is not due on the project until the project has totally  
9 been completed in its entirety. Not only that, the owner has to accept  
10 all the work that was completed, the as-builts must be in, the closeouts  
11 must be in, and retention is then paid from the owner and will then be  
12 paid to the subcontractors. **It is not due until all those five things [in  
13 paragraph 3.8 of the subcontract] have been completed.**

14 Q. Understood. And during the course of Zitting's work on the  
15 project, Zitting received progress payments; correct?

16 A. Yes, sir.

17 Q. In the course of making those progress payments, there were  
18 retention that were withheld, is that correct?

19 A. Yes, sir.

20 Q. You testified that Zitting would not get those retentions  
21 until certain conditions were met, correct?

22 A. Yes, sir.

23 Q. Until those conditions were met, was there an actual  
24 retention check being issued to anyone and held by anyone?

25 A. No.

26 Q. The retention would only be withheld if the  
27 work had already been approved and completed by Zitting, correct?

28 A. When completed by all subcontractors.

Q. Let me clarify. When you say completed by all  
subcontractors, that's only when the retention is being paid to  
Zitting, correct?

A. The project had to be completed in its entirety. This contract  
was bound to the prime contract. They signed this – in they are  
bound to the same terms of the prime contract. The prime contract  
states that no retention will be released until the entire project is  
completed in its entirety.

Q. Understood. And I'm not talking about when the actual  
retention is released to Zitting, I'm talking about the process before  
that, basically when the progress payments are authorized to be  
issued, where someone retains ten percent of that progress .

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<sup>70</sup> Exhibit 2, APCO's Answer to Zitting's Complaint.

<sup>71</sup> See Exhibit 12, Zitting Notice of Deposition to APCO at 4:10-12.

1 A. The bank.

2 Q. Right, the bank retains ten percent of that amount. Before the  
3 bank can even retain that amount and once the payment was  
4 authorized, that work for which the proper assignment was assigned  
5 to, that had to be approved and completed by Zitting, correct?

6 A. The work that was paid for, the 90 percent that was paid, yes.  
7 The percentage of work that was completed was approved by the  
8 owner. The owner approved the percentage. They were the one that  
9 told us what to pay the subcontractors.

10 Q. Right, so the only reason why the retention was not paid  
11 right away was that there were other conditions that may depend  
12 on other subcontractors, correct?

13 A. The job in its entirety.

14 Q. Earlier you testified that the retention would be released once  
15 the entire project is complete; is that correct?

16 A. Yes.<sup>72</sup>

17 More specifically to the retention payment schedule, APCO's NRCP 30(b)(6) designee  
18 also discussed Subcontract Section 3.8 and the preconditions to APCO's obligation to pay  
19 Zitting's retention:

20 Q. Right, can I direct you to section 3.8?

21 A. Um-hum. The building was not completed. Neither building.  
22 Neither 8 nor 9 was completed.

23 Q. Understood. But I haven't asked any questions with respect  
24 to buildings 8 or 9, so there were no questions pending.

25 A. Sorry.

26 Q. I'm not trying to be rude, I'm trying to make the record  
27 clear. I know you're very excited to answer questions.

28 Q. Can I have you read the first sentence up until Part A,  
where it starts with "the ten percent withheld" into the record,  
please.

A. "The ten percent withheld retention shall be payable to  
subcontractor upon and only upon the occurrence of the  
following events, each of which is a condition precedent to the  
subcontractor's right to receive final payment hereunder and  
payment of such retainer."

Q. Earlier you talked about how the release of retention is  
conditioned precedent to the completion. Can I have you read  
the handwritten part at the end of section 3.8 into the record.

A. F, down here, sir?

Q. Yes.

A. "Building is considered complete as soon as the drywall is  
complete."<sup>73</sup>

...

<sup>72</sup> Exhibit 16, Allen Deposition, Volume II at 117:1-119:17.

<sup>73</sup> Allen Deposition, Volume II at 119:18-120:19.



1 Q. Right. After the payment application number 11 shown on  
2 APCO 106218, did APCO receive any payment applications from  
the subs?

3 A. No.

4 Q. Not that you're aware of?

5 A. No, sir.

6 Q. As far as you know, the owner has withheld a retention  
amount from all the subs, not just Zitting, for their work on the  
project?

7 A. Yes, sir.

8 Q. Has APCO ever received any payment of the retention  
amount?

9 A. No, sir.

10 Q. And just for clarity of the record then, that means APCO has  
not paid any retention amount to anyone; is that correct?

11 A. That is correct.<sup>74</sup>

12 So it is clear that Zitting knew of APCO's position that the retention preconditions were not met.  
13 Zitting's Reply and Court's ruling did not account for these references to defenses unrelated to the  
14 pay-if-paid issue.

15 APCO's 30(b)(6) designee also testified that not all of Zitting's change order work was  
16 approved by the owner, a condition precedent to Zitting being paid under the change order  
17 payment schedule:

18 Q. Do you know whether Zitting has completed work for the  
project for the total amount of \$4,033,654.85. Does that number  
ring a bell to you?

19 A. Not without papers in front of me.

20 Q. And the numbers shown on Exhibit Allen 75, this reflects both  
the contract work and the change order work, correct?

21 A. The change order work that was submitted to the owner.

22 Q. And approved, correct?

23 A. Not all of it was approved, sir.

24 Q. Is there a reason for APCO to submit a bill containing change  
orders that was not approved by the owner?

25 A. The owner was the one that would determine what was  
approved. If Zitting gave us a change order billing, we would give it  
to the owner. The owner would say yes or no.

26 Q. Understood. So during the application review process that's  
when, as far as you know, the owner would approve or disapprove of the  
change order work being billed, correct?

27 A. Correct.<sup>75</sup>

28 In addition to its answer and 30(b)(6) deposition testimony, APCO also supplemented its  
responses to Zitting's interrogatories within two weeks of taking Zitting's NRCP 30(b)(6)

<sup>74</sup> Allen Deposition, Volume II at 140, lines 8-24.

<sup>75</sup> Allen Volume II at 146:1-23.

1 deposition.<sup>76</sup> The Court's failure to consider these various sources and articulations of APCO's  
2 affirmative defenses is the equivalent of case terminating sanctions. Such a sanction would only be  
3 appropriate after the Court conducted a full sanctions analysis under *Young v. Johnny Ribeiro*  
4 *Bldg.*<sup>77</sup> including evaluating: the degree of wilfulness of the offending party; the extent to which  
5 the non-offending party would be prejudiced by a lesser sanction; the severity of the sanction of  
6 ssal relative to the severity of the alleged discovery abuse; whether any evidence has been  
7 irreparably lost; the feasibility and fairness of alternatives; the policy favoring adjudication on the  
8 merits; whether sanctions unfairly operate to penalize a party for the misconduct of its attorney, and  
9 the need to deter parties and future litigants from similar abuses.<sup>78</sup> No such analysis was  
10 performed in this case.

11 Further, "Nevada is a notice-pleading jurisdiction and pleading should be liberally  
12 construed to allow issues that are fairly noticed to the adverse party."<sup>79</sup> "However, even if not  
13 properly pleaded, an affirmative defense may be tried by consent or when fairness warrants  
14 consideration of the affirmative defense and the plaintiff will not be prejudiced by the district  
15 court's consideration of it."<sup>80</sup> And, NRCP 15(b) permits liberal amendment of pleadings during  
16 trial "when the presentation of the merits of the action will be subserved thereby and the objecting  
17 party fails to satisfy the court that the admission of such evidence would prejudice him in  
18 maintaining his action or defense upon the merits."<sup>81</sup> "And omission of an affirmative defense is  
19 not fatal as long as it is included in the pretrial order."<sup>82</sup>

21 <sup>76</sup> Exhibit 8, APCO's Supplement to Zitting's First Set of Interrogatories.

22 <sup>77</sup> 106 Nev. 88, 93, 787 P.2d 777, 780 (1990).<sup>77</sup>

23 <sup>78</sup> *Id.*

24 <sup>79</sup> *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 353-54 (1997) (quoting *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 801 (1990)).

25 <sup>80</sup> *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 558 (2007) (affirming the district court's decision to  
26 consider affirmative defenses that were not included in defendants' answers because plaintiff had notice of them). See  
27 also *Schettler v. RailRon Capital Corp.*, 128 Nev. 209, 221 n.7 (2012) (finding that fair notice of an affirmative  
defense was given on reconsideration and thus allowing the affirmative defense to be considered); *Williams v.*  
*Cottonwood Cove Dev. Co.*, 96 Nev. 857, 619 P.2d 1219, (1980) (affirming the decision of the district court because  
the buyers were given reasonable notice and opportunity to respond to the newly asserted affirmative defense in  
limited partnership's motion for summary judgment).

28 <sup>81</sup> NRCP 15(b).

<sup>82</sup> *Pulliam v. Tallapoosa Cty. Jail*, 185 F.3d 1182, 1185 (11th Cir. 1999) citing *Hargett v. Valley Fed. Sav. Bank*, 60  
F.3d 754, 763 (11th Cir.1995) (failure to assert affirmative defense in answer curable by insertion of defense in  
pretrial order); *Id.* citing Fed.R.Civ.P. 16(e) (pretrial order "shall control the subsequent course of action").

1 In *Colony Ins. Co. v. Kuehn*,<sup>83</sup> the defendants were completely uncooperative in that they  
2 did not file initial disclosures and failed to respond to plaintiff's discovery. Plaintiffs filed a  
3 motion to compel to force defendants to respond and file its initial disclosures. Shockingly, the  
4 defendants did not even bother to oppose the motion. The motion was granted and the defendants  
5 were given several weeks to comply. Plaintiffs filed another motion to compel months later  
6 because the defendants did a poor job of answering the discovery. Plaintiffs requested that  
7 defendants be ordered to completely answer its discovery and asked for sanctions including  
8 striking the defendant's affirmative defenses, and disallowing certain witnesses from testifying on  
9 a particular issue. The court ordered that certain witnesses would be prohibited from testifying  
10 since defendants still had not made its initial disclosures. The court did not strike the defendants'  
11 affirmative defenses.

12 Plaintiffs were forced to file a third motion to compel because defendants would still not  
13 completely answer their discovery. The court reviewed defendant's interrogatories and found that  
14 one interrogatory went to the veracity of one of the defendant's defenses regarding mental state.  
15 The court found that interrogatory answer to be vague and lacked factual detail. *Instead of*  
16 *granting the request to preclude this critical defense, the court granted the defendants an*  
17 *opportunity to supplement this interrogatory.* Shockingly, defendants resubmitted the exact same  
18 response to the critical interrogatory they were given an opportunity to supplement. Only then did  
19 the court preclude the defendants from providing any testimony on this defense. The court  
20 recognized that, "Precluding all evidence on this issue is tantamount to striking defendant's  
21 affirmative defense of Mr. Kuehn's mental state."<sup>84</sup> *Colony Ins.* exemplifies the rare circumstances  
22 in which a court may or should consider striking affirmative defenses.

23 Through the granting of Zitting's Motion on the current record, the Court is issuing a case  
24 terminating sanction by not considering APCO's affirmative defenses because of its interrogatory  
25 responses. The Nevada Supreme Court had the opportunity to consider the severity of case  
26

27  
28 <sup>83</sup> No. 2:10-cv-01943-KJD-GWF, 2011 U.S. Dist. LEXIS 155198, at \*6 (D. Nev. Dec. 22, 2011)

<sup>84</sup> *Id.* at 7.

1 terminating sanctions in *McDonald v. Shamrock Invs., LLC*.<sup>85</sup> In *McDonald*, the court struck the  
2 defendant's answer after the defendant: did not make initial disclosures regarding witnesses or  
3 exhibits, did not sign the plaintiff's joint case conference report (nor file his own), did not appear  
4 for his deposition, did not oppose plaintiff's motion to strike his answer, and did not appear at the  
5 plaintiff's hearing on its motion to strike his answer. Defendant then failed to object to the  
6 discovery commissioner's report and recommendations recommending that the district court strike  
7 his answer. Plaintiff then filed a motion for default judgment, and defendant opposed this motion.  
8 The district court entered a default judgment, and the defendant appealed, alleging the district  
9 court abused its discretion in striking its answer without analyzing the *Young*<sup>86</sup> factors, and  
10 because it struck his answer without holding an evidentiary hearing. The Nevada Supreme Court  
11 reversed and remanded finding that the district court abused its discretion in striking defendant's  
12 answer without first conducting a *Young* analysis, and because it did not hold an evidentiary  
13 hearing to consider the *Young* factors. The same is true in this case, the Court has not conducted a  
14 *Young* analysis, nor has it held an evidentiary hearing.

15       APCO put its multiple affirmative defenses in its answer, it testified about them at its  
16 PMK deposition, and supplemented its interrogatory answers regarding defenses within two weeks  
17 of deposing Zitting. There were no motions to compel or meet and confers discussing the issue.  
18 Precluding APCO from pursuing any other defense besides pay-if-paid is an unnecessarily harsh  
19 sanction. This is especially true in light of the procedural history of this case, in which the parties  
20 agreed, and the Court allowed, critical party depositions after discovery was closed and dispositive  
21 motions were fully briefed. Further, Zitting has not suffered any identifiable harm because Zitting  
22 always knew it did not meet the conditions precedent to payment for either change orders or  
23 retention and deposed APCO on its affirmative defenses. See *Advanced Fiber Techs. Tr. v. J&L*  
24 *Fiber Servs., Inc.*,<sup>87</sup> ("[Plaintiff] has suffered no identifiable harm by [defendant's] failure to  
25 supplement its interrogatories as to this defense. Thus, [plaintiff's] request to strike Section III of  
26 Defendant's Memorandum is denied").

27  
28 <sup>85</sup> No. 54852, 2011 Nev. Unpub. LEXIS 1628, at \*1 (Sep. 29, 2011)

<sup>86</sup> *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 787 P.2d 777 (1990)

1 In this particular case, the record is replete with APCO's various defenses and it is error to  
2 preclude APCO from presenting those various defenses at trial.

3 **C. Zitting's Reply did not dispute and thus conceded APCO's NRS 108 arguments.**

4 APCO provided substantial law in its opposition to Zitting's Motion regarding its  
5 opposition to Zitting's NRS 108 claims.<sup>88</sup> Those facts and arguments included that APCO never  
6 owned the Project, and that there was no property to foreclose upon because the Court awarded it  
7 to the bank. Zitting did not address a single NRS 108 argument in its Reply. As explained below,  
8 the Court granting Zitting's NRS 108 claims was error since Zitting conceded these arguments,  
9 and because APCO cannot be responsible for a deficiency judgment.

10 In *Nev. Nat'l Bank v. Snyder*,<sup>89</sup> the owner of a project optioned a piece of land to develop.  
11 He engaged engineers to begin developing the land. The next year, the owner received a loan from  
12 a bank, and purchased the land. The owner did not pay the engineers, and the engineers recorded  
13 mechanic's liens against the property. The owner declared bankruptcy and owed the engineers  
14 money for work done for the project. The bank foreclosed upon the property and the district court  
15 granted the mechanic's liens priority over the bank, and found the bank to be personally liable to  
16 the engineer for the deficiency of their mechanic's liens, stating that the architect and the engineer  
17 were entitled to a "personal judgment for the residue against the Bank."<sup>90</sup> The bank appealed,  
18 arguing that "the remedy to enforce a mechanic's lien is to force a sale of the property" and that "it  
19 is not liable for any deficiency if the monies from the sale do not cover the amount of the  
20 [architect's and engineer's] liens."<sup>91</sup> The Nevada Supreme Court agreed, finding, "[i]t is unjust to  
21 hold the Bank personally liable for a deficiency when it was not a party to the C&S/Benny  
22 contract, and because the bank is not the personally liable for the debt under NRS 108.238."<sup>92</sup>

23 The architect and engineer argued that the bank was unjustly enriched because the work  
24 they performed increased the value of the property. The Court found that  
25

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26 <sup>87</sup> No. 1:07-CV-1191 (LEK/DRH), 2010 U.S. Dist. LEXIS 45938, at \*39 (N.D.N.Y. May 11, 2010)

27 <sup>88</sup> See APCO's Opposition at 14-16, on file herein.

28 <sup>89</sup> 108 Nev. 151, 157, 826 P.2d 560, 563 (1992)

<sup>90</sup> *Id.* at 157.

<sup>91</sup> *Id.* at 157.

<sup>92</sup> *Id.* at 157.

1 [w]hile there was a benefit conferred on the Bank, it does not rise to unjust enrichment.”<sup>93</sup>

2 The same logic applies here. While APCO received some minor benefit by being able to  
3 perform its work in conjunction with Zitting, APCO certainly was not unjustly enriched and  
4 APCO is not personally liable for the Owner’s debt. APCO was not paid for June, July or August  
5 2008.<sup>94</sup> APCO lost approximately \$8,000,000 on this job and APCO did not acquire the  
6 property.<sup>95</sup> Instead, it endured a \$900,000 legal battle on behalf of itself and its subcontractors to  
7 endeavor to get priority and paid from the owner.<sup>96</sup> Unfortunately, after the project shut down,  
8 everyone lost, most of all APCO.

9 **V. The additional discovery authorized by this Court should be considered.**

10 Zitting challenged the timing of APCO’s supplemental brief. But it was Zitting’s conduct  
11 that necessitated APCO’s additional briefing. Further, Zitting was the party that originally  
12 requested its NRCP 30(b)(6) deposition be continued and agreed to the late discovery by APCO,  
13 as APCO in good faith acquiesced to Zitting request in an attempt to save the Parties and this  
14 Court valuable time and costs.

15 The hearing on Zitting’s Motion was scheduled for October 5, 2017.<sup>97</sup> At that hearing,  
16 APCO informed the Court that depositions were not finished, and requested 45 days to complete  
17 the depositions.<sup>98</sup> The Court granted the parties until October 30, 2017 to take these depositions.<sup>99</sup>

18 “The timing of discovery as established in the Rules may be modified through the parties’  
19 stipulation or by court or discovery commissioner order in most instances.”<sup>100</sup> In this case, Zitting  
20 and APCO (and other parties) agreed to postpone depositions.<sup>101</sup> The subsequent depositions are  
21  
22

23  
24 <sup>93</sup> *Id.* at 157.

25 <sup>94</sup> Exhibit 13, Declaration of Mary Jo Allen.

26 <sup>95</sup> See Exhibit 13, Declaration of Mary Jo Allen.

27 <sup>96</sup> See Exhibit 13, Declaration of Mary Jo Allen.

28 <sup>97</sup> See Docket at October 5, 2017 entry.

<sup>98</sup> Exhibit 14, October 5, 2017 Minutes. (“Further, [APCO’s counsel] requested discovery be extended another 45 days to finish up depositions, which resulted in colloquy as to deferring the hearing on the motions pending depositions... COURT FURTHER ORDERED that the deadline for taking depositions is October 30, 2017.”)

<sup>99</sup> *Id.*

<sup>100</sup> 1-13 Nevada Civil Practice Manual § 13.03 (2017).

<sup>101</sup> See Affidavit of Cody Munteer, Esq.

1 new evidence.<sup>102</sup> As such, both Zitting and this Court knew that additional information could  
2 come to light, and would need to be considered. This is obvious from the Court's ruling to defer a  
3 hearing on the pending dispositive motions. By agreeing to, and allowing its deposition, Zitting  
4 waived any argument it had to dispute the timeliness of APCO submitting any new deposition  
5 testimony to the Court.<sup>103</sup>

6 Further, APCO's supplemental briefing was necessitated by Zitting's conduct. When the  
7 Court reopened deposition discovery, everyone understood that the parties would be permitted to  
8 utilize any new evidence. Zitting cannot cry foul when APCO pointed out inconsistencies  
9 between the new deposition testimony and the prior affidavit submitted to the Court. Those patent  
10 inconsistencies and factual questions independently preclude summary judgment.

11 When discovery is re-opened, courts typically acknowledge that corresponding deadlines  
12 need to be adjusted to account for the change in discovery.<sup>104</sup> *Cf. Visa Int'l Serv. Ass'n v. JSL*  
13 *Corp.*,<sup>105</sup> (discovery was re-opened and the District Court for the District of Nevada concluded  
14 there was good cause to extend the deadline for filing dispositive motions). Under these  
15 circumstances the new deposition testimony should be considered by the Court. *See Morgan v.*  
16 *D&S Mobile Home Ctr., Inc.*,<sup>106</sup> (where the trial court considered the decision to reopen discovery  
17 as "implicitly negating" its previously issued order denying appellant the opportunity to proffer  
18 evidence on damages. The court cautioned litigants that reopening discovery "may change  
19 everything," that parties may have to "resubmit motions for Summary Judgment" and that by  
20 doing so, it may allow the opposing party to "create factual issues"). As in *Morgan*, once  
21  
22

23 <sup>102</sup> *Fertilizer v. Davis*, 567 So. 2d 451, 455, 15 Fla. L. Weekly 2171 (Dist. Ct. App. 1990)

24 <sup>103</sup> "A waiver is an intentional relinquishment of a known right . . . To be effective, a waiver must occur with full  
25 knowledge of all material facts." *State v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8, 18, 2004 Nev. LEXIS 129, 27, 120  
26 Nev. Adv. Rep. 99 (Nev. 2004).

27 <sup>104</sup> *See EEOC v. Autozone, Inc.*, 248 F.R.D. 542, 543 (W.D. Tenn. 2008) ("After the court granted in part the  
28 corporation's motion for summary judgment, it conducted a status conference during which it reopened discovery, set  
a new date for trial, and set new deadlines for discovery and dispositive motions."); *Boyd v. Etchebehere*, No. 1:13-  
01966-LJO-SAB (PC), 2015 U.S. Dist. LEXIS 152584, at \*6 (E.D. Cal. Nov. 9, 2015) ("After Defendant's motion for  
summary judgment was denied, the Court reopened discovery and extended the discovery and dispositive motion  
deadlines.")

<sup>105</sup> No. 02:01-CV-0294-LRH (LRL), 2006 U.S. Dist. LEXIS 81923, at \*10 (D. Nev. Nov. 3, 2006)

<sup>106</sup> Nos. 07-09-0315-CV, 07-09-0354-CV, 2010 Tex. App. LEXIS 7498, at \*8-9 n.4 (App. Sep. 10, 2010)

1 deposition discovery was reopened, several critical material issues were brought to light, and  
2 APCO was able to clarify and magnify the factual issues it confirmed in its original Opposition.

3 **A. Zitting's own testimony confirmed numerous factual issues that preclude**  
4 **summary judgment.**

5 APCO deposed Zitting on October 27, 2017. At its deposition, APCO confirmed several  
6 material discrepancies between Zitting's deposition testimony and the affidavit Zitting submitted  
7 in support of its request for summary judgment to this Court. As such, it was incumbent upon  
8 APCO to highlight these contradictory statements to the Court.

9 **B. Zitting always knew it was not entitled to payment under the retention and**  
10 **change order pay schedules.**

11 It is undisputed that in order to be entitled to retention, Zitting had to meet five  
12 preconditions as described in Section 3.8 of the subcontract.<sup>107</sup> The first precondition for retention  
13 is that the building be complete. Zitting clarified the completion definition by further defining it  
14 as the completion of drywall.<sup>108</sup>

15 Zitting's July 31, 2017 affidavit swore to this Court as follows: "By the time the Project  
16 shut down, Zitting had completed its scope of work for two buildings on the Project—Buildings 8  
17 and 9. The drywall was complete for those two buildings."<sup>109</sup> As quoted previously in section II of  
18 this Motion, three months later, Zitting's deposition testimony confirmed the opposite. So  
19 Zitting's 30(b)(6) designee confirmed drywall was not complete.

20 The second precondition is that the Owner must give final acceptance of APCO's or  
21 Zitting's work. Zitting's affidavit also represented that the Owner accepted and approved Zitting  
22 Brother's work: "I am not aware of any complaints with the timing or quality of Zitting's work on  
23 the Project. As far as I am aware, Gemstone Development West, Inc., the owner of the Project, has  
24  
25  
26

27 <sup>107</sup> See Section 3.8 of Subcontract.

28 <sup>108</sup> Exhibit 15, Subcontract at Section 3.8.

<sup>109</sup> See Zitting Brother's Motion for Partial Summary Judgment Against APCO Construction, Inc. at Exhibit A, ¶ 7, on  
file herein.



1 approved the timing and quality of Zitting's work."<sup>110</sup> Three months later, Zitting Brother's NRCP  
2 30(b)(6) designee testified he had no knowledge of the Owner's acceptance:

3 "Q. While you -- let's look back at paragraph 3.8 of the subcontract,  
4 Exhibit 1. We've talked about subparagraph A, the completion as  
5 you further defined it in subparagraph F. Subparagraph B was the  
6 approval and final acceptance of the building work by owner. While  
7 you were working for APCO, did that occur, to your knowledge?  
8 A. I have no knowledge of that."<sup>111</sup>

9 ...  
10 "Q. Do you know if there was ever a certificate of occupancy for  
11 Building 8?

12 A. I didn't -- I do not know.

13 Q. Do you know if there was ever a certificate of occupancy for  
14 Building 9?

15 A. I do not know."

16 The third precondition was that APCO had to receive the final payment from the Owner.  
17 Zitting's deposition designee did not have any knowledge of this condition being met:

18 Q. Okay. Next item is, receipt of final payment by contractor from  
19 owner. Do you have any personal knowledge or information to  
20 suggest whether that occurred?  
21 A. I do not."<sup>112</sup>

22 In fact, APCO disclosed documentation showing it was not paid any of Zitting's retention or  
23 unapproved change order work by the Owner."<sup>113</sup>

24 The fourth precondition was Zitting providing its as-built drawings and other close out  
25 documentation related to its work. Zitting's affidavit swore to this Court that, "Zitting had  
26 submitted close-out documents for its scope of work, including as-built drawings and releases of  
27 claims for Zitting's vendors."<sup>114</sup> Once again, three months later, the story changed:

28 Q. Item D [within Section 3.8 of Subcontract] is delivery to  
contractor from subcontractor, all as-built drawings for its scope of  
work, and other closeout documents. Did Zitting ever satisfy that  
requirement?  
A. I don't recall.

<sup>110</sup> See Zitting Brother's Motion for Partial Summary Judgment Against APCO Construction, Inc. at Exhibit A, ¶ 7, on file herein.

<sup>111</sup> Zitting Deposition.

<sup>112</sup> Exhibit 7, Zitting's NRCP 30(b)(6) Deposition at 31: 17-20.

<sup>113</sup> Exhibit 18, Accounting Records Confirming Owner Never Paid APCO Zitting Brothers' Retention.

<sup>114</sup> See Zitting Brother's Motion for Partial Summary Judgment Against APCO Construction, Inc. at Exhibit A, ¶ 7, on file herein.

1 **Q. Do you know?**

2 **A. I don't recall.**

3 **Q. Prior to today, have you seen any records in your file that would**  
4 **reflect the transmittal of that type of closeout documentation and as-**  
5 **built?**

6 **A. Not that I recall.**<sup>115</sup>

7 In fact, the Zitting's designee summarized its failure to meet these last three preconditions to be  
8 entitled to its retention payment as follows:

9 **Q. Sitting here today as the corporate designee, are you aware**  
10 **of any documents, facts, information to suggest that Zitting met the**  
11 **conditions of subparagraphs B, C, and D of paragraph 3.8?**

12 **A. I'm not aware of any.**<sup>116</sup>

13 During its deposition, Zitting also acknowledged that it did not meet the conditions  
14 precedent to be entitled to payment for some of its change orders. Section 3.9 of the Subcontract  
15 delineated the following change order payment schedule:

16 Subcontractor agrees that Contractor shall have no obligation to pay  
17 Subcontractor for any changed or extra work performed by  
18 Subcontractor until or unless Contractor has actually been paid for  
19 such work by the Owner **unless Contractor has executed and**  
20 **approved change order directing subcontractor to perform**  
21 **certain changes in writing and certain changes have been**  
22 **completed by subcontractor.**<sup>117</sup>

23 Zitting has acknowledged this is the payment schedule for change orders.<sup>118</sup> In fact, Zitting added  
24 the language in bold confirming that Zitting had to have an "executed and approved change order"  
25 to be entitled to payment for change orders if the Owner did not pay APCO for the change  
26 order.<sup>119</sup>

27 **Q. So your -- if I understand your testimony, your**  
28 **entitlement to a change order could be determined separate, apart**  
29 **from whether the owner paid APCO, if you had executed approved**  
30 **change orders?**

31 **A. That was my intention here.**

32 **Q. My statement is correct, yes?**

33 <sup>115</sup> Zitting Deposition pp. 31-32.

34 <sup>116</sup> Zitting Depo. pp. 34-35.

35 <sup>117</sup> Exhibit 15, Section 3.9 of Subcontract.

36 <sup>118</sup> Exhibit 7, Zitting Deposition at p. 37:1-5 ("Q. Sitting here today as the corporate designee, would you agree that  
37 Zitting accepted that payment schedule for change orders? A. With some changes and modifications, it appears that I  
38 did.").

<sup>119</sup> Exhibit 7, Zitting Deposition at 37:6-16.

1 A. Yes.<sup>120</sup>

2 Zitting then confirmed that it did not have information to suggest that either APCO was paid for  
3 the change orders that Zitting submitted, or that it had "executed and approved change orders" for  
4 some of the change orders it is seeking:

5 Q. -- okay -- do you have executed and approved change order  
6 forms from APCO on those?

7 A. Not on all of them.

8 Q. On some of them do you?

9 A. I believe so.

10 Q. (By Mr. Jefferies) Sir, do you have -- as the corporate  
11 designee, do you have any information, documentation, evidence to  
12 suggest that APCO was paid your retention that you're seeking in  
13 this action?

14 A. Not that I know of.

15 Q. As you sit here today as the corporate designee, do you have  
16 any documents, facts, information to suggest that APCO received  
17 payment for the change orders you're seeking payment for in this  
18 action?

19 A. Not that I know of.<sup>121</sup>

20 Additionally, Zitting also agreed that it would list any alleged claims it had against APCO on its  
21 progress releases:

22 As a condition precedent to receiving partial payments from  
23 Contractor for Work performed, Subcontractor shall execute and  
24 deliver to Contractor, with its application for payment, a full and  
25 complete release (Forms attached) of all claims and causes of action  
26 Subcontractor may have against Contractor and Owner through the  
27 date of the execution of said release, save and except those claims  
28 specifically listed on said release and described in a manner  
sufficient for Contractor to identify such claim or claims with  
certainty.<sup>122</sup>

29 Zitting did not list any change order claims in its progress releases.<sup>123</sup>

30 As such, Zitting has not earned the right to any change order payment because it has not  
meet the preconditions in the Subcontract and because it did not list and reserve any alleged claims

31 <sup>120</sup> Exhibit 7, Zitting Deposition at 38:9-13.

32 <sup>121</sup> Exhibit 7, Zitting Deposition at 39:16-40:8.

33 <sup>122</sup> Exhibit 15, Zitting Subcontract at Section 3.4 (emphasis added).

34 <sup>123</sup> Exhibit 19, Zitting's Progress Releases.

1 against APCO in its progress releases. So not only was Zitting always on notice of APCO's  
2 defenses, it has known that it could not meet the necessary conditions precedent to payment for  
3 either retention or its change orders. By granting Zitting's Motion, the Court is awarding money  
4 that the original briefing and new evidence confirm was never due.

5 Further, as is proven above, it appears that Exhibit A to Zitting's Motion, a declaration  
6 from Sam Zitting, who was also the recent corporate designee, appears to be nothing more than a  
7 sham affidavit and should not be given any weight. *Nutton v. Sunset Station, Inc.*,<sup>124</sup> ("Even where  
8 a summary judgment motion has already been filed and a party seeks to defeat it by presenting  
9 last-minute inconsistent testimony, under federal jurisprudence, the general rule is that an apparent  
10 contradiction between an affidavit submitted in opposition to a summary judgment motion and the  
11 same witness's prior deposition testimony presents a question of credibility for the jury, unless the  
12 court affirmatively concludes that the later affidavit constitutes a sham.")

13 Awarding Zitting summary judgment in light of the inconsistencies between its affidavit  
14 and its deposition testimony constitutes legal error.

15 **C. APCO supplemented its interrogatory responses after Zitting's deposition.**

16 Zitting was deposed in this case for the first time on Friday, October 27, 2017.<sup>125</sup> After the  
17 deposition, APCO supplemented its interrogatory responses to reiterate its defenses given Zitting's  
18 critical admissions less than two weeks later, on Wednesday, November 8, 2017.<sup>126</sup> Zitting has  
19 acknowledged that APCO specifically reserved the right to supplement or amend its interrogatory  
20 answers as investigation, discovery, disclosure and analysis of the case continued.<sup>127</sup> Further,  
21 APCO did not need to amend its Answer since these defenses were already listed in its answer.  
22

23 **VI. Zitting's surreply contained many inaccuracies.**

24 Zitting's surreply filed the day before the November 15, 2017 oral argument contained  
25

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26  
27 <sup>124</sup> 2015 Nev. LEXIS 4, \*31-33, 357 P.3d 966, 977, 131 Nev. Adv. Rep. 34 App. (internal citations and quotations  
omitted).

28 <sup>125</sup> Exhibit 7, Zitting Deposition.

<sup>126</sup> APCO CONSTRUCTION'S SUPPLEMENTAL ANSWERS TO ZITTING BROTHERS CONSTRUCTION  
INC.'S FIRST REQUEST FOR INTERROGATORIES at 6-7.

1 many inaccuracies, including: (1) its interpretation of Section 9.4 of the Subcontract, (2) whether  
2 or not Zitting met the conditions precedent to be entitled to retention or payments for change  
3 orders, (3) the state of conditions precedent under Nevada law, (4) what a "schedule of payments"  
4 is under NRS 624, and (5) whether or not Zitting could unilaterally waive the condition that  
5 change orders had to be approved and in writing to be entitled to payment from APCO for change  
6 orders.

7 **A. APCO's departure from the project does not trigger payment under Section 9.4**  
8 **of the Subcontract.**

9 On November 15, 2017, Zitting filed a Reply to APCO's Supplemental Brief.<sup>128</sup> In it,  
10 Zitting contends that APCO's payment obligation was triggered under Section 9.4 when APCO's  
11 contract with the owner was terminated. Zitting is incorrect. By its terms that section only applies  
12 to terminations for convenience. No one associated with this project can seriously contend, and  
13 certainly has not provided any evidence, that the Owner or APCO terminated the prime contract  
14 for convenience. Also, Section 9.4 confirms that APCO's payment obligation would only be  
15 triggered when APCO received payment from the Owner for Zitting's work, and per the Contract  
16 Documents:

17 9.4 Effect of Owner's Termination of Contractor. If there has been a  
18 termination of the Contractor's contract with the Owner, the  
19 Subcontractor shall be paid the amount due from the Owner to the  
20 Contractor for the Subcontractor's completed work, as provided in  
21 the Contract Documents, after payment by the Owner to the  
22 Contractor.<sup>129</sup>

23 So it is clear that APCO's payment obligation was not triggered by Section 9.4 of the Subcontract  
24 because there was not a convenience termination and the Owner never paid APCO for Zitting's  
25 work. The Contract Documents confirm that Zitting has to meet certain preconditions to be  
26 entitled to payment for retention and change orders under Sections 3.8 and 3.9 and Section 5 of the  
27 Contract Documents.<sup>130</sup>

28 <sup>127</sup> See Zitting's MIL at 8:25-27 and 9:16-18, on file herein.

<sup>128</sup> See Zitting's Reply to APCO's Supplemental Brief, on file herein.

<sup>129</sup> Exhibit 15, Zitting Subcontract at 9.4.

<sup>130</sup> See Zitting Subcontract.

1       **B. Zitting did not comply with the conditions precedent for payment of its retention**  
2       **and change orders.**

3       Zitting argues “Under Nevada law, compliance with a valid condition precedent requires  
4 only substantial performance” citing *Laughlin Recreational Enters. v. Zab Dev. Co.*<sup>131</sup> Zitting is  
5 wrong. The case it cited does not analyze, opine on, or even mention conditions precedent.  
6 Instead, the case addresses whether a construction contract was substantially performed and  
7 whether there was substantial evidence to support the court’s findings on appeal.<sup>132</sup>

8       In *MB Am., Inc. v. Alaska Pac. Leasing Co.*,<sup>133</sup> the Nevada Supreme Court directly  
9 considered conditions precedent. In *MB Am., Inc.*, the contract between the parties contained a  
10 condition precedent to mediate disputes before proceeding to litigation. The plaintiff did not  
11 comply with this condition precedent, and initiated litigation before attempting mediation. The  
12 defendant filed a motion for summary judgment alleging that MBA prematurely initiated the  
13 litigation since it had not complied with the condition precedent, and awarded MBA attorneys fees  
14 as the prevailing party. The Supreme Court of Nevada affirmed both the motion for summary  
15 judgment and the award of attorneys fees. It cited to and adopted the position taken in *DeValk*  
16 *Lincoln Mercury, Inc. v. Ford Motor Co.*,<sup>134</sup> where that court specifically required “strict  
17 compliance” with a condition precedent. See also *Lucini-Parish Ins. v. Buck*,<sup>135</sup> (A party who  
18 seeks to recover on a contract has the burden of establishing any condition precedent to the  
19 respective contract).

20       Zitting had to strictly comply with the contractual conditions precedent to be entitled to  
21 retention. Next, contrary to Zitting’s contention, the Nevada Supreme Court has ruled that a  
22 “schedule of payments” includes a situation where an owner has to first accept the subcontractor’s  
23 work, and the prime contractor has to be paid for subcontractor’s work. See *Padilla v. Big-D*,<sup>136</sup>  
24 (“Because the parties’ subcontract contained a payment schedule that required that Padilla be

25  
26       <sup>131</sup> 98 Nev. 285, 287, 646 P.2d 555, 556 (1982).

27       <sup>132</sup> *Id.* at 287.

28       <sup>133</sup> 367 P.3d 1286, 1288 (Nev. 2016)

<sup>134</sup> 811 F.2d 326, 336 (7th Cir. 1987)

<sup>135</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992)

<sup>136</sup> 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958.

1 paid within ten days after IGT accepted Padilla's work and paid Big-D for that work and it  
2 is undisputed that IGT never accepted Padilla's work and never paid Big-D for Padilla's work,  
3 the district court correctly found that payment never became due to Padilla under the  
4 subcontract or *NRS 624.624(1)(a)*.”).

5 **C. Zitting effectively acknowledges that it did not meet the preconditions for**  
6 **retention.**

7 Tellingly, Zitting's Surreply does not dispute that the drywall was not complete and the  
8 owner had not accepted Zitting's work when APCO left the Project. If Zitting competed the  
9 Project under replacement general contractor Camco as it contends, and the owner accepted that  
10 work, Zitting's remedy is against Camco, not against APCO. Zitting does not dispute that APCO  
11 was never paid by the owner for Zitting's work, and Zitting does not have any evidence within the  
12 record to show that it provided close-out documents to APCO. If it had them, it had the  
13 responsibility to produce these documents in this litigation, and attach them as an exhibit to its  
14 motion. It did neither.

15 **D. The condition precedent of an executed and approved change order was not only**  
16 **for Zitting's benefit.**

17 Zitting's Surreply contends that since Zitting added the language entitling it to payment if  
18 it had an executed and approved change order could be waived by Zitting since the provision was  
19 only for Zitting's benefit. This is incorrect. The addition of an “executed and approved change  
20 order” was for APCO's benefit as well since APCO would not be subject to erroneous and  
21 unjustified claims without a change order.

22 Zitting's argument that its change orders were approved by operation of law is also  
23 incorrect. Zitting's PMK admitted APCO rejected its change orders in its deposition:

24 Q. So as the corporate designee, would you agree that APCO  
25 rejected certain change order requests because it objected to your  
26 labor rate?

27 A. Based on an e-mail chain that I read, it appeared that that was the  
28 case.

Q. So that's a yes?

A. I don't have a memory of it. So I'm just going off of this limited  
e-mail chain and what was going on in it. I don't know if there was  
other conversation had outside. I don't know if somebody got mad  
and picked up the phone and called and had a discussion. I don't

1 recall that. And the e-mail chain isn't inclusive of -- of a conclusion,  
2 but that looks like that's the direction it was going. And I just --  
3 unfortunately, it's been so long and there's so many -- so many  
4 phone conversations and so forth that -- that I don't have the benefit  
5 of recalling.

6 Q. Okay. Isn't it true, sir, that as the corporate representative for  
7 Zitting today, that APCO -- whether you agreed or not, APCO did  
8 reject some change order requests. Correct?

9 A. It appeared that they had.

10 Q. Okay. And as a result, Zitting repriced certain change order  
11 requests using a labor rate of \$30 an hour. Correct?

12 A. Correct.<sup>137</sup>

13 In fact, Zitting admitted that some of the change orders it is seeking payment for were completed  
14 under Camco's direction, not APCO's.<sup>138</sup>

15 Accordingly, Zitting's supplemental brief confirms it is not entitled to summary judgment.

16 **VII. Lastly, material misstatements regarding the critical *Padilla v. Big-D Construction***  
17 **case were made at the November 16, 2017 abbreviated hearing on this matter.**

18 At the November 16, 2017 hearing on Zitting's Motion for Summary Judgment, Helix's  
19 counsel represented to the Court that the Nevada Supreme Court's decision in *Padilla v. Big-D* did  
20 not account for pay-if-paid arguments in its decision.<sup>139</sup> This is incorrect. Both *Padilla's* and *Big-*  
21 *D's* Supreme Court briefs argued their respective interpretations of pay-if-paid provisions, and  
22 specifically addressed the applicability of dicta from the *Lehrer McGovern Bovis v. Bullock*  
23 *Insulation*,<sup>140</sup> decision. This clarification is necessary because the Court may have considered the  
24 incorrect information provided by Helix in its decision.

25 **A. The *Padilla v. Big-D* District Court Action**

26 In *Padilla v. Big-D*,<sup>141</sup> Big-D was hired as the general contractor for a construction project  
27 and subcontracted with *Padilla* to install a stucco system on the building. While the stucco was  
28 being installed, separation issues developed and the owner rejected *Padilla's* work. *Padilla* filed a  
complaint against Big-D for non-payment. After trial, this Court found that: (1) *Padilla's* signed

<sup>137</sup> Exhibit 17, S. Zitting Deposition at 51-52.

<sup>138</sup> See Zitting's Deposition at 53-56.

<sup>139</sup> Exhibit 20, Transcript of November 16, 2017 hearing at 12.

<sup>140</sup> 124 Nev. 1102, 1117-1118, 197 P.3d 1032 (2008).

<sup>141</sup> 386 P.3d 982 (Nev. 2016).



1 subcontract bound it to the owner's decisions,<sup>142</sup> (2) NRS 624.624 was designed to ensure that  
2 general contractors pay subcontractors **after** the owner pays the general,<sup>143</sup> (3) NRS 624.624  
3 yields to a schedule of payments,<sup>144</sup> (4) the subcontract confirmed that Padilla would get paid after  
4 the owner accepted and paid the prime contractor for the work,<sup>145</sup> and (5) the owner never  
5 accepted the work so Big-D's payment to Padilla never became due.<sup>146</sup> Then this court awarded  
6 Big-D damages and attorneys fees.<sup>147</sup> In the subsequent appeal, Padilla's opening brief, Big-D's  
7 responding brief, and Padilla's reply brief each made arguments regarding pay-if-paid provisions.

8 **B. The Nevada Supreme Court**

9 Padilla argued that the Court erred because it found that Padilla was to be paid after the  
10 owner paid the general contractor, and cited *Lehrer McGovern Bovis* for the proposition that pay-  
11 if-paid provisions are illegal under Nevada law.<sup>148</sup> So it is clear that the Nevada Supreme Court  
12 was aware of Padilla's pay-if-paid arguments since Padilla's opening brief.

13 Big-D addressed pay-if-paid provisions in its responding brief and argued that NRS  
14 624.624 does not change when payment is due, and that payment was not due until: (1) the owner  
15 accepted Padilla's work, and (2) the owner paid Big-D for Padilla's work under the subcontract:

16 The Subcontract provided that Padilla was to be paid within ten  
17 (10) days after IGT paid Big-D **and** after IGT accepted the Padilla  
18 Work. Specifically, Big-D "must have first received from the Owner  
19 the corresponding periodic payment, **including the approved**  
20 **portion of your monthly billing**, unless the Owner's failure to make  
payment was caused exclusively by us." *Id.* at Section 4.2.

---

21 <sup>142</sup> See Exhibit 21, Findings of Fact and Conclusions of Law and Judgment at 19:15-18 ("9A. In the Subcontract  
22 Agreement, Padilla agreed to be subject to the Owner's decisions and actions and that Big-D 'shall have the rights,  
remedies, powers and privileges as to, or against You which the Owner has against us.'").

23 <sup>143</sup> See *Id.* at 21:14-16 (emphasis added). ("NRS 624.624 is designed to ensure that general subcontractors promptly  
pay subcontractor after the general contractor receives payment from the Owner associated with work performed by  
the subcontract.").

24 <sup>144</sup> *Id.* at 21: 17-19. ("By its own terms, NRS 624.624 yields to (a) payment schedules contained in subcontract  
agreements and (b) contractual rights to withhold payments from a subcontractor after arising from deficient work.");  
25 *Id.* at 22:6-9. ("Here, it is undisputed that the Subcontract Agreement is a written agreement between Big-D and  
Padilla. Accordingly, pursuant to NRS 624.624(1)(a) payment is due to Padilla on the date specified in the  
26 Subcontract Agreement.").

27 <sup>145</sup> *Id.* at 22:9-11. ("The Subcontract provided that Padilla was to be paid within ten (10) days after IGT paid Big-D  
and after IGT accepted the Padilla work.").

28 <sup>146</sup> See *Id.* at 23:2-3 ("Here, it is undisputed that IGT never accepted the Padilla work. Accordingly, payment to  
Padilla never became due.").

<sup>147</sup> Exhibit 22, Order Granting Motion for Attorney's Fees.

<sup>148</sup> Exhibit 23, Padilla's Opening Brief at 26 (internal citations to the record omitted).

1 NRS 624.624 does not change the timing of when payment is due  
2 under a subcontract. The statute is designed to ensure that general  
3 subcontractors promptly pay subcontractors after the general  
4 contractor receives payment from the Owner associated with work  
performed by the subcontractor. NRS 624.624 is clear that its  
provisions yields to (a) payment schedules contained in subcontract  
agreements...<sup>149</sup>

5 Big-D also addressed *Lehrer McGovern Bovis* in its responding brief and argued that  
6 *Lehrer McGovern Bovis* was not at issue in *Padilla v. Big-D*, the issue was the payment schedule  
7 in the subcontract:

8 First, NRS 624 was not in effect or being interpreted in *Lehrer*  
9 *McGovern Bovis, Inc. v. Bullock Insulation, Inc.* 124 Nev. 1102,  
10 1117 (2008). Second, the issue here is not whether the payment  
11 schedule in the Big-D subcontract is a pay-if-paid clause that  
12 would excuse Big-D's obligation to pay Padilla if the owner  
13 failed to pay Big-D for Padilla's work. Rather, the issue is, for  
the purposes of NRS 624.624 notice of withholding, when was  
the payment from Big-D to Padilla due. The Subcontract  
Agreement contained a schedule for payments-payment to  
Padilla was due after IGT approved Padilla's work *and* after  
Big-D received payment attributable to Padilla's work.<sup>150</sup>

14 Padilla's reply brief reargued that *Lehrer McGovern Bovis* prohibits pay if paid provisions, and  
15 that there was not a schedule of payments in the subcontract.<sup>151</sup> This Court and the Nevada  
16 Supreme Court disagreed and applied the subcontract provision as written. That is exactly the  
17 case here with APCO's subcontract. So it is clear the Nevada Supreme Court had the  
18 opportunity to consider pay-if-paid clauses and *Lehrer McGovern Bovis* in its decision and still  
19 enforced agreed upon payment schedules.

20 The Nevada Supreme Court issued its decision on November 18, 2016 confirming that the  
21 Big-D/ Padilla subcontract contained a schedule of payments, and that payment obligation to the  
22 subcontractor never became due because the owner: (1) never accepted the subcontractor's work,  
23 and (2) never paid the general for the subcontractor's work:

24 Because the parties' subcontract contained a payment schedule  
25 that required that Padilla be paid within ten days after IGT

26 <sup>149</sup> Exhibit 24, Big D's responding brief at 28-29.

<sup>150</sup> See Exhibit 24, Big-D's responding brief at 32 (citations to the record omitted).

27 <sup>151</sup> See Exhibit 25, Padilla's Reply Brief at 13 ("According to *Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev.  
28 1102, 1117-1118, 197 P.3d 1032 (2008), 'pay-if-paid provisions are unenforceable because they violate public policy.'  
Big-D's reliance on the NRS 624.624(1)(a) provision for agreements "that includes a schedule for payments"  
is inconsistent with the plain language of the Big-D - Padilla Subcontract; which does not contain a schedule of  
payments. Instead of a Schedule of Payments, the Subcontract provides for monthly payments.").

1           accepted Padilla's work and paid Big-D for that work and it is  
2           undisputed that **IGT never accepted Padilla's work and never**  
3           **paid Big-D for Padilla's work**, the district court correctly found  
          that payment never became due to Padilla under the subcontract  
          or *NRS 624.624(1)(a)*.<sup>152</sup>

4           So the decision recognized that payment schedules that are triggered after owner payment are not  
5           unenforceable pay-if-paid provisions.

6           In the present action, the subcontract that APCO had with each subcontractor: (1)  
7           confirmed that the subcontractor would be bound to the owner to the same extent APCO was,<sup>153</sup>  
8           (2) contained a schedule of payments for both retention and change orders with preconditions that  
9           were clearly not met,<sup>154</sup> and (3) APCO was not paid for the subcontractor's work. Accordingly,  
10          APCO's payment obligation to the subcontractors never became due. NRS 624.624 was never  
11          intended to make the general contractor the owner's guarantor.

#### 12 13       **VIII. Pay-if-Paid Defenses**

14          The Court's order on Zitting's motion for summary judgment incorporated the Court's  
15          order on the Peel Brimley's Partial Motion for Summary Judgment to Preclude Defenses Based on  
16          Pay-if-Paid Provisions. For the sake of judicial economy, APCO incorporates the arguments in its  
17          August 21, 2017 opposition and January 4, 2018 motion for reconsideration of the Peel Brimley  
18          motion by this reference. APCO believes the language in the contract requiring the owner's  
19          payment to APCO before APCO had an obligation to pay Zitting to be a valid condition precedent  
20          to payment.

#### 21       **IX. The Court's strong policy on deciding cases on the merits.**

22          "This court has held that good public policy dictates that cases be adjudicated on their  
23          merits."<sup>155</sup> In fact, Nevada has a "judicial policy favoring the disposition of cases on their  
24          merits."<sup>156</sup> "[A]s a proper guide to the exercise of discretion, the basic underlying policy to have  
25          each case decided upon its merits. In the normal course of events, justice is best served by such a

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27       <sup>152</sup> 386 P.3d 982, 2016 Nev. Unpub. LEXIS 958.

28       <sup>153</sup> Exhibit 15, Subcontract at 3.4.

<sup>154</sup> Exhibit 15, Subcontract at Section 3.8.

<sup>155</sup> *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992)


1 policy."<sup>157</sup> *Cf. Mansur v. Mansur*,<sup>158</sup> ("In regard to appellant's argument that the district court  
2 should not have considered respondent's untimely opposition to his motion, we conclude that that  
3 argument lacks merit" citing Nevada has a basic underlying policy in favor of deciding cases on  
4 their merits).

5 Thus, despite Zitting's argument about APCO's defenses (despite APCO's answer, its  
6 NRCF 30(b)(6) deposition and supplemental interrogatory answers), this case should be decided at  
7 a trial on the merits.

8 In light of the foregoing, and for the reasons set forth in APCO's original opposition,  
9 APCO respectfully requests that this Court grant the instant Motion for Reconsideration, set aside  
10 its related Order and deny Zitting's Motion for Summary Judgment.

11 DATED: January ~~5th~~ 2018.

12 SPENCER FANE LLP

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28 <sup>156</sup> *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980).

<sup>157</sup> *Hotel Last Frontier Corp. v. Frontier Props.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963).

<sup>158</sup> No. 63868, 2014 Nev. Unpub. LEXIS 790, at \*4 n.1 (May 14, 2014)

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SPENCER FANE LLP and that a copy of the foregoing **MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING ZITTING BROTHERS CONSTRUCTION, INC.'S PARTIAL MOTION FOR SUMMARY JUDGMENT AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME AND TO EXCEED PAGE LIMIT** was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 8 day of January, 2018, as follows:

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Eric B. Zimbelman (ezimbelman@peelbrimley.com)

**Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

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**Plaintiff: Apco Construction**

Rosie Wesp (rwesp@madlaw.com)

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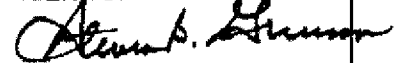
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An employee of Spencer Fane LLP



# **EXHIBIT F**

# **EXHIBIT F**



DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs

GEMSTONE DEVELOPMENT WEST, INC.,  
Nevada corporation; NEVADA  
CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
TITLE INSURANCE COMPANY; FIRST  
AMERICAN TITLE INSURANCE  
COMPANY and DOES I through X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AS TO THE  
CLAIMS OF HELIX ELECTRIC OF  
NEVADA, LLC AGAINST CAMCO  
PACIFIC CONSTRUCTION, INC.**

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,  
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared  
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP

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MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1 Cactus Rose Construction Co., Inc. ("Cactus	Eric Zimbelman, Esq. and the Law
2 Rose")	Firm of Peel Brimley LLP
3 SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law
4	Firm of Peel Brimley LLP
5 National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law
6	Firm of Cadden & Fuller LLP
E&E Fire Protection, LLC ("E&E").	T. James Truman, Esq. of the Law
7	Firm of T. James Truman, &
	Associates

8 **A. Procedural History.**

9 1. This is one of the oldest cases on the Court's docket. This action arises out  
10 of a construction project in Las Vegas, Nevada known as the Manhattan West  
11 Condominiums Project ("the Project") located at West Russell Road and Rocky Hill Street  
12 in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005, 163-32-101-010  
13 and 163-32-101-014 (the "Property" and/or "Project"), owned by Gemstone Development  
14 West, Inc. ("Gemstone" or "the Owner").

15 2. Gemstone hired APCO, and, subsequently, Camco as its general  
16 contractors, who in turn entered into subcontract agreements with various subcontractors.  
17 In December 2008 the Owner suspended the Project and advised the various contractors  
18 that Gemstone's lender did not expect to disburse further funds for construction. The  
19 Project was never completed. Numerous contractors, including the parties hereto, recorded  
20 mechanic's liens against the Property.

21 3. After several years of litigation and a Writ Action to determine the priority  
22 of the various lienors (during which the Property was sold, the proceeds of the same held  
23 in a blocked account and this action was stayed), the Nevada Supreme Court ruled that the  
24 Owner's lenders had priority over the proceeds of the sale of the Property, holding that the  
25 NRS Ch. 108 mechanic's liens were junior to the lenders' deeds of trust. The Court  
26 subsequently ordered the proceeds be released to the lenders. Thereafter, the stay was  
27 lifted and many of the trade contractors continued to pursue claims for non-payment from  
28

1 APCO and Camco. The trial focused on these claims. The Court has separately treated  
2 Helix's claims against APCO and has made or is making separate Findings of Fact and  
3 Conclusions of Law regarding the same.

4 **B. Significant Pre-Trial Orders**

5 1. **Order Granting Partial Summary Judgment re: Pay-if-Paid.** On  
6 January 2, 2018, this Court issued an Order granting a Motion for Partial Summary  
7 Judgment brought by a group of subcontractors represented by the Peel Brimley Law Firm  
8 (the "Peel Brimley Lien Claimants"<sup>1</sup>) and joined in by others. Generally, but without  
9 limitation, the Court concluded that, pursuant to NRS 624.624 and *Lehrer McGovern*  
10 *Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev.  
11 2008), higher-tiered contractors, such as APCO and Camco, are required to pay their  
12 lower-tiered subcontractors within the time periods set forth in NRS 624.626(1) and may  
13 not fail to make such payment based on so-called "pay-if-paid" agreements ("Pay-if-Paid")  
14 that are against public policy, void and unenforceable except under limited circumstances.  
15 Accordingly, the Court ruled that APCO and Camco may not assert or rely on a defense to  
16 their payment obligations to the party subcontractors that is based on a pay-if-paid  
17 agreement.

18 2. **Order on Peel Brimley Lien Claimants' Motion in Limine Against**  
19 **Camco.** On December 29, 2017 the Court issued an order on motions *in limine* brought by  
20 the Peel Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco  
21 from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on  
22 the Project was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in  
23 compliance with the terms of the parties' agreement because Camco's person most  
24 knowledgeable was not aware of, and Camco did not otherwise offer, any evidence to  
25 support such claims. For the same reason, the Court also precluded Camco from asserting  
26 or offering evidence at trial that the Peel Brimley Lien Claimants have breached their

---

27 <sup>1</sup> The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.  
28

1 agreements other than with respect to pay-if-paid agreements, evidence and argument of  
2 which is otherwise precluded by the Partial Summary Judgment discussed above. For the  
3 same reason, the Court also precluded Camco from asserting or offering evidence at trial to  
4 dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel  
5 Brimley Lien Claimants in their respective Requests for Admission. For the same reason,  
6 the Court also precluded Camco from asserting or offering evidence at trial that any liens  
7 recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected  
8 and are otherwise valid and enforceable.

9 **C. Findings of Fact.**

10 Having received evidence and having heard argument of counsel, the Court makes  
11 the following Findings of Fact:

12 1. The original general contractor on the Project was APCO. Gemstone and  
13 APCO entered into the ManhattanWest General Construction Agreement for GMP (the  
14 "APCO-Gemstone Agreement") on or about September 6, 2006. [See Exhibit 2].

15 2. After APCO ceased work on the Project, Gemstone hired Camco to be its  
16 general contractor pursuant to an Amended and Restated ManhattanWest General  
17 Construction Agreement effective as of August 25, 2008 ("the Camco-Gemstone  
18 Agreement"). [See Exhibit 162].

19 3. Camco continued the same payment application format and numbering and  
20 same schedule of values that APCO had been following. [See Exhibit 218; TR5-30:21-  
21 31:4].<sup>2</sup> Like APCO before it, Camco compiled and included in its payment applications to  
22 Gemstone the amounts billed by its subcontractors, including Helix. [See e.g., Exhibit  
23 522-001-011]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone  
24 Agreement required Camco, upon receipt of a progress payment from Gemstone, to  
25 "promptly pay each [subcontractor] the amount represented by the portion of the  
26 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-

27 \_\_\_\_\_  
28 <sup>2</sup> Testimony of Dave Parry.

1 010, ¶7.03(e)).<sup>3</sup> It is only after Gemstone announced that the Project would be suspended  
2 that Camco asserted otherwise.

3 4. Camco's initial letter to subcontractors following Gemstone's  
4 announcement demonstrates both that it believed it had subcontracts (because it purported  
5 to terminate the same) and that it intended to continue to forward payment applications to  
6 Gemstone. [See e.g., Exhibit 804-003-004]. Specifically, Camco wrote:

7 Camco is left with no choice but to terminate our agreement with Gemstone  
8 and all subcontracts on the Project, including our agreement with your  
9 company. Accordingly, we have terminated for cause our agreement with  
10 Gemstone, effective December 19, 2008, and we hereby terminate for  
11 convenience our subcontract with your company, effective immediately.

12 Please submit to Camco all amounts you believe are due and owing on your  
13 subcontract. We will review and advise you of any issues regarding any  
14 amounts you claim are owed. For all amounts that should properly be billed to  
15 Gemstone, Camco will forward to Gemstone such amounts for payment y  
16 Gemstone. If your claims appear to be excessive, we will ask you to justify  
17 and/or revise the amount.

18 [See e.g., Ex. 804-003-004].

19 5. Camco quickly retracted its initial communication and replaced it with a  
20 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to "please disregard  
21 previous letter which was sent in error." [See e.g., Ex. 804-005]. Among other things,  
22 Camco's second letter:

- 23 • Deleted its statement that it had terminated the Camco-Gemstone
- 24 Agreement (while continuing to terminate the subcontractors);
- 25 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk
- 26 of non-payment from the owner (which is also Pay-if-Paid); and,
- 27 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus
- 28 agreement wherein the subcontractors and suppliers were paid directly by
- Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.

<sup>3</sup> Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be paid to Camco (though retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].

1 804-007].

2 While Gemstone eventually did make partial payment through NCS and not Camco [*see*  
3 discussion, *infra*], the Camco-Gemstone Agreement expressly required Camco, upon  
4 receipt of a progress payment from Gemstone, to "promptly pay each [subcontractor] the  
5 amount represented by the portion of the Percentage of the Work Completed that was  
6 completed by such [subcontractor]." [Ex. 162-010, ¶7.03(e)].

7 6. Some subcontractors stopped working after APCO left the Project. Others,  
8 such as Helix, continued to work on the Project and began working for Camco as the  
9 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started  
10 working on the Project only after APCO left and worked only for Camco.

11 7. Camco presented some subcontractors with a standard form subcontract  
12 Agreement ("the Camco Subcontract"), a representative example of which is Camco's  
13 subcontract with Fast Glass. [See Exhibit 801-007-040; TR5-57:8-16].<sup>4</sup> Among other  
14 provisions, the Camco Subcontract (consistent with the Camco-Gemstone Agreement),  
15 requires Camco, no later than 10 days after receiving payment from Gemstone in response  
16 to its payment applications, to "pay to Subcontractor, in monthly progress payments, 90%<sup>5</sup>  
17 of labor and materials placed in position by Subcontractor during [the month preceding a  
18 payment application]." [See Ex. 701-012, ¶ II(C)].

19 8. Despite and contrary to the payment provisions of the Camco-Gemstone  
20 Agreement [*see supra* and Ex. 162-010, ¶7.03(e)] and the Camco Subcontract [See Ex.  
21 701-012, ¶ II(C)], no monies were ever distributed to the subcontractors through Camco.  
22 Instead, and until it ceased making payments, Gemstone released funds to NCS, which  
23 issued checks "on behalf of Camco Pacific" to some of the subcontractors and/or joint  
24 checks to the subcontractors and their lower tiers, including Helix and its lower tiers. [See  
25 e.g., Exhibit 508-062 (NCS check no. 531544 to Helix and its lower tier, Graybar Electric  
26 "on behalf of Camco Pacific.")].

27 <sup>4</sup> Testimony of Dave Parry.

28 <sup>5</sup> i.e., less retention.

1           9. Camco also presented subcontractors who had previously worked for  
2 APCO, including Helix and Cabintec (National Wood), with a document titled Ratification  
3 and Amendment of Subcontract Agreement ("the Camco Ratification"). [See e.g., Exhibit  
4 3164].

5           10. Helix admitted in its Complaint and in its lien documents that it entered into  
6 the Camco Subcontract and the Camco Ratification.

7           11. As it was instructed to do, Camco continued to perform the work it had  
8 agreed to perform on the Project until Gemstone suspended work on December 15, 2008.  
9 As it was also instructed to do, Helix submitted payment applications to Camco using the  
10 same forms and same procedures as it had employed while APCO was still on the Project.  
11 [See e.g., Ex. 508-067-074]. Camco in turn submitted its pay applications to Gemstone in  
12 the same way, and using the same forms, as APCO had used. [See e.g., Ex. 522-001-011].

13           12. Helix submitted gross payment applications to Camco totaling  
14 \$1,010,255.25 (i.e., inclusive of retention). [See Ex. 508-001-002; 037-038; 049; 068-  
15 069].<sup>6</sup> Helix was paid only \$175,778.80 and is owed the balance, \$834,476.45.

16           13. The Court finds that Helix and Camco entered into a  
17 contractor/subcontractor relationship and agreement whereby they agreed on the material  
18 terms of a contract – i.e., the work to be performed, the price for the work and Camco's  
19 obligation to pay. The Court finds that Camco breached its obligation to pay Helix the sum  
20 of \$834,476.45.

21           14. Helix provided undisputed testimony that the amounts it billed were  
22 reasonable for the work performed. [TR2-71:22-72:3].<sup>7</sup> Because (i) this testimony was  
23 undisputed, (ii) Camco submitted these amounts on its certified pay applications to  
24 Gemstone, and (iii) Helix was paid in part for these amounts, the Court finds that the  
25 amounts Helix billed Camco for its work were reasonable for the work performed.

26  
27           <sup>6</sup> See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See  
TR3-68:17-69:7].

28           <sup>7</sup> Testimony of Andy Rivera.



1           15.     Helix presented undisputed evidence, and the Court finds, that Helix timely  
2 recorded a mechanic's lien, as amended ("the Helix Lien"), pursuant to NRS Chapter 108  
3 and perfected the same. [See Exhibit 512]. The Helix Lien identified both APCO and  
4 Camco as the "person by whom the lien claimant was employed or to whom the lien  
5 claimant furnished or agreed to furnish work, materials or equipment." [See e.g., Ex. 512-  
6 007, 009].

7           16.     Any finding of fact herein that is more appropriately deemed a conclusion  
8 of law shall be treated as such.

9           FROM the foregoing Findings of Fact, the Court hereby makes the following

10          B.     Conclusions of Law.

11          1.     "Basic contract principles require, for an enforceable contract, an offer and  
12 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,  
13 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have  
14 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d  
15 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context  
16 and also on the subsequent conduct of the parties, including the dispute which arises and  
17 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a  
18 contract exists is a question of fact and the District Court's findings will be upheld unless  
19 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,  
20 119 P.3d at 1257.

21          2.     The Court concludes that Camco and Helix entered into a contract whereby  
22 they agreed on the material terms of a contract – i.e., the work to be performed, the price  
23 therefore and Camco's obligation to pay. The Court further concludes that Camco failed to  
24 pay Helix the undisputed sum of \$834,476.45 without excuse (other than Camco's reliance  
25 on Pay-if-Paid, which the Court has previously rejected).

26          3.     Camco did not dispute Helix's testimony that the amounts it billed were a  
27 reasonable value for the work performed, and the reasonableness thereof was demonstrated

1 by Camco's payment in part and its inclusion of Helix's billings in its own payment  
2 applications to Gemstone. The court therefore concludes that the unpaid value of Helix's  
3 work while Camco was on site as the general contractor is \$834,476.45 and that Helix  
4 should be awarded that principal amount against Camco for that principal amount.

5 4. The Court rejects Camco's argument that it is not liable to Helix (and other  
6 subcontractors) because it never received payment from Gemstone who instead made  
7 payments to subcontractors through the disbursement company, NCS. Camco's position  
8 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract  
9 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO  
10 Subcontract) payments to subcontractors were intended to flow through the general  
11 contractor. Camco presented no evidence that Helix or any other subcontractor consented  
12 in advance to Gemstone's eventual decision to release payments (in part) through NCS and  
13 not Camco.

14 5. Similarly, the Court rejects Camco's contention that the Court's decision on  
15 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and  
16 other subcontractors. Camco presented no evidence that it, for example, declared  
17 Gemstone to be in breach for failing to make payments through Camco rather than through  
18 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract  
19 and, at least until Gemstone announced that it was suspending construction, continued to  
20 process subcontractor payment applications and submit them to Gemstone. Camco's  
21 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public  
22 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

23 6. Helix is entitled to the principal sum of \$834,476.45 against Camco which  
24 will be the subject of a judgment to be entered by the Court.

25 7. The Court denies all of Camco's affirmative defenses.

26 8. Helix is entitled to prejudgment interest pursuant to NRS 108.237 and/or  
27 NRS 17.130.

9. Helix is the prevailing party and/or prevailing lien claimant as to Camco and Helix and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237 and/or the Camco Subcontract. Helix is granted leave to separately apply for the same.

10. As the prevailing party, Helix may also apply for an award of costs against Camco in accordance with the relevant statutes and for judgment as to the same.

11. Any conclusion of law herein that is more appropriately deemed a finding of fact shall be treated as such.

## ORDER

NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact and Conclusions of Law; and

IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and Conclusions of Law, and those made regarding the other parties and claims involved in the consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the same at the appropriate time subject to further order of the Court.

DATED this 24 day of April, 2018.

**DISTRICT COURT JUDGE**

## CERTIFICATE

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List.

LORRAINE TASHIRO  
Judicial Executive Assistant  
Dept. No. XIII

# **EXHIBIT E**

# **EXHIBIT E**

1 DECN

DISTRICT COURT

2 CLARK COUNTY, NEVADA

3  
4 APCO CONSTRUCTION, a Nevada  
corporation,

5 Plaintiff(s),

6 vs.

7  
8 GEMSTONE DEVELOPMENT WEST, INC., a  
Nevada corporation, et al.,

9 Defendant(s).

10 AND ALL RELATED CLAIMS.

) CASE NO. A571228

) DEPT. NO. XIII

) (Consolidated with A574391;

) A574792; A577623; A580889;

) A583289; A584730; A587168;

) A589195; A592826; A596924;

) A597089; A606730; A608717;

) A608718)

11  
12 **DECISION**

13 THIS MATTER having come before the Court on November 16,  
14 2017 for hearing on "Peel Brimley Lien Claimants' Motion for Partial  
15 Summary Judgment Precluding Defenses Based on Pay-if-Paid  
16 Agreements," with Joinders by Zitting Brothers Construction, Inc.,  
17 William A. Leonard/Interstate Plumbing and Air Conditioning LLC,  
18 National Wood Products, Inc., E & E Fire Protection, LLC, and United  
19 Subcontractors, Inc., and with appearances as noted in the Minutes  
20 and to be reflected in the proposed order to be submitted as directed  
21 hereinbelow;  
22

23 AND, the Court having heard the argument of counsel and  
24 having then taken such items under advisement for further  
25 consideration, and being now fully advised in the premises;

26 NOW, THEREFORE, the Court decides the submitted issues  
27 as follows:  
28

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MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1           The subject items have been well briefed and argued with  
2 the parties' contentions. In the interest of time, the Court will  
3 make its rulings with instructions hereinbelow to counsel to submit  
4 a proposed order consistent with the briefing and argument  
5 supportive of the same.  
6

7           The Motion and Joinders address defenses based on  
8 "pay-if-paid" agreements. The Court is persuaded that they have  
9 merit and they are thus GRANTED. Among other things, the contention  
10 that the public policy rationale of *Lehrer McGovern Bovis, Inc.*  
11 *v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032,  
12 1042 (2008) is limited to the concept of security is without merit.

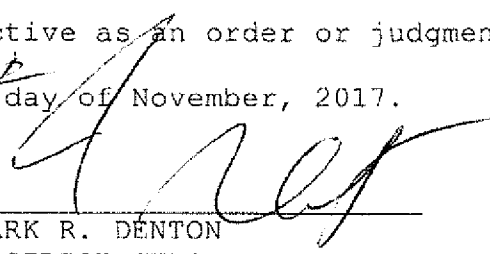
13       The term "secured payment" utilized by *Bullock*, at 1116, uses  
14 "secured" as an adjective and "payment" as a noun.

15       Counsel for the Peel Brimley moving parties is directed  
16 to submit a proposed order consistent with the foregoing and which  
17 sets forth the underpinnings of the same in accordance herewith  
18 and with the aspects of counsel's briefing and argument supportive  
19 of the same. Such proposed order should be submitted to opposing  
20 counsel for review and signification of approval/disapproval.  
21 Instead of seeking to clarify or litigate meaning or any disapproval  
22 through correspondence directed to the Court or to counsel with  
23 copies to the Court, any such clarification or disapproval should  
24 be the subject of appropriate motion practice.  
25

26       This Decision sets forth the Court's intended disposition  
27  
28


1 on the subject, but it anticipates further order of the Court to  
2 make such disposition effective as an order or judgment.

3 DATED this 21<sup>st</sup> day of November, 2017.

4  
5   
6 MARK R. DENTON  
7 DISTRICT JUDGE

8 **CERTIFICATE**

9 I hereby certify that on or about the date filed, this  
10 document was Electronically Served to the Counsel on Record on the  
11 Clark County E-File Electronic Service List.

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14 LORRAINE TASHIRO  
15 Judicial Executive Assistant  
16 Dept. No. XIII  
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# **EXHIBIT D**

# **EXHIBIT D**



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DECN DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,  
Plaintiff(s),  
vs.  
GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation, et al.,  
Defendant(s).  
AND ALL RELATED CLAIMS.

)  
)  
)  
) CASE NO. A571228  
) DEPT. NO. XIII  
)  
) (Consolidated with A574391;  
) A574792; A577623; A580889;  
) A583289; A584730; A587168;  
) A589195; A592626; A596924;  
) A597089; A606730; A608717;  
) A608718)  
)

DECISION

THIS MATTER having come before the Court on November 16, 2017 for hearing on "Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction," with appearances as noted in the Minutes and to be reflected in the proposed order to be submitted as directed hereinbelow;

AND, the Court having heard the argument of counsel and having then taken such items under advisement for further consideration, and being now fully advised in the premises;

NOW, THEREFORE, the Court decides the submitted issues as follows:

The subject Motion has been well briefed and argued with the parties' contentions. In the interest of time, the Court will make its ruling with instructions hereinbelow to counsel to submit a proposed order consistent with the briefing and argument

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1 supportive of the same.

2 The "pay-if-paid" aspect of Zitting's Motion has been  
3 the subject of another recent Decision of the Court. However,  
4 putting that aspect of the Motion aside, the Court still has before  
5 it the question of whether there are genuine issues going to breach  
6 of contract related to Zitting's performance of the same.

7  
8 The Court is persuaded that, in what is one of the oldest  
9 cases pending in this Court, what APCO has provided is "too little  
10 too late." It is simply unfair to require Zitting to address  
11 supposed issues that have been drawn out at the last minute.

12 All things considered, the subject Motion is GRANTED in  
13 its entirety.

14 Counsel for Zitting is directed to submit a proposed order  
15 consistent with the foregoing and which sets forth the underpinnings  
16 of the same in accordance herewith and with the aspects of counsel's  
17 briefing and argument supportive of the same. Such proposed order  
18 should be submitted to opposing counsel for review and signification  
19 of approval/disapproval. Instead of seeking to clarify or litigate  
20 meaning or any disapproval through correspondence directed to the  
21 Court or to counsel with copies to the Court, any such clarification  
22 or disapproval should be the subject of appropriate motion practice.

23  
24 This Decision sets forth the Court's intended disposition

25 . . . . .

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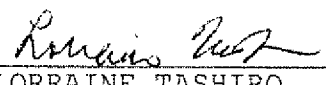
1 on the subject, but it anticipates further order of the Court to  
2 make such disposition effective as an order or judgment.

3 DATED this 21<sup>st</sup> day of November, 2017.

4   
5  
6 MARK R. DENTON  
DISTRICT JUDGE

7  
8 CERTIFICATE

9 I hereby certify that on or about the date filed, this  
10 document was Electronically Served to the Counsel on Record on the  
11 Clark County E-File Electronic Service List.

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14 LORRAINE TASHIRO  
15 Judicial Executive Assistant  
16 Dept. No. XIII  
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# **EXHIBIT C**

# **EXHIBIT C**

*Steven D. Grierson*

FFCO

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

Case No.: 08A571228

Dept. No.: XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718;  
and A590319

AND ALL RELATED MATTERS

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**AS TO THE CLAIMS OF HELIX ELECTRIC**  
**AND CABENETEC AGAINST APCO**

This matter having come on for a non-jury trial on January 17-19, 23, 24, and February 6, 2018, APCO Construction, Inc., appearing through Spencer Fane, LLP and Marquis & Aurbach; Cameco Construction, Inc., through Grant Morris Dodds; National Wood Products, LLC through Cadden Fuller and Richard L. Tobler, Ltd.; United Subcontractors, Inc. through Fabian Vancott; and Helix Electric of Nevada, LLC, SWPP Compliance Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all through Peel Brimley; and, the Court having heard the testimony of witnesses, having reviewed the evidence provided by the parties, having heard the arguments of counsel, and having read and considered the briefs of counsel and good cause appearing; the Court hereby makes the following:

**I. FINDINGS OF FACT**

**A. The Project**

1. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums project in Clark County Nevada, (the "Project").

2. Gemstone Development West, Inc. ("Gemstone") was the owner and developer of the Project that contracted APCO to serve as the prime contractor.

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MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1           3.     On or about September 6, 2007, Gemstone and APCO entered into the  
2 Manhattan West General Construction Contract for GMP (the "Contract")<sup>1</sup>.

3           4.     The Contract included Phase 1 and Phase 2 and consisted of nine buildings, with  
4 five of the nine buildings in Phase 1 (buildings 2, 3, 7, 8 and 9).<sup>2</sup>

5           5.     The Contract price for Phase 1 was \$78,938,160.00.<sup>3</sup> APCO started work on the  
6 Project in September, 2007.<sup>4</sup>

7           **B.     The Contract**

8           6.     The following are several critical Contract provisions that relate to the current  
9 claims.

10          1.     **Completion**

11          7.     Section 2.10 of the Contract defines completion as follows:

12               (a) The Work within or related to each Building shall be deemed  
13 completed upon the (i) completion of the Work in such Building  
14 and the Corresponding Common Area; (ii) issuance of the  
15 Certificate of Occupancy for such Building; (iii) completion of  
16 any corrections that are requested by Developer, set forth on a  
17 Developer Punch List; and (iv) delivery of the applicable  
Completion Documents (collectively, a "Building Completion").  
The Project shall be deemed completed upon the Building  
Completion of each Building (collectively "Final Completion").<sup>5</sup>

18          8.     Given the ultimate disputes between APCO and Gemstone, APCO did not meet  
19 this definition of completion.<sup>6</sup>

20          .....

21 \_\_\_\_\_  
22               <sup>1</sup> Exhibit 2. Gemstone and APCO also entered into a grading contract on April  
17, 2007 but that contract is not the subject of this lawsuit. Exhibit 1.

23               <sup>2</sup> Testimony of Joe Pelan (APCO) Day 1, pp. 19 and 22; Exhibit 13, p.1. Joe  
Pelan is the General Manager of APCO Construction.

24               <sup>3</sup> Testimony of Joe Pelan (APCO), Day 1, p. 28.

25               <sup>4</sup> Testimony of Joe Pelan (APCO), Day 1, p. 28. APCO first started work under  
the grading contract. Exhibit 1.

26               <sup>5</sup> Exhibit 2, Section 2.10.

27               <sup>6</sup> Testimony of Joe Pelan (APCO), Day 1, p. 23.

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1           10.     Per this provision, on the 20<sup>th</sup> of each month subcontractors submitted their  
2 billings to APCO for the current month (including a projection of what each intended to  
3 complete through the end of that month).<sup>8</sup>

4           11.     APCO would then provide all of these documents to Gemstone.<sup>9</sup>

5           12.     Gemstone would then walk the Project and determine the percentage each  
6 subcontractor had completed.<sup>10</sup>

7           13.     Gemstone would adjust each subcontractor's billings to match its estimate of the  
8 percentage complete.<sup>11</sup>

9           14.     Gemstone would give the revised billings back to APCO, and APCO would  
10 return them to each subcontractor to revise.<sup>12</sup>

11           15.     Once revised, the subcontractors would submit them to APCO, APCO would  
12 submit them to Gemstone, and Gemstone would submit them to its construction funds control  
13 company, Nevada Construction Services ("NCS") for further review and payment.<sup>13</sup>

14           16.     NCS would then send an inspector to verify the work was complete.<sup>14</sup>

15           17.     NCS would then request funds from the lender and pay the total amount directly  
16 to APCO.<sup>15</sup>

17           18.     APCO then paid the subcontractor the final amount received from Gemstone.<sup>16</sup>

18           19.     As discussed more fully below, this process continued until June 2008.<sup>17</sup>

19  
20           <sup>8</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

21           <sup>9</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

22           <sup>10</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

23           <sup>11</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

24           <sup>12</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

25           <sup>13</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24; Exhibit 3, Nevada Construction  
26 Services Agreement.

27           <sup>14</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

28           <sup>15</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25, and 59.

<sup>16</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

<sup>17</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.



1           **3.     Final Payment**

2           20.    Per the payment schedule in Section 5.06, Gemstone was required to make final  
3 payment when the following preconditions were met:

4                   (c) ...Prior to final payment, and as a condition precedent,  
5                   General Contractor shall furnish Developer with the following  
6                   (the "Completed Documents"):

7                   (i) All maintenance and operating manuals;

8                   (ii) Marked set of drawings and specifications reflecting "as-  
9                   built" conditions, upon which General Contractor shall have  
10                  transferred all changes in the location of concealed utilities...

11                  (iii) the documents set forth in Section 2.06(e)

12                  (iv) Any assignment and/or transfer of all guaranties and  
13                  warranties from Third-Party Service Providers, vendors or  
14                  suppliers and manufacturers;

15                  (v) A list of the names, address and phone numbers of all parties  
16                  providing guarantees and warranties, and

17                  (vi) verification that all waivers that should be issued to  
18                  Developer concurrent with Final payment.<sup>18</sup>

19           21.    APCO admitted that none of these preconditions were met while APCO was on  
20 the Project.<sup>19</sup>

21           **4.     Retainage**

22           22.    Section 5.07 contained the Contract's retention (or retainage) payment  
23 schedule.<sup>20</sup>

24           23.    Retainage is essentially an "escrow account" representing a temporarily  
25 withheld portion of a billing that is retained by Gemstone to ensure that the work is completed

26                   <sup>18</sup> Exhibit 2 at Section 5.06(c).

27                   <sup>19</sup> Testimony of Joe Pelan (APCO), Day 1, p. 63.

28                   <sup>20</sup> Exhibit 2 at Section 5.07.

properly, that all material suppliers are paid and lien releases have been provided, and that all certificates of occupancy were issued.<sup>21</sup>

24. APCO and the subcontractors tracked the 10% retention in their billings each month.<sup>22</sup>

25. APCO never held or otherwise received any subcontractor's retention withheld by Gemstone and kept by the lender for the Project.<sup>23</sup>

26. Section 5.07(f) sets forth the preconditions for APCO to receive its retention:

(f) Any remaining Standard Retainage, Monthly Retainage, and Milestone Retainage shall be released to General Contractor on the date that (i) Final Completion is attained and (ii) all outstanding disputes between Developer and General Contractor and Developer and any Third Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed.<sup>24</sup>

27. APCO admits that it never met any of the milestones or preconditions to be entitled to its retention from Gemstone.<sup>25</sup>

28. Accordingly, APCO never billed and did not receive any retention from Gemstone.<sup>26</sup>

#### 5. Termination for Convenience

29. Section 10.01 of the Contract is entitled "Termination by the Developer Without Cause."<sup>27</sup>

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<sup>21</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25; Exhibit 2 at Section 5.07; Helix's Post-Trial Brief, p. 3, ll. 10-11.

<sup>22</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 25-26.

<sup>23</sup> Testimony of Joe Pelan (APCO), Day 1, p. 26.

<sup>24</sup> Exhibit 2 at Section 5.07(f).

<sup>25</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 1-4, 26.

<sup>26</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127. Mary Jo Allen is a bookkeeper for APCO, and has been a bookkeeper for approximately 40 years. Testimony of Mary Jo Allen (APCO), Day 3, p. 121. She assisted in preparing the pay applications to Gemstone for the Project. Testimony of Mary Jo Allen (APCO), Day 3, p. 121.

1 30. In the construction industry, this is known as a "termination for convenience."<sup>28</sup>

2 31. Gemstone never terminated the Contract for convenience.

3 **6. Termination for Cause**

4 32. Section 10.02 of the Contract is entitled "**Termination by Developer With**  
5 **Cause**" and states:

6 ...

7 (b) When any of the reasons set forth in Section 10.02(a) exist,  
8 Developer may without prejudice to any other rights or remedies  
9 available to Developer and after giving General Contractor seven  
10 days' written notice (in addition to the 48 hours notice for  
11 purposes of Section 10.02 (a)(vi)), terminate employment of  
12 General Contractor and may do the following:

13 ...

14 (ii) Accept assignment of any Third-Party Agreements pursuant  
15 to Section 10.04.<sup>29</sup>

16 33. Although Gemstone purported to terminate the Contract for cause,<sup>30</sup> the  
17 undisputed evidence established that APCO was not in default.<sup>31</sup>

18 **7. Assignment**

19 34. The Contract contained an assignment provision confirming that upon the  
20 Contract's termination, APCO's subcontracts would be assigned to Gemstone.

21 35. At that point, Gemstone would be responsible for any amounts that Gemstone  
22 had not already paid APCO for the subcontractors' work:

23 **10.04 Assignment.** Each Third-Party Agreement for a portion of  
24 the Work is hereby assigned by General Contractor to Developer  
25 provided that such assignment is effective only after termination  
26 of the Agreement by Developer for cause pursuant to Section  
27

---

28 <sup>27</sup> Exhibit 2 at Section 10.01.

<sup>28</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

<sup>29</sup> Exhibit 2 at Section 10.02(b)(2).

<sup>30</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

<sup>31</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.

1 10.02 and only for those Third-Party Agreements which  
2 Developer accepts by notifying General Contractor and the  
3 applicable Third Party Service Provider in writing. General  
4 Contractor shall execute and deliver all such documents and take  
5 all such steps as Developer may require for the purpose of fully  
6 vesting in Developer the rights and benefits of General  
7 Contractor under such documents. Upon the acceptance by  
8 Developer of any Third-Party Agreement, subject to the other  
9 terms of this Article X, Developer shall pay to the corresponding  
10 Third-Party Service Provider any undisputed amounts owed for  
11 any Work completed by such Third Party Provider, prior to the  
12 underlying termination for which Developer had not yet paid  
13 General Contractor prior to such underlying termination.<sup>32</sup>

14 36. Despite its dispute with Gemstone, APCO could not have terminated its  
15 subcontracts or it would have been in breach of the Contract.<sup>33</sup>

16 37. Notably, the Contract and this assignment clause were incorporated into the  
17 APCO subcontracts.<sup>34</sup>

18 38. And before APCO left the Project, Gemstone and APCO ensured that all  
19 subcontractors were properly paid up through that last period.<sup>35</sup>

20 C. Subcontracts

21 1. Helix

22 39. Helix Electric of Nevada, LLC ("Helix") was originally selected and retained by  
23 Gemstone and performed work on the Project prior to APCO becoming the general  
24 contractor.<sup>36</sup>

25 <sup>32</sup> Exhibit 2, Section 10.04 (p. 36).

26 <sup>33</sup> Testimony of Joe Pelan (APCO), Day 1, p. 75.

27 <sup>34</sup> Exhibit 45 (Helix Subcontract) and Exhibit 149 (CabineTec Subcontract),  
28 Section 1.1.

<sup>35</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67, and 82.  
Testimony of Mary Jo Allen (APCO), Day 3, pp. 127-128.

<sup>36</sup> Testimony of Joe Pelan (APCO), Day 1, p. 58.

1           40.     Specifically, Helix's Vice President, Bob Johnson,<sup>37</sup> admitted Helix participated  
2 in preparing engineering and design services for Gemstone on the Project's electrical scope of  
3 work.<sup>38</sup>

4           41.     So at Gemstone's direction, APCO entered into a subcontract with Helix for the  
5 electrical work (the "Helix Subcontract") required on the Project.<sup>39</sup>

6           42.     Helix's scope of work included "electrical installation for the project, which  
7 consists of distribution of power, lighting, power for the units, connections to equipment that  
8 required electrical."<sup>40</sup>

9           43.     So Helix's work was based, in part, on the electrical drawings that Helix  
10 prepared under contract to Gemstone.<sup>41</sup>

11           44.     The Helix subcontract included the following relevant provisions:

- 12           ○     Section 1.1: The subcontract incorporates the Contract including all
- 13           ○     exhibits and attachments, specifically including the Helix exhibit.
- 14           ○     Section 1.3: Helix was bound to APCO to the same extent and duration
- 15           ○     that APCO was bound to Gemstone.
- 16           ○     Section 3.4 outlined the agreed upon progress payment schedule as
- 17           ○     follows: Progress Payments
- 18           ▪     The progress payment to Subcontractor shall be one
- 19           ▪     hundred percent (100%) of the value of Subcontract work
- 20           ▪     completed (less 10% retention) during the preceding
- 21           ▪     month as determined by the Owner, less such other
- 22           ▪     amounts as Contractor shall determine as being properly
- 23           ▪     withheld as allowed under this Article or as provided

24           <sup>37</sup> Bob Johnson is the Vice President of the major projects group at Helix.  
25           Testimony of Bob Johnson (Helix), Day 1, p. 106. Mr. Johnson has negotiated more  
26           than 50 subcontracts in his career, three to four of which have been with APCO.  
27           Testimony of Bob Johnson (Helix), Day 2, p. 17. Mr. Johnson was involved in the  
28           negotiation and execution of the final terms and conditions of Helix's subcontract with  
APCO for the Project. Testimony of Bob Johnson (Helix), Day 1, p. 107. Mr. Johnson  
admitted Andy Rivera received most of the project related correspondence and had the  
most information on Helix's damages claim. Testimony of Bob Johnson (Helix), at Day  
2, p. 24.

<sup>38</sup> Testimony of Bob Johnson (Helix) Day 2, p. 6.

<sup>39</sup> Exhibit 45, Helix Subcontract; Testimony of Joe Pelan (APCO), Day 1, p. 58.

<sup>40</sup> Testimony of Bob Johnson (Helix) at Day 2, p. 10.

<sup>41</sup> Testimony of Bob Johnson (Helix) Day 2, p. 7.

1 elsewhere in this Subcontract. The estimates of Owner as  
2 to the amount of Work completed by Subcontractor shall  
3 be binding upon Contractor and Subcontractor and shall  
4 conclusively establish the amount of Work performed by  
5 Subcontractor. As a condition precedent to receiving  
6 partial payments from Contractor for Work performed,  
7 Subcontractor shall execute and deliver to Contractor,  
8 with its application for payment, a full and complete  
9 release (Forms attached) of all claims and causes of action  
10 Subcontractor may have against Contractor and Owner  
11 through the date of the execution of said release, save and  
12 except those claims specifically listed on said release and  
13 described in a manner sufficient for Contractor to Identify  
14 such claim or claims with certainty. Upon the request of  
15 Contractor, Subcontractor shall provide an Unconditional  
16 Waiver of Release in form required by Contractor for any  
17 previous payment made to Subcontractor. Any payment to  
18 Subcontractor shall be conditioned upon receipt of the  
19 actual payments by Contractor from Owner.  
20 Subcontractor herein agrees to assume the same risk that  
21 the Owner may become insolvent that Contractor has  
22 assumed by entering Into the Prime Contract with the  
23 Owner.

24 ○ 3.5 Progress Payments

- 25 ■ Progress payments will be made by Contractor to  
26 Subcontractor within 15 days after Contractor actually  
27 receives payment for Subcontractor's work from  
28 Owner.... The estimate of owner as to the amount of  
Work completed by Subcontractor be binding upon  
Contractor and Subcontractor and shall conclusively  
establish the amount of Work performed by  
Subcontractor...<sup>42</sup>

45. Of critical importance to the present action and claims, the Helix Subcontract  
contained the following agreed upon retention payment schedule:

○ Section 3.8: Retainage

The 10 percent withheld retention shall be payable to Subcontractor  
upon, and only upon the occurrence of all the following events, each of  
which is a condition precedent to Subcontractor's right to receive final  
payment hereunder and payment of such retention: (a) Completion of the

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<sup>42</sup> Exhibit 45.

1 entire project as described in the Contract Documents; (b) The approval  
2 of final acceptance of the project Work by Owner, (c) Receipt of final  
3 payment by Contractor from Owner; (d) Delivery to Contractor from  
4 Subcontractor all as-built drawings for it's (*sic*) scope of work and other  
5 close out documents; (e) Delivery to Contractor from Subcontractor a  
6 Release and Waiver of Claims from all of Subcontractor's laborers,  
7 material and equipment suppliers, and subcontractors, providing labor,  
8 materials or services to the Project.<sup>43</sup>

9 46. As documented below, Helix admitted that these preconditions were not met  
10 while Apco was the contractor.<sup>44</sup>

11 47. In its lien documents,<sup>45</sup> Complaint against APCO,<sup>46</sup> and its Amended  
12 Complaint, Helix has unequivocally admitted that it had a binding subcontract with APCO.<sup>47</sup>

13 48. In fact, Victor Fuchs, the President of Helix,<sup>48</sup> also confirmed the following in  
14 an affidavit attached to Helix's May 5, 2010 Motion for Summary Judgment Against Gemstone  
15 Development West (and corresponding errata) filed with this Court:

16 4. On or around April 17, 2007 [the date of Exhibit 45],  
17 APCO contracted with Helix to perform certain work on the  
18 Property.

19 5. Helix's relationship with APCO was governed by a  
20 subcontract, which provided the scope of Helix's work and  
21 method of billing and payments to Helix for work performed on  
22 the Property (the "Subcontract"). A true and correct copy of the  
23 Subcontract is attached hereto as Exhibit 1.

24 6. Helix also performed work and provided equipment and  
25 services directly for and to Gemstone, namely design engineering  
26 and temporary power.

27 <sup>43</sup> Exhibit 45.

28 <sup>44</sup> Testimony of Bob Johnson, Day 2, pp. 36 and 37.

<sup>45</sup> Exhibits 512 pp. 5-6, 7-9, 10-11.

<sup>46</sup> Exhibit 77.

<sup>47</sup> Exhibit 231.

<sup>48</sup> Testimony of Bob Johnson (Helix), Day 1, p. 108.

1                   7. Camco Pacific Construction Company, Inc. ("Camco")  
2 replaced APCO as the general contractor. Thereafter, Helix  
3 performed its Work for Gemstone and/or Camco...<sup>49</sup>

4 Exhibit 1 to the declaration was the first fifteen pages of Exhibit 45.<sup>50</sup>

5           49. And notwithstanding Helix's proposed interlineations to the subcontract, Helix's  
6 Mr. Johnson admitted he did not change the retention payment schedule in the subcontract:

7                   Q. Okay. Would you turn to page 4 [of Exhibit 45] And  
8 directing your attention to paragraph 3.8?

9                   A. Okay.

10                  Q. Do you recognize that as the agreed-upon retention  
11 payment schedule in the subcontract?

12                  A. I do.

13                  Q. And in fairness to you and the record, you did propose  
14 a change to paragraph 3.8. Could you turn to page 16 of the  
15 exhibit, Exhibit 45? And directing your attention to paragraph 7,  
16 does this reflect your proposed change to the retention payment  
17 schedule in the original form of Exhibit 45?

18                  A. In the original form, yes.

19                  Q. Okay. And APCO accepted your added sentence that if  
20 the retention was reduced on the Project, the same would be  
21 passed on to the subcontractor, correct?

22                  A. Correct.

23                  Q. Through your change in paragraph 7, on page 16 of  
24 Exhibit 45, you did not otherwise modify the preconditions in the  
25 retention payment schedule of 3.8, did you?

26                  A. We did not.<sup>51</sup>

27           50. Mr. Johnson, also admitted that Exhibit 45 represented the APCO agreement  
28 that Helix alleges APCO somehow breached:

                  Q. Okay, sitting here today, is it your contention that  
APCO breached a contract with Helix?

                  A. I would say they did in the respect that we haven't  
been paid.

                  Q. Okay. And which contract is it in your opinion that  
APCO breached?

---

<sup>49</sup> Exhibit 314.

<sup>50</sup> Helix Electric's May 5, 2010 Motion for Partial Summary Judgment Against  
Gemstone Development West (and corresponding errata).

<sup>51</sup> Testimony of Bob Johnson, Day 2, pp. 17-18.



1 A. For the Manhattan West project.  
2 Q. Is there a document?  
3 A. There is a document.  
4 Q. Okay. And, sir, would you turn—if you could, grab  
5 Exhibit 45. You spent some time talking about this yesterday.  
6 A. Okay.  
7 The Court: Which item is it, counsel?  
8 Mr. Jefferies: Exhibit 45.  
9 Q. Is it your position that APCO breached this agreement?  
10 A. My assumption would be they breached it, yes.  
11 Q. Okay. But this is the document that represents the  
12 agreement between APCO and Helix for the project?  
13 A. It is the agreement between APCO and Helix.<sup>52</sup>

14 51. Notably, the Helix Subcontract did not contain a provision purporting to waive  
15 Helix's statutory lien rights.

16 2. CabineTec

17 52. Gemstone also selected CabineTec, Inc. ("CabineTec") to serve as APCO's  
18 cabinet subcontractor.<sup>53</sup> Plaintiff in Intervention National Wood Products, Inc. ("National  
19 Wood") is a judgment creditor of CabineTec which has assigned all of its right, title, and  
20 interest in the project to National Wood. Such parties are collectively referred to herein as  
21 "CabineTec."

22 53. APCO entered into a subcontract with CabineTec on April 28, 2008 for the  
23 delivery and installation of cabinets on the Project (the "CabineTec Subcontract")<sup>54</sup>

24 54. CabineTec's Subcontract contained the same retention and progress payment  
25 schedules quoted above from the Helix Subcontract.<sup>55</sup>

26 <sup>52</sup> Testimony of Bob Johnson (Helix), Day 2, p. 9.

27 <sup>53</sup> Testimony of Joe Pelan (APCO), Day 1, p. 89.

28 <sup>54</sup> Exhibit 149, CabineTec Subcontract.

<sup>55</sup> Exhibit 149.

1           55. CabineTec's Nicholas Cox<sup>56</sup> admitted CabineTec did not change the retention  
2 payment schedule found in Section 3.8.<sup>57</sup>

3           56. CabineTec and APCO also signed an August 6, 2008 letter regarding Terms &  
4 Conditions.<sup>58</sup>

5           57. That letter confirmed that CabineTec would be paid when "APCO receives  
6 payment from Gemstone per subcontract."<sup>59</sup>

7           58. The CabineTec Subcontract does not contain a waiver of CabineTec's right to  
8 place a mechanic's lien on the Project.

9           **D. The Contract was terminated.**

10          59. APCO did not finish the Project as the general contractor.<sup>60</sup>

11          60. Despite APCO's performance, issues with Gemstone's payments started in May  
12 2008 and Gemstone reduced the May Pay Application to exclude any money for APCO.<sup>61</sup>

13          61. "...Gemstone will withhold \$226,360.88 from the May Progress Payment (the  
14 "Withheld Amount") in addition to the 10% retainage that was already being withheld. The  
15 Withheld Amount represents the APCO Construction Contractor's Fee line-item from the May  
16 Progress Payment."<sup>62</sup>

17          62. As a result, Gemstone only paid the subcontractors for the May time period.

18          63. Given the wrongful withholding, APCO provided Gemstone with written notice  
19 of its intent to stop work pursuant to NRS 624.610 if APCO was not paid in full.<sup>63</sup>

20 \_\_\_\_\_  
21          <sup>56</sup> Mr. Cox was the president of CabineTec during the Project. Testimony of  
Nicholas Cox (CabineTec) Testimony Day 3, p. 13.

22          <sup>57</sup> Testimony of Nicholas Cox (CabineTec), Day 3, p. 29.

23          <sup>58</sup> Exhibit 152.

24          <sup>59</sup> Exhibit 152.

25          <sup>60</sup> Testimony of Brian Benson (APCO) at Day 3, p. 50; Testimony of Mary Jo  
Allen (APCO), Day 3, p. 122.

26          <sup>61</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 31.

27          <sup>62</sup> Exhibit 212-1.

28          <sup>63</sup> Exhibit 5.

1           64.    On or about July 18, 2008, APCO submitted its pay application for the month  
2 ending June 30, 2008, and requested \$6,566,720.38 (the "June Application").<sup>64</sup>

3           65.    The cover page of the June Application, like all other pay applications, tracked  
4 the total value of the Contract, the total requested for that month, subcontractor billings and  
5 retention.<sup>65</sup>

6           66.    The June Application shows Gemstone was withholding \$4,742,574.01 in  
7 retainage as of that date.<sup>66</sup>

8           67.    On July 18, 2008, APCO sent Gemstone a notice of intent to stop work for its  
9 failure to pay the May Application as follows.

10                       Specifically, Gemstone has failed to pay \$3,434,396.50 for  
11                       Application for Payment No. 8, Owner Draw No. 7, which was  
12                       submitted to Gemstone on June 20, 2008, and was due no later  
13                       than July 11, 2008 pursuant to NRS 624.609(A). Accordingly,  
14                       THIS LETTER SHALL SERVE AS APCO'S NOTICE OF  
15                       INTENT TO STOP WORK PURSUANT TO NRS 624.609  
16                       THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS  
17                       PAID THE TOTAL AMOUNT OF \$3,434,396.50 FOR ITS  
18                       WORK ON THE PROJECT... Accordingly, pursuant to NRS  
19                       624.609(1)(b), payment was due to APCO within 21 days of its  
20                       request for payment (again, no later than July 11, 2008). To date,  
21                       no payment has been made... If APCO has not been paid for  
22                       Application for Payment No. 8, Owner Construction Draw No. 7,  
23                       in the amount of \$3,434,396.50 by the close of business on  
24                       Monday, July 28, 2008, APCO reserves the right to stop work on  
25                       the Project anytime after that date. While APCO is willing to  
26                       continue to work with Gemstone to get these issues resolved,  
27                       APCO is not waiving its right to stop work any time after July 28,  
28                       2008, if APCO continues to work on the Project or otherwise  
                      attempts to resolve these issues with Gemstone.<sup>67</sup>

22           68.    On July 28, 2008, APCO sent a letter confirming that APCO would stop  
23 working unless Gemstone made full payment to APCO for all past due amounts:

24  
25           <sup>64</sup> Exhibit 4.

26           <sup>65</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 29; Exhibit 4.

27           <sup>66</sup> Exhibit 4; Testimony of Joe Pelan (APCO), Day 1, p. 30.

28           <sup>67</sup> Exhibit 5.

1 As you area aware, on July 17, 2008, APCO provided Gemstone  
2 with written notice that unless APCO was paid the full amount of  
3 \$3,434,396 by the close of business on Monday, July 28, 2008,  
4 that APCO would stop work on the Project. Gemstone failed to  
5 make full payment and has improperly withheld \$203,724.29,  
6 despite having no good faith or proper statutory basis for  
7 withholding the payment. AS a result, APCO is stopping work on  
8 the Manhattan West Project effective immediately.  
9 In addition to stopping work on the project, APCO hereby asserts  
10 its rights to terminate the contract pursuant to NRS 624.610(2).  
11 THIS LETTER SHALL SERVICE AS APCO'S NOTICE OF  
12 INTENT TO TERMINATE THE MANHATTAN WEST  
13 GENERAL CONSTRUCTION CONTRACT FOR GMP  
14 PURSUANT TO NRS 624.606 THROUGH NRS 624.630,  
15 INCLUSIVE, PURSUANT TO THE TERMS OF THE NRS  
16 624.610, THE CONTRACT SHALL BE TERMINATED AS OF  
17 AUGUST 14, 2008.<sup>68</sup>

18 69. Helix was aware that shortly after a July 11, 2008 email,<sup>69</sup> APCO began issuing  
19 stop work notices to Gemstone on the Project.<sup>70</sup>

20 70. Gemstone ultimately paid APCO for May.<sup>71</sup>

21 71. In addition, on July 29, 2008, APCO sent the following letter to its  
22 subcontractors:

23 As most of you are now aware, APCO Construction and  
24 GEMSTONE are embroiled in an unfortunate contractual dispute  
25 which has resulted in the issuance of a STOP WORK NOTICE to  
26 GEMSTONE. While it is APCO Construction's desire to  
27 amicably resolve these issues so work may resume, it must also  
28 protect its contractual and legal rights. This directive is to advise  
all subcontractors on this project that until further notice, all work  
on the Manhattan West project will remain suspended.  
THIS SUSPENSION IS NOT A TERMINATION OF THE  
GENERAL CONTRACT AT THIS TIME AND AS SUCH ALL  
SUBCONTRACTORS ARE STILL CONTRACTUALLY  
BOUND TO THE TERMS OF THEIR RESPECTIVE  
SUBCONTRACTS WITH APCO CONSTRUCTION.

68 Exhibit 6.

69 Exhibit 506, p. 1.

70 Testimony of Bob Johnson (Helix), Day 1, p. 113.

71 Testimony of Joe Pelan (APCO) Day 1, p. 31.

1                    Additionally, the subcontractors are advised that, at the present  
2                    time they are not obligated to perform any subcontract work on  
3                    the project at the direction or insistence of Gemstone.

4                    We will keep all subcontractors advised on a timely basis if the  
5                    status of the work suspension changes. Should you have any  
6                    questions, feel free to call.<sup>72</sup>

7                    72.     On July 30, 2008, Scott Financial, the Project's lender, sent a letter to APCO  
8                    confirming the loan for the Project was in good standing.<sup>73</sup>

9                    73.     On or about August 6, 2008, Gemstone provided APCO notice of its intent to  
10                   withhold the sum of \$1,770,444.28 from APCO for the June Application.<sup>74</sup>

11                   74.     Accordingly, APCO sent Gemstone another notice of intent to stop work on  
12                   August 11, 2008, noting that if APCO was not paid by August 21, 2008, APCO would suspend  
13                   work on the Project:

14                   On July 18, 2008, APCO Construction submitted its Progress  
15                   Payment for June 2008 pursuant to the terms of the General  
16                   Construction Agreement for GMP, dated September 6, 2007 in  
17                   the amount of \$6,566,720.38. This number has since been  
18                   adjusted on your submittal to the lender to reflect \$5,409,029.42  
19                   currently due to APCO Construction. We understand this number  
20                   reflects certain upward adjustments to change orders made after  
21                   the Progress Payment was submitted on July 18, 2008. Pursuant  
22                   to NRS 624.609(1), this payment was due on or before August 8,  
23                   2008. By way of good faith agreement extended by APCO  
24                   Construction to Peter Smith, this deadline was extended for three  
25                   (3) days as a result of what were intended to be "good faith"  
26                   efforts to fully resolve certain change order issues. While APCO  
27                   Construction does not feel at this time that Gemstone participated  
28                   in good faith, we will nevertheless honor our commitment to you  
                 to extend the deadline. Accordingly, and pursuant to the  
                 aforementioned statute and agreement, deadline for payment for  
                 the June Progress Payment was close of business Monday,  
                 August 11, 2008.

...  
...  
...

---

<sup>72</sup> Exhibit 48.

<sup>73</sup> Exhibit 7.

<sup>74</sup> Exhibit 313.

1 In review of your August 6, 2008 correspondence you have  
2 provided a "withholding breakdown" wherein you have given  
3 notice of your intent to withhold \$1,770,444.28, allegedly  
4 pursuant to NRS 624.609(3) and Section 5.05(d) and 5.05(f)(vii)  
5 of the Agreement.

6 As such, the correct amount of the June Progress Payment  
7 should be \$6,183,445.24. As of this date, Gemstone has failed  
8 and/or refused to pay the June Progress Payment.

9 THIS LETTER SHALL SERVE AS APCO'S NOTICE OF  
10 INTENT TO STOP WORK PURSUANT TO NRS 624.606  
11 THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS  
12 PAID THE TOTAL AMOUNT OF \$6,183,445.24 FOR ITS  
13 WORK ON THE PROJECT.

14 IF APCO CONSTRUCTION HAS NOT BEEN PAID FOR  
15 PAYMENT NO. 9 OWNER CONSTRUCTION DRAW NO. 8,  
16 IN THE AMOUNT OF \$6,183,445.24 BY CLOSE OF  
17 BUSINESS ON THURSDAY, AUGUST 21, 2008, APCO  
18 CONSTRUCTION RESERVES THE RIGHT TO STOP WORK  
19 ON THE PROJECT ANYTIME AFTER THAT DATE.

20 As we have previously demonstrated, APCO Construction will  
21 continue to work with Gemstone to resolve the various issues  
22 affecting this project, however, we will not waive our right to  
23 stop work anytime after August 21, 2008. We trust you will give  
24 this Notice appropriate attention.<sup>75</sup>

25 75. All subcontractors were copied on this notice.<sup>76</sup>

26 76. APCO informed all subcontractors that it intended to terminate the Contract as  
27 of September 5, 2008.<sup>77</sup>

28 77. Helix's Project Manager, Andy Rivera,<sup>78</sup> admitted that he received APCO's stop  
work notice and possible termination.<sup>79</sup>

<sup>75</sup> Exhibit 10; Testimony of Joe Pelan (APCO) Day 1, pp. 30 and 32.

<sup>76</sup> Testimony of Joe Pelan (APCO), Day 1, p. 31; Exhibit 10.

<sup>77</sup> Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 74.

<sup>78</sup> Andy Rivera was Helix's Project Manager. Testimony of Andy River (Helix),  
Day 2, p. 48. As the Project Manager, he was in charge of labor, materials,

1           78.     After receipt of APCO's written notice, Gemstone sent a letter on Friday,  
2 August 15, 2008, claiming that APCO was in breach of contract and that Gemstone would  
3 terminate the Contract for cause if the alleged breaches were not cured by Sunday, August 17,  
4 2008.<sup>80</sup>

5           79.     That letter divided APCO's alleged breaches into curable breaches and non-  
6 curable breaches<sup>81</sup> and also confirmed that upon termination: "(a) all Third-Party Agreements  
7 shall be assigned to Gemstone and (b) APCO must execute and deliver all documents and take  
8 such steps as Gemstone may require for the purpose of fully vesting in Gemstone the rights and  
9 benefits of such assigned Third-Party Agreements."<sup>82</sup>

10          80.     APCO's counsel responded to the letter the same day, August 15, 2008.<sup>83</sup>

11          81.     That letter refuted Gemstone's purported basis for termination for cause,<sup>84</sup> as  
12 there was no factual basis for any of the alleged defaults in Gemstone's letter:

13                   Gemstone's demand is factually incorrect as APCO is not in  
14 default of the agreement, and even if APCO was in default of the  
15 Agreement as alleged, the issues set forth by Gemstone would  
16 not support a termination of the contract...APCO has provided  
17 Gemstone with a 10 day Notice of Intent to Stop Work on the  
18 project due to Gemstone's failure to pay the June 2008  
Application. Instead of making the payment that is due,  
Gemstone is seeking to terminate the contract on or before the  
date that APCO will stop work on the project...APCO has

19  
20 subcontractors, labor reports, billings, change orders, submittals, requests for  
21 information, and most other documents on the Project. Mr. Rivera reported to Robert  
22 Johnson. Testimony of Andy Rivera (Helix), Day 2, p. 48. Andy Rivera prepared  
23 Helix's pay applications. Testimony of Bob Johnson (Helix), Day 2, p. 8. So while  
24 Robert Johnson signed the pay applications for Helix, Mr. Andy Rivera had the most  
25 personal knowledge of the financial aspects of the Project for Helix and was actually  
26 designated as Helix's PMK on Helix's claim. Testimony of Andy Rivera, Day 2, p. 73.

27           <sup>79</sup> Testimony of Bob Johnson (Helix), Day 1, p. 113.

28           <sup>80</sup> Exhibit 13; Testimony of Joe Pelan (APCO), Day 1, pp. 35-36.

<sup>81</sup> Exhibit 13 - 1-13.

<sup>82</sup> Exhibit 13, p. 14, Section C.3.

<sup>83</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 36.

<sup>84</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, pp. 37 and 79.

1 received a copy of the e-mail sent to APCO's subcontractors by  
2 Gemstone. The e-mail notes that Gemstone has a replacement  
3 General Contractor in place. Obviously, Gemstone's intent is to  
4 improperly declare APCO in default and then attempt to move  
5 forward with the project using APCO's subcontractors... Items  
(ii), (iii), (iv) and (v) were all complete months ago as part of the  
normal job process.<sup>85</sup>

6 82. There was no evidence presented at trial rebutting Mr. Pelan's testimony that  
7 APCO was not in default.

8 83. And since the Court has stricken Gemstone's answer and counterclaim against  
9 APCO,<sup>86</sup> the Court must find that APCO was not in breach.

10 84. On or about August 15, 2008, prior to its purported termination, Gemstone  
11 improperly contacted APCO's subcontractors and notified them that Gemstone was terminating  
12 APCO as of Monday, August 18, 2008.<sup>87</sup>

13 85. Gemstone confirmed it had already retained a replacement general contractor.<sup>88</sup>  
14 Gemstone advised the APCO subcontractors as follows:

15 In the event that APCO does not cure breaches to Gemstone's  
16 satisfaction during the cure period, Gemstone will proceed with a  
17 new general contractor. This GC has been selected and they are  
18 ready to go. We do not expect any delays or demobilizations in  
19 this event... If APCO does not cure all breaches, we will be  
providing extensive additional information on the transition to a  
new GC in 48 hours time.<sup>89</sup>

20 86. The replacement contractor turned out to be Camco.<sup>90</sup>

21  
22  
23 <sup>85</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 100.

24 <sup>86</sup> Docket at May 26, 2010 Order Striking Defendant Gemstone Development  
West, Inc.'s Answer and Counterclaims, and Entering Default.

25 <sup>87</sup> Exhibit 215; Testimony of Joe Pelan (APCO), Day 1, pp. 34 and 35.

26 <sup>88</sup> Exhibit 215.

27 <sup>89</sup> Exhibit 215-2.

28 <sup>90</sup> Exhibit 162, Camco/Gemstone Prime Contract.



1           87.    On August 18, 2008, APCO emailed Gemstone objecting to such direct  
2 communications with the subcontractors: "The APCO Construction GMP and Grading  
3 Contracts are still in effect and as such Gemstone shall not meet with our subcontractors. Please  
4 read the contract and other correspondence closely. If APCO didn't (and APCO did) cure the  
5 breach, Gemstone must issue a seven day notice of termination. You are disrupting my ability  
6 to perform the work."<sup>91</sup>

7           88.    That same day, APCO submitted its July 2008 pay application for  
8 \$6,307,487.15.<sup>92</sup>

9           89.    The next day on August 19, 2008, APCO sent Gemstone a letter noting  
10 Gemstone's breaches:

11                   [I]t was and is my clear position that any termination of our  
12 contract would be a breach of the agreement. Then today before I  
13 could send my letter I received a letter from your lawyer saying  
14 our contract was over.... As with the other changes, it is  
15 impossible to fully account for the delays and full impacts to our  
16 schedule at this stage. Consistent with the (2) two change orders  
17 that Alex signed after Pete initially rejected them for the HVAC  
18 deltas, I would propose that we hold the time issues for now... I  
19 also find it interesting that you have sent us letters to terminate  
20 the contract all within the time that we were allowed to provide  
21 you notice of our intent to suspend the work if the change orders  
22 on the June pay application were not paid. That was to elapse on  
23 Thursday and now your lawyer is proposing that we agree to a  
24 termination before that date. We will not agree and intend to fully  
25 proceed with our contract obligations... Yesterday morning, Alex  
26 came in and asked me what we were still doing on site because  
27 there was nothing that we could do to satisfy Gemstone. That  
28 would be consistent with the email that was sent to all of our  
subcontractors on Friday advising that we were being removed  
from the project before we even had a chance to respond to the  
48 hour notice... Craig also told me that Gemstone had  
previously selected Camco to complete the project.<sup>93</sup>

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<sup>91</sup> Exhibit 216-1.

<sup>92</sup> Exhibit 8.

<sup>93</sup> Exhibit 15.

1           90.     On August 19, 2008, Gemstone confirmed that joint checks to the  
2 Subcontractors and Apco would be written for the June 2008's pay application: "I'd like to  
3 have dual checks cut for this [June, 2008] pay application directly to the subs and the general. I  
4 believe this is different than what we have historically done on Manhattan West, but similar to  
5 how we have paid some Manhattan Pay Apps in the past."<sup>94</sup>

6           91.     Gemstone confirmed that all future payments would essentially go directly from  
7 Nevada Construction Control to the subcontractors.<sup>95</sup>

8           92.     Although it disagreed with Gemstone's conduct, APCO cooperated in this post  
9 termination process to ensure that all subcontractors were properly paid for work performed on  
10 APCO's watch:

11                   An APCO representative has to sign all of the subcontractor  
12 checks due to Gemstone's request to prepare the "joint checks".  
13 An APCO signer should be doing that by the end of today or  
14 tomorrow morning. At that time, NCS will contact all of the  
15 subcontractors to pick up their checks. Furthermore, today the  
16 APCO's July pay application was submitted to NCS. As  
17 mentioned in the meeting on Monday, August 25, 2008, enclosed  
18 is the contact information for Camco Pacific regarding pay  
19 applications... Please forward your July and August pay requests  
20 to Yvonne. Obviously, July was already submitted to NCS but we  
21 would like Camco to have record of the most current pay  
22 requests.<sup>96</sup>

23           93.     None of the joint checks that NCS and Gemstone issued and that APCO  
24 properly endorsed included any funds for APCO.<sup>97</sup>

25           94.     And none of the joint checks accounted for any APCO or subcontractor  
26 retention because retention had not been earned under either the Contract or the various  
27 subcontracts.<sup>98</sup>

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28           <sup>94</sup> Exhibit 16; Testimony of Joe Pelan (APCO), Day 1, p. 38.

<sup>95</sup> Testimony of Joe Pelan (APCO), Day 1, p. 38.

<sup>96</sup> Exhibit 26. Testimony of Joe Pelan (APCO), Day 1, pp. 38 and 41.

<sup>97</sup> Testimony Day 1, p. 38.

<sup>98</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 38-39.

- 1           95.    As of the end of August, the Project was only about 74% complete.<sup>99</sup>  
2           96.    Ultimately, APCO was not paid for its share of June Application even though  
3 the subcontractors received their money.<sup>100</sup>  
4           97.    On August 21, 2008, APCO sent a letter to its subcontractors informing them  
5 that APCO would stop work on the Project on August 21, 2008:

6                   Attached hereto is APCO Construction's Notice of Stopping  
7                   Work and Notice of Intent to Terminate Contract for  
8                   nonpayment. As of 5:00p.m., Thursday, August 21, 2008 all  
9                   work in furtherance of the subcontracts you have with APCO  
10                  CONSTRUCTION on the Manhattan West project is to stop until  
11                  you are advised otherwise, in writing, by APCO  
12                  CONSTRUCTION... If a prime contractor terminates an  
13                  agreement pursuant to this section, all such lower tiered  
14                  subcontractors may terminate their agreements with the prime  
15                  contractor... Pursuant to statute, APCO CONSTRUCTION is  
16                  only stopping work on this project. At this time it has not  
17                  terminated its contract with Gemstone. As such, all  
18                  subcontractors, until advised in writing by APCO  
19                  CONSTRUCTION, remain under contract with APCO  
20                  CONSTRUCTION.<sup>101</sup>

- 21           98.    On August 21, 2008 APCO also provided Gemstone with written notice of  
22 APCO's intent to terminate the Contract as of September 5, 2008.<sup>102</sup>

- 23           99.    APCO's last work on the Project was August 21, 2008.<sup>103</sup>

- 24           100.   On August 22, 2008, APCO sent a letter to the Clark County Building  
25 Department advising that APCO was withdrawing as the general contractor for the Project.<sup>104</sup>  
26

27                   <sup>99</sup> Exhibit 218-10; Testimony of Steven Parry (Camco), Day 5, pp. 31-32. Mr.  
28 Parry was Camco's project manager for the approximate four months that Camco  
worked on the Project. Testimony of Steven Parry (Camco), Day 5, p. 24.

<sup>100</sup> Testimony of Joe Pelan (APCO), Day 1, p. 33.

<sup>101</sup> Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 32.

<sup>102</sup> Exhibit 23.

<sup>103</sup> Testimony of Brian Benson (APCO), Day 3, p. 50; Testimony of Joe Pelan  
(APCO), Day 1, p. 40.

<sup>104</sup> Exhibit 24; Testimony of Joe Pelan (APCO), Day 1, p. 40.

1 101. APCO was required to cancel its current building permits so the Project permits  
2 could be issued and transferred to Camco.<sup>105</sup>

3 102. In an August 28, 2008 letter, Gemstone advised that APCO was terminated for  
4 cause as of August 24, 2008:

5 Furthermore, pursuant to the ManhattanWest's August 15, 2008  
6 notice regarding Termination of Phase 1 for Cause, and APCO's  
7 failure to cure the breaches set forth in the notice prior to August  
8 17, 2008, the Contract terminated for cause on August 24, 2008.  
9 Consequently, pursuant to Section 10.02(c) of the Contract,  
10 APCO is not entitled to receive any further payments until the  
11 Work [as defined in the Contract] is finished. Later today,  
12 Gemstone will issue joint checks to the subcontractors pursuant  
13 to the June Progress Payment; however, payment will not include  
14 any fees or general conditions to APCO.<sup>106</sup>

15 103. APCO contested Gemstone's purported termination and APCO's evidence was  
16 uncontested on that issue that it was not in default.<sup>107</sup>

17 104. APCO properly terminated the Contract for cause in accordance with NRS  
18 624.610 and APCO's notice of termination since Gemstone did not pay the June Application,  
19 as of September 5, 2008.<sup>108</sup>

20 105. Helix and CabineTec both received a copy of the termination letter.<sup>109</sup> APCO  
21 considered its notice of termination to be effective as of September 5, 2008.<sup>110</sup>

22 106. But Gemstone proceeded with the Project as if it had terminated the Contract  
23 with APCO.<sup>111</sup> APCO was physically asked to leave the Project as of the end of August,  
24 2008.<sup>112</sup>

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25 <sup>105</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.

26 <sup>106</sup> Exhibit 27; Testimony of Joe Pelan (APCO), Day 1, p. 41.

27 <sup>107</sup> Testimony of Joe Pelan (APCO), Day 1, p. 42.

28 <sup>108</sup> Exhibit 28; Testimony of Joe Pelan (APCO), Day 1, pp. 73 and 80.

<sup>109</sup> Exhibit 28; Testimony of Bob Johnson (Helix), Day 1, p. 113.

<sup>110</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 42-43.

<sup>111</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 100-101; Exhibit 29.

1 107. And all subcontractors received notice from Gemstone that APCO was  
2 terminated on August 26, 2008 and would not be returning to the Project.<sup>113</sup>

3 E. Gemstone owed APCO \$1.4 million when APCO left the Project.

4 108. Even though the subcontractors had received all amounts billed through August  
5 2008, Gemstone owed APCO \$1,400,036.75 for APCO's June, July, and August 2008 payment  
6 applications.<sup>114</sup>

7 109. Gemstone also owed APCO \$200,000.00 from various reimbursements.<sup>115</sup>

8 110. APCO has never received payment in any form from any entity for these pay  
9 applications or the \$200,000.00 in reimbursements.<sup>116</sup>

10 111. The \$1,400,036.75 does not reflect any of the retention that Gemstone withheld  
11 from APCO on the Project because the retention never became due.<sup>117</sup>

12 112. Ultimately, Gemstone would not accept APCO's final August 2008 pay  
13 application.<sup>118</sup>

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14  
15 <sup>112</sup> Testimony of Joe Pelan (APCO) Day 3, p. 150.

16 <sup>113</sup> Exhibit 118.

17 <sup>114</sup> Exhibit 320/321, Summary of June, July and August 2008 payment  
18 applications to Gemstone that were not paid; Testimony of Joe Pelan (APCO) Day 1, p.  
19 67; Testimony of Mary Jo Allen (APCO) Day 3, p. 144. Exhibit 4 is APCO's June  
20 Application. Testimony of Mary Jo Allen (APCO), Day 3, p. 124. APCO's share of the  
21 June Pay Application was \$700,802.90, which was not paid. Testimony of Mary Jo  
22 Allen (APCO), Day 3, pp. 125-127. Exhibit 8 is APCO's July pay application.  
23 Testimony of Mary Jo Allen (APCO), Day 3, p. 125. APCO's share of the July 2008  
24 pay application was \$431,183.67, which was not paid. Testimony of Mary Jo Allen  
25 (APCO), Day 3, pp. 125-127. Exhibit 31 was APCO's August 2008 pay application and  
26 its final pay application. Accordingly, the August 2008 application shows everything  
27 that was done by APCO and its subcontractors through the end of August 2008.  
28 Testimony of Mary Jo Allen (APCO) Day 3, p. 135. APCO's share of the August 2008  
pay application was \$268,050.18, which was not paid. Testimony of Joe Pelan (APCO)  
Day 1, p. 46; Testimony of Mary Jo Allen (APCO), Day 3, pp. 126-127. In total,  
Gemstone owed APCO \$1,400,036.75 for its last three pay applications. Testimony of  
Mary Jo Allen (APCO), Day 3, p. 122.

<sup>115</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>116</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>117</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>118</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 44-45. Exhibit 31.

1 113. So Camco submitted APCO's August 2008 billing so APCO's subcontractors  
2 would get paid.<sup>119</sup>

3 114. Camco's August 2008 pay application tracked the full retention from the Project  
4 (including APCO's)<sup>120</sup> and APCO's full contract amount.<sup>121</sup>

5 115. As of its last pay application, APCO believed it was 76% complete with the  
6 Project.<sup>122</sup>

7 116. Despite the amounts owed to APCO, the evidence was uncontested that the  
8 subcontractors received all of their billed amounts, less retention, up through August 2008.<sup>123</sup>

9 **F. APCO did not terminate the Helix or CabineTec Subcontracts.**

10 117. During this dispute, APCO did not terminate the Helix or CabineTec  
11 subcontracts,<sup>124</sup> but advised its subcontractors that they could suspend work on the Project in  
12 accordance with NRS Chapter 624.<sup>125</sup>

13 118. If APCO wanted to terminate its subcontractors, it had to do so in writing.<sup>126</sup>

14 119. Helix admitted it knew APCO was off the Project as of August 28, 2008<sup>127</sup> and  
15 that neither APCO nor Helix terminated the Helix Subcontract.<sup>128</sup>

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17  
18 <sup>119</sup> Exhibit 218; Testimony of Joe Pelan (APCO), Day 1, pp. 43-44.

19 <sup>120</sup> Testimony of Joe Pelan (APCO), Day 1, p. 44; Exhibit 218-2.

20 <sup>121</sup> Exhibit 218-10.

21 <sup>122</sup> Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.

22 <sup>123</sup> Testimony of Mary Jo Allen (APCO) Day 3, pp. 127-129 and 144; Testimony  
23 of Andy Rivera (Helix) Day 2, pp. 73 and 75; Testimony of Joe Pelan (APCO) Day 3,  
p. 150; Exhibit 26; Exhibit 152; Testimony of Joe Pelan (APCO) Day 1, pp. 26, 46, 67  
and 82.

24 <sup>124</sup> Testimony of Joe Pelan (APCO), Day 1, p. 39.

25 <sup>125</sup> Exhibit 23.

26 <sup>126</sup> Testimony of Joe Pelan (APCO) Day 1, p. 71.

27 <sup>127</sup> Testimony of Andy Rivera (Helix) Day 2, p. 62.

28 <sup>128</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 126; Testimony of Bob Johnson  
(Helix) Day 2, p. 33.

1 120. Additionally, Helix admitted it never issued a stop work notice to APCO  
2 pursuant to NRS 624 because it had no payment disputes with APCO.<sup>129</sup>

3 121. In fact, per Gemstone's notice dated August 15, 2008, Gemstone gave APCO  
4 notice that it exercised its right under Contract Section 10.04 to accept an assignment of the  
5 APCO subcontracts.<sup>130</sup>

6 122. Accordingly, any purported termination of a subcontract by APCO would have  
7 breached the Contract.<sup>131</sup>

8 123. During August 2008, subcontractors on the Project were getting information  
9 directly from Gemstone.<sup>132</sup>

10 124. Helix and CabineTec both continued work on the Project for Gemstone and  
11 Camco, and submitted their August billings to Camco.<sup>133</sup>

12 **G. Status of the Project when APCO was off the Project**

13 125. Before APCO was asked to leave the Project on August 19 and 20, 2008, APCO  
14 documented the as-built conditions and confirmed that Helix and CabineTec were not  
15 anywhere close to completing their respective scopes of work.<sup>134</sup>

16 126. So the evidence was undisputed that at the time APCO left the Project,  
17 Gemstone did not owe APCO or the subcontractors their retention.

18 . . . . .

19 . . . . .

20  
21 <sup>129</sup> Testimony of Bob Johnson (Helix) Day 1, p. 127.

22 <sup>130</sup> Exhibit 13.

23 <sup>131</sup> Testimony of Joe Pelan (APCO) Day 1, p. 75.

24 <sup>132</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

25 <sup>133</sup> Exhibit 29; Exhibit 173, Helix's first payment application to Camco; Exhibits  
182/185, CabineTec's first payment application to Camco.

26 <sup>134</sup> Testimony of Brian Benson (APCO) Day 3, pp. 50-58, 63-64 and 97. Those  
27 videos are a correct and accurate representation and reproduction of the status of the  
28 Project on August 19 and August 20, 2008. Testimony of Brian Benson (APCO) Day 3,  
p. 52.

1           **H.     Camco became the Prime Contractor.**

2           127. Camco and Gemstone had several meetings and Gemstone contracted with  
3 Camco to complete the Project on August 25, 2008.<sup>135</sup>

4           128. In terms of the plans, specifications and technical scope of work, Camco's work  
5 was the same as APCO's.<sup>136</sup>

6           129. In fact, Camco used the same schedule of values and cost coding that APCO had  
7 been using on the Project.<sup>137</sup>

8           130. Camco obtained permits in its own name to complete the Project.<sup>138</sup>

9           131. Camco's Steve Parry confirmed that Exhibit E to the Camco contract  
10 represented the state of the Project when Camco took over.<sup>139</sup>

11           132. Gemstone and Camco estimated the Project to be 74% complete for Phase 1.<sup>140</sup>  
12 Those estimates also confirmed that:

- 13                 • The first floor drywall taping in building 8 was 70% complete.<sup>141</sup>
- 14                 • The first floor drywall taping in building 9 was 65% complete.<sup>142</sup>

15           133. Among other things, the Camco contract required that Camco "shall engage the  
16 Third-Party Service Providers listed on Exhibit C (the "Existing Third-Party Service  
17 Providers)."<sup>143</sup>

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19  
20           <sup>135</sup> Exhibit 162, Camco/Gemstone Prime Contract; Testimony of Steve Parry  
(Camco) Day 5, pp. 25-26.

21           <sup>136</sup> Exhibit 162; Testimony of Joe Pelan (APCO) Day 1, pp. 45 and 98;  
22 Testimony of Steve Parry (Camco) Day 5, p. 31.

23           <sup>137</sup> Testimony of Steve Parry (Camco) Day 5, pp. 30-31.

24           <sup>138</sup> Testimony of Steve Parry (Camco) Day 5, p. 37.

25           <sup>139</sup> Testimony of Steve Parry (Camco) Day 5, p. 27.

26           <sup>140</sup> Exhibit 218, p. 10; Testimony of Steven Parry (Camco) Day 5, p. 31-32.

27           <sup>141</sup> Exhibit 160-3.

28           <sup>142</sup> Exhibit 160-3.

<sup>143</sup> Exhibit 162-2.



1           134. Helix and CabineTec are both listed as Existing Third-Party Service Providers  
2 on Exhibit C.<sup>144</sup>

3           135. And Camco had worked with Helix before.<sup>145</sup>

4           136. Camco's Steve Parry admitted that Camco was assuming the subcontracts that  
5 APCO had with Helix and CabineTec:

6                     [Exhibit 162 was on the elmo]

7                     Q. ..I've highlighted a sentence that says, "General contractor  
8 shall engage third-party service providers." Do you see that?

9                     A. Yes.

10                    Q. Okay. What did you understand that to mean?

11                    A. That we would use subcontractors on the site that had already  
12 been under contract to perform work on the project.

13                    Q. Okay. So you were assuming the Subcontracts that APCO had  
14 issued on the Project; is that right?

15                    A. Yes.

16                    Q. And, sir, if you would, turn to Exhibit C within the exhibit.  
17 Those assumed contracts from APCO included CabineTec and  
18 Helix; correct?

19                    A. Yes.

20                    Q. And, sir, if you would, turn to Exhibit C within the exhibit.  
21 Those assumed subcontracts from APCO included CabineTec  
22 and Helix; correct?

23                    A. Yes.<sup>146</sup>

24           137. After Camco became the general contractor, it was responsible to pay  
25 subcontractors for work performed under it.<sup>147</sup>

26           138. Camco never had any contact or involvement with APCO on the Project,<sup>148</sup> nor  
27 did APCO provide any direction or impose any scheduling requirements on subcontractors  
28 proceeding with their work.<sup>149</sup>

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<sup>144</sup> Exhibit 162-23.

<sup>145</sup> Testimony of Steve Parry (Camco) Day 5, pp. 13-14.

<sup>146</sup> Testimony of Steve Parry (Camco) Day 5, p. 26.

<sup>147</sup> Testimony of Joe Pelan (APCO) Day 1, p. 99.

<sup>148</sup> Testimony of Steve Parry (Camco) Day 5, p. 27.

<sup>149</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Joe Pelan  
(APCO) Day 3, p. 150; Testimony of Steve Parry (Camco) Day 5, p. 27.

1 139. APCO played no role in the pay application process or the actual field work on  
2 the Project from September-December 2008.<sup>150</sup>

3 140. And no Helix nor CabineTec representative ever approached APCO with  
4 questions or concerns about proceeding with work on the Project after APCO's termination.<sup>151</sup>

5 141. So APCO did not receive any benefit from the work or materials that Helix or  
6 CabineTec performed or provided to the Project after August 21, 2008.<sup>152</sup>

7 142. Camco's first pay application was for the period through August 31, 2008.<sup>153</sup>

8 143. That billing reflected Gemstone retainage account for APCO's work:

9 Q. Now, I have highlighted the retainage line item of  
10 \$5,337,982.74 [on Exhibit 218]. Do you see that?

11 A. Yes.

12 Q. What did that figure represent?

13 A. The retainage that was being withheld on the Project.

14 Q. And who was the retainage being withheld by?

15 A. Gemstone, the owner.

16 ...

17 Q. Okay. So my point simply was what you're depicting  
18 here in the retainage is the accounting of the retainage that was  
19 withheld from APCO as you're going forward on the Project.

20 A. That's correct.<sup>154</sup>

21 So all parties knew that the subcontract retention amounts were maintained with Gemstone  
22 after APCO was terminated.

23 I. **CabineTec entered into a ratification agreement with Camco.**

24 144. After APCO left the Project, CabineTec signed a ratification agreement with  
25 Camco whereby CabineTec agreed to complete its original scope of work for Camco.<sup>155</sup>

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26 <sup>150</sup> Testimony of Joe Pelan (APCO) Day 1, p. 98.

27 <sup>151</sup> Testimony of Joe Pelan (APCO) Day 1, p. 98.

28 <sup>152</sup> Testimony of Joe Pelan (APCO) Day 3, pp. 149-150.

<sup>153</sup> Testimony of Steve Parry (Camco) Day 5, p. 29.

<sup>154</sup> Testimony of Steve Parry (Camco) Day 5, p. 30.

1 145. CabineTec understood the ratification to mean that "you guys [APCO] were  
2 stepping out and Camco was stepping in."<sup>156</sup>

3 146. CabineTec further clarified its understanding of the ratification agreement as  
4 follows:

5 Q. Okay. Sir, but going forward from and after the point that  
6 CabineTec signed the ratification agreement with Camco, you  
7 knew and understood that Camco was going to be the  
8 "contractor", as that term was used in the original subcontract  
9 that Cabinetec had for the project, correct?

10 A. So APCO was going away and Camco was coming on. That's  
11 what was happening.<sup>157</sup>

12 147. In addition, the signed ratification agreement contained the following terms:

- 13 • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to  
14 the terms of the Subcontract Agreement, whereby Camco will replace  
15 APCO as the "Contractor" under the Subcontract Agreement but, subject  
16 to the terms of this Ratification, all other terms and conditions of the  
17 Subcontract Agreement will remain in full force and effect."<sup>158</sup>
- 18 • The ratification agreement acknowledged that \$264,395.00 of work  
19 remained to be finished on Building 8 and \$264,395.00 on Building 9.<sup>159</sup>
- 20 • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the  
21 Subcontract Agreement (as amended by this Ratification and including  
22 all Amendments, Previously Approved Change Orders, and the Camco  
23 Schedule) will govern their relationship regarding the Project, (b) Camco  
24 will be the "Contractor" under the Subcontract Agreement, and (c)  
25 Subcontractor and Camco agree to perform and fulfill all of the  
26 executory terms, covenants, conditions and obligations required to be  
27 performed and fulfilled thereunder by Subcontractor and Camco,  
28 respectively."<sup>160</sup>

Accordingly, all retention and future payments to CabineTec, which were executory  
obligations, were Camco's responsibility.

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<sup>155</sup> Exhibit 3096; Testimony of Nicholas Cox (CabineTec) Day 3, p. 34;  
Testimony of Mr. Thompson (CabineTec) Day 5, p. 60.

<sup>156</sup> Testimony of Nicholas Cox (CabineTec) Day 3, p. 35.

<sup>157</sup> Testimony of Nicholas Cox (CabineTec) Day 3, p. 36.

<sup>158</sup> Exhibit 183-1.

<sup>159</sup> Exhibit 183-2.

1 148. After Gemstone could no longer pay Camco, CabineTec filed a complaint  
2 against APCO and Camco and alleged that it entered into a ratification agreement with Camco:

3 10. On or about August 26, 2008, pursuant to Gemstone's request  
4 CABINETEC entered into a Ratification and Amendment of  
5 Subcontract Agreement (the "Ratification") with CAMCO,  
6 whereby CAMCO agreed to the terms of the APCO Subcontract  
7 and to replace APCO as the "Contractor" under the APCO  
8 Contract. . .

9 14. CABINETEC entered into the Ratification with CAMCO,  
10 pursuant to Gemstone's request, wherein CAMCO agreed to pay  
11 CABINETEC for the services and materials on the Project.

12 15. Pursuant to, and in reliance upon, the aforementioned  
13 Subcontract, Ratification and representations, CABINETEC  
14 performed the work of providing services and materials (the  
15 "Work.")...<sup>161</sup>

16 APCO had no liability for the materials CabineTec provided to Camco and Gemstone after  
17 termination.

18 149. The fact is, APCO paid (and even overpaid) CabineTec for materials delivered  
19 to the Project while APCO was contractor.<sup>162</sup>

20 150. CabineTec did not dispute this overpayment at trial.

21 151. CabineTec submitted two invoices while APCO was on the Project.<sup>163</sup>

22 152. Exhibit 148 is CabineTec's first invoice to Camco for \$70,836.00.<sup>164</sup>

23 153. CabineTec's second invoice is for \$72,540.00.<sup>165</sup>

24 154. The total amount due to CabineTec, less retention, was \$129,038.40.<sup>166</sup>

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25 <sup>160</sup> Exhibit 172-5.

26 <sup>161</sup> Exhibit 156 at ¶ 10-15.

27 <sup>162</sup> Testimony of Mary Jo Allen (APCO) Day 3, pp. 131-132.

28 <sup>163</sup> Exhibits Nos. 148, 150, 151, and 320-321, Calculation of CabineTec  
overpayment; Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

<sup>164</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

<sup>165</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

<sup>166</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

1 155. But APCO actually paid CabineTec a total of \$161,262.00 for these two  
2 invoices.<sup>167</sup>

3 156. As such, CabineTec was overpaid \$32,223.60 by APCO on the Project.

4 157. CabineTec did not submit a pay application for August 2008.<sup>168</sup>

5 158. APCO is entitled to credit for this over payment.

6 J. CabineTec Claims retention against APCO.

7 159. When CabineTec originally filed suit CabineTec disclosed \$19,547.00 in  
8 damages against APCO in its complaint:

9 "50. As a result of the foregoing, and in accordance with the  
10 principles of equity and common law, CABINETEC is entitled to  
11 judgment in its favor, and against APCO in the amount of  
12 \$19,547.00, together with interest thereon at the highest legal  
13 rate."<sup>169</sup>

14 160. And, CabineTec's initial and first supplemental disclosures only disclosed  
15 \$30,110.95 in damages against APCO: "...National Wood seeks to recover those damages  
16 claimed by CabineTec in its complaint in intervention against APCO in the amount of  
17 \$30,110.95 and CAMCO in the amount of \$1,125,374.94..."<sup>170</sup> The \$30,110.95 represented  
18 \$19,547.00 in alleged retention, and \$10,563.95 in interest and fees.<sup>171</sup>

19 161. Those were the only two disclosures CabineTec made before the close of  
20 discovery, as was extended by the Court. Then on the eve of trial, CabineTec attempted to  
21 disclose and seek \$1,154,680.40 in damages against APCO.<sup>172</sup>

22 <sup>167</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

23 <sup>168</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 134.

24 <sup>169</sup> Exhibit 156-8.

25 <sup>170</sup> Exhibit 157 (CabineTec's Initial Disclosure); Exhibit 158 (CabineTec's First  
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's Second Supplemental  
27 Disclosure).

28 <sup>171</sup> Compare Exhibit 156, CabineTec's Complaint to Exhibit 157, CabineTec's  
Initial Disclosure.

<sup>172</sup> Exhibit 159-6.

1 162. Aside from the late disclosure there is no basis for that amount as it is  
2 undisputed that CabineTec was paid every dollar it billed APCO, less retention,  
3 notwithstanding the overpayment.<sup>173</sup>

4 K. Helix's claim for \$505,021.00 in retention.

5 163. Helix's designated PMK and Project Manager, Andy Rivera, confirmed that  
6 Helix's only claim in this litigation against APCO was for the retention of \$505,021.00.<sup>174</sup>

7 164. Helix's counsel admitted this limited claim in its opening statement.<sup>175</sup>

8 165. And then at trial, Mr. Rivera confirmed Helix was only seeking retention and  
9 not the unpaid invoices submitted to Camco:

10 Q. Sir, could you pull out Exhibit 44. And I want to make  
11 sure my record's clear. Exhibit 44 that I marked is, in fact, the  
12 same summary that was found in Exhibit 535, page 252, that you  
and Mr. Zimbleman went over; is that—

13 A. Correct.

14 Q. Okay. And does Exhibit 44 represent the damages that  
you are seeking from APCO in this matter?

15 A. Yes.

16 Q. And do you recall if you were designated as the person  
most knowledgeable for one of the topics being the damages that  
Helix was seeking from APCO in these proceedings, correct?

17 A. Correct.

18 Q. And would you agree that as the PMK, you identified a  
figure of \$505,021 as the amount that Helix in this lawsuit claims  
APCO owes it, correct?

19 A. Correct.

20 Q. And there are no other amounts that you identified in  
your PMK depo as being APCO's liability on this Project,  
correct?

21 A. Correct.

22 Q. Okay. And we are in agreement that the 505—that's  
your handwriting, where you wrote: Retention?

23 A. Yes.

24 <sup>173</sup> Exhibit 147 summarizing payments and releases.

25 <sup>174</sup> Exhibit 279, Testimony of Andy Rivera (Helix) Day 2, pp. 63-65; Helix's  
PMK Deposition at p. 52.

26 <sup>175</sup> Testimony, Day 1 at p. 10. ("...Helix remains to be unpaid \$505,021, while  
27 APCO was the general contractor. This is to say amounts still owing from pay  
applications submitted to APCO, and yes, that is essentially our retention.").

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Q. And would it be fair to conclude that that retention represents retention that had been accounted for and accrued while APCO was serving as the prime contract – prime contractor on the Project?

A. Yes.

Q. Prior to today has Helix ever billed APCO for that retention?

A. No. No. I'm sorry.

Q. Do you have any information to suggest that APCO ever received Helix's retention from Gemstone?

A. I would not know.

Q. Okay. You don't have any information to suggest that APCO has collected Helix's retention but not forwarded it on to Helix, correct?

A. Correct.

Q. Okay. And in light of your summary within Exhibit 44, would it be fair to conclude that all of the amounts that Helix billed to APCO were, in fact, paid but for retention?

A. Yes.<sup>176</sup>

166. Helix received direct payments from APCO through May 2008.<sup>177</sup>

167. After May 2008, Helix received payment for its APCO billings directly from NCS through joint checks to Helix and APCO, which APCO endorsed over to Helix.<sup>178</sup>

168. Helix's first billing to Camco was on September 19, 2008.<sup>179</sup>

169. Mr. Rivera admitted Helix is only seeking \$505,021.00 in retention from APCO, which Helix never billed APCO.<sup>180</sup>

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<sup>176</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

<sup>177</sup> Testimony of Andy Rivera (Helix) Day 2, p. 61.

<sup>178</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 61-64

<sup>179</sup> Exhibit 508, p. 1; Testimony of Andy Rivera (Helix) Day 2 at p. 65.

<sup>180</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 50 and 58. Exhibit 501, p. 393 is the spreadsheet Helix created of payments it applied for and received from APCO. Helix's Mr. Rivera admitted Helix was paid a total of \$4,626,186.11 on the Project by and through APCO, which reflected payment for work billed (and retention) through August 31, 2008. Testimony of Andy Rivera (Helix) Day 2, pp. 58-59; Exhibits 46-47,

1           L.     Retention never became due to Helix or CabineTec from APCO.

2           170. As noted above, both the Helix Subcontract and the CabineTec Subcontract  
3 included an agreed upon retention payment schedule in Paragraph 3.8.

4           171. The evidence was undisputed, and even acknowledged by Helix and CabineTec,  
5 that the level of completion and other preconditions of the retention payment schedule were not  
6 met while APCO was the general contractor.

7           172. More specifically, Helix's Mr. Johnson admitted Helix did not meet the  
8 preconditions in Section 3.8 of the Subcontract to be entitled to retention:<sup>181</sup>

9                     Q. Well, let me ask it this way: Did Helix satisfy any of  
10 these preconditions found in paragraph 3.8 while APCO was the  
general contractor on the project?

11                     A. Not to my knowledge.<sup>182</sup>

12           173. CabineTec's Mr. Thompson admitted that the buildings had to be drywalled and  
13 painted before the cabinets were installed<sup>183</sup> and he had no documentation (daily reports,  
14 photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in Phase 1  
15 for APCO.<sup>184</sup>

16           174. It is undisputed that neither Helix nor CabineTec presented *any* testimony that  
17 they met the valid conditions precedent to payment to be entitled to retention.

18           175. *See Lucini-Parish Ins. v. Buck*,<sup>185</sup> (a party who seeks to recover on a contract has  
19 the burden of establishing any condition precedent to the respective contract).

20           176. Instead, the Court saw pictures<sup>186</sup> and videos<sup>187</sup> confirming that Helix's and  
21 CabineTec's work was not completed.

22  
23 Helix May and June billings; Exhibit 49-50; APCO Checks to Helix, Exhibit 58, Exhibit  
24 59, Exhibit 60, Exhibit 61, Exhibit 66, Exhibit 75.

25           <sup>181</sup> Testimony of Bob Johnson (Helix) Day 2, pp. 36-37.

26           <sup>182</sup> Testimony of Bob Johnson (Helix) Day 2, p. 19.

27           <sup>183</sup> Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

28           <sup>184</sup> Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

<sup>185</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).



1 177. The Court also heard unrefuted testimony that APCO was never paid from  
2 Gemstone for Helix's or CabineTec's retention.<sup>188</sup>

3 178. The fact is APCO and its subcontractors never got to the point where they could  
4 request retention while APCO was the contractor.<sup>189</sup>

5 179. To that end, Helix's Mr. Johnson admitted that Helix did not present a claim to  
6 APCO for any additional compensation for disputed claims or changes while APCO was on the  
7 Project.<sup>190</sup>

8 180. Helix's Mr. Rivera admitted Helix *has never* billed APCO for retention, and that  
9 all amounts that Helix did bill APCO were paid, less retention.<sup>191</sup>

10 181. The fact that Helix did not bill retention confirms that Helix recognized that  
11 retention never became due from APCO under the retention payment schedule which governed  
12 the same.

13 182. Both Helix and CabineTec rolled their retention account over to Camco and  
14 Gemstone in their post-APCO billings as it was truly a Project and Gemstone liability.<sup>192</sup>

15 183. APCO's responsibility for retention under the subcontract's retention payment  
16 schedule was governed by the same.

17 184. That is confirmed by Helix's and Camco's conduct at the Project level through  
18 their pay applications.<sup>193</sup>

---

19  
20 <sup>186</sup> Exhibit 32-38, 51-57, 108-114, 62-65, 67-74, 125-132, Pictures of Status of  
21 Project; Testimony of Brian Benson (APCO) Day 3, pp. 53-71.

22 <sup>187</sup> Exhibits 17-22, Videos of Project.

23 <sup>188</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 144; Testimony of Joe Pelan  
24 (APCO) Day 1, p. 26.

25 <sup>189</sup> Testimony of Joe Pelan (APCO) Day 1, pp. 60 and 82; Testimony of Bob  
26 Johnson (Helix) Day 2, pp. 36-37; Testimony of Joe Pelan (APCO) Day 3, p. 151.

27 <sup>190</sup> Testimony of Bob Johnson (Helix) Day 2, p. 31.

28 <sup>191</sup> Testimony of Andy Rivera (Helix) Day 2, p. 74; Exhibits 43, 50, 61 and 75.

<sup>192</sup> Exhibits 170-177, Helix billings to Camco and Exhibit 185, CabineTec's  
billings to Camco; Testimony of Mary Jo Allen (APCO) Day 3, pp. 129-130; Testimony  
of Andy Rivera (Helix) Day 2, p. 74.

1 M. Similarly, APCO never earned or received its retention.

2 185. Gemstone and/or its lender maintained the retention account.<sup>194</sup>

3 186. APCO's August 2008 pay application did not bill Gemstone for APCO's  
4 retention.<sup>195</sup>

5 187. In fact, APCO never billed Gemstone for retention<sup>196</sup> because APCO had not  
6 earned the retention and thus was not entitled to it.<sup>197</sup>

7 188. And APCO never billed or received the retention funds from Gemstone for any  
8 of the subcontractors.<sup>198</sup>

9 189. APCO never received CabineTec's or Helix's retention from Gemstone.<sup>199</sup>

10 190. Helix's Mr. Johnson admitted that Gemstone, not APCO, was holding its  
11 retention.<sup>200</sup>

12 191. And Helix admitted it had no information to suggest that APCO was ever paid  
13 Helix's retention.<sup>201</sup>

14 192. Neither Helix nor CabineTec ever billed APCO for any of the materials or work  
15 it performed after Camco signed its prime contract with Gemstone.<sup>202</sup>

16  
17 <sup>193</sup> Compare Exhibit 58, Helix's August 2008 pay application to APCO, to  
18 reflecting \$513,120.71 in retention to Exhibit 173, Helix's September 2008 payment  
19 application to Camco reflecting \$553,404.81 in retention. See also, Exhibit 151 pgs. 1, 2  
20 CabineTec's last pay application to APCO for \$179,180.00 reflecting \$17,918.00 in  
retention, to Exhibit-185, CabineTec's first payment application to Camco showing  
approved amount of \$537,404.80 less \$53,740.48 in retention. See also Exhibit 30  
(Camco's August 2008 draw request confirming retention was being held for the entire  
project).

21 <sup>194</sup> Testimony of Joe Pelan (APCO) Day 1, p. 30.

22 <sup>195</sup> Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.

23 <sup>196</sup> Testimony of Joe Pelan (APCO) Day 1, p. 30.

24 <sup>197</sup> Testimony of Joe Pelan (APCO) Day 1, p. 83.

25 <sup>198</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 128.

26 <sup>199</sup> Testimony of Joe Pelan (APCO) Day 3, p. 150.

27 <sup>200</sup> Testimony of Bob Johnson (Helix) Day 2, p. 19.

28 <sup>201</sup> Testimony of Bob Johnson (Helix) Day 2, p. 20.

<sup>202</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97.

1 193. And notably, neither Helix nor CabineTec billed APCO nor submitted a claim  
2 letter for the retention they now claim.<sup>203</sup>

3 194. In fact, CabineTec actually billed Camco for the retention it incurred under  
4 APCO.<sup>204</sup>

5 N. Helix also entered into a ratification agreement with Camco.

6 195. Helix's Project Manager, Mr. Rivera understood that Gemstone purported to  
7 terminate the Contract:

8 Q. Wouldn't it be fair to say that based on  
9 communications, both written and verbal, that you received from  
10 APCO and/or Gemstone, you knew that Gemstone had purported  
to terminate APCO's prime contract?

11 A. We knew they were having issues.

12 Q. Okay. And those issues had culminated in APCO  
purporting to terminate the prime contract and/or Gemstone  
purporting to terminate the prime contract, correct?

13 A. Correct.<sup>205</sup>

14 196. In fact, during the August 2008 timeframe, Helix was getting information  
15 directly from Gemstone.<sup>206</sup>

16 197. Mr. Rivera admitted Helix was copied on certain communications between  
17 APCO and Gemstone:

18 Q. And wouldn't it be fair to say that you received copies  
19 of certain communications from APCO to the owner, Gemstone,  
20 whereby APCO indicated that we're having payment issues and  
we're giving notice of our intent to exercise statutory rights to  
suspend and/or terminate?

21 A. Something to that effect, yes.<sup>207</sup>

22 \_\_\_\_\_  
23 <sup>203</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Mary Jo Allen  
(APCO) Day 3, p. 128 (as to CabineTec); Testimony of Joe Pelan (APCO) Day 3, p.  
150.

24 <sup>204</sup> Exhibit 3103 confirming CabineTec billed Camco for its retention. Testimony  
25 of Nicholas Cox (CabineTec) Day 3, p. 38-39.

26 <sup>205</sup> Testimony of Andy Rivera (Helix) Day 2, p. 75.

27 <sup>206</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

28 <sup>207</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

1  
2 Q. Okay. But do you recall receiving APCO generated  
3 correspondence indicating to the owner, which was sent to  
4 subcontractors as well, that APCO was suspending and/or  
5 terminating its work, correct?

6 A. Correct.<sup>208</sup>

7 198. Mr. Rivera also admitted Helix was performing work under Gemstone's  
8 direction by August 26, 2008:

9 Q. And from and after about August 26, 2008, Helix was  
10 taking its direction from Gemstone and/or Camco, correct?

11 A. Gemstone.

12 Q. Okay. APCO was not directing, requesting any work  
13 on behalf of Helix after September 5, 2008, correct?

14 A. Correct.

15 Q. And based on your personal involvement with  
16 Gemstone and Camco, did you understand that, in fact, Camco  
17 was replacing APCO as the prime contractor?

18 A. At that time did not know exactly how that was—the  
19 agreement was going to be.

20 Q. Did you come to find out?

21 A. Yes.

22 Q. that was, in fact, the case?

23 A. Yes.<sup>209</sup>

24 199. Helix was directed to hook up power to the Camco trailer on August 26, 2008.<sup>210</sup>

25 200. Gemstone provided Helix with the Camco subcontract and Camco pay  
26 applications,<sup>211</sup> and directed Helix to start directing its payment applications to Camco.<sup>212</sup>

27 201. On August 26, 2008 Camco sent Helix a checklist for starting work.<sup>213</sup> Among  
28 the provisions included:

- **RETENTION MONIES** Final retention monies will only be released to Camco Pacific from Owner when all Punch list

208 Testimony of Andy Rivera (Helix) Day 2, p. 77.

209 Testimony of Andy Rivera (Helix) Day 2, pp. 76-77. *See also* Testimony of Bob Johnson (Helix) Day 2, p. 25.

210 Exhibit 171; Testimony of Bob Johnson (Helix) Day 2, p. 25.

211 Exhibit 170.

212 Testimony of Andy Rivera (Helix) Day 2, p. 66.

213 Exhibit 170.

1 Items, Contract Items, and Close-Out Documents have been  
2 fully completed and inspected by the owner. Any delay by a  
3 single Subcontractor in completing this will delay the entire  
4 project's final payment. PLEASE DO NOT DELAY IN  
5 COMPLETING YOUR PUNCHLIST ITEMS. Exhibit 170-3.  
6 ...

- 7 • **D. Final Payment.** Subcontractor shall not be entitled to  
8 payment of the balance of the Contract Price, including,  
9 without limitation, the Retainage, until (1) the Contract Work  
10 has been completed to the satisfaction of Contractor, (2)  
11 Subcontractor has submitted to Contractor an invoice for the  
12 final payment accompanied by (i) a final complete list of all  
13 suppliers and subcontractors whose materials or services have  
14 been utilized by Subcontractor, (ii) all closeout documents  
15 including, warranties, guarantees, as-builts, drawings,  
16 operating and maintenance manuals and such other items  
17 required of Subcontractor have been provided and such have  
18 been accepted by Owner, (iii) executed unconditional lien  
19 releases and waivers from Subcontractor and all of its  
20 mechanics, subcontractors, and suppliers for the Contract  
21 Work covered by all preceding progress payments, and (iv)  
22 executed unconditional lien releases and waivers upon final  
23 payment from all mechanics, subcontractors, and suppliers  
24 who have previously received final payment, and conditional  
25 lien releases and waivers upon final payment from  
26 Subcontractor and each mechanic, subcontractor, and supplier  
27 from which an unconditional lien release and waiver upon  
28 final payment has not been submitted to Contractor, (3)  
Contractor has received the corresponding final payment  
from Owner, (4) Contractor has received evidence of  
Subcontractor's insurance required to be in place, (5) 45 days  
have elapsed after a Notice of Completion has been recorded  
or if a valid Notice of Completion is not recorded, upon  
Subcontractor's receipt of a written notice of acceptance of  
the Contract Work that shall be given by Contractor not later  
than 91 days after Contractor determines in good faith that the  
Contract Work has been performed completed and in  
acceptable manner and (6) all outstanding disputes related to  
the Project have been resolved, and any liens against the  
Project have been removed.<sup>214</sup>

<sup>214</sup> Exhibit 170-11, 170-12.

1 Having received these requirements, Helix continued on as the electrical subcontractor for  
2 Camco after APCO's termination.

3 202. Helix's Andy Rivera admitted Helix's technical scope of work remained the  
4 same under Camco:

5 Q. Would it be fair to conclude the technical scope of  
6 work remained the same as you transitioned to work with  
Camco—

7 A. Yeah.

8 Q. —for Helix?

9 A. Yes.<sup>215</sup>

10 203. During the transition of APCO to Camco, Helix had a meeting with  
Gemstone.<sup>216</sup>

11 204. The purpose of that meeting was to: "represent that work was still proceeding,  
12 nothing had changed with our contracts with the current APCO relationship, and that we were  
13 to take direction for construction from Camco, and they wanted to negotiate a contract."<sup>217</sup>

14 205. Helix never sent APCO a letter or requested that APCO clarify or provide any  
15 information to Helix on the status of its relationship to the Project.<sup>218</sup>

16 206. Camco presented Helix with a ratification agreement.<sup>219</sup>

17 207. It was Camco's intent and understanding that it was replacing APCO in the  
18 Helix-APCO subcontract.<sup>220</sup>

19 208. Helix had a copy of the ratification agreement by at least September 3, 2008.<sup>221</sup>

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22 <sup>215</sup> Testimony of Andy Rivera (Helix) Day 2, p. 78.

23 <sup>216</sup> Testimony of Bob Johnson (Helix) Day 2, p. 22.

24 <sup>217</sup> Testimony of Bob Johnson (Helix) Day 2, pp. 22-23.

25 <sup>218</sup> Testimony of Bob Johnson (Helix) Day 2, p. 23.

26 <sup>219</sup> Testimony of Bob Johnson (Helix) Day 1, p. 124.

27 <sup>220</sup> Testimony of Steve Parry (Camco) Day 5, pp. 28, 29 and 60.

28 <sup>221</sup> Exhibit 172. Testimony of Bob Johnson (Helix) Day 2, p. 27.

1           209. Helix understood the purpose of the ratification agreement as follows: "...they  
2 [Camco] were stepping in as construction management for the project and that they were using  
3 that agreement in order to proceed with – hold us as the subcontractor going forward."<sup>222</sup>

4           210. Camco's understanding was the same, i.e. the ratification agreement formed the  
5 basis of Camco's agreement in allowing Helix to proceed on the Project.<sup>223</sup>

6           211. Helix continued working on the Project after receiving the ratification agreement  
7 from Gemstone.<sup>224</sup>

8           212. Camco sent Helix the ratification agreement with a September 4, 2008 letter that  
9 included the following representations: "The conditional acceptance of this work is based on  
10 the execution of a standard Camco Pacific Ratification Agreement... We have provided you a  
11 copy of the Camco Pacific Ratification Agreement for your review and acceptance."

12           213. The Ratification Agreement contained the following additional terms:

- 13           • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to  
14 the terms of the Subcontract Agreement, whereby Camco will replace  
15 APCO as the "Contractor" under the Subcontract Agreement but, subject  
16 to the terms of this Ratification, all other terms and conditions of the  
17 Subcontract Agreement will remain in full force and effect."
- 18           • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the  
19 Subcontract Agreement (as amended by this Ratification and including  
20 all Amendments, Previously Approved Change Orders, and the Camco  
21 Schedule) will govern their relationship regarding the Project, (b) Camco  
22 will be the "Contractor" under the Subcontract Agreement, and (c)  
23 Subcontractor and Camco agree to perform and fulfill all of the  
24 executory terms, covenants, conditions and obligations required to be  
25 performed and fulfilled thereunder by Subcontractor and Camco,  
26 respectively."<sup>225</sup>

27           <sup>222</sup> Testimony of Bob Johnson (Helix) Day 1, p. 124.

28           <sup>223</sup> Exhibit 172. Testimony of Steve Parry (Camco) Day 5, p. 29.

<sup>224</sup> Testimony of Bob Johnson (Helix) Day 2, p. 28.

<sup>225</sup> Exhibit 172-5.

1           214. Helix admitted it entered into a ratification agreement with Camco on  
2 September 4, 2008 to continue on and complete the APCO scope of work.<sup>226</sup>

3           215. Helix even added a document to the ratification entitled "Helix Electric's  
4 Exhibit to the Ratification and Amendment."<sup>227</sup>

5           216. The Helix Exhibit to the Ratification and Amendment contained language  
6 confirming that APCO was removed as the general contractor and that Helix submitted  
7 \$994,025.00 in change orders to APCO prior to August 26, 2008, the date Camco was using for  
8 its ratification agreement.<sup>228</sup>

9           217. Helix included a total contract price of \$5.55 million for the Project, which was  
10 its original contract price with APCO for Phase 1, and added \$480,689.00 as approved change  
11 orders under APCO to the total contract price.<sup>229</sup>

12           218. The proposed Helix Amendment to the ratification agreement also included the  
13 following term: "All close out documents must be turned in before Camco Pacific can release  
14 final payment."<sup>230</sup>

15           219. And although Helix has not produced a signed copy of the ratification  
16 agreement, Helix has admitted entering into its ratification and amended subcontract agreement  
17 in its complaint as follows:

18                   18. On or about September 4, 2008, Helix entered into the  
19 Ratification and Amendment of Subcontract Agreement ("CPCC  
20 Agreement") with Camco who replaced APCO as the general  
21 contractor on the Project, to continue the work for the Property  
22 ("CPCC Work").

23                   19. Helix furnished the CPCC Work for the benefit of and at the  
24 specific instance and request of CPCC and/or Owner.

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25           <sup>226</sup> Exhibit 77, Helix Complaint, ¶18.

26           <sup>227</sup> Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, p. 42.

27           <sup>228</sup> Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, pp. 42-43.

28           <sup>229</sup> Exhibit 170-54; Testimony of Bob Johnson (Helix) Day 2, p. 44; Exhibit 169-  
8.

<sup>230</sup> Exhibit 169-1.



1 20. Pursuant to the CPCC Agreement, Helix was to be paid an  
2 amount in excess of Ten Thousand Dollars (\$10,000.00)  
3 (hereinafter "CPCC Outstanding Balance") for the CPCC Work.  
4 21. Helix furnished the CPCC Work and has otherwise performed  
5 its duties and obligations as required by the CPCC Agreement.  
6 22. CPCC has breached the CPCC Agreement...  
7 CPCC breached its duty to act in good faith by performing the  
8 Ratification Agreement in a manner that was unfaithful to the  
9 purpose of the Ratification Agreement, thereby denying Helix's  
10 justified expectations...<sup>231</sup>

11 Helix's Mr. Johnson admitted that Exhibit 172, the Ratification Agreement, was the document  
12 that Helix referenced in its complaint (Exhibit 77) as the Ratification.<sup>232</sup>

13 220. Helix sought \$834,476.45 against Camco.<sup>233</sup>

14 221. Helix also admitted it had a contract with Camco/Gemstone for \$8.6 million in  
15 its lien documents.<sup>234</sup>

16 222. The scope of work that Helix and CabineTec undertook on the Project was the  
17 same as each had previously contracted with APCO for.<sup>235</sup>

18 223. Helix did not have any further communication with APCO after Camco took  
19 over the Project.<sup>236</sup>

20 224. That is because both knew that APCO was no longer involved and had no  
21 further liability.

22 225. In fact, both Helix and CabineTec rolled their retention over into the Camco  
23 billings.<sup>237</sup>

24 <sup>231</sup> Exhibit 77.

25 <sup>232</sup> Testimony of Bob Johnson (Helix) at Day 2, p. 28.

26 <sup>233</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 10.

27 <sup>234</sup> Exhibit 512; Testimony of Bob Johnson (Helix) at Day 2, p. 29.

28 <sup>235</sup> Exhibit 314 and Testimony of Bob Johnson (Helix) Day 2, p. 10.

<sup>236</sup> Testimony of Bob Johnson (Helix) Day 2, p. 14.

<sup>237</sup> Compare Exhibit 58, Helix's last pay application to APCO to Exhibit 173, Helix's first payment application to Camco. *See also* Exhibit 176 and 177 showing Helix's retention rolled over. *See also*, Exhibit 150, CabineTec's last pay application to APCO, to Exhibit 185, CabineTec's first payment application to Camco showing

1           226.     Helix's Andy Rivera specifically admitted that it rolled its \$505,000.00 in  
2 retention billings over to Camco.<sup>238</sup>

3           227.     After Helix and CabineTec went to work for Camco, neither sent APCO any  
4 further pay applications or billings for work they performed on the Project.<sup>239</sup>

5           228.     And it is undisputed that Helix submitted its September 2008 pay application  
6 for \$354,456.90 to Camco.<sup>240</sup>

7           229.     That pay application tracked Helix's full retainage of \$553,404.81 for the  
8 Project, not just work completed under Camco.<sup>241</sup>

9           230.     Helix also submitted its October 2008 billing for \$361,117.44,<sup>242</sup> its  
10 November 2008 pay application for \$159,475.68,<sup>243</sup> and its December 2008 billing for  
11 \$224,805.30 to Camco.<sup>244</sup>

12           O.     **Camco never completed the Project.**

13           231.     Camco never finished the Project<sup>245</sup> and was never paid retention by  
14 Gemstone.<sup>246</sup>

15           232.     In its letter to the subcontractors dated December 22, 2008, Camco advised the  
16 subcontractors as follows:

17                     [It has come to Camco Construction, Inc.'s attention that  
18                     funding for the completion of the Manhattan West project (the

19 CabineTec's retention rolled over. See also, Exhibit 30 (Camco's August 2008 draw  
20 request confirming retention was being held for the entire Project).

21                     <sup>238</sup> Testimony of Andy Rivera (Helix) Day 2, p. 74.

22                     <sup>239</sup> Testimony of Mary Jo Allen (APCO) Day 3, at pp. 127-128; Testimony of  
23 Andy Rivera (Helix) Day 2, p. 76.

24                     <sup>240</sup> Exhibit 173-1.

25                     <sup>241</sup> Exhibit 173-2

26                     <sup>242</sup> Exhibit 176-2.

27                     <sup>243</sup> Exhibit 177-4.

28                     <sup>244</sup> Exhibit 178-4.

<sup>245</sup> Testimony of Steve Parry (Camco) Day 5, p. 36.

<sup>246</sup> Testimony of Steven Parry (Camco) Day 5, p. 36.

1 "Project") has been withdrawn. Camco recently received the  
2 following email from [Gemstone]...As a result, Gemstone does  
3 not have funds sufficient to pay out the October draw or other  
4 obligations...Based on the foregoing facts and circumstances,  
5 Camco has no other alternative but to immediately terminate all  
6 subcontracts on the Project, including the agreement with your  
7 company... you have acknowledged that Camco is not liable to  
8 you for payment unless and until Camco receives the  
9 corresponding payment from the Owner...Camco's contract with  
10 Gemstone is a cost plus agreement wherein the subcontracts and  
11 supplies were paid directly by Gemstone and/or its agent, Nevada  
12 Construction Services, based on the invoices and/or payment  
13 applications submitted through voucher control... Therefore,  
14 Camco has no contractual and/or statutory obligation to pay any  
15 claim that may be alleged by any of the subcontractors and/or  
16 suppliers on the Project... any claim for payment alleged against  
17 Camco will result in additional fees, costs ...Therefore, all claims  
18 for payment must be directed to and/or alleged against Gemstone  
19 and the Project.<sup>247</sup>

20 233. Camco's Parry was not able to tell if CabineTec billed Camco in August 2008,  
21 Exhibit 218 and Camco's first pay app to Gemstone.<sup>248</sup>

- 22 • Exhibit 220 is Camco's second pay application for the Project, through  
23 September 30, 2008.<sup>249</sup> That pay application accounted \$6,004,763.00 in  
24 retention.<sup>250</sup> Camco's Parry admitted that Exhibit 220 does include  
25 billings from Helix to Camco that Camco was passing on to  
26 Gemstone.<sup>251</sup>
- 27 • Exhibit 221 is Camco's billing to Gemstone through October 31, 2008;  
28 reflecting a total retention of \$6,928,767.84 in retention.
- Exhibit 163 is Camco's November 2008 billing, reflecting a total  
retention of \$7,275,991.08.

20 234. Based on Camco's last billing,<sup>252</sup> Exhibit 163, Camco's best estimate of the  
21 work completed on Phase 1 was 86%.<sup>253</sup>

22 <sup>247</sup> Exhibit 40 and Exhibit 39.

23 <sup>248</sup> Exhibit 218; Testimony of Steven Parry (Camco) Day 5, p. 34.

24 <sup>249</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

25 <sup>250</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

26 <sup>251</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 33.

27 <sup>252</sup> Testimony of Steve Parry (Camco), Day 5, p. 36.

28 <sup>253</sup> Exhibit 163; Testimony of Steven Parry (Camco), Day 5, p. 36.

1           P.     The litigation.

2           235. On September 9, 2008, APCO brought an action against Gemstone for breach of  
3 Contract and nonpayment.<sup>254</sup>

4           236. Gemstone counterclaimed alleging that APCO breached the Contract.<sup>255</sup>

5           237. On November 4, 2008, the Project lender confirmed that it was reviewing  
6 September's pay application, and confirmed that the subcontractors would be paid for the work  
7 performed for Camco.<sup>256</sup>

8           238. In December 2008 Gemstone suspended work on the Project and advised Camco  
9 and its various subcontractors that the lender was halting all financing for the Project.<sup>257</sup>

10          239. That led to the onslaught of liens and the related priority litigation.

11          240. On December 16, 2008, Camco officially terminated its prime contract with  
12 Gemstone:

13                   Pursuant to your notice to Camco on December 15, 2008,  
14                   Gemstone (a) has lost its funding for the ManhattanWest project  
15                   and (b) will be unable to meet its payment obligations pursuant to  
16                   Article VI of the Engagement Agreement. Furthermore,  
17                   Gemstone has failed to make payments to Camco pursuant to  
18                   Article VI of the Engagement Agreement for October 2008,  
19                   November 2008, and December 2008, and such failures are a  
20                   material breach of the Engagement Agreement. As Gemstone has  
21                   no means of curing such material breach in a timely manner, the  
22                   Engagement Agreement is terminated for cause, effective  
23                   December 19, 2008. Pursuant to our discussions, we understand  
24                   that you agree with the termination  
25                   and the effective date of termination.

26                   ...

27                   Pursuant to our discussions and with Gemstone's consent, Camco  
28                   will immediately send notices to all of the subcontractors to  
                    terminate their subcontract agreements. In Camco's termination  
                    notice, we will ask the subcontractors to submit their payment  
                    applications to Camco. Camco will review the payment

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25           <sup>254</sup> Exhibit 219.

26           <sup>255</sup> Exhibit 226.

27           <sup>256</sup> Exhibit 138.

28           <sup>257</sup> Exhibit 48; Exhibit 138.

1 applications and, if they appear proper, Camco will forward them  
2 to Gemstone for payment.<sup>258</sup>

3 In response, Camco terminated the subcontracts with its subcontractors on December 22,  
4 2008.<sup>259</sup>

5 241. On May 26, 2010, Judge Kathleen Delaney filed an Order Striking Defendant  
6 Gemstone Development West, Inc.'s Answer and Counterclaims, and Entering Default for  
7 failure to give reasonable attention to matters, failure to obtain new counsel, failure to appear at  
8 hearings.<sup>260</sup>

9 242. On June 6, 2013, APCO filed a motion for summary judgment against  
10 Gemstone. That Motion confirmed that APCO complied with all terms of the Agreement and  
11 that Gemstone materially breached the Agreement by, among other things: (1) failing to make  
12 payments due to APCO; (2) interfering with APCO's relationships with its subcontractors; (3)  
13 refusing to review, negotiate, or consider change order requests in good faith; (4) removing  
14 APCO from the Project without valid or appropriate grounds; and (5) otherwise breaching the  
15 terms of the Agreement.<sup>261</sup>

16 243. On June 13, 2013, the Court (Judge Susan Scann) granted that motion.<sup>262</sup> The  
17 record does not reflect an order or judgment.

18 244. APCO did not receive any funds associated with its work from June, July or  
19 August 2008 on the Project and never received its or any subcontractor's retention.

20 245. APCO did cooperate with Gemstone to see that all subcontractors, including  
21 Helix and CabineTec were paid all progress payments that were billed and due while APCO  
22 was in charge.

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23 <sup>258</sup> Exhibit 165.

24 <sup>259</sup> Exhibit 166-2.

25 <sup>260</sup> Docket at May 26, 2010 Order Striking Defendant Gemstone Development  
26 West, Inc.'s Answer and Counterclaims, and Entering Default.

27 <sup>261</sup> Docket at June 6, 2013, Motion for Summary Judgment against Gemstone.

28 <sup>262</sup> Docket at Minutes from June 13, 2013.

246. Despite APCO's efforts, Helix and CabineTec are seeking to hold APCO responsible for retention.

247. Any of the foregoing findings of fact that would be more appropriately considered conclusions of law should be deemed so.

FROM the foregoing Findings of Fact, the Court makes the following

## II. CONCLUSIONS OF LAW

### Helix's Claims Against APCO

#### A. Breach of Contract

1. In Nevada, there are four elements to a claim for breach of contract: "(1) formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3) material breach by the defendant, and (4) damages."<sup>263</sup>

2. Exhibit 45 is the Helix Subcontract, which represents the valid, final written agreement between APCO and Helix.

3. Helix's claim against APCO is for \$505,021.00 in alleged retention.<sup>264</sup> As a condition precedent to payment for retention, the Helix Subcontract required Helix to properly comply with the retention payment schedule in Section 3.8.<sup>265</sup> Specifically, Section 3.8 required: (1) completion of the entire project, (2) owner acceptance, (3) final payment from owner to APCO, (4) final as-built drawings, and (5) releases.<sup>266</sup>

4. A party who seeks to recover on a contract has the burden of establishing any condition precedent to the respective contract.<sup>267</sup>

5. Parties can agree to a schedule of payments.<sup>268</sup>

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<sup>263</sup> *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180 (D. Nev. 2011).

<sup>264</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

<sup>265</sup> Exhibit 45 at Section 3.8.

<sup>266</sup> Exhibit 45 at Section 3.8.

<sup>267</sup> *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

- 1           6.     Parties can agree to proper conditions precedent to payment.<sup>269</sup>
- 2           7.     Under Nevada precedent and legislative action, acceptance provisions are valid
- 3 conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.
- 4           270
- 5           8.     NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after
- 6 the owner paid the general for the subcontractor's work.<sup>271</sup>
- 7           9.     In the present action, the Helix Subcontract: (1) incorporated the Contract,<sup>272</sup> (2)
- 8 confirmed that the subcontractors would be bound to Gemstone to the same extent APCO
- 9 was,<sup>273</sup> and (3) contained a schedule of payments for both retention and change orders with
- 10 preconditions before APCO had an obligation to pay the subcontractors.<sup>274</sup>
- 11          10.     Only one of those preconditions involved Gemstone's payment of retention to
- 12 APCO. The others concerned the right to receive payment, not the fact of payment.
- 13          11.     Pursuant to NRS 624.624(1)(a), payment was due to Helix in accordance with
- 14 the retention payment schedule or within 10 days after APCO received payment from
- 15 Gemstone:
- 16                   **NRS 624.624 Payment of lower-tiered subcontractor;**
- 17                   **grounds and procedure for withholding amounts from**
- 18

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19           <sup>268</sup> NRS 624.624(1)(a).

20           <sup>269</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386

21 P.3d 982 (Nev. 2016) (unpublished) ("Because the parties' subcontract contained a

22 payment schedule that required that Padilla be paid within ten days after IGT accepted

23 Padilla's work and paid Big-D for that work and it is undisputed that IGT never

accepted Padilla's work . . . the district court correctly found that payment never

became due to Padilla under the subcontract or NRS 624.624(1)(a); see generally,

NRS 624.626.

24           <sup>270</sup> *Id.*

25           <sup>271</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386

26 P.3d 982 (Nev. 2016) (unpublished).

27           <sup>272</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.

28           <sup>273</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.

<sup>274</sup> *Id.* at Section 3.8 and Article 4.

1 payment; rights and duties after notice of withholding, notice  
2 of objection or notice of correction.

3 1. Except as otherwise provided in this section, if a  
4 higher-tiered contractor enters into:

5 (a) A written Contract with a lower-tiered  
6 subcontractor that includes a schedule for payments, the  
7 higher-tiered contractor shall pay the lower-tiered  
8 subcontractor:

9 (1) On or before the date payment is due; or

10 (2) Within 10 days after the date the higher-tiered  
11 contractor receives payment for all or a portion of  
12 the work, materials or equipment described in a  
13 request for payment submitted by the lower-tiered  
14 subcontractor,

15 → whichever is earlier.

16 12. These provisions place a time obligation on a higher-tiered contract to make  
17 payment, but they do not restrict the right of the lower-tiered contractor to receive payment if  
18 the higher-tiered contractor has not been paid. Section 3.8 of the Helix Subcontract contained a  
19 retention payment schedule that was acknowledged and affirmed by Helix and APCO at trial.  
20 As such, Helix needed to show that applicable and enforceable conditions precedent were  
21 satisfied before APCO had to pay retention. *See Lucini-Parish Ins. v. Buck*,<sup>275</sup> (a party who  
22 seeks to recover on a contract has the burden of establishing any condition precedent to the  
23 respective contract).

24 13. Helix admitted that it did not comply with the applicable and enforceable  
25 conditions precedent to be entitled to its retention payments from APCO.<sup>276</sup>

26 <sup>275</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

27 <sup>276</sup> See Testimony of Helix's Bob Johnson, Day 2 at pg. 19 ("Q. Well, let me ask  
28 it this way: Did Helix satisfy any of these preconditions found in paragraph 3.8 while  
APCO was the general contractor on the project? A. Not to my knowledge.")



1           14. Helix did not show: (1) completion of the entire Project, (2) final acceptance of  
2 the Project by Gemstone, (3) receipt of final payment from Gemstone to APCO, (4) delivery of  
3 all as-builts and close out document, and (5) delivery of all final waivers and releases.

4           15. Helix never sent APCO an invoice or billing for its retention.

5           16. Accordingly, Helix's retention payment was not due from APCO at the time  
6 APCO was removed from the project.

7           17. As a result, Helix's first claim for relief for breach of contract for failing to pay  
8 retention fails as a matter of law.

9           18. Lastly, there is no contractual obligation for APCO to pay Helix for the work it  
10 performed for Gemstone and/or Camco after APCO left the Project. Helix knowingly replaced  
11 APCO with Camco under the Helix Subcontract on all executory obligations, including  
12 payment for future work and retention.

13           **B. Breach of the Implied Covenant of Good Faith and Fair Dealing**

14           19. Helix's second claim for relief for breach of the covenant of good faith and fair  
15 dealing also fails.

16           20. In Nevada, "[e]very contract imposes upon each party a duty of good faith and  
17 fair dealing in its performance and enforcement."<sup>277</sup> This implied covenant requires that parties  
18 "act in a manner that is faithful to the purpose of the contract and the justified expectations of  
19 the other party."<sup>278</sup>

20           21. A breach of the implied covenant of good faith and fair dealing occurs when the  
21 terms of a contract are complied with but one party to the contract deliberately contravenes the  
22 intention of the contract.<sup>279</sup>

23  
24           <sup>277</sup> *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9  
(Nev. 1989) (quoting NRS 104.1203).

25           <sup>278</sup> *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2  
26 (Nev. 1994) (internal quotations omitted).

27           <sup>279</sup> See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d  
28 919,923 (Nev. 1991).

1           22. To prevail on a theory of breach of the covenant of good faith and fair dealing, a  
2 plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2) defendants  
3 owed a duty of good faith to the plaintiff, (3) defendants breached that duty by performing in a  
4 manner that was unfaithful to the purpose of the contract, and (4) plaintiff's justified  
5 expectations were denied.<sup>280</sup>

6           23. The Nevada Supreme Court has held that good faith is a question of fact.<sup>281</sup>

7           24. Helix claims APCO breached its duty of good faith and fair dealing by  
8 "performing in a manner that was unfaithful to the purpose of the APCO Agreement."<sup>282</sup>

9           25. APCO acted in good faith with respect to Helix:

10           a. APCO paid Helix all sums Helix billed APCO through August 2008  
11           (when APCO left the Project),<sup>283</sup>

12           b. APCO signed joint checks so that its subcontractors, including Helix,  
13           would get paid, even though APCO was not getting paid,<sup>284</sup>

14           c. APCO pulled its general contractor permits so that Camco could get  
15           permits for the Project and APCO's subcontractors could continue on  
16           with the Project (less retention),<sup>285</sup> and

17           d. APCO also financed the related appeal to obtain priority for Helix and  
18           the other subcontractors once Gemstone shut the Project down.

19  
20  
21           <sup>280</sup> *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

22           <sup>281</sup> *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev..  
1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

23           <sup>282</sup> Exhibit 231, Helix's amended complaint at ¶ 27.

24           <sup>283</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1 at pg. 67; Testimony  
25 of Mary Jo Allen (APCO), Day 3 pg. 127 (as to Helix) and Testimony of Mary Jo Allen  
(APCO), Day 3 at pg. 128; Testimony of Joe Pelan (APCO), Day 1 at pg. 46; Testimony  
of Joe Pelan (APCO), Day 1 at pg. 82.

26           <sup>284</sup> Exhibit 26. See also: Testimony of Joe Pelan (APCO), Day 1 at pg. 38;  
Testimony of Joe Pelan (APCO), Day 1 at pg. 41.

27           <sup>285</sup> Testimony of Joe Pelan (APCO), Day 1 at pg. 100.

1           26.     Helix failed to present any evidence that APCO failed to act in good faith under  
2 the Helix Subcontract or these circumstances. While it is undisputed that APCO did not pay  
3 Helix the retention, there is no evidence that this non-payment was in bad faith.

4           27.     As a result, Helix's second claim for breach of the implied covenant of good  
5 faith and fair dealing of the subcontract fails as a matter of law.

6           C.     Unjust Enrichment/Quantum Meruit

7           28.     Helix asserted breach of contract *and* unjust enrichment claims against  
8 APCO.<sup>286</sup>

9           29.     APCO had a subcontract with Helix, Exhibit 45. Helix admitted the same in its  
10 complaints, at trial, and in its May 10, 2010 Motion for Partial Summary Judgment Against  
11 Gemstone (and corresponding errata), on file with this Court.

12           30.     An action based upon a theory of unjust enrichment is not available when there  
13 is an express, written contract because no contract can be implied when there is an express  
14 contract.<sup>287</sup> However, frustration of an express contract's purpose can make unjust enrichment  
15 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

16           31.     Even if the Helix Subcontract did not preclude an unjust enrichment/*quantum*  
17 *meruit* theory of recovery (which it does), APCO was not unjustly enriched by Helix's work.  
18 The undisputed evidence confirms that APCO was not paid any amounts for Helix's work that  
19 it did not transmit to Helix, and APCO did not get to keep the property. Instead, APCO remains  
20 unpaid \$1,400,036.75 from the failed Project.<sup>288</sup>

21           32.     As such, APCO was not unjustly enriched by Helix's work.

22           .....

23           .....

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24  
25           <sup>286</sup> See Exhibit 45, Helix Subcontract, and Exhibit 149, CabineTec Subcontract.

26           <sup>287</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182  
(1997).

27           <sup>288</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

1           D.     Mechanic's Lien Foreclosure

2           33.    Helix's fourth claim for relief was of a mechanic's lien foreclosure, which also  
3 fails.

4           34.    APCO was not the owner of the Project.

5           35.    The Project has already been foreclosed upon and the proceeds were awarded to  
6 the lender. The Nevada Supreme Court affirmed the decision of the trial court that the lender  
7 was entitled to keep the Project and related proceeds, and the subcontractors (and APCO) were  
8 left with nothing. Thus, Helix cannot foreclose upon the property.

9           36.    APCO is not legally liable for any deficiency judgment because it is not the  
10 party responsible for any deficiency.<sup>289</sup>

11           E.     Violation of NRS 624.606 through 624.630 et seq.

12           37.    NRS 624.624 is designed to ensure that general contractors promptly pay  
13 subcontractors after the general contractor receives payment from the owner for the work  
14 performed by the subcontractor.

15           38.    Here, it is undisputed that Exhibit 45, the Helix Subcontract is a written  
16 agreement between APCO and Helix and contained a retention payment schedule in Section  
17 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified in the  
18 subcontract.

19           39.    The Helix Subcontract confirmed that Helix would get paid retention after it  
20 met the five conditions precedent in the retention payment schedule.

21           40.    It is undisputed that Helix never met the five preconditions in the subcontract's  
22 payment schedule.<sup>290</sup> Accordingly, payment of retention to Helix never became due under NRS  
23 624 and Helix's claim for a violation of NRS 624 fails.

24  
25 \_\_\_\_\_  
26           <sup>289</sup> NRS 108.239(12); *Nev. Nat'l Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d  
560, 563 (1992).

27           <sup>290</sup> Testimony of Bob Johnson (Helix) Day 2 at pg. 36 and 37

41. Additionally, Helix never billed APCO for its retention and APCO never received Helix's retention from Gemstone.

**CabineTec's claims against APCO**

**A. Breach of Contract**

42. In Nevada, there are four elements to a claim for breach of contract: "(1) formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3) material breach by the defendant, and (4) damages."<sup>291</sup>

43. Exhibit 149 is the CabineTec Subcontract, which represents the valid, final written agreement between APCO and CabineTec.

44. Exhibit 156, CabineTec's Complaint (page 7, paragraph 50) confirms that CabineTec's principal claim against APCO is for \$19,547.00 for retention.

45. As a condition precedent to payment for retention, the CabineTec Subcontract required CabineTec to properly comply with the retention payment schedule in Section 3.8.<sup>292</sup> Specifically, Section 3.8 required: (1) completion of the entire project, (2) owner acceptance, (3) final payment from owner to APCO, (4) final as-built drawings, and (5) releases.<sup>293</sup>

46. A party who seeks to recover on a contract has the burden of establishing any condition precedent to the respective contract.<sup>294</sup>

47. Parties can agree to a schedule of payments.<sup>295</sup>

48. Parties can agree to proper conditions precedent to payment.<sup>296</sup>

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<sup>291</sup> *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180 (D. Nev. 2011).

<sup>292</sup> Exhibit 149, CabineTec Subcontract at Section 3.8.

<sup>293</sup> Exhibit 149, CabineTec Subcontract at Section 3.8.

<sup>294</sup> *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

<sup>295</sup> NRS 624.624(1)(a).

<sup>296</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev. 2016) (unpublished) ("Because the parties' subcontract contained a payment schedule that required that Padilla be paid within ten days after IGT accepted Padilla's work and paid Big-D for that work and it is undisputed that IGT never accepted Padilla's work the district court correctly found that payment never became

49. Under Nevada precedent and legislative action, acceptance provisions are valid conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.

<sup>297</sup>

50. NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after the owner paid the general for the subcontractor's work.<sup>298</sup>

51. In the present action, the CabineTec Subcontract: (1) incorporated the Contract,<sup>299</sup> (2) confirmed that the subcontractors would be bound to Gemstone to the same extent APCO was,<sup>300</sup> and (3) contained a schedule of payments for both retention and change orders with preconditions before APCO had an obligation to pay the subcontractors.<sup>301</sup>

52. Only one of those preconditions involved Gemstone's payment of retention to APCO, which never occurred. The others concerned the right to receive payment, not the fact of payment.

53. Pursuant to NRS 624.624(1)(a), payment was due to CabineTec in accordance with the retention payment schedule or within 10 days after APCO received payment from Gemstone:

**NRS 624.624 Payment of lower-tiered subcontractor;  
grounds and procedure for withholding amounts from  
payment; rights and duties after notice of withholding, notice  
of objection or notice of correction.**

1. Except as otherwise provided in this section, if a higher-tiered contractor enters into:

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due to Padilla under the subcontract or *NRS 624.624(1)(a)*; *see generally*, NRS 624.626.

<sup>297</sup> *Id.*

<sup>298</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev. 2016) (unpublished).

<sup>299</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.

<sup>300</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.

<sup>301</sup> *Id.* at Section 3.8 and Article 4.

1 (a) A written Contract with a lower-tiered  
2 subcontractor that includes a schedule for payments, the  
3 higher-tiered contractor shall pay the lower-tiered  
4 subcontractor:

5 (1) On or before the date payment is due; or

6 (2) Within 10 days after the date the higher-tiered  
7 contractor receives payment for all or a portion of  
8 the work, materials or equipment described in a  
9 request for payment submitted by the lower-tiered  
10 subcontractor,

11 → whichever is earlier.

12 These provisions place a time obligation on a higher-tiered contractor to make  
13 payment but they do not restrict the right of a lower-tiered contractor to receive  
14 payment if the higher-tiered contractor has not been paid.

15 54. Section 3.8 of the CabineTec Subcontract contained retention payment  
16 schedules that were acknowledged and affirmed by CabineTec and APCO at trial. As such,  
17 CabineTec needed to show that applicable and enforceable conditions precedent were satisfied  
18 before APCO had to pay retention. See *Lucini-Parish Ins. v. Buck*,<sup>302</sup> (a party who seeks to  
19 recover on a contract has the burden of establishing any condition precedent to the respective  
20 contract).

21 55. CabineTec did not even attempt to show: (1) completion of the entire Project,  
22 (2) final acceptance of the Project by Gemstone, (3) receipt of final payment from Gemstone to  
23 APCO, (4) delivery of all as-builts and close out document, and (5) delivery of all final waivers  
24 and releases.

25 56. CabineTec did not meet its burden of proof and APCO never received  
26 CabineTec's retention to trigger the 10 day period.

27 57. Accordingly, CabineTec's retention payment never became due from APCO.

28  

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302 108 Nev. 617, 620, 836 P.2d 627, 629 (1992)

1           58. As a result, CabineTec's first claim for relief for breach of contract fails as a  
2 matter of law.

3           59. There is no contractual obligation for APCO to pay CabineTec for the work it  
4 performed for Gemstone and/or Camco after APCO left the Project. CabineTec knowingly  
5 replaced APCO with Camco under the CabineTec Subcontract on all executory obligations,  
6 including payment for future work and retention.

7           60. NRCP 16.1(a)(1)(c) requires that a plaintiff "**must, without awaiting a discovery**  
8 **request, provide to other parties . . . [a] a computation of any category of damages claimed**  
9 **by the disclosing party, making available for inspection and copying under Rule 34 of the**  
10 documents or other evidentiary matter... on which such computation is based, including  
11 materials bearing on the nature and extent of injuries suffered..."<sup>303</sup>

12           61. A plaintiff "is not excused from making its disclosures because it has not fully  
13 completed its investigation of the case."<sup>304</sup>

14           62. NRCP 16.1(a)(c) requires that parties voluntarily disclose "[a] computation of  
15 any category of damages claimed by the disclosing party" and documents to support the  
16 computation.<sup>305</sup>

17           63. Under NRCP 26(e)(1), a plaintiff must immediately supplement its initial  
18 damages computation if it "learns that in some material respect the information disclosed is  
19 incomplete or incorrect."<sup>306</sup> See *Keener v. United States*,<sup>307</sup> (finding a second disclosure so  
20 substantially different from the first that it could not qualify as a correction of an incomplete or  
21 inaccurate expert report).

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22  
23  
24           <sup>303</sup>NRCP 16.1(a)(1)(c)(emphasis added).

25           <sup>304</sup>*Id.*

26           <sup>305</sup>NRCP 16.1(a)(1)(c).

27           <sup>306</sup>NRCP 26(e)(1).

28           <sup>307</sup>181 F.R.D. 639, 640 (D. Mont. 1998)



1           64.   CabineTec's complaint alleged \$19,547.00 against APCO.<sup>308</sup>

2           65.   CabineTec's initial, and first supplemental disclosures disclosed \$30,110.95 in  
3 damages against APCO, which included interest and fees on the retention amount of  
4 \$19,547.00.<sup>309</sup>

5           66.   Those were the only disclosures that CabineTec made prior to the close of  
6 discovery, as extended by the Court.

7           67.   CabineTec's damage claims against APCO are limited to \$30,110.95.

8           68.   National Wood's Second Supplemental Disclosure containing amended  
9 damages was filed on November 13, 2017, two weeks before a November 28 trial date. This  
10 supplement increases the damages from \$30,110.95 to \$1,154,680.40, a 3600% increase.

11           69.   APCO has been prejudiced as a result of this late disclosure as APCO described  
12 in its motion in limine, and National Wood's error in not disclosing its damages pursuant to  
13 these rules was not harmless.

14           70.   CabineTec/National Wood has no adequate justification for its repeated failure  
15 to comply with Rule 16.1(a)'s disclosure requirements.

16           71.   CabineTec did not present any testimony confirming it met any of the conditions  
17 in Section 3.8. Instead, CabineTec's Mr. Thompson admitted that the buildings had to be  
18 drywalled and painted before the cabinets were installed<sup>310</sup> and he had no documentation (daily  
19 reports, photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in  
20 Phase 1 for APCO.<sup>311</sup>

21           .....

22           .....

23  
24           <sup>308</sup> Exhibit 156-8.

25           <sup>309</sup> Exhibits 157 (CabineTec's initial disclosures); Exhibit 158 (CabineTec's First  
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's second supplemental  
disclosure).

27           <sup>310</sup> Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

28           <sup>311</sup> Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

1           B.     Breach of the Implied Covenant of Good Faith and Fair Dealing

2           72.     In Nevada, "[e]very contract imposes upon each party a duty of good faith and  
3     fair dealing in its performance and enforcement."<sup>312</sup> This implied covenant requires that  
4     parties "act in a manner that is faithful to the purpose of the contract and the justified  
5     expectations of the other party."<sup>313</sup>

6           73.     A breach of the implied covenant of good faith and fair dealing occurs when the  
7     terms of a contract are complied with but one party to the contract deliberately contravenes  
8     the intention of the contract.<sup>314</sup>

9           74.     To prevail on a theory of breach of the covenant of good faith and fair dealing, a  
10    plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2)  
11    defendants owed a duty of good faith to the plaintiff, (3) defendants breached that duty by  
12    performing in a manner that was unfaithful to the purpose of the contract, and (4) plaintiff's  
13    justified expectations were denied.<sup>315</sup>

14          75.     The Nevada Supreme Court has held that good faith is a question of fact.<sup>316</sup>

15          76.     APCO acted in good faith with respect to CabineTec:

- 16           a.     APCO paid CabineTec all sums CabineTec billed APCO through August  
17                 2008 (when APCO left the Project),<sup>317</sup>  
18           b.     APCO signed joint checks so that its subcontractors, including  
19                 CabineTec, would get paid, even though APCO was not getting paid,<sup>318</sup>

20  
21           <sup>312</sup> *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9  
(Nev. 1989) (quoting NRS 104.1203).

22           <sup>313</sup> *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2  
(Nev. 1994) (internal quotations omitted).

23           <sup>314</sup> See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d  
24           919,923 (Nev. 1991).

25           <sup>315</sup> *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

26           <sup>316</sup> *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev..  
27           1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

28           <sup>317</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67 and 82;  
Testimony of Mary Jo Allen (APCO) Day 3, p. 128.

- 1 c. APCO pulled its general contractor permits so that Camco could get  
2 permits for the Project and APCO's subcontractors could continue on  
3 with the Project (less retention),<sup>319</sup> and  
4 d. APCO also financed the related appeal to obtain priority for CabineTec  
5 and the other subcontractors once Gemstone shut the Project down.

6 77. CabineTec failed to present any evidence that APCO failed to act in good faith  
7 under the CabineTec Subcontract. While it is undisputed that APCO did not pay CabineTec the  
8 retention, there is no evidence that this non-payment was in bad faith.

9 78. As a result, CabineTec's second claim for breach of the implied covenant of  
10 good faith and fair dealing of the subcontract fails as a matter of law.

11 C. Unjust Enrichment/Quantum Meruit

12 79. CabineTec asserted breach of contract *and* unjust enrichment/ *quantum meruit*  
13 claims against APCO.<sup>320</sup>

14 80. APCO had a subcontract with CabineTec, **Exhibit 149**.

15 81. An action based upon a theory of unjust enrichment is not available when there  
16 is an express, written contract because no contract can be implied when there is an express  
17 contract.<sup>321</sup> However, frustration of an express contract's purpose can make unjust enrichment  
18 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

19 82. Even if the CabineTec Subcontract did not preclude an unjust  
20 enrichment/*quantum meruit* theory of recovery (which it does), APCO was not unjustly  
21 enriched by CabineTec's work. The undisputed evidence confirms that APCO was not paid any  
22

23  
24 <sup>318</sup> Exhibit 26. See also: Trial Testimony of Joe Pelan (APCO) Day 1 at p. 38;  
Testimony of Joe Pelan (APCO) Day 1 at p. 41.

25 <sup>319</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 100.

26 <sup>320</sup> See Exhibit 149, CabineTec Subcontract.

27 <sup>321</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182  
(1997).

1 amounts for CabineTec's work that it did not transmit to CabineTec, and APCO did not get to  
2 keep the property. Instead, APCO remains unpaid \$1,400,036.75 from the failed Project.<sup>322</sup>

3 83. As such, APCO was not unjustly enriched by CabineTec's work.

4 **D. Violation of NRS 624.606 through 624.630 et seq.**

5 84. NRS 624.624 is designed to ensure that general contractors promptly pay  
6 subcontractors after the general contractor receives payment from the Owner for the work  
7 performed by the subcontractor.

8 85. Here, it is undisputed that Exhibit 149, the CabineTec Subcontract is a written  
9 agreement between APCO and CabineTec and contained a retention payment schedule in  
10 Section 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified  
11 in the subcontract.

12 86. The CabineTec Subcontract confirmed that CabineTec would get paid retention  
13 after it met the five conditions precedent in the retention payment schedule.

14 87. It is undisputed that CabineTec never met the five preconditions in the  
15 subcontract's payment schedule. Accordingly, payment of retention to CabineTec never  
16 became due under NRS 624 and CabineTec's claim for a violation of NRS 624 fails.

17 88. Additionally, CabineTec never billed APCO for its retention and APCO never  
18 received CabineTec's retention from the Owner. CabineTec rolled its retention over to Camco  
19 as a Project liability, and actually billed its retention to Camco.

20 **E. Monies Due and Owing**

21 89. CabineTec has failed to prove that it is due monies from APCO.

22 90. "The word due always imports a fixed and settled obligation or liability."<sup>323</sup>

23 91. Exhibit 149 governed the relationship between the parties and it was subject to  
24 the retention payment schedule in Section 3.8.

25  
26 <sup>322</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

27 <sup>323</sup> *Black's Law Dictionary*, Sixth Edition, 1990.

1           92.     Payment never became due under Section 3.8 for the reasons set forth above.

2           F.     Account Stated

3           93.     CabineTec's claim for account stated fails.

4           94.     In Nevada, "[a]n account stated may be broadly defined as an agreement based  
5 upon prior transactions between the parties with respect to the items composing the account and  
6 the balance due, if any, in favor of one of the parties."<sup>324</sup>

7           95.     "To effect an account stated, the outcome of the negotiations must be the  
8 recognition of a sum due from one of the parties to the other with a promise, express or  
9 implied, to pay that balance."<sup>325</sup>

10          96.     "The genesis of an account stated is the agreement of the parties, express or  
11 implied."<sup>326</sup> APCO and CabineTec had an express written agreement that governed their  
12 relationship.

13          97.     APCO and CabineTec did not have any prior transactions with respect to the  
14 items composing any account.

15          98.     No evidence was presented that APCO agreed that any sum was due. Instead,  
16 APCO disputed any payment obligation.

17          99.     APCO and CabineTec have not agreed to any other payment provisions outside  
18 of Exhibit 149 and this claim fails.

19                   **Helix and CabineTec ratified their subcontracts with Camco.**

20  
21          100.     "Ratification of a contract occurs when one approves, adopts, or confirms a  
22 contract previously executed by another..."<sup>327</sup>

23  
24                   <sup>324</sup> *Old W. Enterprises, Inc. v. Reno Escrow Co.*, 86 Nev. 727, 729, 476 P.2d 1, 2  
25 (1970).

26                   <sup>325</sup> *Id.*

27                   <sup>326</sup> *Id.*

28                   <sup>327</sup> *Id.*

1           101. Ratification may be express or implied by the conduct of the parties.<sup>328</sup> The  
2 party to be charged with ratification of such a contract must have acted voluntarily and with full  
3 knowledge of the facts.<sup>329</sup>

4           102. "A person ratifies an act by manifesting assent that the act affects the person's  
5 legal relations or conduct that justifies a reasonable assumption that the person so consents."<sup>330</sup>

6           103. "Any conduct which indicates assent by the purported principal to become a  
7 party to the transaction or which is justifiable only if there is ratification is sufficient, and even  
8 silence with full knowledge of the facts may operate as a ratification."<sup>331</sup>

9           104. "If a person makes a manifestation that the person has ratified another's act and  
10 the manifestation, as reasonably understood by a third party, induces the third party to make a  
11 detrimental change in position, the person may be estopped to deny the ratification."<sup>332</sup>

12           105. "A valid ratification by the principal relieves the agent from any liability to the  
13 principal which would otherwise result from the fact that the agent acted in an unauthorized  
14 way or without authority."<sup>333</sup>

15           106. Helix legally admitted it ratified the Helix/APCO subcontract to the Court and to  
16 APCO in its complaint, thereby replacing Camco for APCO in all executory obligations under  
17 the Helix Subcontract, including payment for retention and future work.

18           107. CabineTec signed a ratification agreement with Camco.

19           108. After APCO left the Project, Helix and CabineTec took direction from  
20 Gemstone or Camco, not APCO.

21  
22  
23           <sup>328</sup> 17A Am Jur 2d Contracts § 10.

24           <sup>329</sup> *Id.*

25           <sup>330</sup> 3 Am Jur 2d Agency § 169.

26           <sup>331</sup> *Id.*

27           <sup>332</sup> 3 Am Jur 2d Agency § 171.

28           <sup>333</sup> 2A C.J.S. Agency § 85.

1 109. Helix and CabineTec submitted billings to Camco including rolling over the  
2 retention they now seek from APCO, and each performed work under the ratified original  
3 scope of work.

4 110. None of the ongoing work was done for or on behalf of APCO and there is no  
5 legal authority that would make APCO liable for their ongoing work on the Project, or the  
6 Project retention.

7 111. Helix never billed APCO for retention because it never became due.<sup>334</sup>

8 112. Helix and CabineTec waived all claims against APCO by knowingly contracting  
9 to work on the Project for Camco/Gemstone and rolling their retention over to Camco and  
10 Gemstone.

11 113. When Helix and CabineTec ratified their subcontracts with Camco, they  
12 replaced APCO. See *Foley Co. v. Scottsdale Ins. Co.*,<sup>335</sup> ("The ratification, by subcontractor's  
13 liability insurer, of its general agent's allegedly unauthorized placement of coverage released  
14 the general agent from liability to the insurer."); *Brooks v. January*,<sup>336</sup> (holding that because a  
15 dissident faction of a church congregation ratified their pastor's unauthorized sale of property,  
16 the pastor was relieved from liability to the church); *Southwest Title Ins. Co. v. Northland*  
17 *Bldg.*,<sup>337</sup> (holding that because the title insurance company ratified its agent's arguably  
18 unauthorized actions, the agent could not be held liable to the title insurance company);  
19 *Rakestraw v. Rodrigues*,<sup>338</sup> (holding that because a wife ratified forgery of her name on a deed  
20 of trust, the agent was relieved of liability to the principal).

21  
22  
23 <sup>334</sup> CabineTec admittedly sent one billing for the full amount of CabineTec's  
delivered (but uninstalled) cabinets that incorrectly included retention. Retention clearly  
was not due under the retention payment schedule.

24 <sup>335</sup> 28 Kan. App. 2d 219, 15 P.3d 353 (2000)

25 <sup>336</sup> 116 Mich.App. 15, 321 N.W.2d 823 (1982)

26 <sup>337</sup> 542 S.W.2d 436 (Tex.App.1976), *rev'd in part on other grounds* 552 S.W.2d  
425 (Tex.1977)

27 <sup>338</sup> 8 Cal.3d 67, 104 Cal.Rptr. 57, 500 P.2d 1401 (1972)

1 114. CabineTec and Helix ratified their subcontracts with Camco and discharged  
2 APCO.

3  
4 The Subcontracts were assigned to Gemstone.

5 115. The following factors are relevant in determining whether an assignment of a  
6 construction contract took place: which party was responsible for the administration of the  
7 project, which party ensured the design was correctly carried out, who paid the subcontractors  
8 and materialmen, which party answered questions from the owner, which parties were on the  
9 job site, which party had ongoing involvement with the project, and which party was  
10 corresponding with the owner.<sup>339</sup>

11 116. These factors weigh in APCO's favor. Each party's behavior is consistent with  
12 the assignment of the Helix and CabineTec Subcontracts to Gemstone:

- 13 • **Gemstone:** Gemstone attempted to "terminate" the APCO/Gemstone prime  
14 contract and stopped giving direction and/or orders to APCO. Gemstone told the  
15 subcontractors to stop working for APCO and that their contracts would be  
16 assumed by Camco. Gemstone also ordered APCO off the site.
- 17 • **Camco:** Camco started giving direction to the subcontractors and dictating their  
18 work. Camco sent subcontracts and/or Ratification agreements to both Helix and  
19 CabineTec. It engaged in negotiations of the respective subcontracts, and it  
20 received billings directly from Helix and CabineTec, including the rollover of  
21 their retention.
- 22 • **Helix:** Helix did not contact APCO after August 2008 and remained on-site  
23 working directly for Gemstone and Camco. It engaged in subcontract  
24 negotiations for the same scope of work as it had initially subcontracted for with  
25 APCO with Camco, and took direction and performed work under Camco's and  
26 Gemstone's direction. Helix submitted pay applications to Camco and even  
27 rolled its retention account over to Camco billings. Helix also represented that it  
28 signed a ratification Contract and subcontract with Camco in its complaint and  
its amended complaint.
- **CabineTec:** CabineTec did not contact APCO after August 2008 and remained  
on-site working for Camco. It engaged in subcontract negotiations for the same  
scope of work as it had initially subcontracted for with APCO with Camco, and  
took direction and performed work under Camco's direction. CabineTec

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339 *J. Christopher Stuhmer, Inc. v. Centaur Sculpture Galleries, Ltd., Inc.*, 110  
Nev. 270, 274, 871 P.2d 327, 330 (1994)



1 submitted pay applications to Camco including all retention. CabineTec also  
2 signed a ratification agreement with Camco.  
3 • **APCO:** APCO was off-site and did not dictate or control the subcontractors'  
4 work. It did not have any communication with Gemstone or the subcontractors  
5 after August 2008. It did not participate in construction related meetings, did not  
6 receive billings from subcontractors, or submit payment applications on behalf  
7 of subcontractors. In fact, Helix never invoiced APCO for its retention.

8 117. The Contract contained a subcontract assignment provision that assigned  
9 Gemstone APCO's subcontracts upon termination of the Contract.<sup>340</sup>

10 118. The Contract was incorporated into the subcontracts.<sup>341</sup>

11 119. Once APCO left the Project, the Helix and CabineTec Subcontracts were  
12 assigned to Gemstone per Gemstone's written notice to APCO.

13 120. Once Gemstone had those Subcontracts, it facilitated Camco's assumption of  
14 those subcontracts.<sup>342</sup>

15 121. After the subcontracts were assigned, Gemstone/Camco were responsible for all  
16 executory obligations including payments for retention and future work.<sup>343</sup>

17 122. An assignment took place thereby making Gemstone/Camco the party  
18 responsible for payment to the subcontractors.

19 **Helix and CabineTec waived any right to pursue APCO.**

20 123. "Waiver requires the intentional relinquishment of a known right."<sup>344</sup>

21 124. "If intent is to be inferred from conduct, the conduct must clearly indicate the  
22 party's intention."<sup>345</sup>

23 <sup>340</sup> Exhibit 2 at 10.4.

24 <sup>341</sup> See Sections 1.1 of Helix and CabineTec subcontracts. Helix's Mr. Johnson  
25 admitted it was Helix's practice to request and review an incorporated prime contract.  
26 Testimony of Bob Johnson (Helix) Day 2, p.16.

27 <sup>342</sup> See Exhibit 170/169 Helix's subcontract and Helix Amendment with Camco;  
28 and Exhibit 184, CabineTec's subcontract with Camco.

<sup>343</sup> See Exhibit 2, Section 10.4.

<sup>344</sup> *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*,  
123 Nev. 44, 49, 152 P.3d 737, 740 (2007) (internal citations omitted).

1 125. "Thus, the waiver of a right may be inferred when a party engages in conduct so  
2 inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has  
3 been relinquished."<sup>346</sup>

4 126. In this case, CabineTec's and Helix's intent was clear: they understood that  
5 APCO left the Project. They entered into ratification agreements with Camco and continued  
6 working for Camco and Gemstone on the Project without any further dealings with APCO.

7 127. Helix and CabineTec did not negotiate entirely new contracts and their  
8 subsequent billings to Camco depicted their retention that was being held by Gemstone, not  
9 APCO. They took orders and direction from Camco employees. They sent billings to Camco.  
10 They submitted change orders to Camco. They showed up to the Project at Camco's direction  
11 and Camco ultimately informed them the Project had shut down. By pursuing this course of  
12 action, it was clear that none of the parties believed APCO was the general contractor on the  
13 Project. This conduct is entirely inconsistent with any claim that APCO was the general  
14 contractor and was responsible for retention or other future payments. APCO paid Helix and  
15 CabineTec all amounts due while APCO was the general contractor.

16 Any of the foregoing conclusions of law that would more appropriately be considered to  
17 be findings of fact shall be so deemed.

18 ORDER

19 NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact  
20 and Conclusions of Law; and

21 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and  
22 Conclusions of Law, and those made regarding the other parties and claims involved in the

23 .....

24 .....

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26 <sup>345</sup> *Id.*

27 <sup>346</sup> *Id.*

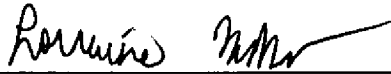
1 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the  
2 same at the appropriate time subject to further order of the Court.

3 DATED this 24<sup>th</sup> day of April, 2018.

4   
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE

7 CERTIFICATE

8 I hereby certify that on or about the date filed, this document was Electronically  
9 Served to the Counsel on Record on the Clark County E-File Electronic Service List.

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11 \_\_\_\_\_  
12 LORRAINE TASHIRO  
13 Judicial Executive Assistant  
14 Dept. No. XIII  
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Wilson, Elser, Moskowitz, Edelman & Dickler, LLP  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101-6937



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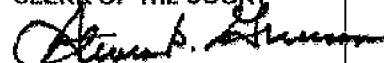
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# EXHIBIT Q



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 Attorneys for APCO Construction

## DISTRICT COURT

## CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Case No.: A571228

Dept. No.: XIII

Plaintiff,

vs.

Consolidated with:

A574391; A574792; A577623; A583289;  
 A587168; A580889; A584730; A589195;  
 A595552; A597089; A592826; A589677;  
 A596924; A584960; A608717; A608718 and  
 A590319

GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation,

Defendant.

Hearing Date: 07/27/17

AND ALL RELATED MATTERS

Hearing Time: 9:00 AM

APCO CONSTRUCTION'S  
 MOTION TO DISMISS OR FOR SUMMARY JUDGMENT ON LIEN CLAIMANTS'  
 NRS CH 108 CLAIM FOR FORECLOSURE OF MECHANIC'S LIEN<sup>1</sup>

APCO Construction ("APCO"), by and through the law firm of Marquis Aurbach Coffing, hereby submits this motion. This Motion is made and based upon the points and

////

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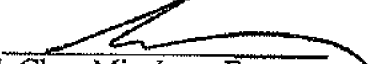
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<sup>1</sup> An example of this claim is reflected in Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint, 6th Cause of Action. See Exhibit A.

1 authorities attached hereto, papers and pleadings on file herein, and any argument of counsel at  
2 the time of hearing in this matter.

3 Dated this 26<sup>th</sup> day of June, 2017.


4 MARQUIS AURBACH COFFING

5 By   
6 Jack Chen Min Juan, Esq.  
7 Nevada Bar No. 6367  
8 Cody S. Munteer, Esq.  
9 Nevada Bar No. 11220  
10 10001 Park Run Drive  
11 Las Vegas, Nevada 89145  
12 Attorneys for APCO Construction

13 **NOTICE OF MOTION**

14 You and each of you, will please take notice that the APCO CONSTRUCTION'S'  
15 MOTION TO DISMISS OR FOR SUMMARY JUDGMENT ON LIEN CLAIMANTS'  
16 NRS CH 108 CLAIM FOR FORECLOSURE OF MECHANIC'S LIEN will come on  
17 regularly for hearing on the 27 day of July, 2017, at the hour of 9:00  
18 A.m., or as soon thereafter as counsel may be heard, in Department XIII in the above-  
19 referenced court.

20 MARQUIS AURBACH COFFING

21 By   
22 Jack Chen Min Juan, Esq.  
23 Nevada Bar No. 6367  
24 Cody S. Munteer, Esq.  
25 Nevada Bar No. 11220  
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27 Las Vegas, Nevada 89145  
28 Attorneys for APCO Construction



**MEMORANDUM OF POINTS AND AUTHORITIES****I. Motion Based on Court's Prior Orders**

This case involves the incomplete construction of Manhattan West Condominium Property ("Property"), which was owned / developed by Gemstone Development West, Inc. ("Gemstone"). Gemstone hired APCO Construction ("APCO") as the prime contractor and later replaced APCO with Camco Pacific Construction Co. Inc. ("CAMCO"). Due to the economy, Gemstone encountered dire financial stress and stopped payment to everyone on the Property. This caused the subcontractors / lien-claimants to record NRS Ch. 108 mechanic's liens against the Property and assert NRS Ch. 108 claims for foreclosure of mechanic's liens. The subcontractors / lien-claimants asserted those claims not only against Gemstone, but also against APCO (and CAMCO).<sup>2</sup>

However, APCO does not own the Property.<sup>3</sup> Equally important, the Court ordered the "Property shall be sold free and clear of all liens including but not limited to all liens as shown on Preliminary Title Report ...".<sup>4</sup> And, all the sale proceeds then went to the banks.<sup>5</sup> Thus, from prior Court orders, the NRS Ch. 108 mechanic's liens have been wiped away and no NRS Ch. 108 foreclosure can take place against the Property. All NRS Ch. 108 claims for foreclosure of Mechanic's Lien should thus be dismissed or summary judgment entered on such claims in favor of APCO. This is so based on NRCP 12(b)(5); NRCP 56(b); and issue preclusion.

**II. Relevant Procedural History**

**April 9, 2009:** APCO files complaint against Gemstone for unpaid construction work on the Property.

---

<sup>2</sup> *Id.* at p.9 para. 53.

<sup>3</sup> *Id.* at p.2 para. 2.

<sup>4</sup> **Exhibit D** (Order Approving Sale of Property), para. 6; and **Exhibit E** (Notice of Entry of Order Releasing Sale Proceeds From Court-Controlled Escrow Account).

<sup>5</sup> *Id.*

1       **Thereafter:** Subcontractors started to file their Statement of Facts Constituting Notice of  
2       Lien and Third-Party Complaint.<sup>6</sup>

3       **December 14, 2010:** Court orders a stay of the case pending the resolution of who has  
4       priority over the property sale proceeds, between the NRS Ch. 108 subcontractors / lien  
5       claimants or the banks ("Priority Dispute").<sup>7</sup>

6       **November 20, 2012:** Court orders the stay to continue, except for the sale of the  
7       Property, pending all the parties Writs and the like before the Nevada Supreme Court on the  
8       Priority Dispute.

9       **April 23, 2013:** Court orders the sale of the Property, free and clear of any and all  
10       encumbrances and NRS Ch. 108 mechanic's liens.<sup>8</sup> The Property shall be sold free and clear of  
11       all liens including but not limited to all liens as shown on Preliminary Title Report ...<sup>9</sup>

12       **April 24, 2016:** The Court orders the sale proceeds, all of it, released to the banks, who  
13       prevailed on the Priority Dispute. This is based on the Nevada Supreme Court's ruling that the  
14       NRS Ch. 108 mechanic liens were junior to the banks deed of trust / lien securing financing for  
15       the construction of the Property and denials of all reconsiderations and rehearings.<sup>10</sup>

### 16       **III. Legal Standards**

17       All NRS Ch. 108 claims for foreclosure of Mechanic's Lien should thus be dismissed or  
18       summary judgment entered on such claims in favor of APCO. This is so based on (A) NRCP  
19       12(b)(5); (B) NRCP 56(b); and (C) issue preclusion.

20       

---

<sup>6</sup> An example is Helix Elecric's Amended Statement of Facts Constituting Notice of Lien and Third-Party  
21       Complaint, 6th Cause of Action. See Exhibit A.

22       <sup>7</sup> **Exhibit B** (Notice of Entry of Order Granting Scott Financial Corporation's Motion to Stay Further  
23       Activity in this Case Until the Issue of Priority Issue has been Resolved); and **Exhibit C** (Notice of Entry  
24       of Order Staying the Case, Except for the Sale of the Property, Pending Resolution of the Writ Petition  
25       Before the Nevada Supreme Court).

26       <sup>8</sup> **Exhibit D** (Order Approving Sale of Property), para. 6.

27       <sup>9</sup> Id.

28       <sup>10</sup> **Exhibit E** (Order Releasing Sale Proceeds From Court-Controlled Escrow Account), p.2 lines 7 thru  
16; and p.3 lines 1 thru 4.

## 1           A.     NRCP 12(b)(5)

2           Even if we assume as true all the facts supporting the subcontractors / lien claimants'  
3 claim<sup>11</sup> for NRS Ch. 108 mechanic's lien foreclosure, that claim still fails as no relief can be  
4 granted based on the Court's prior orders directly on that point.<sup>12</sup> The reason is because APCO  
5 does not own the Property<sup>13</sup> (at the relevant time, it was owned by Gemstone and the banks).<sup>14</sup>  
6 And, the Court ordered the "Property shall be sold free and clear of all liens including but not  
7 limited to all liens as shown on Preliminary Title Report ... ." <sup>15</sup> And, the all the sale proceeds  
8 went to the banks.<sup>16</sup>

9           The net effect of the Court's order was all liens wiped away (thus no more NRS Ch. 108  
10 liens on the Property); the Property was sold (thus no Property to foreclose upon under NRS Ch.  
11 108); and all the sale proceeds went to the bank (nothing for the NRS Ch. 108 claims attach  
12 thereto). There are thus no set of facts alleged or can be alleged by the subcontractors / lien  
13 claimants that would entitle them to a NRS Ch. 108 mechanic's lien foreclosure of the  
14 Property.<sup>17</sup> NRCP 12(b)(5) dismissal of the NRS Ch. 108 mechanic's lien foreclosure claim is  
15 thus proper.

16           B.     NRCP 56(b)<sup>18</sup>

17           The undisputed material facts entitled APCO to NRCP 56(b) summary judgment on the  
18 subcontractors / lien claimants NRS Ch. 108 claim for mechanic's lien foreclosure. The Court's  
19 prior orders are undisputed material facts that all NRS Ch. 108 mechanic's liens have been wiped  
20 away from the Property,<sup>19</sup> the Property was sold to a third-party free and clear of those liens and  
21

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22  
23 <sup>11</sup> NRCP 12(b)(5).

24 <sup>12</sup> Exhibit D (Order Approving Sale of Property), para. 6.

25 <sup>13</sup> Exhibit A, p.2 para. 2.

26 <sup>14</sup> Id.

27 <sup>15</sup> Exhibit D (Order Approving Sale of Property), para. 6.

28 <sup>16</sup> Exhibit E (Notice of Entry of Order Releasing Sale Proceeds From Court-Controlled Escrow Account).

<sup>17</sup> Brown v. Kellar, 97 Nev. 582, 636 P.2d 874 (1981) (emphasis added); see also, Bergmann v. Boyce,  
109 Nev. 670, 856 P.2d 560 (1993).

<sup>18</sup> NRCP 56(b) applies since APCO is defending against the subcontractors / lien claimants' NRS Ch. 108  
lien foreclosure claim alleged against it.

<sup>19</sup> Exhibit D (Order Approving Sale of Property), para. 6.

1 all the sale proceeds went to the banks.<sup>20</sup> The result is there are no facts or law that could result  
2 in an order or award on a claim for NRS Ch. 108 mechanics lien foreclosure against the  
3 Property.<sup>21</sup> Subcontractors / lien claimants cannot provide any "affidavit or otherwise, set forth  
4 specific facts demonstrating the existence of a genuine issue for trial" on their NRS Ch. 108  
5 claim for mechanics lien foreclosure.<sup>22</sup> On the other hand, the undisputed material facts and law  
6 – the Court's prior findings and orders<sup>23</sup> – prove a NRS Ch. 108 mechanics lien foreclosure  
7 against the Property is not possible and summary judgment on that claim should be entered in  
8 favor of APCO.  
9

### 10 C. Issue Preclusion

11 The Court has already ruled the subcontractors / lien claimants no longer have any NRS  
12 Ch. 108 mechanic's liens to foreclose<sup>24</sup> or any property to foreclose upon.<sup>25</sup> The doctrine of  
13 issue preclusion applies. Issue preclusion (and claim preclusion) are intended to "protect the  
14 finality of decisions and prevent the proliferation of litigation."<sup>26</sup> "In Nevada, issue preclusion  
15 requires that (1) an issue be identical, (2) the initial ruling was final and on the merits, (3) the  
16 party against whom the judgment is asserted' was a party or in privity with a party in the prior  
17 case, and (4) the issue was actually and necessarily litigated."<sup>27</sup> Here, all four elements are met:  
18  
19

20 <sup>20</sup> Id. ant Exhibit E (Notice of Entry of Order Releasing Sale Proceeds From Court-Controlled Escrow  
21 Account).

22 <sup>21</sup> Farmers Ins. Exchange v. Young, 108 Nev. 328, 832 P.2d 376 (1992).

23 <sup>22</sup> Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

24 <sup>23</sup> In, Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Court stated "[s]ummary judgment  
25 is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions,  
26 and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact  
27 exists, and the moving party is entitled to judgment as a matter of law. A factual dispute is genuine when  
28 the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Id. 121  
Nev. at 731, 121 P.3d at 1031 (citing Matsushita, 475 U.S. at 586, 106 S.Ct. 1348. (Emphasis added).

<sup>24</sup> Exhibit D (Order Approving Sale of Property), para. 6; and Exhibit E (Notice of Entry of Order  
Releasing Sale Proceeds From Court-Controlled Escrow Account).

<sup>25</sup> Id.

<sup>26</sup> Redrock Valley Ranch v. Washoe County, 127 Nev. Adv. Op. 38, 254 P.3d 641.

<sup>27</sup> Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (2009) (quoting Five Star  
Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d 709, 713 (2008) (holding modified on other grounds by  
Garcia v. Prudential Ins. Co. of Am., 129 Nev. Adv. Op. 3, 293 P.3d 869 (2013)).

1           1.       Identical issue: Whether the NRS Ch. 108 remains on the Property or if the  
2 Property is sold free and clear of all liens;<sup>28</sup>

3           2.       Initial ruling was final and on the merits: The court issued the order and a notice  
4 of entry was done, resulting in the Property being sold free and clear of any and all NRS Ch. 108  
5 mechanic's liens;<sup>29</sup>

6           3.       Party and privity: All the parties, all of the subcontractors / lien claimants, were  
7 involved in the dispute on the property sale and whether it would be sold free and clear. "A  
8 reasonable opportunity to object or be heard regarding the requested relief has been afforded to  
9 all interested persons and there being no objection, the Court finds: ...";<sup>30</sup>

10           4.       Issue actually and heavily litigated: On the issue of the Property being sold free  
11 and clear of all NRS Ch. 108 liens and encumbrances, there were conferences, hearings, and  
12 motions. Equally important, there was a specific hearing on this issue, a "September 28, 2012  
13 Order to Show Cause re: Sale of the Property decreed that all interested parties to the action  
14 appear on October 9, 2012 to show cause why an Order allowing the sale of the Property free of  
15 liens and establishment of a fund as replacement security for the liens should be entered by the  
16 Court."<sup>31</sup>

17  
18           All elements of issue preclusion have been met. No need to further litigate this specific  
19 issue. Issue preclusion "is based upon the sound public policy of limiting litigation by  
20 preventing a party who had one full and fair opportunity to litigate an issue from again drawing it  
21 into controversy."<sup>32</sup> "[I]ssue preclusion is applied to conserve judicial resources, maintain  
22 consistency, and avoid harassment or oppression of the adverse party."<sup>33</sup> "[I]ssue-preclusion  
23  
24

25 <sup>28</sup> Exhibit D (Order Approving Sale of Property), para. 6; and Exhibit E (Notice of Entry of Order  
26 Releasing Sale Proceeds From Court-Controlled Escrow Account).

27 <sup>29</sup> Id.

28 <sup>30</sup> Exhibit D, p.3 lines 16-17.

<sup>31</sup> Id. at p.2 lines 20-24.

<sup>32</sup> Bower v. Harrah's Laughlin, Inc., 125 Nev. at 481, 215 P.3d at 718.

<sup>33</sup> Alcantara v. Wal-Mart Stores, Inc., 130 Nev. Adv. Op. 28, 321 P.3d 912, 916 (2014) (altered).

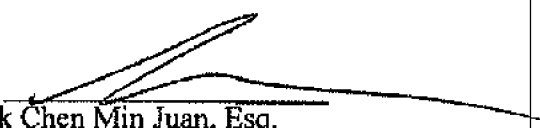
doctrines are not concerned with whether the decision in the prior proceeding was right or wrong.”<sup>34</sup> If any of the subcontractors / lien claimants felt aggrieved by that prior ruling, then their remedy was to appeal, not to seek to change the ruling in any further second or third bites at the apple.<sup>35</sup> Issue preclusion is intended to “protect the finality of decisions and prevent the proliferation of litigation.”<sup>36</sup> Here, the Court has already ruled there is no longer any NRS Ch. 108 liens and no Property for such liens to foreclose on. The result is the subcontractors / lien claimants no longer have any NRS Ch. 108 mechanic’s lien foreclosure claims.

#### IV. Conclusion

All NRS Ch. 108 claims for foreclosure of mechanic’s lien should be dismissed or summary judgment entered on such claims in favor of APCO. The Court previous ordered the “Property shall be sold free and clear of all liens including but not limited to all liens as shown on Preliminary Title Report ... .”<sup>37</sup> Pursuant to NRCP 12(b)(5); NRCP 56(b); and claim preclusion, those claims are dismissed or summary judgment in favor of APCO.

Dated this 26<sup>th</sup> day of June, 2017.

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<sup>34</sup> Holt v. Reg'l Tr. Servs. Corp., 127 Nev. Adv. Op. 80, 266 P.3d 602, 608 (2011) (altered).

<sup>35</sup> Id.

<sup>36</sup> Redrock Valley Ranch v. Washoe County, 127 Nev. Adv. Op. 38, 254 P.3d 641.

<sup>37</sup> Exhibit D (Order Approving Sale of Property), para. 6; and Exhibit E (Notice of Entry of Order Releasing Sale Proceeds From Court-Controlled Escrow Account).

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APCO CONSTRUCTION'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT ON LIEN CLAIMANTS' NRS CH 108 CLAIM FOR FORECLOSURE OF MECHANIC'S LIEN** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 21 day of June 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>38</sup>

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**Party: Camco Pacific Construction Co Inc - Counter Claimant**

Steven L. Morris steve@gmdlegal.com

**Party: Fidelity & Deposit Company Of Maryland - Intervenor Defendant**

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**Party: Interstate Plumbing & Air Conditioning Inc - Intervenor Plaintiff**

Jonathan S. Dabbieri dabbieri@sullivanhill.com

**Party: Cactus Rose Construction Inc - Intervenor Plaintiff**

Eric B. Zimbelman ezimbelman@peelbrimley.com

**Party: National Wood Products, Inc.'s - Intervenor**

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<sup>38</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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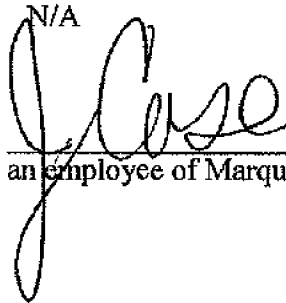


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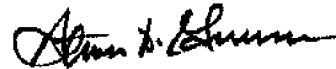
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12 thereof, postage prepaid, addressed to:

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14   
15 an employee of Marquis Aurbach Coffing  
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# EXHIBIT R



CLERK OF THE COURT

ORIGINAL

1 **ORDER**

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10 Facsimile: (702) 792-9002  
11 Attorneys for Defendants Club Vista Financial Services, LLC  
12 and Tharaldson Motels II, Inc.

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 APCO CONSTRUCTION, a Nevada  
16 corporation,

17 Plaintiffs,

18 v.

19 GEMSTONE DEVELOPMENT WEST,  
20 INC., a Nevada corporation; NEVADA  
21 CONSTRUCTION SERVICES, a  
22 Nevada corporation; SCOTT  
23 FINANCIAL CORPORATION, a North  
24 Dakota corporation;  
25 COMMONWEALTH LAND TITLE  
26 INSURANCE COMPANY; FIRST  
27 AMERICAN TITLE INSURANCE  
28 COMPANY; and DOES I through X

Defendants.

**AND ALL RELATED CASES AND  
MATTERS**

Case No.: A571228  
Dept. No.: XXIX

**CONSOLIDATED CASES:**

A571792, A574397, A574792,  
A577623, A579963, A580889,  
A583289, A584730, A587168,  
A589195, A589677, A590319,  
A592826, A596924, A597089,  
A606730, A608717, and A608718

**ORDER APPROVING SALE OF  
PROPERTY**

21 Evidentiary hearings were held in the above-entitled matter on July 9 and 11, 2012 before  
22 the Honorable Susan Scann, Department 29, District Court, Clark County, on Scott Financial  
23 Corporation's Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further  
24 Court Order, and for Posting of Bond on Order Shortening Time ("Motion"). At that time, the  
25 Seller, Gemstone Development West, Inc. ("Gemstone"), the Purchaser, WGH Acquisitions, Inc.  
26 ("WGH"), and lender Scott Financial Corporation ("Scott") sought Court approval of a Purchase  
27 and Sale Agreement ("the PSA") dated May 12, 2012. On July 31, 2012, this Court issued an  
28

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1 Order Granting In Part And Denying In Part Scott Financial Corporation's Motion To Lift Stay,  
2 Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order And For Posting Of  
3 Bond On Order Shortening Time. Among other things, the Court:

- 4 • Denied Scott's request to approve the sale of the Property to WGH for \$18,050,000.00;
- 5 • Deemed the PSA to be "unenforceable and of no further effect;" and
- 6 • Decided to hold additional hearings to "determine the best and most appropriate way to  
7 proceed to the expeditious sale of the property in the event the parties cannot agree on a  
8 stipulated method of sale."

9 On July 11, 2012, this Court issued an Order to Show Cause Re: Summary  
10 Determination of Lien Amounts; and the Possible Sale of the Property, and a hearing on the  
11 same was held on July 18, 2012. At the July 18, 2012 hearing, the Court granted the Motion in  
12 Part, ordering the sale of the property, and scheduled a hearing for July 26, 2012, which was  
13 continued to August 16, 2012, to determine the bidding and sale procedures. At the August 16,  
14 2012 hearing, the Court scheduled an auction for the sale of the Manhattan West Property  
15 ("Property") for October 9, 2012.

16 At a September 26, 2012 telephonic conference with the Court, the parties informed the  
17 Court of the possibility the parties would consent to the sale of the Property to a specific buyer,  
18 without need for an auction, provided the price was acceptable to all parties. On September  
19 28, 2012, the Court issued an Order Vacating the Auction Set for October 9, 2012 and set an  
20 Order to Show Cause Re: Sale of the Property. The September 28, 2012 Order to Show Cause  
21 Re: Sale of the Property decreed that all interested parties to the action appear on October 9,  
22 2012 to show cause why an Order allowing the sale of the Property free of liens and  
23 establishment of a fund as replacement security for the liens should not be entered by the  
24 Court.

25 On October 9, 2012, the Court held a hearing on the Order to Show Cause Re: Sale of  
26 the Property. The Court subsequently continued the hearing to allow the parties the opportunity  
27 to review and clarify the terms of the proposed sale and to propose a written Order approving  
28

1 the sale of the Property to WGH for \$20,000,000, preserving the net proceeds of the sale and  
2 otherwise setting forth terms and conditions under which the Court would approve the sale.

3 In or about October 2012, Gemstone, WGH, and Scott executed a First Amendment to  
4 the PSA ("First Amendment") as a convenient method to memorialize Gemstone's agreement  
5 to sell the Property to WGH, with Scott's consent, for \$20,000,000. The First Amendment  
6 purports to ratify the terms of the PSA, except as modified by the First Amendment. In or  
7 about November 2012, Gemstone, WGH, and Scott executed a Second Amendment to the PSA  
8 ("Second Amendment"), which by its terms supersedes and replaces the First Amendment to  
9 the PSA, but which also purports to ratify the terms of the PSA, except as modified by the  
10 Second Amendment.

11 By way of a Motion to Set Hearing, certain lien claimants raised concerns they had  
12 with the PSA and Amendments and requested a hearing to discuss the same. The Court held a  
13 hearing regarding such issues on January 3, 2013, which hearing was continued for further  
14 consideration on January 16, 2013.

15 ACCORDINGLY, IT IS HEREBY ORDERED that:

16 A reasonable opportunity to object or be heard regarding the requested relief has been  
17 afforded to all interested persons and there being no objection, the Court finds:

18 1. Compelling circumstances exist requiring the Property to be sold on the terms  
19 outlined herein. The sale of the Property is in the best interest of all parties holding liens on the  
20 Property.

21 2. The Purchase and Sale Agreement dated as of May 10, 2012 and the Second  
22 Amendment to Purchase and Sale Agreement and Escrow Instructions dated as of November 7,  
23 2012, which supersedes and replaces the First Amendment (collectively, the "Purchase and  
24 Sale Agreement") between Gemstone Development West, Inc. and WGH Acquisitions, LLC  
25 constitutes the best offer for the Property. The Court hereby approves the Purchase and Sale  
26 Agreement, except as modified or amended by the terms of this Order, as follows:

27 3. Paragraph 2 of the Second Amendment is amended, modified and superseded as  
28

1 follows: All contingencies shall be satisfied or waived by, the Property shall close escrow by,  
2 and the Closing Date shall be, no later than June 17, 2013 unless extended by further Order of  
3 this Court upon application prior to the Closing Date for good cause shown and with notice to  
4 all parties.

5 4. Paragraph 4 of the Second Amendment is amended, modified and superseded as  
6 follows: the sale of the Property is subject to approval of this Court as set forth in this Order.

7 5. Paragraph 9 of the Second Amendment is amended, modified and superseded as  
8 follows: the amount of the broker commissions payable from the proceeds of the sale shall be  
9 \$200,000.00 (Two Hundred Thousand U.S. Dollars).

10 6. The Property shall be sold free and clear of all liens including but not limited to  
11 all liens as shown on the Preliminary Title Report No. 12-02-1358-KR prepared by Nevada  
12 Title Company on March 12, 2013 and amended on April 3, 2013 attached hereto as Exhibit A.  
13 Those existing liens on the Property, identified in the attached Exhibit "B," will be transferred  
14 to the net proceeds from the sale and will retain the same force, effect, validity and priority that  
15 previously existed against the Property subject to the determination of priority by the Supreme  
16 Court of Nevada in the Writ Petition procedure discussed below. For purposes of this Order  
17 "net proceeds from the sale" shall mean the sale proceeds available after the payment of sales  
18 commissions (as determined by the Court), and other ordinary closing costs and any unpaid  
19 property taxes.

20 7. The net proceeds from the sale (including any deposit under the Purchase and  
21 Sale Agreement) are to be held in an interest-bearing account ("Account") pending final  
22 resolution of the mechanic lien claimants' Joint Petition for Writ of Mandamus or, in the  
23 Alternative, Prohibition filed in the Supreme Court of Nevada on June 22, 2012, or upon  
24 resolution of any appeal brought with respect to the net proceeds from the sale. The contents  
25 of the Account are to remain subject to Court control until the Court orders the distribution of  
26 the contents to the party or parties the Nevada Supreme Court determines has a first priority  
27 lien on the proceeds or as may otherwise be agreed upon by the parties. Nothing in the  
28

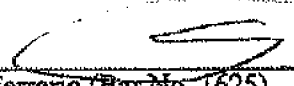
1 Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal  
2 arguments or positions regarding priority.

3 **IT IS SO ORDERED.**


4 DATED this 23rd day of April, 2013.

5  
6   
DISTRICT COURT JUDGE

7 Respectfully submitted,

8 By:   
9 Mark E. Ferrario (Bar No. 1625)  
10 Tami D. Cowden (Bar No. 8994)  
11 3773 Howard Hughes Parkway  
12 Suite 400 North  
Las Vegas, Nevada 89169  
*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

13 Approved as to form and content.

14 By:   
15 J. Randall Jones (Bar No. 1927)  
16 Matthew S. Carter (Bar No. 9524)  
17 3800 Howard Hughes Parkway  
18 Seventeenth Floor  
Las Vegas, Nevada 89169  
*Attorneys for Scott Financial Corporation  
and Bradley J. Scott*

19 By: \_\_\_\_\_  
20 Gwen Kutar Mullins (Bar No. 3146)  
21 Wade R. Gochmour (Bar No. 6314)  
22 3800 Howard Hughes Parkway  
Suite 1400  
Las Vegas, Nevada 89169  
*Attorneys for APCO Construction*

23 By: \_\_\_\_\_  
24 Richard L. Peel (Bar No. 4359)  
25 Eric B. Zimbelman (Bar No. 9407)  
26 Michael T. Gebhart (Bar No. 7718)  
27 3333 E. Serene Avenue  
Suite 200  
Henderson, Nevada 89074  
*Attorneys for Various Lien Claimants*

GREENBERG TRAUBING, LLP  
3770 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-0772  
Facsimile: (702) 792-0072

Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

**IT IS SO ORDERED.**

DATED this \_\_\_\_ day of April, 2013.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Respectfully submitted,

By: \_\_\_\_\_  
Mark E. Ferrario (Bar No. 1625)  
Tami D. Cowden (Bar No. 8994)  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

Approved as to form and content,

By: \_\_\_\_\_  
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Matthew S. Carter (Bar No. 9524)  
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Las Vegas, Nevada 89169  
*Attorneys for Scott Financial Corporation  
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By: \_\_\_\_\_  
Gwen Rutar Mullins (Bar No. 3146)  
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GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
Telephone (702) 799-3773  
Facsimile (702) 799-9092

Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

**IT IS SO ORDERED.**

DATED this \_\_\_\_\_ day of April, 2013.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Respectfully submitted,

By: \_\_\_\_\_

Mark E. Ferrario (Bar No. 1625)

Tami D. Cowden (Bar No. 8994)

3773 Howard Hughes Parkway

Suite 400 North

Las Vegas, Nevada 89169

*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

Approved as to form and content,

By: \_\_\_\_\_

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and Bradley J. Scott*

By: \_\_\_\_\_

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Michael T. Gebhart (Bar No. 7718)

3333 E. Serene Avenue

Suite 200

Henderson, Nevada 89074

*Attorneys for Various Lien Claimants*

# Exhibit A

# Exhibit A

NEVADA TITLE COMPANY  
2500 North Buffalo, Suite # 150  
Las Vegas, Nevada 89128  
(702) 251-5000

ATTENTION: Kristin Ravelo

Amended April 3, 2013

Your Number  
Order Number: 12-02-1358-KR / Kristin Ravelo

---

Dated as of March 12, 2013 at 7:30 a.m.

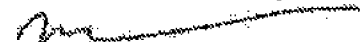
In response to the above referenced application for a policy of title insurance, Nevada Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in the exclusions and exceptions from coverage document attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in the exclusions and exceptions from coverage. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referenced to below and the exceptions and exclusions set forth in the exclusions from coverage of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance, and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.



---

Title Officer: Martin Bressler

### **SCHEDULE A**

The form of Policy of Title Insurance contemplated by this report is:

- ( ) California Land Title/American Land Title Association Homeowners Policy
- ( ) American Land Title Association Lender's Policy 2006 PROPOSED INSURED in the amount of \$ , Premium Amount \$
- ( ) American Land Title Association Owners Policy 2006
- ( ) California Land Title Association Standard Owner's/Lenders

THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS SCHEDULE COVERED BY THIS REPORT IS:

#### **A Fee**

Title to said estate or interest at the date hereof is vested in:

**Gemstone Development West, Inc., a Nevada corporation**

The land referred to in this report is situated in the State of Nevada, County of Clark, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF FOR LEGAL DESCRIPTION:

Address: Vacant Land Las Vegas, NV

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL I:**

THE WEST HALF (W ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224982 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL II:**

THE WEST HALF (W ½) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224994 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY SHOWN IN FINAL ORDER OF CONDEMNATION RECORDED NOVEMBER 20, 1998 IN BOOK 981120 AS DOCUMENT NO. 00763 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF

PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL III:**

THE EAST HALF (E ½) OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL IV:**

A TRACT OF LAND BEING A PORTION OF THE NORTH HALF (N ½) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SAID SECTION 32, SAID POINT BEING ON THE CENTERLINE OF "RUSSELL ROAD"; THENCE ALONG THE EAST LINE THEREOF, SOUTH 00°45'29" WEST, 45.01 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD" AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

- (1) SOUTH 00°45'29" WEST, 5.00 FEET;
- (2) NORTH 89°28'01" EAST, 100.71 FEET;
- (3) SOUTH 80°02'11" EAST, 1.52 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 11°15'11" WEST;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ALONG SAID 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 79°15'57" (THE LONG CHORD OF WHICH BEARS SOUTH 39°06'50" WEST, 25.51 FEET) FOR AN ARC LENGTH OF 27.67 FEET; THENCE SOUTH 03°30'45" WEST, 68.29 FEET; THENCE

SOUTH 02°09'32" WEST, 81.12 FEET; THENCE SOUTH 17°40'33" WEST, 32.81 FEET; THENCE SOUTH 27°55'25" WEST, 41.45 FEET; THENCE SOUTH 00°35'39" EAST, 308.38 FEET; THENCE SOUTH 45°19'56" EAST, 20.47 FEET; THENCE NORTH 89°24'01" EAST, 109.32 FEET; THENCE SOUTH 26°03'44" EAST, 21.96 FEET; THENCE SOUTH 35°52'59" WEST, 41.00 FEET; THENCE SOUTH 57°56'46" WEST, 29.28 FEET; THENCE SOUTH 89°25'29" WEST, 145.72 FEET; THENCE SOUTH 00°45'29" WEST, 349.42 FEET; THENCE NORTH 90°00'00" WEST, 74.74 FEET; THENCE NORTH 00°00'07" WEST, 304.72 FEET; THENCE SOUTH 89°18'50" WEST, 258.60 FEET; THENCE NORTH 00°46'11" EAST, 44.21 FEET; THENCE SOUTH 89°23'43" WEST, 312.37 FEET; THENCE NORTH 00°46'53" EAST, 370.04 FEET; THENCE SOUTH 89°13'07" EAST, 5.00 FEET TO THE BEGINNING OF A 10.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 39°13'07" WEST; THENCE SOUTHEASTERLY ALONG SAID 10.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 91°22'53" (THE LONG CHORD OF WHICH BEARS SOUTH 44°54'33" EAST, 14.31 FEET) FOR AN ARC LENGTH OF 15.95 FEET; THENCE NORTH 89°24'01" EAST, 22.46 FEET; THENCE SOUTH 54°17'04" EAST, 42.60 FEET; THENCE NORTH 35°42'56" EAST, 18.50 FEET; THENCE SOUTH 54°17'04" EAST, 14.50 FEET TO THE BEGINNING OF A 26.00 FOOT RADIUS CURVE, CONCAVE TO THE NORTH; THENCE EASTERLY ALONG SAID 26.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 36°18'55" (THE LONG CHORD OF WHICH BEARS SOUTH 72°26'32" EAST, 16.20 FEET) FOR AN ARC LENGTH OF 16.48 FEET; THENCE NORTH 89°24'01" EAST, 48.35 FEET; THENCE SOUTH 00°35'59" EAST, 19.00 FEET; THENCE NORTH 89°24'12" EAST, 37.56 FEET TO THE BEGINNING OF A 23.50 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG SAID 23.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 47°53'29" (THE LONG CHORD OF WHICH BEARS NORTH 65°27'27" EAST, 19.08 FEET) FOR AN ARC LENGTH OF 19.64 FEET; THENCE NORTH 41°30'43" EAST, 30.28 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE NORTHERLY ALONG SAID 20.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 72°57'04" (THE LONG CHORD OF WHICH BEARS NORTH 05°02'11" EAST, 23.78 FEET) FOR AN ARC LENGTH OF 25.46 FEET; THENCE NORTH 31°26'22" WEST, 45.62 FEET; THENCE SOUTH 59°33'15" WEST, 18.50 FEET TO THE BEGINNING OF A 297.01 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 59°04'19" WEST; THENCE NORTHERLY ALONG SAID 297.01 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°39'01" (THE LONG CHORD OF WHICH BEARS NORTH 21°06'11" WEST, 101.37 FEET) FOR AN ARC LENGTH OF 101.86 FEET; THENCE NORTH 78°14'25" EAST, 15.18 FEET TO THE BEGINNING OF A 2.50 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG SAID 2.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF

105°11'40" (THE LONG CHORD OF WHICH BEARS NORTH 25°38'35" EAST, 3.97 FEET) FOR AN ARC LENGTH OF 4.59 FEET TO THE BEGINNING OF A 102.50 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 63°02'45" WEST; THENCE NORTHERLY ALONG SAID 102.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 26°21'16" (THE LONG CHORD OF WHICH BEARS NORTH 13°46'37" WEST, 46.73 FEET) FOR AN ARC LENGTH OF 47.15 FEET; THENCE NORTH 00°35'59" WEST, 55.31 FEET; THENCE SOUTH 89°24'01" WEST, 3.00 FEET TO THE BEGINNING OF A 25.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A RADIAL LINE BEARS NORTH 89°24'01" EAST; THENCE NORTHWESTERLY ALONG SAID 25.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°00'00" (THE LONG CHORD OF WHICH BEARS NORTH 45°35'59" WEST, 35.36 FEET) FOR AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 00°35'59" WEST, 5.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD"; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 89°24'01" EAST, 516.96 FEET TO THE POINT OF BEGINNING.



## SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$3,247.99, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$813.31 unpaid delinquent third Monday in August

Second installment of \$811.56 unpaid delinquent first Monday in October

Third installment of \$811.56 unpaid delinquent first Monday in January

Fourth installment of \$811.56 unpaid delinquent first Monday in March

Affects: Parcel I

Parcel No. 163-32-101-020

7. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$12,782.80, plus costs and penalties.

Affects: Parcel I

8. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$8,882.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,214.27 unpaid delinquent third Monday in August

Second installment of \$2,219.47 unpaid delinquent first Monday in October

Third installment of \$2,219.47 unpaid delinquent first Monday in January

Fourth installment of \$2,219.47 unpaid delinquent first Monday in March

Affects: Parcel II

Parcel No. 163-32-101-022

9. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$35,994.29, plus costs and penalties.

Affects: Parcel II

10. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$7,317.63, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,832.37 unpaid delinquent third Monday in August

Second installment of \$1,828.42 unpaid delinquent first Monday in October

Third installment of \$1,828.42 unpaid delinquent first Monday in January

Fourth installment of \$1,828.42 unpaid delinquent first Monday in March

Affects: Parcel III

Parcel No. 163-32-101-023

11. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$26,814.71, plus costs and penalties.

Affects: Parcel III

12. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$307,660.62, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$77,039.94 unpaid delinquent third Monday in August

Second installment of \$76,873.56 unpaid delinquent first Monday in October

Third installment of \$76,873.56 unpaid delinquent first Monday in January

Fourth installment of \$76,873.56 unpaid delinquent first Monday in March

Affects: Parcel IV

Parcel No. 163-32-101-024

13. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$912,192.21, plus costs and penalties.

Affects: Parcel IV

14. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

15. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

16. Reservations and Easements in the patent from the United States of America, recorded September 9, 1957, in Book 139 as Document No. 114353, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

17. Reservations and Easements in the patent from the United States of America, recorded June 7, 1962, in Book 365 as Document No. 295090, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

18. Reservations and Easements in the patent from the United States of America, recorded October 16, 1979, in Book 1133 as Document No. 1092838, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

19. Reservations and Easements in the patent from the United States of America, recorded December 19, 1979, in Book 1163 as Document No. 1122179, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

20. Terms, covenants, conditions and provisions in an instrument entitled, "GRANT, BARGAIN AND SALE DEED", recorded October 5, 2004, in Book 20041005 as Document No. 05012, of Official Records.
21. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC, PANTEA, LLC AND LAS VEGAS LAND DEV CO, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01346 of Official Records.
22. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC AND PANTEA, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01347 of Official Records.
23. Deed of Trust to secure an indebtedness of \$15,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: July 5, 2006 in Book 20060705 Document No. 04264 of Official Records.  
Dated: June 26, 2006  
Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY  
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

First Amendment to the above Senior Deed of Trust for an additional \$13,000,000.00 recorded February 7, 2008 in Book 20080207 as Document No. 01484

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

24. Deed of Trust to secure an indebtedness of \$10,000,000.00 and any other amounts payable under the terms thereof:

Recorded: July 5, 2006 in Book 20060705 Document No. 04265 of Official Records.

Dated: June 26, 2006

Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Junior Deed of Trust for an additional \$8,000,000.00 recorded May 22, 2007 in Book 20070522 as Document No. 04011, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An instrument purports to modify the terms of the hereinabove stated Deed of Trust as therein provided, executed by GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION and SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION, and recorded February 7, 2008, in Book 20080207 as Document No. 01485 of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

25. Deed of Trust to secure an indebtedness of \$13,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: July 5, 2006 in Book 20060705 Document No. 04266 of Official Records.  
Dated: June 26, 2006  
Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY  
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Third Deed of Trust for an additional \$10,000,000.00 recorded October 24, 2007 in Book 20071024 as Document No. 04182, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

Second Amendment to the above Third Deed of Trust for an additional \$9,000,000.00 recorded September 9, 2008 in Book 20080909 as Document No. 03943, of Official Records.

26. Terms, covenants, conditions and provisions in an instrument entitled, "IMPROVEMENT PHASING AGREEMENT", recorded February 7, 2007, in Book 20070207 as Document No. 04555, of Official Records.
27. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for pedestrian access and utility, recorded August 23, 2007, in Book 20070823 as Document No. 04784 of Official Records.



28. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 04781 of Official Records.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

29. Terms, covenants, conditions and provisions in an instrument entitled, "DEVELOPMENT AGREEMENT", recorded November 28, 2007, in Book 20071128 as Document No. 04645, of Official Records.

Ordinance to Adopt the Development recorded November 28, 2007 in Book 20071128 as Document No. 04646, of Official Records.

30. Terms, covenants, conditions and provisions in an instrument entitled, "OFF-SITE IMPROVEMENT AGREEMENT", recorded December 3, 2007, in Book 20071203 as Document No. 00472, of Official Records.

31. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, for water lines, recorded January 3, 2008, in Book 20080103 as Document No. 03130 of Official Records.

32. Deed of Trust to secure an indebtedness of \$110,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: February 7, 2008 in Book 20080207 Document No. 01482 of Official Records.

Dated: January 22, 2008

Trustor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION

Trustee: COMMONWEALTH LAND TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

33. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded July 3, 2008, in Book 20080703 as Document No. 00633 of Official Records.

34. Intentionally omitted (expunged in Case 08-A571391-B/08-A571228-B)

35. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.

Amount: \$217,911.29

36. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.

Amount: \$374,262.70

The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.

An action commenced in the District Court, dated June 4, 2009, Case No. A571228, entitled, "PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION'S NOTICE OF LIS PENDENS", PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION, A FOREIGN CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NORTHSTAR CONCRETE, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; RICHARD THORNTON, AN INDIVIDUAL; SCOTT FINANCIAL CORPORATION; AN DOES I THROUGH X

Notice of Pendency of said Action was recorded June 10, 2009 in Book 20090610 as Document No. 04982 of Official Records.

37. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded September 9, 2008, in Book 20080909 as Document No. 01209 of Official Records.

38. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.

Amount: \$69,260.04

39. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.

Amount: \$79,420.00

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00986 of Official Records.

New Amount: \$79,420.61

40. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.

Amount: \$754,618.89

An action commenced in the District Court, dated April 9, 2009, Case No. A577623, entitled, "NOTICE OF LIS PENDENS", READY MIX, INC., A NEVADA CORPORATION -vs- CONCRETE VISIONS, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; ALEXANDER EDELSTEIN; SELINA MARIE CISNEROS; JUAN S. PULIDO; PLATTE RIVER INSURANCE COMPANY, A FOREIGN CORPORATION; APCO CONSTRUCTION, INC., A NEVADA CORPORATION; AND DOES I THROUGH X, INCLUSIVELY

Notice of Pendency of said Action was recorded April 12, 2010 in Book 20100412 as Document No. 01733 of Official Records.

41. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.

Amount: \$420,157.90

An action commenced in the District Court, dated February 27, 2009, Case No. A583289, entitled, "NOTICE OF LIS PENDENS", UTAH INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A SIERRA REINFORCING -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00930 of Official Records.

42. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.

Amount: \$20,782,659.95

An action commenced in the District Court, dated December 9, 2008, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded December 10, 2008 in Book 20081210 as Document No. 02470 of Official Records.

The above lien was amended by Amended and Restated Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.

43. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.  
Amount: \$161,000.00
44. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, D/B/A NV ENERGY, for electrical lines, recorded November 14, 2008, in Book 20081114 as Document No. 04014 of Official Records.
45. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199.  
Amount: \$1,001,790.15
46. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.  
Amount: \$461,795.78
47. A claim of Mechanic's Lien by TRI CITY DRYWALL, INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.  
Amount: \$586,642.07
48. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. - AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.  
Amount: \$30,383.68
49. Intentionally omitted (Expunged Case 08-A571228-B)
50. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.  
Amount: \$400,000.00
51. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 141 of Plats, Page 28, of Official Records.

52. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.

Amount: \$1,956,902.53

The above lien was amended by Amended Notice of Lien recorded February 2, 2009 in Book 20090202 as Document No. 00834 of Official Records.

An action commenced in the District Court, dated April 7, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 9, 2009 in Book 20090409 as Document No. 01356 of Official Records.

An action commenced in the District Court, dated June 23, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "ACCURACY GLASS & MIRROR COMPANY, INC.'S AMENDED NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00234 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01819 of Official Records.

53. Intentionally omitted (Expunged Case 08-A571228-B)

54. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.  
Amount: \$373,892.42

The effect of an instrument entitled, PARTIAL RELEASE OF LIEN, Recorded February 10, 2009 in Book 20090210 as Document No. 02380 of Official Records.

New Amount: \$358,892.42

The above lien was amended by Amended and Restated Notice of Lien recorded April 1, 2009 in Book 20090401 as Document No. 04564 of Official Records.  
New Amount: \$202,592.07

An action commenced in the District Court, dated June 13, 2009, Case No. A571228, entitled, "LIS PENDENS", LAS VEGAS PIPELINE, LLC -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC.; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; DOES 1-40, DOE CORPORATIONS 1-40, DOE BONDING COMPANIES 1-40; DOE SURETIES 1-10; DOE LENDERS 1-10; AND DOE TENANTS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded June 15, 2009 in Book 20090615 as Document No. 04814 of Official Records.

55. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.  
Amount: \$641,748.33

The above lien was amended by Amended/Restated Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.  
New Amount: \$771,401.32

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00143 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "BRUIN PAINTING CORPORATION'S AMENDED NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00235 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01817 of Official Records.

56. Intentionally omitted (Expunged A571228)

57. Intentionally omitted (Expunged A571228)

58. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01589.

Amount: \$199,000.00

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01815 of Official Records.

59. Intentionally omitted (Expunged A571228)

60. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.

Amount: \$57,611.11

61. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.

Amount: \$57,611.11

62. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00974.

Amount: \$85,260.82

63. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00975.

Amount: \$63,362.02

64. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00976.

Amount: \$3,685.15

65. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00977.

Amount: \$3,257.73

66. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.

Amount: \$788,405.41

An action commenced in the District Court, dated April 30, 2009, Case No. A-09-589195-C, entitled, "NOTICE OF LIS PENDENS", ZITTING BROTHERS CONSTRUCTION, INC., A UTAH CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES I THROUGH X; BOE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 1, 2009 in Book 20090501 as Document No. 04227 of Official Records.

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02126 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02127 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02128 of Official Records.

New Amount: \$750,807.16



67. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.

Amount: \$25,441.40

The above lien was amended by Amended Notice of Lien recorded February 4, 2009 in Book 20090204 as Document No. 04357 of Official Records.

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; DOES 1 THROUGH X; ROE CORPORATIONS 1 THROUGH X; BOE BONDING COMPANIES 1 THROUGH X; LOE LENDERS 1 THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00144 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HD SUPPLY WATERWORKS, LP'S AMENDED NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES 1 THROUGH X; ROE CORPORATIONS 1 THROUGH X; BOE BONDING COMPANIES 1 THROUGH X; LOE LENDERS 1 THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00236 of Official Records.

68. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.

Amount: \$50,000.00

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00431 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "DAVE PETERSON FRAMING, INC.'S AMENDED NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00983 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00984 of Official Records.

69. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.  
Amount: \$95,659.36

An action commenced in the District Court, dated March 24, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", INSULPRO PROJECTS, INC. -vs- GEMSTONE DEVELOPMENT, INC., A NEVADA CORPORATION; AND DOES I THROUGH X; AND ROES CORPORATIONS I THROUGH V, INCLUSIVE; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES XI THROUGH XX; AND ROES CORPORATIONS VI THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; AND DOES XXI THROUGH XXV; AND ROES CORPORATIONS XI THROUGH SV, INCLUSIVE

Notice of Pendency of said Action was recorded March 30, 2009 in Book 20090330 as Document No. 0001552 of Official Records.

70. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.  
Amount: \$77,220.70

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01818 of Official Records.

71. Intentionally omitted (Expunged Case 08-A571228-B)

72. Intentionally Omitted (Expunged A571228)

73. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.  
Amount: \$5,868.00

74. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.  
Amount: \$62,250.50

75. Intentionally omitted (refiled see Ex. 155)

76. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.  
Amount: \$4,300.00

77. An action commenced in the District Court, dated January 5, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X; AND HARSCO CORPORATION, A FOREIGN CORPORATION, -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; CONCRETE VISIONS, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded January 7, 2009 in Book 20090107 as Document No. 04231 of Official Records.

78. Intentionally omitted (Expunged Case 08-A571228-B)

79. Intentionally omitted (Expunged Case 08-A571228-B)

80. Intentionally omitted (Expunged Case 08-A571228-B)

81. Intentionally omitted (Expunged Case 08-A571228-B)

82. Intentionally omitted (Expunged Case 08-A571228-B)

83. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.  
Amount: \$945,351.40

An action commenced in the District Court, dated February 25, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00250 of Official Records.

An action commenced in the District Court, dated April 18, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "NOORDA SHEET METAL COMPANY'S SECOND AMENDED NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00987 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00988 of Official Records.

84. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document number 02970.  
Amount: \$109,032.00
85. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.  
Amount: \$8,625.00
86. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.  
Amount: \$242,608.00
87. Intentionally omitted (Expunged A571228)
88. Intentionally omitted (Expunged A571228)
89. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.  
Amount: \$20,596.03
90. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.  
Amount: \$3,186,102.67

The above lien was amended by Amended Notice of Lien recorded January 29, 2009 in Book 20090129 as Document No. 00237 of Official Records.

An action commenced in the District Court, dated April 14, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 16, 2009 in Book 20090416 as Document No. 00180 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HELIX ELECTRIC'S AMENDED NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00237 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01812 of Official Records.

91. Intentionally omitted (Expunged A571228)

92. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.  
Amount: \$79,420.00

93. Intentionally omitted (Released)

94. Intentionally omitted (Expunged Case 08-A571228-B)

95. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official  
Records as document number 03191.  
Amount: \$3,376,600.45

96. Intentionally omitted (Released 3/5/13).

97. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official  
Records as document number 00331.  
Amount: \$20,311,853.16

98. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official  
Records as document number 01512.  
Amount: \$783,161.63

99. Intentionally omitted (Expunged Case 08-A571228-B)

100. Intentionally omitted (Expunged Case 080A571228-B)

101. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded  
January 20, 2009 in Book 20090120 of Official Records as document number  
04864.  
Amount: \$9,494.23 (THERE IS A PROMISED PAYMENT OF \$2,333.62  
WHICH CLAIMANT DOES NOT WANT TO INCLUDE IN THE LIEN)

An action commenced in the District Court, dated July 9, 2009, Case No.  
A571228, entitled, "LIS PENDENS", NORTHSTAR CONCRETE, INC., A  
NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND, A SURETY; CONCRETE VISIONS,  
INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE  
COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A  
NEVADA CORPORATION; MOES 1 - 10, INCLUSIVE; AND ZOE  
CORPORATIONS 1 - 10, INCLUSIVE

Notice of Pendency of said Action was recorded July 20, 2009 in Book 20090720  
as Document No. 00028 of Official Records.

102. Intentionally omitted (Refiled see Ex. 154)

103. Intentionally omitted (Released 20130207-267)

104. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.  
Amount: \$22,176.01

105. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.  
Amount: \$20,156.25

106. Intentionally omitted (Expunged Case 08-A571228-B)

107. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.  
Amount: \$582,966.86

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00432 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "PROFESSIONAL DOORS AND MILLWORK'S AMENDED NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00989 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010



in Book 20100504 as Document No. 00990 of Official Records.

108. Intentionally omitted (Expunged Case 08-A571228-B)

109. Intentionally omitted (Expunged Case 08-A571228-B)

110. Intentionally omitted (Expunged Case 08-A571228-B)

111. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC.,  
recorded January 30, 2009 in Book 20090130 of Official Records as document  
number 0002909.  
Amount: \$89,474.70

112. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA,  
INC., recorded February 2, 2009 in Book 20090202 of Official Records as  
document number 03407.  
Amount: \$111,629.00

113. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded  
February 3, 2009 in Book 20090203 of Official Records as document number  
00318.  
Amount: \$185,319.09

The above lien was amended by Amended Notice of Lien recorded April 9, 2009  
in Book 20090409 as Document No. 01355 of Official Records.  
New Amount: \$187,525.26

An action commenced in the District Court, dated April 27, 2009, Case No.  
A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT  
GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS  
CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE  
DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE  
CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I  
THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book  
20090429 as Document No. 00142 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00238 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01813 of Official Records.

114. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.

Amount: \$127,822.00

115. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.

Amount: \$3,795,218.91

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00430 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, entitled, "E & E FIRE PROTECTION, LLC'S AMENDED NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO

PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION;  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504  
as Document No. 00981 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010  
in Book 20100504 as Document No. 00982 of Official Records.

116. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC.,  
recorded February 4, 2009 in Book 20090204 of Official Records as document  
number 02241.  
Amount: \$756,647.12

The above lien was amended by Amended Notice of Lien recorded February 26,  
2009 in Book 20090226 as Document No. 05925 of Official Records.

An action commenced in the District Court, dated March 9, 2009, Case No.  
A584730, entitled, "LIS PENDENS", THE MASONRY GROUP NEVADA,  
INC., A NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; GEMSTONE DEVELOPMENT WEST, INC.; FIDELITY  
AND DEPOSIT COMPANY OF MARYLAND AND DOES 1 THROUGH 500,  
INCLUSIVE

Notice of Pendency of said Action was recorded March 11, 2009 in Book  
20090311 as Document No. 03973 of Official Records.

117. Intentionally omitted (Expunged A571228)

118. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC.,  
recorded February 10, 2009 in Book 20090210 of Official Records as document  
number 02713.  
Amount: \$90,932.76

119. Intentionally omitted (Expunged A571228)

120. Intentionally omitted (Expunged Case 08-A571228-B)

121. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13,  
2009 in Book 20090213 of Official Records as document number 04321.  
Amount: \$314,085.66

The above lien was amended by Amended Notice of Lien recorded April 27, 2009  
in Book 20090427 as Document No. 00107 of Official Records.  
New Amount: \$275,115.66

An action commenced in the District Court, dated April 22, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 30, 2009 in Book 20090430 as Document No. 01007 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND 587168, entitled, "WRG DESIGN, INC.'S AMENDED NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00239 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01809 of Official Records.

122. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.  
Amount: \$159,478.55

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01814 of Official Records.

123. Intentionally omitted (Expunged A571228)

124. Intentionally omitted (Expunged Case 08-A571228-B)

125. Intentionally omitted (Expunged Case 08-A571228-B)

126. Intentionally omitted (Expunged Case 08-A571228-B)

127. Intentionally omitted (Expunged Case 08-A571228-B)

128. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded March 3, 2009 in Book 20090303 of Official Records as document number 00057.

Amount: \$79,420.00

An action commenced in the District Court, dated May 4, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", THE PRESSURE GROUT COMPANY, A CALIFORNIA CORPORATION -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; AND, GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I-X; AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 6, 2009 in Book 20090506 as Document No. 04009 of Official Records.

An action commenced in the District Court, dated April 15, 2010, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "THE PRESSURE GROUT COMPANY'S AMENDED NOTICE OF PENDENCY OF ACTION", THE PRESSURE GROUT COMPANY, A CALIFORNIA CORPORATION -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; AND, GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I-X; AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00985 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00986 of Official Records.

New Amount: \$79,420.61

129. A claim of Mechanic's Lien by CUSTOM SELECT BILLING, INC., recorded March 3, 2009 in Book 20090303 of Official Records as document number 03785.

Amount: \$153,765.25

The above lien was amended by Amended and Restated Notice of Lien recorded August 13, 2009 in Book 20090813 as Document No. 04380 of Official Records.

130. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded March 6, 2009 in Book 20090306 of Official Records as document number 0004245.

Amount: \$23,307.87

131. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.

Amount: \$212,444.00

132. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02343.

Amount: \$110,731.00

133. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.

Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE; ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records.

134. Intentionally omitted (Expunged Case 08-A571228-B)

135. Intentionally omitted (Expunged A571228)

136. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.

Amount: \$496,043.86

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded April 8, 2009 in Book 20090408 as Document No. 03269 of Official Records.

The above lien was amended by Amended Notice and Claim of Lien recorded April 13, 2010 in Book 20100413 as Document No. 03544 of Official Records.

137. Intentionally omitted (Expunged Case 08-A571228-B)

138. Intentionally omitted (Expunged Case 08-A571228-B)

139. Intentionally omitted (Expunged Case 08-A571228-B)

140. Intentionally omitted (Expunged A571228)

141. Intentionally omitted (Case 08-A571228-B)

142. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.

Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE; ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records.

143. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.

Amount: \$238,627.22

144. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.

Amount: \$103,955.04

145. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded April 22, 2009 in Book 20090422 as Document No. 02306 of Official Records;

Debtor: CONCRETE VISIONS, INC., A NEVADA CORPORATION;

SELINA CISNEROS, INDIVIDUALLY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH X, ROE CORPORATIONS 1 THROUGH X, INCLUSIVE

Creditor: AHERN RENTALS, INC., A NEVADA CORPORATION

Court: District

County: Clark

Case No.: A574792

Filing Date: April 14, 2009

Amount: \$66,140.04, plus costs and interest

Attorney for Plaintiff: D. Shane Clifford, Esq. and Anjali B. Woods, Esq.

146. Intentionally omitted (Case 08-A571228-B)

147. Dedications and Easements as shown on the recorded Reversionary Map referred to herein, on file in Book 141 of Plats, Page 93, of Official Records.

148. An action commenced in the District Court, dated July 17, 2009, Case No. A-09-595552-C, entitled, "LIS PENDENS", CONTAINMENT SOLUTIONS, INC., A DELAWARE CORPORATION -vs- E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; PLATTE RIVER INSURANCE COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH 10, INCLUSIVE; AND ROE CORPORATIONS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded August 3, 2009 in Book 20090803 as Document No. 00902 of Official Records.

149. An action commenced in the District Court, dated August 26, 2009, Case No. A-09-598102-C, entitled, "LIS PENDENS", WADLEY CONSTRUCTION, INC. DBA IMPACT SAND & GRAVEL, A NEVADA CORPORATION -vs- LAS VEGAS PIPELINE, LLC, A NEVADA LIMITED LIABILITY COMPANY; WESTERN SURETY COMPANY, A SURETY; MARK LEE BLACKWELL, AN INDIVIDUAL; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 -- 10, INCLUSIVE; AND ROE CORPORATIONS 1 -- 10, INCLUSIVE

Notice of Pendency of said Action was recorded September 1, 2009 in Book 20090901 as Document No. 00252 of Official Records.



150. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.

Amount: \$121,063.00

151. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.

Amount: \$238,627.22

An action commenced in the District Court, dated April 1, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "CACTUS ROSE CONSTRUCTION'S NOTICE OF LIS PENDENS", CACTUS ROSE CONSTRUCTION, INC., AN ARIZONA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407 as Document No. 02810 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01816 of Official Records.

152. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official Records as document number 01085.

Amount: \$3,376,600.45

An action commenced in the District Court, dated April 5, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING & AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I

THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407  
as Document No. 02809 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book  
20120723 as Document No. 01811 of Official Records.

153. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official  
Records as document number 01086.

Amount: \$738,161.63

An action commenced in the District Court, dated April 5, 2010, Lead Case No.  
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,  
A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR  
CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING  
& AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY  
COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA  
CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION;  
CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA  
CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA  
CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND;  
SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA  
CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I  
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407  
as Document No. 02809 of Official Records.

154. A claim of Mechanic's Lien by S.R. BRAY CORP. D/B/A POWER PLUS!,  
recorded May 6, 2010 in Book 20100506 of Official Records as document  
number 03905.

Amount: \$65,180.00

An action commenced in the District Court, dated May 7, 2010, Lead Case No.  
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,  
A584730 AND A587168, entitled, "S.R. BRAY CORP.'S NOTICE OF LIS  
PENDENS", S.R. BRAY CORP., A CALIFORNIA CORPORATION D/B/A  
POWER PLUS! -vs- GEMSTONE DEVELOPMENT WEST, INC., NEVADA  
CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH  
DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I  
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02297 of Official Records.

155. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.

Amount: \$117,470.00

An action commenced in the District Court, dated May 10, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "SWPPP COMPLIANCE SOLUTIONS, LLC'S NOTICE OF LIS PENDENS", SWPPP COMPLIANCE SOLUTIONS, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOB BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02296 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01810 of Official Records.

156. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded September 22, 2010 in Book 20100922 as Document No. 02754 of Official Records;

Debtor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT, LLC, A NEVADA LIMITED-LIABILITY COMPANY; GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED-LIABILITY COMPANY; DOES I THROUGH X, AND ROE BUSINESS ENTITIES XI THROUGH XX, INCLUSIVE  
Creditor: PCI GROUP, LLC, A NEVADA LIMITED-LIABILITY COMPANY

Court: District  
County: Clark  
Case No.: A584960  
Filing Date: August 6, 2010  
Amount: \$34,729.09

Attorney for Plaintiff: R. Christopher Reade, Esq. and Dana L. Howell, Esq.

157. Water rights, claims or title to water, whether or not shown by the public records.

158. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

159. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

160. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as disclosed by an inspection of said premises.

161. REQUIREMENT: In the event this file converts to a request for title insurance, please advise the Title Department at least one week prior to close of the transaction.

We reserve the right to make additional exceptions and/or requirements.

NOTE: This report is a preliminary investigation only of the property contained herein. This is not an abstract, it is a report derived from our review of various documents of record. No reliance should be placed on the contents hereof without first obtaining the approval of an Officer of the Company.

SB

SCHEDULE C  
OFFICE NOTES

1.

## SCHEDULE D

**Privacy Notice (15 U.S.C. 6801 and 16 CFR Part 313):** Nonpublic personal information about you is provided to us from information you submit on forms and documents and from others who are involved in your transaction. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. If you want a full page explanation of our privacy policy, or if you have questions, please contact us.

Exhibit B

Exhibit B



# EXHIBIT "B"

## A. Mechanics Liens

1. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.  
Amount: \$217,911.29
2. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.  
Amount: \$374,262.70  
  
The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.
3. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.  
Amount: \$69,260.04
4. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.  
Amount: \$79,420.00
5. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.  
Amount: \$754,618.89
6. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.  
Amount: \$420,157.90
7. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.  
Amount: \$20,782,659.95  
  
The above lien was amended by Amended Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.
8. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.  
Amount: \$161,000.00
9. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199  
Amount: \$1,001,790.15

10. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.  
Amount: \$461,795.78
11. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.  
Amount: \$586,642.07
12. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. - AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.  
Amount: \$30,383.68
13. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.  
Amount: \$400,000.00
14. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.  
Amount: \$1,956,902.53
15. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.  
Amount: \$373,892.42
16. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.  
Amount: \$641,748.33
- The above lien was amended by Amended Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.
17. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01598.  
Amount: \$199,000.00
18. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.  
Amount: \$57,611.11
19. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$57,611.11
20. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$85,260.82

21. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$63,362.02
22. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$3,685.15
23. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$3,257.73
24. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.  
Amount: \$788,405.41
25. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.  
Amount: \$25,441.40
26. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.  
Amount: \$50,000.00
27. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.  
Amount: \$95,659.36
28. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.  
Amount: \$77,220.70
29. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.  
Amount: \$5,868.00
30. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. - CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.  
Amount: \$62,250.50
31. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.  
Amount: \$4,300.00
32. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document Number 02970.  
Amount: \$109,032.00

33. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.  
Amount: \$945,351.40
34. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.  
Amount: \$8,625.00
35. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.  
Amount: \$242,608.00
36. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.  
Amount: \$20,596.03
37. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.  
Amount: \$3,186,102.67
38. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.  
Amount: \$79,420.00
39. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official Records as document number 03919.  
Amount: \$3,376,600.45
40. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official Records as document number 00331.  
Amount: \$20,311,853.16
41. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official Records as document number 01512.  
Amount: \$783,161.63
42. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 20, 2009 in Book 20090120 of Official Records as document number 04864.  
Amount: \$9,494.23
43. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.  
Amount: \$22,176.01
44. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.  
Amount: \$20,156.25

45. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.  
Amount: \$582,966.86
46. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC., recorded January 30, 2009 in Book 20090130 of Official Records as document number 0002909.  
Amount: \$89,474.70
47. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA, INC., recorded February 2, 2009 in Book 20090202 of Official Records as document number 03407.  
Amount: \$111,629.00
48. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded February 3, 2009 in Book 20090203 of Official Records as document number 00318.  
Amount: \$185,319.09

The above lien was amended by Amended Notice of Lien recorded April 9, 2009 in Book 20090409 as Document No. 01355 of Official Records.

49. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.  
Amount: \$127,822.00
50. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.  
Amount: \$3,795,218.91
51. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC., recorded February 4, 2009 in Book 20090204 of Official Records as document number 02241.  
Amount: \$756,647.12
52. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC., recorded February 10, 2009 in Book 20090210 of Official Records as document number 02713.  
Amount: \$90,932.76
53. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04321.  
Amount: \$314,085.66
- The above lien was amended by Amended Notice of Lien recorded April 27, 2009 in Book 20090427 as Document No. 00107 of Official Records.
54. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.  
Amount: \$159,478.55
55. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded March 3, 2009 in Book 20090303 of Official Records as document number 00057.

Amount: \$79,420.00

56. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded March 6, 2009 in Book 20090306 of Official Records as document number 04245.  
Amount: \$23,307.87
57. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.  
Amount: \$212,444.00
58. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document 02343.  
Amount: \$110,731.00
59. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.  
Amount: \$245,971.07
60. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.  
Amount: \$496,043.86
61. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.  
Amount: \$245,971.07
62. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.  
Amount: \$238,627.22
63. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.  
Amount: \$103,955.04
64. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.  
Amount: \$121,053.00
65. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.  
Amount: \$238,627.22
66. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.  
Amount: \$117,470.00

57. A claim of Mechanic's Lien by SR BRAY, recorded May 6, 2010 in Book 20100506 of Official Records as document number 03905.  
Amount: \$65,180.00
58. A claim of Mechanic's Lien by CUSTOM SELECT, recorded August 13, 2009 in Book 20090813 of Official Records as document number 04380.  
Amount: \$153,765.25

**B. Deeds of Trust**

1. A First Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004264.  
Amount: \$15,000,000.00
2. A Junior Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004265.  
Amount: \$10,000,000.00
3. A Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004266.  
Amount: \$13,000,000.00
4. A Junior Deed of Trust Amendment in favor of SCOTT FINANCIAL CORPORATION, recorded May 22, 2007 in Book 20070522 of Official Records as document number 0004011.  
Amount: \$8,000,000.00
5. An Amendment to Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded October 24, 2007 in Book 20071024 of Official Records as document number 0004182.  
Amount: \$10,000,000.00
6. A Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing in favor of SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 0001482.  
Amount: \$110,000,000.00

# EXHIBIT S



  
CLERK OF THE COURT

1 **NEOJ**

2 Mark E. Ferrario (NV Bar No. 1625)  
3 Moorea L. Katz (NV Bar No. 12007)  
4 GREENBERG TRAURIG, LLP  
5 3773 Howard Hughes Parkway  
6 Suite 400 North  
7 Las Vegas, Nevada 89109  
8 ferrariom@gtlaw.com  
9 katzmo@gtlaw.com  
10 Telephone: (702) 792-3773  
11 Facsimile: (702) 792-9002

12 *Attorneys for Defendants Club Vista Financial Services, LLC*  
13 *and Tharaldson Motels II, Inc.*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 **APCO CONSTRUCTION, a Nevada**  
17 **corporation,**

18 **Plaintiffs,**

19 **v.**

20 **GEMSTONE DEVELOPMENT WEST,**  
21 **INC., a Nevada corporation; NEVADA**  
22 **CONSTRUCTION SERVICES, a**  
23 **Nevada corporation; SCOTT**  
24 **FINANCIAL CORPORATION, a North**  
25 **Dakota corporation;**  
26 **COMMONWEALTH LAND TITLE**  
27 **INSURANCE COMPANY; FIRST**  
28 **AMERICAN TITLE INSURANCE**  
**COMPANY; and DOES I through X**

**Defendants.**

**AND ALL RELATED CASES AND**  
**MATTERS**

Case No.: A571228  
Dept. No.: XIII

**CONSOLIDATED CASES:**

A571792, A574397, A574792,  
A577623, A579963, A580889,  
A583289, A584730, A587168,  
A589195, A589677, A590319,  
A592826, A596924, A597089,  
A606730, A608717, and A608718

**NOTICE OF ENTRY OF ORDER**  
**RELEASING SALE PROCEEDS**  
**FROM COURT-CONTROLLED**  
**ESCROW ACCOUNT**

29 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an Order  
30 **Releasing Sale Proceeds from Court-Controlled Escrow Account** was entered in the above-  
31 **captioned matter on the 14th day of April, 2016.**

32 ///

33 ///

1 A copy of said Order is attached hereto.

2 DATED this 14th day of April, 2016.

3 GREENBERG TRAURIG, LLP

4  
5 /s/ Moorea L. Katz

6 MARK E. FERRARIO (NV Bar No. 1625)  
7 MOOREA L. KATZ (NV Bar No. 12007)  
8 3773 Howard Hughes Parkway  
9 Suite 400 North  
10 Las Vegas, Nevada 89169

11 *Attorneys for Defendants Club Vista Financial*  
12 *Services, LLC and Tharaldson Motels II, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2016, service of the foregoing was made by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system (Wiznet) and served on counsel electronically in accordance with the e-service list to the following email addresses:

<b>Bennett Tueller Johnson &amp; Deere</b>		
<b>Contact</b>	<b>Email</b>	
Benjamin D. Johnson	<a href="mailto:ben.johnson@ntjd.com">ben.johnson@ntjd.com</a>	
<b>Brian K. Berman, Chtd.</b>		
<b>Contact</b>	<b>Email</b>	
Brian K. Berman, Esq.	<a href="mailto:b.k.berman@att.net">b.k.berman@att.net</a>	
<b>Cadden &amp; Fuller LLP</b>		
<b>Contact</b>	<b>Email</b>	
Dana Y. Kim	<a href="mailto:dkim@caddenfuller.com">dkim@caddenfuller.com</a>	
S. Judy Hirahara	<a href="mailto:jhirahara@caddenfuller.com">jhirahara@caddenfuller.com</a>	
Tammy Cortez	<a href="mailto:tcortez@caddenfuller.com">tcortez@caddenfuller.com</a>	
<b>David J. Merrill P.C.</b>		
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David J. Merrill	<a href="mailto:david@dmerrillpc.com">david@dmerrillpc.com</a>	
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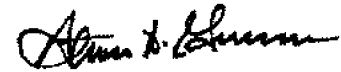
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The date and time of the electronic proof of service is in place of the date and place of deposit in the U.S. Mail.

/s/ Joyce Heilich  
An employee of Greenberg Traurig, LLP

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7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **APCO CONSTRUCTION, a Nevada**  
10 **corporation,**

11 **Plaintiffs,**

12 **v.**

13 **GEMSTONE DEVELOPMENT WEST,**  
14 **INC., a Nevada corporation; NEVADA**  
15 **CONSTRUCTION SERVICES, a**  
16 **Nevada corporation; SCOTT**  
17 **FINANCIAL CORPORATION, a North**  
18 **Dakota corporation;**  
19 **COMMONWEALTH LAND TITLE**  
20 **INSURANCE COMPANY; FIRST**  
21 **AMERICAN TITLE INSURANCE**  
22 **COMPANY; and DOES I through X**

23 **Defendants.**

24 **AND ALL RELATED CASES AND**  
25 **MATTERS**

Case No.: A571228  
Dept. No.: XIII

**CONSOLIDATED CASES:**

A571792, A574397, A574792,  
A577623, A579963, A580889,  
A583289, A584730, A587168,  
A589195, A589677, A590319,  
A592826, A596924, A597089,  
A606730, A608717, and A608718

**ORDER RELEASING SALE  
PROCEEDS FROM COURT-  
CONTROLLED ESCROW  
ACCOUNT**

26 On or about April 23, 2013, the Court issued an Order Approving Sale of Property  
27 ("Sale Order"). Pursuant to the Sale Order, the Court approved the purchase and sale of the  
28 Manhattan West Property ("Property") free and clear of all liens and ordered that all liens on  
the Property identified in a title report attached to the Sale Order be transferred to the net  
proceeds from the sale. The Court further ordered that the net proceeds from the sale be  
transferred to an interest-bearing account pending final resolution of the mechanic lien

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1 claimants' Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the  
2 Supreme Court of Nevada on June 22, 2012, or upon resolution of any appeal brought with  
3 respect to the net proceeds from the sale." *Id.* Furthermore, the Court ordered that "[t]he  
4 contents of the Account are to remain subject to Court control until the Court orders the  
5 distribution of the contents to the party or parties the Nevada Supreme Court determines has a  
6 first priority lien on the proceeds or as may otherwise be agreed upon by the parties." *Id.*

7       The Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the  
8 Supreme Court of Nevada on June 22, 2012 and referenced in the Sale Order was denied by the  
9 Supreme Court of Nevada on or about September 24, 2015 in 131 Nev. Adv. Op. 70.  
10 Specifically, the Supreme Court of Nevada determined that the mechanic liens on the  
11 Manhattan West Property remained junior to a lien against the Property securing construction  
12 financing and which was recorded against the Property prior to the attachment of the mechanic  
13 liens. Accordingly, the Supreme Court of Nevada determined that Scott Financial Corporation  
14 had a first priority lien against the Property to the extent of the \$38,000,000 initial financing.  
15 *See id.* at \*12-13. The parties all agree that the net proceeds from the sale are less than  
16 \$38,000,000.

17       On or about October 19, 2015, the mechanic lien claimants petitioned the Supreme  
18 Court of Nevada for rehearing, which the Supreme Court of Nevada denied on or about  
19 November 24, 2015.

20       On or about December 17, 2015, the mechanic lien claimants petitioned the Supreme  
21 Court of Nevada for en banc reconsideration, which the Supreme Court of Nevada denied on or  
22 about February 16, 2016.

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25 ///

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27 ///

1       **ACCORDINGLY, IT IS HEREBY ORDERED** that the net proceeds from the sale,  
2 as defined in the Sale Order, shall be released from escrow and delivered to Scott Financial  
3 Corporation, or its designee, within five (5) business days from the notice of entry of this  
4 Order.

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6       DATED this 14<sup>th</sup> day of April, 2016.

7  
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9  
10         
11       DISTRICT COURT JUDGE

12  
13       Respectfully Submitted By:

14       **GREENBERG TRAUBIG, LLP**

15  
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11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 **APCO CONSTRUCTION, a Nevada**  
14 **corporation,**

15 **Plaintiff,**

16 **vs.**

17 **GEMSTONE DEVELOPMENT WEST, INC.,**  
18 **a Nevada corporation; NEVADA**  
19 **CONSTRUCTION SERVICES, a Nevada**  
20 **corporation; SCOTT FINANCIAL**  
21 **CORPORATION, a North Dakota corporation;**  
22 **COMMONWEALTH LAND TITLE**  
23 **INSURANCE COMPANY; FIRST**  
24 **AMERICAN TITLE INSURANCE**  
25 **COMPANY; and DOES I through X,**

26 **Defendants.**

27 **AND ALL RELATED CASES AND**  
28 **MATTERS**

**CASE NO.: A571228**  
**DEPT. NO.: XXV**

Consolidated with: 08A574391,  
08A574792, 08A577623, 09A580889,  
09A583289, 09A584730, 09A584960,  
09A587168, A-09-589195-C, A-09-589677-  
C, A-09-590319-C, A-09-592826-C,  
A-09-596924-C, and A-09-597089-C

**APCO CONSTRUCTION'S**  
**RESPONSES TO ZITTING BROTHERS**  
**CONSTRUCTION, INC.'S**  
**INTERROGATORIES**

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APCO CONSTRUCTION'S  
RESPONSES TO ZITTING BROTHERS CONSTRUCTION, INC.'S  
INTERROGATORIES

APCO Construction ("APCO"), by and through its attorneys of record, Gwen Rutar Mullins, Esq. and Wade B. Gochmour, Esq., of the law firm of HOWARD & HOWARD ATTORNEYS PLLC, pursuant to NRCP Rule 33, hereby responds to the First Set of Interrogatories propounded by Plaintiff Zitting Brothers Construction, Inc. ("Zitting Brothers") upon APCO as follows:

DEFINITIONS

A. "Nondiscoverable/Irrelevant" - The Interrogatory in question concerns a matter which is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

B. "Unduly burdensome" - The Interrogatory in question seeks discovery which is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

C. "Vague" - The Interrogatory in question contains a word or phrase which is not adequately defined, or the overall request is confusing, and APCO is unable to reasonably ascertain what information or documents Zitting Brothers seeks in the request.

D. "Overly broad" - The Interrogatory seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation and, accordingly, seeks information or documents which are nondiscoverable/irrelevant and unduly burdensome.

GENERAL OBJECTIONS

1. APCO will make reasonable efforts to respond to each Interrogatory, to the extent that it has not been objected to, as APCO understands and interprets the Interrogatory. If Zitting Brothers subsequently asserts an interpretation of any Interrogatory which differs from that of APCO, APCO reserves the right to supplement its responses accordingly.

///

1           APCO objects to each and every Interrogatory to the extent that, and insofar as, Zitting  
2 Brothers attempts to purport to impose requirements or obligations beyond those imposed by the  
3 Nevada Rules of Civil Procedure.

4           2.       APCO objects to each of Zitting Brothers' Interrogatories to the extent that the  
5 Interrogatory requests any information that is protected by any absolute or qualified privilege or  
6 exception, including, but not limited to, the attorney-client privilege, the attorney work-product  
7 exemption, and the consulting-expert exemption.

8           3.       APCO objects to any attempt by Zitting Brothers to evade any numerical  
9 limitations set on interrogatories by asking multiple independent questions within single  
10 individual questions and subparts.

11          4.       To the extent applicable to any specific Interrogatory, APCO asserts the  
12 following objections: attorney-client privilege and/or work product privilege; proprietary  
13 and/or confidential business or personal information; irrelevant and not reasonably calculated to  
14 lead to admissible evidence; vague and ambiguous; overbroad and burdensome and/or the  
15 burden outweighs the benefit of the requested production; and cumulative and duplicative.  
16 Each of these objections is hereby incorporated by this reference as to each and every one of the  
17 following Responses to Zitting Brothers' Interrogatories. It is unfair and inappropriate to require  
18 a complete, comprehensive factual exposition on the matters covered by the interrogatories at  
19 the very outset of the discovery phase of the case. Accordingly, APCO reserves the right to  
20 supplement their interrogatory answers later in these proceedings as required by Rule 26(e) of  
21 the Nevada Rules of Civil Procedure.

22          5.       All answers and responses will be made solely for the purpose of this action.

23          6.       Each response will be subject to all objections as to competence, relevance,  
24 materiality, propriety and admissibility, and to any and all other objections on any ground which  
25 would require the exclusion from evidence of any statement herein if any such statements were  
26 made by a witness present and testifying at trial, all of which objections and grounds are  
27 expressly reserved and may be interposed at such hearings or trial.

28

1 7. APCO adopts by reference the above objections and incorporates each objection  
2 as if it were fully set forth below in each of APCO's responses below.

3 8. The following Objections, Answers and Responses are based upon the  
4 information and documents presently available to and known by APCO and disclose only those  
5 contentions which are presently asserted based upon facts now known. It is anticipated that  
6 further discovery, independent investigation, legal research and analysis will supply additional  
7 facts, add meaning to known facts, as well as establish entirely new factual conclusions and  
8 legal contentions, all of which may lead to substantial addition to, change in, and variations  
9 from these contentions and responses. APCO herein reserves the right to change any of these  
10 Objections, Answers and Responses as additional facts are recalled or ascertained, analyses are  
11 made, legal research is completed and contentions are made. These Answers and Responses are  
12 made in good faith to supply as much information and specification as is presently known.

13 9. Additionally, APCO reserves the right to amend, revise, correct, supplement or  
14 clarify any of the responses contained herein pursuant to any facts or information gathered at  
15 any time subsequent to the date of this response. By responding to these requests, APCO does  
16 not adopt or agree with any of Zitting Brothers' allegations or definitions in the discovery  
17 requests, but rather, is a good faith attempt to respond to the discovery requests. APCO's  
18 responses are not admissions on any matter in this case.

19 10. APCO further objects to the instructions and definitions contained in Zitting  
20 Brothers' Interrogatories because, as applied to specific discovery requests, they cause the  
21 requests to be overly broad and global, vague and ambiguous, unduly burdensome, and to seek  
22 information, in part, protected from disclosure by the attorney-client, work product, party  
23 communications, investigative, and consulting expert privileges.

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1 Subject to the general objections made above, and without waiving them, APCO  
2 responds to Zitting Brothers' Interrogatories propounded against APCO as follows:

3 **INTERROGATORIES**

4 **INTERROGATORY NO. 1:**

5 Identify and state with specificity the facts that you intend to rely upon to refute each  
6 cause of action in Zitting Brothers' Complaint.

7 **RESPONSE TO INTERROGATORY NO. 1:**

8 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
9 vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force  
10 APCO to "Identify and state with specificity the facts that you intend to rely upon to refute each  
11 cause of action in Zitting Brothers' Complaint." Broad ranging interrogatories are improper  
12 when they essentially subsume every fact in the case or every person having knowledge. See  
13 Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998), ("Interrogatories should  
14 not require the answering party to provide a narrative account of its case."). Parties can hardly  
15 know when they have identified "all" facts, persons, and documents with respect to anything –  
16 particularly before the close of discovery. "How can the court make enforceable orders with  
17 reference to 'all' of anything?" Often, the relevance of a particular fact to a particular issue is  
18 not known until clarified and put into context by testimony at deposition or trial. Such a  
19 question places the responding party in an impossible position. See Id.; Safeco of Am. V.  
20 Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998)(finding unreasonable an interrogatory  
21 calling for all facts supporting denial of a request for admission); Lawrence v. First Kan. Bank  
22 & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182,  
23 186-87 (D. Kan. 1997)(finding unduly burdensome an interrogatory seeking to require plaintiff  
24 to state 'each and every fact' supporting allegations of a complaint). APCO further objects on  
25 the grounds that to answer this Interrogatory would result in annoyance, embarrassment, or  
26 oppression to APCO in that the question is overly broad, vague, ambiguous, indefinite as to  
27 time and without reasonable limitation in its scope. APCO further objects on the basis that the  
28 question is oppressive, harassing and burdensome; the information sought seeks APCO's



1 counsel's legal analysis and theories regarding laws, ordinances, safety orders, etc., which are  
2 equally available to Zitting Brothers; the question also invades the attorney's work product  
3 privilege. APCO further objects on the basis that the question calls for information which is  
4 available to all parties equally, and is therefore oppressive and burdensome to APCO. APCO  
5 further objects on the basis that the question seeks information which is protected from  
6 disclosure by the attorney's work product privilege. APCO further objects on the basis that the  
7 question seeks to invade APCO's counsel's work product privilege in that it calls for him to  
8 provide an analysis of written data. APCO further objects on the basis that the question seeks to  
9 ascertain all facts and other data which APCO intends to offer at trial and, as such, is violative  
10 of the attorney work product privilege. APCO objects on the basis that the attorney-client  
11 privilege protects disclosure of the information sought. APCO further objects to this  
12 Interrogatory on the grounds that it calls for legal conclusions, and that the contract documents  
13 at issue speak for themselves.

14 Subject to and without waiving any objections, APCO responds as follows: Gemstone  
15 Development West, Inc. ("Gemstone") has asserted various complaints about the quality of the  
16 work performed by APCO and its subcontractors. As of this time, Gemstone has not identified  
17 specific issues that Gemstone has with APCO's or its subcontractor's work, including that of  
18 Zitting Brothers. However, as a result of Gemstone's assertions that there are issues with the  
19 quality of the work performed on the Project, Gemstone has failed to pay APCO for the work  
20 that APCO performed including the work that was performed by Zitting Brothers. Pursuant to  
21 the terms of the Subcontract Agreement, any payments to Zitting Brothers were specifically  
22 conditioned upon APCO's actual receipt of payment from Gemstone for Zitting Brothers' work.  
23 Moreover, the Subcontract specifically provided that Zitting Brothers was assuming the same  
24 risk that Gemstone may become insolvent and not be paid for its work as APCO assumed in  
25 entering into prime contract with Gemstone. Zitting Brothers further agreed that APCO had no  
26 obligation to pay Zitting Brothers for any work performed by Zitting Brothers until or unless  
27 APCO had actually been paid for such work by Gemstone. To date, APCO has not been paid  
28 for the work performed, including the work performed by Zitting Brothers. In fact, due to non-

1 payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime  
2 contract with Gemstone and further terminated the Subcontract with Zitting Brothers. After  
3 APCO ceased work on the Project, Zitting Brothers may have negotiated with Camco Pacific  
4 Construction Company ("Camco"), the replacement general contractor, and/or Gemstone and  
5 may have entered into a ratification agreement, wherein APCO was replaced as the general  
6 contractor under the Subcontract and Camco and/or Gemstone became liable for any monies  
7 due Zitting Brothers on the Project. Discovery is ongoing; APCO reserves the right to  
8 supplement or amend its response to this Interrogatory as investigation, discovery, disclosure  
9 and analysis continues.

10 **INTERROGATORY NO. 2:**

11 State the procedure by which you and/or Gemstone paid Zitting Brothers for its work,  
12 material, and/or equipment furnished at the Project.

13 **RESPONSE TO INTERROGATORY NO. 2:**

14 APCO paid Zitting Brothers pursuant to the terms of the Subcontract. More specifically,  
15 see Section 3 of the Subcontract. Basically the procedure for payment was as follows: Pursuant  
16 to the terms of the Subcontract, Zitting Brothers submitted to APCO its monthly billing, no later  
17 than the 25th of each month, showing quantities of subcontract work that has been satisfactorily  
18 completed in the preceding month, as well as backup material. In the event that Zitting Brothers  
19 failed to timely submit its monthly billing with the necessary backup material that resulted in  
20 that monthly payment application being rolled over to the following month. In turn, APCO  
21 submitted its Application for Payment, which included the subcontractor's monthly billing and  
22 backup documentation to Gemstone for payment. Upon actual receipt of payment by APCO  
23 from Gemstone, APCO then paid the amount that APCO received for Zitting Brothers work to  
24 Zitting Brothers as required under the Subcontract. Discovery is ongoing. APCO reserves the  
25 right to supplement or amend its response to this Interrogatory as investigation, discovery,  
26 disclosure and analysis continues.

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1 **INTERROGATORY NO. 3:**

2 State the amount of any payments you or Gemstone made to Zitting Brothers, the date  
3 and manner in which each payment was made, and at what stage of completion the Project was  
4 in at the time of each payment.

5 **RESPONSE TO INTERROGATORY NO. 3:**

6 To date, APCO has paid Zitting Brothers the sum of \$3,282,848.55. More specifically,  
7 APCO paid Zitting Brothers as follows: See Exhibit 1 attached hereto for the breakdown. See  
8 also documents identified by Bate Stamp No. APCO00044563 through APCO00044784 which  
9 APCO deposited into a depository established by APCO for this litigation matter with Litigation  
10 Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made  
11 available for review and copying (at requestor's expense) at a mutually agreeable time and  
12 place. APCO does not have any information as to what payments may have been made by  
13 Gemstone directly to Zitting Brother after APCO terminated its prime contract with Gemstone.  
14 However, from the information obtained through Zitting Brothers discovery requests  
15 propounded upon APCO, it appears that Gemstone may have paid Zitting Brothers at least  
16 \$364,760.00. Discovery is ongoing. APCO reserves the right to supplement or amend its  
17 response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

18 **INTERROGATORY NO. 4:**

19 State the amount of any payments to you by Gemstone, the date and manner in which  
20 each payment was made, and at what stage of completion the Project was in at the time of each  
21 payment.

22 **RESPONSE TO INTERROGATORY NO. 4:**

23 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
24 vague, ambiguous, overly broad, unduly burdensome and/or oppressive. Subject to, and  
25 without waiving any objections, APCO responds as follows: See documents identified by Bate  
26 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for  
27 review and copying (at requestor's expense) at a mutually agreeable time and place. More  
28 specifically, see documents identified by Bate Stamp No. APCO00033494 through

1 APCO00035651. Discovery is ongoing. APCO reserves the right to supplement or amend its  
2 response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

3 **INTERROGATORY NO. 5:**

4 Do you contend that the value of the unpaid work, material, and/or equipment furnished  
5 or supplied by Zitting Brothers is less than the amount set forth in Zitting Brothers' mechanic's  
6 lien? If so, please state:

7 a) the basis for your contention including all facts, witnesses, or documents you  
8 rely on in support of your contention;

9 b) how much you contend the work and equipment provided by Zitting Brothers is  
10 actually valued at;

11 c) the manner in which you calculated the value of the work, materials, and/or  
12 equipment provided by Zitting Brothers;

13 **RESPONSE TO INTERROGATORY NO. 5:**

14 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
15 vague, ambiguous, overly broad, unduly burdensome and oppressive. More specifically APCO  
16 objects on the grounds that it is vague and ambiguous in that "value of the unpaid work,  
17 material and/or equipment furnished or supplied by Zitting Brothers" and "the amount set forth  
18 in Zitting Brothers' mechanic's lien" are not defined. APCO further reiterates its General  
19 Objections and adds that as this action is in the initial stages of discovery and APCO has not yet  
20 determined which witnesses will testify or what evidence will be used in support of APCO's  
21 assertions or denials; therefore, this Interrogatory is premature. APCO further objects as the  
22 Interrogatory seeks information which is protected from disclosure by the attorney's work  
23 product privilege. APCO further objects on the basis that the Interrogatory seeks disclosure of  
24 trial witnesses (other than experts) and is therefore violative of the attorney work product  
25 privilege. APCO further objects on the basis that the Interrogatory seeks to ascertain the  
26 anticipated testimony of witnesses who are not "experts" and as such violate the attorney work  
27 product privilege. APCO further objects on the basis that the question seeks to ascertain all  
28 facts and other data which APCO intends to offer at trial and, as such, is violative of the

1 attorney work product privilege. Furthermore, APCO objects to this Interrogatory insofar as it  
2 purports to require APCO to describe the substance of each person's knowledge for the reason  
3 that such a requirement seeks to impose burdens on APCO beyond those permitted by the  
4 Nevada Rules of Civil Procedure, calls for APCO to speculate, is overly broad and unduly  
5 burdensome and seeks information protected from disclosure by the attorney-client, work  
6 product, party communications, investigative, and consulting expert privileges.

7 Subject to and without waiving any objections, APCO responds as follows: See  
8 documents identified by Bate Stamp No. APCO00000001<sup>1</sup> through APCO00078992 which  
9 APCO has deposited into a depository established by APCO for this litigation matter with  
10 Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are  
11 hereby made available for review and copying (at requestor's expense) at a mutually agreeable  
12 time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its  
13 response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

14 **INTERROGATORY NO. 6:**

15 State with specificity the reasons that you have not paid Zitting Brothers the sums for  
16 the work, material, and/or equipment that Zitting Brothers provided for the Project.

17 **RESPONSE TO INTERROGATORY NO. 6:**

18 Pursuant to the terms of the Subcontract any payments to Zitting Brothers were  
19 specifically conditioned upon APCO's actual receipt of payment from Gemstone for Zitting  
20 Brothers' work. Moreover, the Subcontract specifically provides that Zitting Brothers was  
21 assuming the same risk that Gemstone may become insolvent and not be paid for its work as  
22 APCO assumed in entering into prime contract with Gemstone. Zitting Brothers further agreed  
23 that APCO had no obligation to pay Zitting Brothers for any work performed by Zitting  
24 Brothers until or unless APCO had actually been paid for such work by Gemstone. To date,

25  
26 <sup>1</sup> Please note that documents bate stamped APCO00000001 through APCO00001557 are not being produced by  
27 APCO as those documents were delivered by APCO to Gemstone Development West ("Gemstone") on September  
28 3 2008, around the time of termination of APCO's prime contract so that Gemstone could continue with the  
construction of the Project. APCO does not have a copy of these documents as they remain in Gemstone's  
possession. Furthermore, due to clerical error, the following Bate Stamp Nos. were not used, APCO00005841,  
APCO00024165 and APCO00033296 and are thus not being produced..

APCO has not been paid for the work performed, including the work performed by Zitting Brothers. In fact, due to non-payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime contract with Gemstone and further terminated the Subcontract with Zitting Brothers. Discovery is ongoing; APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

**INTERROGATORY NO. 7:**

State each and every fact that you rely on to support your position that any claim for unjust enrichment against you is invalid.

**RESPONSE TO INTERROGATORY NO. 7:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position that any claim for "unjust enrichment against you is invalid." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified what documents it may decide to utilize or offer as exhibits against Zitting Brothers at the time of trial.

Subject to and without waiving any objections, See Response to Interrogatory No. 1 and 6 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APCO00000001<sup>2</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for

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<sup>2</sup> See Footnote No. 1.

1 review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery  
2 is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory  
3 as investigation, discovery, disclosure and analysis continues.

4 **INTERROGATORY NO. 8:**

5 State each and every fact that you rely on to support your position that Zitting Brothers  
6 failed to mitigate and/or contributed to its damages as asserted in your Sixth Affirmative  
7 Defense.

8 **RESPONSE TO INTERROGATORY NO. 8:**

9 Objection. APCO objects to Interrogatory on the grounds that this Interrogatory is  
10 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
11 "each and every fact" that APCO relied upon to support its position that "Zitting Brothers failed  
12 to mitigate and/or contributed to its damages as asserted in your Sixth Affirmative Defense."  
13 Broad ranging written discovery is improper when it essentially subsumes every fact in the case.  
14 See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V.  
15 Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co.,  
16 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D.  
17 Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client  
18 privilege and/or attorney work product. APCO further objects that this Interrogatory is  
19 premature, as discovery has just commenced on this matter and APCO has not yet identified all  
20 facts that it intends to use relative the Zitting Brothers' action.

21 Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6,  
22 and 7 above, which are incorporated herein by this reference. Moreover, it is APCO's  
23 understanding that after APCO terminated its prime contract with Gemstone for nonpayment,  
24 Gemstone requested all subcontractors, including Zitting Brothers, to continue their work on the  
25 Project. Further, it is APCO's understanding that Zitting Brothers elected not to complete its  
26 work and insure that their work was accepted by the inspectors and Gemstone. As such, Zitting  
27 Brothers failed to put themselves in the position to receive payment for the work that allegedly  
28 remains unpaid at this time. Also, see documents identified by Bate Stamp No.

APCO00000001<sup>3</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

**INTERROGATORY NO. 9:**

State each and every fact that you rely on to support your claim that Zitting Brothers had full knowledge and assumed the risk of any circumstance, condition, or result pertaining to or arising from the Project as asserted in your Fifth and Eighth Affirmative Defenses.

**RESPONSE TO INTERROGATORY NO. 9:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position that "Zitting Brothers had full knowledge and assumed the risk of any circumstance, condition, or result pertaining to or arising from the Project as asserted in your Fifth and Eighth Affirmative Defenses." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6, 7 and 8 above, which are incorporated herein by this reference. Also, see documents identified by

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<sup>3</sup> See Footnote No. 1.



Bate Stamp No. APCO00000001<sup>4</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

**INTERROGATORY NO. 10:**

State each and every fact that you rely on to support your position that any obligation or duty, contractual or otherwise that Zitting Brothers' claims to be owed by APCO Construction has been fully performed, satisfied, excused, and/or discharged as asserted in your Tenth Affirmative Defense.

**RESPONSE TO INTERROGATORY NO. 10:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position that "Zitting Brothers' claims to be owed by APCO Construction has been fully performed, satisfied, excused, and/or discharged as asserted in your Tenth Affirmative Defense." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

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<sup>4</sup> See Footnote No. 1.

1 Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6  
2 and 7 above, which are incorporated herein by this reference. Discovery is ongoing. APCO  
3 reserves the right to supplement or amend its Response to this Interrogatory as investigation,  
4 discovery, disclosure and analysis continues.

5 **INTERROGATORY NO. 11:**

6 State each and every fact that you intend to rely upon to support your position that any  
7 obligation or duty, contractual or otherwise that Zitting Brothers' claims to be owed by APCO  
8 has been replaced, terminated, voided, cancelled or otherwise released as asserted in your  
9 Sixteenth Affirmative Defense.

10 **RESPONSE TO INTERROGATORY NO. 11:**

11 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
12 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
13 "each and every fact" that APCO relied upon to support its position that "Zitting Brothers'  
14 claims to be owed by APCO has been replaced, terminated, voided, cancelled or otherwise  
15 released as asserted in your Sixteenth Affirmative Defense." Broad ranging written discovery is  
16 improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores,  
17 Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048  
18 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan.  
19 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects  
20 to this Interrogatory on the grounds of attorney client privilege and/or attorney work product.  
21 APCO further objects that this Interrogatory is premature, as discovery has just commenced on  
22 this matter and APCO has not yet identified all facts that it intends to use relative the Zitting  
23 Brothers' action.

24 Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6  
25 and 7 above, which are incorporated herein by this reference. Also, see documents identified by  
26 Bate Stamp No. APCO00000001<sup>5</sup> through APCO00078992 which APCO has deposited into a  
27

28 <sup>5</sup> See Footnote No. 1.

1 depository established by APCO for this litigation matter with Litigation Services located at  
2 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for  
3 review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery  
4 is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory  
5 as investigation, discovery, disclosure and analysis continues.

6 **INTERROGATORY NO. 12:**

7 If you contend that Zitting Brothers entered into any independent agreement or  
8 ratification with Camco Pacific or Gemstone, state each and every fact that you rely on to  
9 support your position and on what basis any such agreement relieves APCO of its contractual  
10 duties to Zitting Brothers.

11 **RESPONSE TO INTERROGATORY NO. 12:**

12 It is APCO's understanding that after APCO's termination of the prime contract with  
13 Gemstone for non-payment, Gemstone, through Camco Pacific Construction Company  
14 ("Camco"), its replacement contractor, entered into independent and/or ratification agreements.  
15 APCO is aware that several of its subcontractors have entered into such independent and/or  
16 ratification agreement. APCO does not have personal knowledge of which subcontractors have  
17 entered into such agreements. APCO objects that this Interrogatory is premature, as discovery  
18 has just commenced on this matter and APCO has not yet identified all subcontractors who may  
19 have entered into such agreements and whether or not Zitting Brothers was one of such  
20 subcontractors. Discovery is ongoing. APCO reserves the right to supplement or amend its  
21 Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

22 **INTERROGATORY NO. 13:**

23 State each and every fact that you rely on to support your position that the damages  
24 sustained by Zitting Brothers are the result of the acts, omission to act, or negligence of Zitting  
25 Brothers or third party(ies) over whom APCO has no control as asserted in your Fourth  
26 Affirmative Defense.

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**RESPONSE TO INTERROGATORY NO. 13:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position "that the damages sustained by Zitting Brothers are the result of the acts, omission to act, or negligence of Zitting Brothers or third party(ies) over whom APCO has no control as asserted in your Fourth Affirmative Defense". Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6, and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APCO00000001<sup>6</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

**INTERROGATORY NO. 14:**

State each and every fact that you rely on to support your position that damages sustained by Zitting Brothers were caused solely by a breach of contract, breach of warranty,

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<sup>6</sup> See Footnote No. 1.

1 expressed and implied, and acts or omissions of Zitting Brothers or some third party(ies) over  
2 whom APCO had no control as asserted in your Fourth Affirmative Defense.

3 **RESPONSE TO INTERROGATORY NO. 14:**

4 Objection. APCO objects to this Interrogatory on the grounds that Interrogatory is  
5 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
6 "each and every fact" that APCO relied upon to support its position "that damages sustained by  
7 Zitting Brothers were caused solely by a breach of contract, breach of warranty, expressed and  
8 implied, and acts or omissions of Zitting Brothers or some third party(ies) over whom APCO  
9 had no control as asserted in your Fourth Affirmative Defense". Broad ranging written  
10 discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-  
11 Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D.  
12 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-  
13 63 (D. Kan. 1996)(same); Hilt v. SEC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO  
14 further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney  
15 work product. APCO further objects that this Interrogatory is premature, as discovery has just  
16 commenced on this matter and APCO has not yet identified all facts that it intends to use  
17 relative the Zitting Brothers' action.

18 Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6  
19 and 7 above, which are incorporated herein by this reference. Also, see documents identified by  
20 Bate Stamp No. APCO00000001<sup>7</sup> through APCO00078992 which APCO has deposited into a  
21 depository established by APCO for this litigation matter with Litigation Services located at  
22 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for  
23 review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery  
24 is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory  
25 as investigation, discovery, disclosure and analysis continues.

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27  
28 <sup>7</sup> See Footnote No. 1.

**INTERROGATORY NO. 15:**

State each and every fact that you rely on to support your position that Zitting Brothers claims have been waived as a result of Zitting Brothers' respective acts and conduct as asserted in your Second Affirmative Defense.

**RESPONSE TO INTERROGATORY NO. 15:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position "that Zitting Brothers claims have been waived as a result of Zitting Brothers' respective acts and conduct as asserted in your Second Affirmative Defense." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6 and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APCO00000001<sup>8</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

<sup>8</sup> See Footnote No. 1.

**INTERROGATORY NO. 16:**

State each and every fact that you rely on to support your position that Zitting Brothers' claims are premature as asserted in your Thirteenth Affirmative Defense.

**RESPONSE TO INTERROGATORY NO. 16:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position "Zitting Brothers' claims are premature as asserted in your Thirteenth Affirmative Defense." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. *See Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. V. Rawstron*, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6, and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APCO00000001<sup>9</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

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<sup>9</sup> See Footnote No. 1.

1 **INTERROGATORY NO. 17:**

2 State each and every fact that you rely on to support your position that Zitting Brothers'  
3 claims for relief against Gemstone are barred by Zitting Brothers' prior breach of contract  
4 including the failure to perform any conditions precedent or conditions subsequent as asserted  
5 in your Twelfth Affirmative Defense.

6 **RESPONSE TO INTERROGATORY NO. 17:**

7 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
8 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
9 "each and every fact" that APCO relied upon to support its position "that Zitting Brothers'  
10 claims for relief against Gemstone are barred by Zitting Brothers' prior breach of contract  
11 including the failure to perform any conditions precedent or conditions subsequent as asserted  
12 in your Twelfth Affirmative Defense." Broad ranging written discovery is improper when it  
13 essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D.  
14 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal.  
15 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan.  
16 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects  
17 to this Interrogatory on the grounds of attorney client privilege and/or attorney work product.  
18 APCO further objects that this Interrogatory is premature, as discovery has just commenced on  
19 this matter and APCO has not yet identified all facts that it intends to use relative the Zitting  
20 Brothers' action.

21 Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6  
22 and 7 above, which are incorporated herein by this reference. Also, see documents identified by  
23 Bate Stamp No. APCO00000001<sup>10</sup> through APCO00078992 which APCO has deposited into a  
24 depository established by APCO for this litigation matter with Litigation Services located at  
25 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for  
26 review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery  
27

28 <sup>10</sup> See Footnote No. 1.



1 is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory  
2 as investigation, discovery, disclosure and analysis continues.

3 **INTERROGATORY NO. 19:**

4 State each and every fact that you rely on to support your claim that Zitting Brothers  
5 failed to comply with the requirements contained in NRS Chapter 108 and thus does not have a  
6 valid and enforceable lien against the property at issue as asserted in your Nineteenth  
7 Affirmative Defense.

8 **RESPONSE TO INTERROGATORY NO. 19:**

9 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
10 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
11 "each and every fact" that APCO relied upon to support its position "that Zitting Brothers failed  
12 to comply with the requirements contained in NRS Chapter 108 and thus does not have a valid  
13 and enforceable lien against the property at issue as asserted in your Nineteenth Affirmative  
14 Defense." Broad ranging written discovery is improper when it essentially subsumes every fact  
15 in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco  
16 of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank &  
17 Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182,  
18 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney  
19 client privilege and/or attorney work product. APCO further objects that this Interrogatory is  
20 premature, as discovery has just commenced on this matter.

21 Subject to and without waiving any objections, APCO responds as follows: Discovery is  
22 ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as  
23 investigation, discovery, disclosure and analysis continues.

24 **INTERROGATORY NO. 20:**

25 Identify and describe any and all complaints you have regarding the quality of work,  
26 materials, and/or equipment furnished by Zitting Brothers at the Project.

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1           **RESPONSE TO INTERROGATORY NO. 20:**

2           Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
3 vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force  
4 APCO to identify "all complaints you have regarding the quality of work materials, and/or  
5 equipment furnished by Zitting Brothers at the Project." Broad ranging interrogatories are  
6 improper when they essentially subsume every fact in the case or every person having  
7 knowledge. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998).  
8 ("Interrogatories should not require the answering party to provide a narrative account of its  
9 case."). Parties can hardly know when they have identified "all" facts, persons, and documents  
10 with respect to anything – particularly before the close of discovery. "How can the court make  
11 enforceable orders with reference to 'all' of anything?" Often, the relevance of a particular fact  
12 to a particular issue is not known until clarified and put into context by testimony at deposition  
13 or trial. Such a question places the responding party in an impossible position. See Id.; Safeco  
14 of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998)(finding unreasonable an  
15 interrogatory calling for all facts supporting denial of a request for admission); Lawrence v.  
16 First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc.,  
17 170 F.R.D. 182, 186-87 (D. Kan. 1997)(finding unduly burdensome an interrogatory seeking to  
18 require plaintiff to state 'each and every fact' supporting allegations of a complaint).

19           Subject to, and without waiving the foregoing objections, Gemstone has asserted various  
20 complaints about the quality of the work performed by APCO and its subcontractors. As of this  
21 time, Gemstone has not identified specific issues that Gemstone has with APCO's or its  
22 subcontractor's work, including that of Zitting Brothers. However, as a result of Gemstone's  
23 assertions that there are issues with the quality of the work performed on the Project, Gemstone  
24 has failed to pay APCO for the work that APCO performed including the work that was  
25 performed by Zitting Brothers. Discovery is ongoing. APCO reserves the right to supplement  
26 or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis  
27 continues.

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**INTERROGATORY NO. 21:**

State each and every fact that you rely on to support your claim that Zitting Brothers has failed to comply with the requirements of NRS 624 as asserted in your Eighteenth Affirmative Defense.

**RESPONSE TO INTERROGATORY NO. 21:**

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position "that Zitting Brothers has failed to comply with the requirements of NRS 624 as asserted in your Eighteenth Affirmative Defense." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6 and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APCO00000001<sup>11</sup> through APCO00078992 which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

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<sup>11</sup> See Footnote No. 1.

**INTERROGATORY NO. 22:**

Identify, sufficiently to permit service of subpoena, each witness to this action known to you, your attorney, agent or any investigator or detective employed by you or your attorney or anyone acting on your behalf, which you intend to have testify at the time of trial relative the work, material, and/or equipment supplied by Zitting Brothers and provide a brief statement of their anticipated testimony.

**RESPONSE TO INTERROGATORY NO. 22:**

Objection. APCO reiterates its General Objections and adds that as this action is in the initial stages of discovery, and APCO has not yet determined which witnesses APCO intends "to have testify at the time of trial relative the work, material, and/or equipment supplied by Zitting Brothers". APCO further objects that this Interrogatory is premature. APCO further objects as the Interrogatory seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the Interrogatory seeks disclosure of trial witnesses (other than experts) and is therefore violative of the attorney work product privilege. APCO further objects on the basis that the Interrogatory seeks to ascertain the anticipated testimony of witnesses who are not "experts" and as such violate the attorney work product privilege. APCO further objects on the basis that the question seeks to ascertain all facts and other data which APCO intends to offer at trial and, as such, is violative of the attorney work product privilege. APCO further objects on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each witness to this action known to you, your attorney, agent, or any investigator or detective employed by you or your attorney or anyone acting on your behalf, and provide a brief statement of their anticipated testimony." See also, Response to Interrogatory No. 1 above, which is incorporated herein by this reference.

Furthermore, APCO objects to this Interrogatory insofar as it purports to require APCO to describe the substance of each person's knowledge for the reason that such a requirement seeks to impose burdens on APCO beyond those permitted by the Nevada Rules of Civil Procedure, calls for APCO to speculate, is overly broad and unduly burdensome and seeks

1 information protected from disclosure by the attorney-client, work product, party  
2 communications, investigative, and consulting expert privileges. Subject to and without  
3 waiving any objections, APCO anticipates that the following individuals may be witnesses  
4 and/or have relevant information relative the claims asserted in this action:

- 5 1. Randy Nickerl  
6 APCO Construction  
7 c/o Gwen Rutar Mullins, Esq.  
8 Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy, Ste. 1400  
Las Vegas, Nevada 89169

9 Mr. Nickerl will testify regarding the facts and circumstances surrounding this action  
10 and provide other testimony to support the allegations of APCO's Complaint against Gemstone  
11 and all other claims that APCO has asserted against various subcontractors, including Zitting  
12 Brothers. Mr. Nickerl will further provide testimony to refute the allegations of Gemstone's  
13 Counterclaim and various Complaints in Intervention filed by various subcontractors, including  
14 Zitting Brothers.

- 15 2. Joe Pelan  
16 APCO Construction  
17 c/o Gwen Rutar Mullins, Esq.  
18 Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy, Ste. 1400  
Las Vegas, Nevada 89169

19 Mr. Pelan will testify regarding the facts and circumstances surrounding this action and  
20 provide other testimony to support the allegations of APCO's Complaint against Gemstone and  
21 all other claims that APCO has asserted against various subcontractors, including Zitting  
22 Brothers. Mr. Pelan will further provide testimony to refute the allegations of Gemstone's  
23 Counterclaim and various Complaints in Intervention filed by various subcontractors, including  
24 Zitting Brothers.

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1           3.     Lisa Lynn  
2                 APCO Construction  
3                 c/o Gwen Rutar Mullins, Esq.  
4                 Howard & Howard Attorneys PLLC  
5                 3800 Howard Hughes Pkwy, Ste. 1400  
6                 Las Vegas, Nevada 89169

7           Ms. Lynn will testify regarding the facts and circumstances surrounding this action.

8           4.     Mary Jo Allen  
9                 APCO Construction  
10                c/o Gwen Rutar Mullins, Esq.  
11                Howard & Howard Attorneys PLLC  
12                3800 Howard Hughes Pkwy, Ste. 1400  
13                Las Vegas, Nevada 89169

14           Ms. Allen is expected to testify regarding the amounts due to APCO on the Manhattan  
15           West Project and shall further provide other testimony in support of the allegations of APCO's  
16           Complaint.

17           5.     Person Most Knowledgeable - APCO  
18                 c/o Gwen Rutar Mullins, Esq.  
19                 Howard & Howard Attorneys PLLC  
20                 3800 Howard Hughes Pkwy, Ste. 1400  
21                 Las Vegas, Nevada 89169

22           Person Most Knowledgeable of APCO will testify regarding the facts and circumstances  
23           surrounding this action, will support the allegations of APCO's Complaints and will refute the  
24           allegations of the Counterclaim and/or various Complaints in Intervention as they are asserted  
25           against APCO.

26           6.     The Person Most Knowledgeable  
27                 Gemstone Development West, Inc.  
28                 c/o Alexander Edelstein, registered Agent  
                10170 W. Tropicana Ave., Suite 156-169  
                Las Vegas, Nevada 89147

            The Person Most Knowledgeable of Gemstone Development West, Inc. is expected to  
            testify regarding the facts and circumstances related to the claims made in this action.

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1           7.     Alexander Edelstein  
2                 10170 W. Tropicana Ave., Suite 156-169  
3                 Las Vegas, Nevada 89147

4           Mr. Edelstein is expected to testify regarding the facts and circumstances related to the  
5     claims made in this action.

6           8.     Pete Smith  
7                 Gemstone Development West, Inc.  
8                 Address unknown

9           Mr. Smith is expected to testify regarding the facts and circumstances related to the  
10    claims made in this action.

11          9.     Craig Colligan  
12                 Address unknown

13          Mr. Colligan is expected to testify regarding the facts and circumstances related to the  
14    claims made in this action.

15          10.    The Person Most Knowledgeable  
16                 Scott Financial Services, Inc.  
17                 c/o Kemp, Jones & Coulthard  
18                 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
19                 Las Vegas, Nevada 89169

20          The Person Most Knowledgeable of Scott Financial Services, Inc. is expected to testify  
21    regarding the facts and circumstances related to the claims made by in this action.

22          11.    Bradley J. Scott  
23                 c/o Kemp, Jones & Coulthard  
24                 3800 Howard Hughes Pkwy., 17<sup>th</sup> Floor  
25                 Las Vegas, Nevada 89169

26          Mr. Scott is expected to testify regarding the facts and circumstances related to the  
27    claims made by in this action.

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12. The Person Most Knowledgeable  
Bank of Oklahoma  
c/o Lewis and Roca, LLP  
3993 Howard Hughes Pkwy., Ste. 600  
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Bank of Oklahoma is expected to testify regarding the facts and circumstances related to the claims made in this action.

13. The Person Most Knowledgeable  
Club Vista Financial Services, LLC  
c/o Cooksey, Toolen, Gage, Duffy & Woog  
3930 Howard Hughes Pkwy., Ste. 200  
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Club Vista Financial Services, LLC is expected to testify regarding the facts and circumstances related to the claims made in this action.

14. The Person Most Knowledgeable  
Tharaldson Motels II, Inc.  
c/o Cooksey, Toolen, Gage, Duffy & Woog  
3930 Howard Hughes Pkwy., Ste. 200  
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Tharaldson Motels II, Inc. is expected to testify regarding the facts and circumstances related to the claims made in this action.

15. Gary D. Tharaldson  
c/o Cooksey, Toolen, Gage, Duffy & Woog  
3930 Howard Hughes Pkwy., Ste. 200  
Las Vegas, Nevada 89169

Mr. Tharaldson is expected to testify regarding the facts and circumstances related to the claims made in this action.

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1 16. Person Most Knowledgeable  
2 Zitting Brothers Construction  
3 c/o Michael M. Edwards, Esq.  
4 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
5 415 South Sixth Street, Ste. 300  
6 Las Vegas, Nevada 89101

7 The Person Most Knowledgeable of Zitting Brothers Construction, Inc. is expected to  
8 testify as to his/her understanding of the facts of this matter forming the basis of Zitting  
9 Brothers' lawsuit against APCO.

10 APCO further expects that each of the subcontractors who are participating in this action  
11 will also testify as to his/her understanding of the facts on this matter and to support their claims  
12 that were asserted in this action. Also, see APCO's disclosure of witnesses previously served  
13 on this matter. Discovery is ongoing. APCO reserves the right to supplement or amend its  
14 response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

15 **INTERROGATORY NO. 23:**

16 Identify all documents, records, writings, etc., that support your Answers to these  
17 Interrogatories and your responses to Requests for Admission.

18 **RESPONSE TO INTERROGATORY NO. 23:**

19 Objection. APCO objects to this Interrogatory as being overly broad, unduly  
20 burdensome and oppressive because it seeks to force APCO to identify "all documents, records,  
21 writings, etc., that support your Answers to these Interrogatories and your responses to Requests  
22 for Admission." Broad ranging written discovery is improper when it essentially subsumes  
23 every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan.  
24 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v.  
25 First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc.,  
26 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the  
27 grounds of attorney client privilege and/or attorney work product. APCO further objects that  
28 this Interrogatory is premature, as discovery has just commenced on this matter and APCO has  
not yet identified all facts that it intends to use relative the Zitting Brothers' action.

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1 Subject to and without waiving any objections, see documents identified by Bate Stamp  
2 No. APCO00000001<sup>12</sup> through APCO00078992 which APCO has deposited into a depository  
3 established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta  
4 Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying  
5 (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO  
6 reserves the right to supplement or amend its Response to this Interrogatory as investigation,  
7 discovery, disclosure and analysis continues.

8 **INTERROGATORY NO. 24:**

9 State the names, address and telephone number of each and every individual known to  
10 you who has knowledge of the facts involved in this matter including, but not limited to, Zitting  
11 Brothers' work, material, and/or equipment at the Project.

12 **RESPONSE TO INTERROGATORY NO. 24:**

13 Objection. APCO objects to this Interrogatory on basis that it is overly broad, unduly  
14 burdensome and oppressive because it seeks to force APCO to identify "each and every  
15 individual known to you who has knowledge of the facts involved in this matter including, but  
16 not limited to, Zitting Brothers' work, material, and/or equipment at the Project." Broad ranging  
17 written discovery is improper when it essentially subsumes every fact in the case. *See Hiskett v.*  
18 *Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998); *Safeco of Am. V. Rawstron*, 181  
19 F.R.D. 441, 447048 (C.D. Cal. 1998); *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D.  
20 657, 660-63 (D. Kan. 1996)(same); *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186-87 (D. Kan. 1997).  
21 APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or  
22 attorney work product. APCO further objects that this Interrogatory is premature, as discovery  
23 has just commenced on this matter and APCO has not yet identified all individuals that have  
24 facts relative this matter.

25 Subject to and without waiving any objections, see Response to Interrogatory No. 22  
26 above. Also, see APCO's disclosure of witnesses previously served on this matter. Discovery  
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28 <sup>12</sup> See Footnote No. 1.

1 is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory  
2 as investigation, discovery, disclosure and analysis continues.

3 **INTERROGATORY NO. 25:**

4 State the reasons why you failed to Zitting Brothers for the work, material, and/or  
5 equipment it furnished on the Project.

6 **RESPONSE TO INTERROGATORY NO. 25:**

7 Objection. This Interrogatory is overly broad, vague and incomplete and APCO is  
8 unable to determine what inquiry is being made by Zitting Brothers.

9 **INTERROGATORY NO. 26:**

10 State each and every fact that supports your position that you are not legally liable for  
11 payment to Zitting Brothers for the work, material, and/or equipment that it furnished on the  
12 Project.

13 **RESPONSE TO INTERROGATORY NO. 26:**

14 Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is  
15 overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify  
16 "each and every fact that supports your position that you are not legally liable for payment to  
17 Zitting Brothers for the work, material, and/or equipment that it furnished on the Project."  
18 Broad ranging written discovery is improper when it essentially subsumes every fact in the case.  
19 See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V.  
20 Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co.,  
21 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D.  
22 Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client  
23 privilege and/or attorney work product. APCO further objects that this Interrogatory is  
24 premature, as discovery has just commenced on this matter and APCO has not yet identified all  
25 facts that it intends to use relative the Zitting Brothers' action.

26 Subject to and without waiving any objections, See Responses to Interrogatory No. 1, 6  
27 and 7 above, which are incorporated herein by this reference. Also, see documents identified by  
28

1 Bate Stamp No. APCO00000001<sup>13</sup> through APCO00078992 which APCO has deposited into a  
2 depository established by APCO for this litigation matter with Litigation Services located at  
3 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for  
4 review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery  
5 is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory  
6 as investigation, discovery, disclosure and analysis continues.

7 **INTERROGATORY NO. 27:**

8 Identify each person you expect to call as an expert witness at the time of trial in this  
9 action. With respect to each, please state:

- 10 1) the subject matter on which the expert is expected to testify, the substance of the  
11 facts and opinions to which each expert is expected to testify;  
12 2) a summary of the grounds for each opinion;  
13 3) whether written document was prepared by such expert;  
14 4) the professional title, educational background, qualifications and work  
15 experience of each such expert.

16 **RESPONSE TO INTERROGATORY NO. 27:**

17 Objection. APCO objects to this Interrogatory on the grounds that it is premature.  
18 APCO has not yet decided on which, if any, expert witnesses might be called at trial. In fact,  
19 APCO has not yet retained any expert witness on this matter. Discovery is ongoing. APCO  
20 reserves the right to supplement this Response when APCO has retained an expert witness on  
21 this matter.

22 **INTERROGATORY NO. 28:**

23 Identify any and all exhibits which you intend to produce at the time of trial in this  
24 matter as it relates to the claims brought by Zitting Brothers and the work, material, and/or  
25 equipment furnished by Zitting Brothers on the Project.

26 ///

27  
28 <sup>13</sup> See Footnote No. 1.

1                   **RESPONSE TO INTERROGATORY NO. 28:**

2                   Objection. APCO objects to this Interrogatory on the grounds that it is premature.  
3 APCO has yet to determine the exhibits to be produced at trial. See also Response to  
4 Interrogatory No. 1 above, which is incorporated herein by this reference.

5                   Subject to and without waiving any objections, see documents identified by Bate Stamp  
6 No. APCO000000001<sup>14</sup> through APCO00078992 which APCO has deposited into a depository  
7 established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta  
8 Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying  
9 (at requestor's expense) at a mutually agreeable time and place. See also documents produced  
10 by other parties to this action, including any documents produced by Zitting Brothers in this  
11 action. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to  
12 this Interrogatory as investigation, discovery, disclosure and analysis continues.

13                   **INTERROGATORY NO. 29:**

14                   If you have asserted or intend to assert any causes of action, counter-claims, cross-  
15 claims, or any other similar claim against Zitting Brothers in this matter, identify each and state  
16 all facts you rely on to support each claim.

17                   **RESPONSE TO INTERROGATORY NO. 29:**

18                   Objection. APCO objects on the basis that the Interrogatory is overly broad, vague,  
19 ambiguous, indefinite as to time and without reasonable limitation in its scope. APCO further  
20 objects on the basis that the question is oppressive, harassing and burdensome; the information  
21 sought seeks APCO's counsel's legal analysis and theories regarding laws, ordinances, safety  
22 orders, etc., which are equally available to Zitting Brothers; the question also invades the  
23 attorney's work product privilege. APCO further objects on the basis that the question seeks to  
24 invade APCO's counsel's work product privilege in that it calls for him to provide an analysis of  
25 written data. APCO further objects on the basis that the question seeks to ascertain all facts and  
26 other data which APCO intends to offer at trial and, as such, is violative of the attorney work  
27

28                   <sup>14</sup> See Footnote No. 1.

1 product privilege. APCO objects on the basis that the attorney-client privilege protects  
2 disclosure of the information sought.

3 Subject to and without waiving any objections, APCO, in view of the claims that have  
4 been asserted by Gemstone, APCO is evaluating all of its options, including asserting claims  
5 against Zitting Brothers, including, but not limited to, breach of contract, unjust enrichment,  
6 indemnity, set off, and contribution. Discovery is ongoing. APCO reserves the right to  
7 supplement or amend its response to this Interrogatory as investigation, discovery, disclosure  
8 and analysis continues.

9 **INTERROGATORY NO. 30:**

10 Please identify the first and last date Zitting Brothers performed work and describe in  
11 detail Zitting Brothers' scope of work for the Project.

12 **RESPONSE TO INTERROGATORY NO. 30:**

13 Objection. APCO objects on the basis that the Interrogatory is oppressive, harassing and  
14 burdensome as the information sought information that is equally available to Zitting Brothers.  
15 Subject to and without waiving any objections, APCO responds as follows: Zitting Brothers  
16 commenced with its work on the Project sometime in November 2007. APCO does not know  
17 the last date that Zitting Brothers performed work on the Project. APCO understands that  
18 Zitting Brothers continued to perform work on the Project after APCO ceased its work and  
19 terminated the prime contract with Gemstone. Discovery is ongoing. APCO reserves the right  
20 to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure  
21 and analysis continues.

22 **INTERROGATORY NO. 31:**

23 For each of the Request for Admissions, which were served upon you concurrently with  
24 these Interrogatories, that you denied, either in whole or in part, please state with particularity  
25 the reasons for each and every denial.

26 **RESPONSE TO INTERROGATORY NO. 31:**

27 Objection. This Interrogatory calls for multiple responses as there were denials made by  
28 APCO to Zitting Brothers' Requests for Admissions. APCO objects to any attempt by Zitting

1 Brothers to evade any numerical limitations set on interrogatories by asking multiple  
2 independent questions within single individual questions and subparts. APCO further objects  
3 on the grounds of relevance and that this Interrogatory is vague, ambiguous, overly broad,  
4 unduly burdensome and oppressive because it seeks to force APCO to identify "each and every  
5 denial." See also Response to Interrogatory No. 1 above, which is incorporated herein by this  
6 reference.

7 Subject to and without waiving any objections, see APCO's Responses to Zitting  
8 Brothers' Requests for Admissions. See also, Responses to Interrogatory No. 1, 6 and 7 above,  
9 which are incorporated herein by this reference. Also, see documents identified by Bate Stamp  
10 No. APCO00000001<sup>15</sup> through APCO00078992 which APCO has deposited into a depository  
11 established by APCO for this litigation matter with Litigation Services located at 1640 W. Alta  
12 Drive, Suite 4, Las Vegas, NV 89106 and/or are hereby made available for review and copying  
13 (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO  
14 reserves the right to supplement or amend its Response to this Interrogatory as investigation,  
15 discovery, disclosure and analysis continues.

16 **INTERROGATORY NO. 32:**

17 Identify all facts and circumstances leading up to your issuance of the stop work order to  
18 Zitting Brothers and describe any and all reasons you believe you were justified you in taking  
19 such action.

20 **RESPONSE TO INTERROGATORY NO. 32:**

21 Objection. APCO objects to this request for Interrogatory is overly broad, unduly  
22 burdensome and oppressive because it seeks to force APCO to identify "all facts and  
23 circumstances leading up to your issuance of the stop work order to Zitting Brothers and  
24 describe any and all reasons you believe you were justified you in taking such action." Broad  
25 ranging written discovery is improper when it essentially subsumes every fact in the case. See  
26 Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V.  
27 Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co.

28 <sup>15</sup> See Footnote No. 1.

1 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D.  
2 Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client  
3 privilege and/or attorney work product. APCO further objects that this Interrogatory is  
4 premature, as discovery has just commenced on this matter and APCO has not yet identified all  
5 facts that it intends to use relative the Zitting Brothers' action.

6 Subject to and without waiving any objections, APCO responds as follows: After  
7 APCO was not paid by Gemstone for work that was being performed by APCO and its  
8 subcontractors, APCO, pursuant to Nevada law, gave notice to Gemstone of its intent to stop  
9 work and terminate the prime contract unless payment was made. APCO provided a copy of  
10 such notice to its subcontractors, including Zitting Brothers, so that the subcontractors,  
11 including Zitting Brother, could take whatever action they deemed necessary to protect their  
12 respective rights under Nevada law. After payment from Gemstone was not made, APCO, as  
13 allowed under Nevada law, terminated its prime contract with Gemstone and further notified its  
14 subcontractors, including Zitting Brothers of such termination. See also, Responses to  
15 Interrogatory No. 1, 6 and 7 above, which are incorporated herein by this reference. Also, see  
16 documents identified by Bate Stamp No. APCO00000001<sup>16</sup> through APCO00078992 which  
17 APCO has deposited into a depository established by APCO for this litigation matter with  
18 Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas, NV 89106 and/or are  
19 hereby made available for review and copying (at requestor's expense) at a mutually agreeable  
20 time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its  
21 Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

22 **INTERROGATORY NO. 33:**

23 If you or any officer, director, or employee of APCO has had any conversations with  
24 Zitting Brothers regarding the facts alleged in Zitting Brothers Complaint against APCO and  
25 Gemstone, please state the dates of each conversation, the parties, involved, the contents of the  
26 conversation, and what was said.

27 ///

28 <sup>16</sup> See Footnote No. 1.



1           **RESPONSE TO INTERROGATORY NO. 33:**

2           Objection. APCO objects on the grounds of relevance and further objects that this  
3 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
4 seeks to force APCO to identify any conversations that APCO may have had with Zitting  
5 Brothers including the dates of each conversation, persons involved and the contents of the  
6 conversations. APCO further objects to this Interrogatory on the grounds that the burden of  
7 deriving or ascertaining the answer to this Interrogatory is substantially the same for Zitting  
8 Brothers as for APCO. See also Response to Interrogatory No. 2 above, which is incorporated  
9 herein by this reference.

10           Subject to and without waiving any objections, APCO, during the course of  
11 construction, had numerous conversations with Zitting Brothers relative Zitting Brothers' work  
12 and the Project in general. APCO is unable to recall each and every conversation and their  
13 contents. Discovery is ongoing. APCO reserves the right to supplement or amend its response  
14 to this Interrogatory as investigation, discovery, disclosure and analysis continues.

15           **INTERROGATORY NO. 34:**

16           If you or any officer, director, or employee of APCO has had any conversations with  
17 Camco Pacific regarding the facts alleged in Zitting Brothers Complaint against APCO and  
18 Gemstone, please state the dates of each conversation, the parties, involved, the contents of the  
19 conversation, and what was said.

20           **RESPONSE TO INTERROGATORY NO. 34:**

21           Objection. APCO objects on the grounds of relevance and further objects that this  
22 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
23 seeks to force APCO to identify any conversations that APCO may have had with Camco  
24 including the dates of each conversation, persons involved and the contents of the  
25 conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by  
26 this reference.

27           Subject to and without waiving any objections, APCO, does not recall having any  
28 conversations with Camco regarding Zitting Brothers' work or otherwise. Discovery is

1 ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as  
2 investigation, discovery, disclosure and analysis continues.

3 **INTERROGATORY NO. 35:**

4 If you or any officer, director, or employee of APCO has had any conversations with  
5 Gemstone regarding the facts alleged in Zitting Brothers Complaint against APCO and  
6 Gemstone, please state the dates of each conversation, the parties, involved, the contents of the  
7 conversation, and what was said.

8 **RESPONSE TO INTERROGATORY NO. 35:**

9 Objection. APCO objects on the grounds of relevance and further objects that this  
10 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
11 seeks to force APCO to identify any conversations that APCO may have had with Gemstone  
12 including the dates of each conversation, persons involved and the contents of the  
13 conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by  
14 this reference.

15 Subject to and without waiving any objections, APCO, during the course of  
16 construction, undoubtedly had some conversations with Gemstone relative Zitting Brothers'  
17 work and the Project in general. APCO is unable to recall each and every conversation and  
18 their contents. Discovery is ongoing. APCO reserves the right to supplement or amend its  
19 response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

20 **INTERROGATORY NO. 36:**

21 If you or any officer, director, or employee of APCO has had any conversations with  
22 any Third-Party regarding the facts alleged in Zitting Brothers Complaint against APCO and  
23 Gemstone, please state the dates of each conversation, the parties, involved, the contents of the  
24 conversation, and what was said.

25 **RESPONSE TO INTERROGATORY NO. 36:**

26 Objection. APCO objects on the grounds of relevance and further objects that this  
27 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
28 seeks to force APCO to identify any conversations that APCO may have had with a Third Party

1 including the dates of each conversation, persons involved and the contents of the  
2 conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by  
3 this reference.

4 Subject to and without waiving any objections, APCO does not recall having any  
5 conversations with a "Third-Party" regarding Zitting Brothers' work or otherwise. Discovery is  
6 ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as  
7 investigation, discovery, disclosure and analysis continues

8 **INTERROGATORY NO. 37:**

9 If you contend that your lien has priority over any other party in this matter, including  
10 Zitting Brothers, please state each and every fact supporting your claim.

11 **RESPONSE TO INTERROGATORY NO. 37:**

12 Objection. APCO objects on the grounds of relevance and further objects that this  
13 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
14 seeks to force APCO to identify "each and every fact supporting" "that your lien has priority  
15 over any other party in this matter." See also Response to Interrogatory No. 2 above, which is  
16 incorporated herein by this reference.

17 Subject to and without waiving any objections, APCO responds as follows: APCO has  
18 asserted priority over the deeds of trust that are of record against the Manhattan West Project  
19 pursuant to NRS 108.225. Priority over the deeds of trusts is based on the fact that APCO first  
20 performed work under the Grading Agreement on or about May 2007. APCO first performed  
21 work under the ManhattanWest General Construction Agreement for GMP or about September  
22 5, 2007. The deeds of trust on the property attached after construction work commenced.  
23 APCO has further asked the Court to declare the rank of mechanic's liens pursuant to NRS  
24 108.236. See also documents identified by Bate Stamp No. APCO00000001<sup>17</sup> through  
25 APCO00078992 which APCO has deposited into a depository established by APCO for this  
26 litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas,  
27

28 <sup>17</sup> See Footnote No. 1.

NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

**INTERROGATORY NO. 37:**

Identify the amount of your lien and state whether any of the amounts owed to the subcontractors in this matter, including Zitting Brothers, are included in said amount. If so, provide a break down of all amounts making up your lien on the Project.

**RESPONSE TO INTERROGATORY NO. 37:**

The current principal amount of APCO's lien, as set forth in the Amended and Restated Notice of Lien that APCO recorded on February 11, 2009 in Book 20090211 as Instrument No. 48031, is \$20,782,659.95. APCO's lien includes an amounts owed to the subcontractors and/or suppliers through the date of APCO's termination of prime contract with Gemstone. APCO's lien does not include any sums for any work that any subcontractor and/or supplier may have performed and/or furnished after termination directly to Gemstone or through Camco. The breakdown of APCO's lien is as follows:

Original Contract Amount	\$ 153,472,300.00
Change Orders	<u>\$ 14,597,570.26</u>
Revised Contract Amount	\$ 168,069,870.26
Contract Work Performed & Billed Thru August 2008	\$ 60,325,901.89
Change Order Work Performed Thru Aug 2008	<u>\$ 9,168,116.32</u>
Total Work Performed Thru August 2008	\$ 69,494,018.21
Less Previous Payments	\$ (48,711,358.26)
Final Lien Amount	\$ 20,782,659.95

Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

///

1 **INTERROGATORY NO. 38:**

2 Identify the date you started construction and describe the work that was performed  
3 during the first three months of the Project.

4 **RESPONSE TO INTERROGATORY NO. 38:**

5 Objection. APCO objects on the grounds of relevance and further objects that this  
6 Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it  
7 seeks to force APCO to describe "the work that was performed during the first three months of  
8 the Project." APCO further objects on the grounds that it is vague and ambiguous in that  
9 "construction", "work" and "first three months of the Project" are not defined. See also  
10 Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

11 Subject to and without waiving any objections, APCO responds as follows: APCO first  
12 performed work under the Grading Agreement on or about May 2007. APCO first performed  
13 work under the ManhattanWest General Construction Agreement for GMP or about September  
14 5, 2007. See also documents identified by Bates Stamp No. APCO00000001<sup>18</sup> through  
15 APCO00078992 which APCO has deposited into a depository established by APCO for this  
16 litigation matter with Litigation Services located at 1640 W. Alta Drive, Suite 4, Las Vegas,  
17 NV 89106 and/or are hereby made available for review and copying (at requestor's expense) at  
18 a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to  
19 supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure  
20 and analysis continues.

21 **INTERROGATORY NO. 39:**

22 Identify all payments received by you for the work, material, and/or equipment furnished  
23 by Zitting Brothers at the Project for which Zitting has not been paid.

24 ///

25 ///

26  
27  
28 <sup>18</sup> See Footnote No. 1.

**RESPONSE TO INTERROGATORY NO. 39:**

None. APCO has not received any payments for work, materials and/or equipment furnished by Zitting Brothers at the Project for which Zitting Brother has not been paid by APCO.

**INTERROGATORY NO. 40:**

Identify all facts, opinions, or law not set forth in other responses, which you contend would excuse you from paying Zitting Brothers the owed and outstanding amounts for the work, material, and/or equipment furnished by Zitting Brothers at the Project.

**RESPONSE TO INTERROGATORY NO. 40:**

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "all facts, opinions, or law not set forth in other responses, which you contend would excuse you from paying Zitting Brothers the owed and outstanding amounts for the work, material, and/or equipment furnished by Zitting Brothers at the Project." APCO further objects to this Request on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative the Zitting Brothers' action. APCO further objects on the basis that to answer this Interrogatory would result in annoyance, embarrassment, or oppression to APCO in that the question is overly broad, vague, ambiguous, indefinite as to time and without reasonable limitation in its scope. APCO further objects on the basis that the question is oppressive, harassing and burdensome; the information sought seeks APCO's counsel's legal analysis and theories regarding laws, ordinances, safety orders, etc., which are equally available to Zitting Brother; the question also invades the attorney's work product privilege. APCO further objects on the basis that the question calls for information which is available to all parties equally, and is therefore oppressive and burdensome to APCO. APCO further objects on the basis that the question seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the question seeks to invade APCO's counsel's

1 work product privilege in that it calls for him to provide an analysis of written data and/or law.  
2 APCO further objects to this Interrogatory on the ground that it calls for legal conclusions. See  
3 also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

4 Subject to and without waiving any objections, APCO responds as follows: Gemstone  
5 has asserted various complaints about the quality of the work performed by APCO and its  
6 subcontractors. As of this time, Gemstone has not identified specific issues that Gemstone has  
7 with APCO's or its subcontractor's work, including that of Zitting Brothers. However, as a  
8 result of Gemstone's assertions that there are issues with the quality of the work performed on  
9 the Project, Gemstone has failed to pay APCO for the work that APCO performed, including  
10 the work that was performed by Zitting Brothers. Pursuant to the terms of the Subcontract  
11 Agreement, any payments to Zitting Brothers were specifically conditioned upon APCO's  
12 actual receipt of payment from Gemstone for Zitting Brothers' work. Moreover, the  
13 Subcontract specifically provided that Zitting Brothers was assuming the same risk that  
14 Gemstone may become insolvent and not be paid for its work as APCO assumed in entering  
15 into prime contract with Gemstone. Zitting Brothers further agreed that APCO had no  
16 obligation to pay Zitting Brothers for any work performed by Zitting Brothers until or unless  
17 APCO had actually been paid for such work by Gemstone. To date, APCO has not been paid  
18 for the work performed, including the work performed by Zitting Brothers. In fact, due to non-  
19 payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime  
20 contract with Gemstone and further terminated the Subcontract with Zitting Brothers. After  
21 APCO ceased work on the Project, Zitting Brothers may have negotiated with Camco, the  
22 replacement general contractor, and/or Gemstone and may have entered into a ratification  
23 agreement, wherein APCO was replaced as the general contractor under the Subcontract and  
24 Camco and/or Gemstone became liable for any monies due Zitting Brothers on the Project.

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26 ///

27 ///

28 ///

HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

1 Discovery is ongoing. APCO reserves the right to supplement or amend its response to this  
2 Interrogatory as investigation, discovery, disclosure and analysis continues.

3 DATED this 29<sup>th</sup> day of April 2010.

4 HOWARD & HOWARD ATTORNEYS PLLC

5  
6 /s/ Gwen Rutar Mullins

7 Gwen Rutar Mullins, Esq.

8 Nevada Bar No. 3146

9 Wade B. Gochmour, Esq.

10 Nevada Bar No. 6314

11 3800 Howard Hughes Pkwy., Ste. 1400

12 Las Vegas, Nevada 89169-5914

13 Attorneys for APCO CONSTRUCTION  
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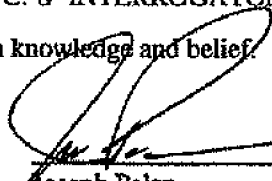
HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

VERIFICATION

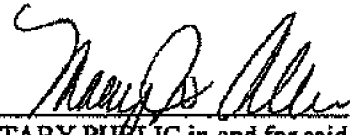
STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK     )

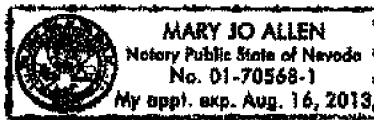
Joseph Pelan, being first duly sworn according to law, deposes and says:

That he is the Senior Project Manager of APCO CONSTRUCTION, and that he executed the foregoing instrument on behalf of APCO CONSTRUCTION in the capacity set forth above; that he has read the foregoing APCO CONSTRUCTION'S RESPONSES TO ZITTING BROTHERS CONSTRUCTION, INC.'S INTERROGATORIES and knows the contents thereof; that the same are true of his own knowledge and belief.

  
\_\_\_\_\_  
Joseph Pelan

SUBSCRIBED AND SWORN to before me  
this 27<sup>th</sup> day of April, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State.



CERTIFICATE OF SERVICE

On the 29<sup>th</sup> day of April 2010, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S RESPONSES TO ZITTING BROTHERS CONSTRUCTION INC.'s INTERROGATORIES by U.S. Mail, postage prepaid, upon the following:

Gemstone Development West, Inc.  
c/o Alexander Edelstein  
10170 W. Tropicana Ave.  
Suite 156-169  
Las Vegas, NV 89147

and by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

/s/ Kellie Piet

An employee of Howard and Howard Attorneys PLLC

EXHIBIT '1'

RESPONSE TO INTERROGATORY NO. 3

Date of Payment	Check No.	Amt. Paid	% Paid on Completion on Phase 1 Only
1/24/2008	12787	\$ 800,000.00	22.2%
2/8/2008	12878	\$ 988,785.00	32.4%
2/18/2008	12844	\$ 567,148.60	48.1%
3/13/2008	13164	\$ 408,225.70	59.4%
4/15/2008	13468	\$ 495,804.90	73.2%
5/19/2008	13847	\$ 424,888.70	84.8%
6/13/2008	13866	\$ 158,574.90	88.3%
7/26/2008	14382	\$ 27,973.80	90.0%
8/28/2008	NCS628368	\$ 33,847.55	90.5%
		\$ 3,282,848.55	

Zitting Bros. was paid 90% of their contract through payment #8 (07/26/08). Payment #9 (08/28/08) was a joint check issued by Nevada Construction Services for work performed on Owner approved change orders paid at 90%. The owner is holding 10% retention for all owner approved work performed by Zitting through August 2008.

# EXHIBIT U

ORIGINAL

1 RESP

Michael M. Edwards, Esq.

2 Nevada Bar No. 006281

Reuben H. Cawley, Esq.

3 Nevada Bar No. 009384

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

4 415 South Sixth Street, Suite 300

Las Vegas, NV 89101

5 (702) 382-1414; FAX (702) 382-1413

michael.edwards@wilsonelser.com

6 reuben.cawley@wilsonelser.com

Attorneys for Plaintiff

7 Zitting Brothers Construction, Inc.

ELECTRONICALLY SERVED

04/09/2010 03:45:36 PM

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 ZITTING BROTHERS CONSTRUCTION, INC., a )  
11 Utah corporation, )

12 Plaintiff, )

13 v. )

14 GEMSTONE DEVELOPMENT WEST, INC., a )  
15 Nevada Corporation, APCO CONSTRUCTION, a )  
16 Nevada corporation; and DOES I through X; ROE )  
17 CORPORATIONS I through X; BOE BONDING )  
COMPANIES I through X and LOE LENDERS I )  
through X, inclusive, )

18 Defendants. )

19 AND ALL RELATED MATTERS. )  
20 )  
21 )

CASE NO. A571228

DEPT NO. XIIV

Consolidate with:

A571792, A574391, A577623, A580889

A583289, A584730, A587168, A589195

A589195, A589677, A597089

ZITTING BROTHERS  
CONSTRUCTION, INC.'S RESPONSES  
TO APCO CONSTRUCTIONS  
INTERROGATORIES

22 TO: APCO CONSTRUCTION; and

23 TO: Gwen Rutar Mullins, Esq. of Howard & Howard Attorneys PLLC, its attorney of record

24 COMES NOW Plaintiff Zitting Brothers Construction, Inc., ("Zitting Brothers"), by and  
25 through its counsel of record, Michael M. Edwards, Esq., and Reuben H. Cawley, Esq., of the law  
26 firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, pursuant to NRCP 30 responds to  
27 Plaintiff's Interrogatories as follows:

28 ///

///

1 **RESP**

Michael M. Edwards, Esq.

2 Nevada Bar No. 006281

Reuben H. Cawley, Esq.

3 Nevada Bar No. 009384

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Attorneys for Plaintiff

7 Zitting Brothers Construction, Inc.

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 ZITTING BROTHERS CONSTRUCTION, INC., a )  
11 Utah corporation, )

12 Plaintiff, )

13 v. )

14 GEMSTONE DEVELOPMENT WEST, INC., a )  
15 Nevada Corporation, APCO CONSTRUCTION, a )  
16 Nevada corporation; and DOES I through X; ROE )  
17 CORPORATIONS I through X; BOE BONDING )  
through X, inclusive, )

18 Defendants. )

19 AND ALL RELATED MATTERS. )  
20 )  
21 )

22 TO: APCO CONSTRUCTION; and

23 TO: Gwen Rutar Mullins, Esq. of Howard & Howard Attorneys PLLC, its attorney of record

24 COMES NOW Plaintiff Zitting Brothers Construction, Inc., ("Zitting Brothers"), by and  
25 through its counsel of record, Michael M. Edwards, Esq., and Reuben H. Cawley, Esq., of the law  
26 firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, pursuant to NRCP 30 responds to  
27 Plaintiff's Interrogatories as follows:

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## GENERAL OBJECTIONS

Each Response provided herein is subject to the general objections set forth below (the "General Objections") and any specific objection made to the particular request. These General Objections are set forth in this fashion in order to avoid undue repetition through these responses. The failure to specifically incorporate a General Objection, however, should not be construed as a waiver of the General Objections.

1. Zitting Brothers objects to each Interrogatory to the extent the Interrogatory calls for information protected by the attorney-client privilege and/or work product doctrine.

2. Zitting Brothers objects and refuses to respond to these Interrogatories and the definitions and instructions to the extent they seek to impose obligations that go beyond those imposed by the Nevada Rules of Civil Procedure and Local Rules of the Eight Judicial District Court.

3. Zitting Brothers Objects to the Interrogatories to the extent that the same seek to require Zitting Brothers to search for or produce documents which are not currently in their possession, custody, or control, or to identify or describe persons, entities, or events that are not known to their employees on the grounds that such Interrogatories would seek to require more of Zitting Brothers than any obligation imposed by law, to unreasonable and undue annoyance, oppression, burden and expense, and would seek to impose upon Zitting Brothers an obligation to investigate or discover information or materials from third-parties or sources that are equally accessible to Scott Financial Corporation.

4. Nothing herein shall be construed as an admission or waiver by Zitting Brothers of:  
(a) Zitting Brothers' rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of any information provided in the Responses, any documents identified therein, or the subject matter thereof; (b) Zitting Brothers' objection due to vagueness, ambiguity, or undue burden; and (c) Zitting Brothers' rights to object to the use of any information provided in the Responses, any documents identified therein, or the subject matter contained in the Response during



1 a subject matter contained in the Responses during a subsequent proceeding, including the trial of  
2 this or any other action.

3 5. The Responses are made solely for the purposes of, and in relation to, this litigation.

4 6. Zitting Brothers objects to the Interrogatories to the extent that they call for  
5 production of documents that have been previously produced to or by Zitting Brothers. Such  
6 documents will not be produced or identified except as otherwise noted herein. The responses  
7 incorporate all documents previously produced to the Nevada Rules of Civil Procedure, and all  
8 pleadings and documents on file herein.

9 7. Zitting Brothers objects to the Interrogatories to the extent they seek "all," "each" or  
10 "any" information concerning various subjects or events, or pertaining to them "in any way" or "any  
11 manner whatsoever" on the grounds that such Interrogatories are vague, overly broad, unduly  
12 burdensome, onerous, and requests information that is not relevant or which is not likely to lead to  
13 the discovery of admissible evidence.

14 8. Zitting Brothers objects to the Interrogatories to the extent that they call for the  
15 creation of lists or summaries not already in existence.

16 9. Zitting Brothers objects to the Interrogatories on the grounds that they consist of  
17 multiple, separate and distinct requests and fail to be properly numbered as such. Therefore, Zitting  
18 Brothers objects to the Interrogatories to the extent that they do not comply with the requirements of  
19 Nevada Rule of Civil Procedure 33.

20 10. Zitting Brothers has not completed: (a) its investigation of facts, witnesses, or  
21 documents relating to this case; (b) discovery in this action; (c) its analysis of available data; and (d)  
22 its preparations for trial. Thus, although a good faith effort has been made to supply pertinent  
23 information where the same has been requested in order to comply with Zitting Brothers' discovery  
24 obligations, it is not possible in some instances for unqualified Responses to be made to the  
25 Interrogatories. Further, the Responses are necessarily made without prejudice to Zitting Brothers'  
26 right to produce evidence of subsequently discovered facts, witnesses, or documents omitted by the  
27 Responses to the following Interrogatories are based on the information available at the current time  
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1 and to the best of Zitting Brothers' knowledge to date. The Responses made include hearsay and  
2 other forms of evidence that may be neither reliable nor admissible. Zitting Brothers reserves the  
3 right to supplement such responses at a later date.

4 Without waiving its General Objections, Zitting Brothers responds to the Interrogatories as  
5 follows:

6 **INTERROGATORIES**

7 **INTERROGATORY NO. 1:**

8 Please identify the name, title and address of each person(s) you anticipate calling as a  
9 witness at the time of trial.  
10

11 **RESPONSE:**

12 Objection. Zitting Brothers is not prepared, nor is it required, to state at this time each and  
13 every witness that will be called at the time of trial in this matter. Discovery is on going and  
14 additional witnesses may be indentified that will be called at the time of trial. Subject to and without  
15 waiving the foregoing objections, Zitting Brothers' responds as follows:

16 See Plaintiff Zitting Brothers Construction, Inc.'s Initial Early Case Conference List of  
17 Witnesses and Identification of Documents. Discovery is continuing and Zitting Brothers reserves  
18 its right to supplement this Response as necessary.

19 **INTERROGATORY NO. 2:**

20 Please identify and state with specificity facts that you intend to rely upon to support your  
21 allegations that Zitting Brothers fulfilled its contractual obligations relative the Project in a  
22 competent and timely manner.  
23

24 **RESPONSE:**

25 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
26 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
27 identify at this time each and every fact that it will rely on to support its claims in this matter.  
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1 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
2 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
3 follows:

4 On or about April 17, 2007, Zitting Brothers entered into a subcontract with APCO  
5 Construction to provide framing labor and materials for the Manhattan West project. Pursuant to the  
6 subcontract, Zitting Brothers began performing its work on or about November 19, 2007, and  
7 continued doing so until approximately December 15, 2008, when Zitting Brothers was advised that  
8 the project was shutting down. All work was performed in a timely and competent manner, and both  
9 APCO Construction and Gemstone received value for Zitting Brothers services. If any complaints  
10 were raised by APCO Construction or Gemstone as to the adequacy or the quality of Zitting  
11 Brothers' work during the course of the project, Zitting Brothers took all necessary steps to timely  
12 resolve the same. Zitting Brothers has not received any notice or communication from APCO  
13 Construction or Gemstone that there are outstanding complaints relative to Zitting Brothers' work at  
14 the project.

15 Discovery is ongoing and Zitting Brothers reserves the right to supplement this Response as  
16 necessary.

17 **INTERROGATORY NO. 3:**

18  
19 Please identify and state with specificity facts that you intend to rely upon to support your  
20 allegations that APCO breached the terms of the Subcontract Agreement or any other agreement  
21 with you relative to the Project.

22 **RESPONSE:**

23 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
24 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
25 identify at this time each and every fact that it will rely on to support its claims in this matter.

26 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
27

1 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
2 follows:

3 On or about April 17, 2007, Zitting Brothers entered into a subcontract with APCO  
4 Construction to provide framing labor and materials for the Manhattan West project. Pursuant to the  
5 subcontract, Zitting Brothers performed all work in a timely and competent manner up to and  
6 including the date APCO Construction left the project on or about September 11, 2009. Zitting  
7 Brothers continued to perform its duties under the subcontract in a timely and competent manner  
8 thereafter until the project was formally closed down on or about December 15, 2009. Despite the  
9 fact that Zitting Brothers performed its work in a timely and professional manner, APCO  
10 Construction and/or Gemstone failed to comply with its contractual obligations to pay Zitting  
11 Brothers for its work. APCO Construction and/or Gemstone received value for the work performed  
12 by Zitting Brothers and knew or should have known that Zitting Brothers expected to be paid for its  
13 work at the project.

14 The following amounts remain outstanding and owed by APCO Construction and/or  
15 Gemstone for work performed by Zitting Brothers at the project:

16 Unpaid Retention	\$403,365.49
17 Unpaid Change Orders	\$347,441.67
18 Total due to Zitting Brothers	\$750,807.16

19 Documents supporting these amounts were previously produced by Zitting Brothers and can  
20 be found at ZBC1112 -- 1166 and ZBC1177 -- 1229. Discovery is continuing and Zitting Brothers  
21 reserves the right to supplement this Response as necessary.

22 **INTERROGATORY NO. 4:**

23  
24 State the amount of any payments made to you by APCO, the date each payment was made,  
25 and the work that the payment covered.

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1 **RESPONSE:**

2 Objection. This Interrogatory is vague, ambiguous, overbroad, and burdensome in that it  
3 seeks to have Zitting Brothers identify to an unreasonable detail the work it performed on the  
4 Manhattan West project. Subject to and without waiving the foregoing objections, Zitting Brothers'  
5 responds as follows:

6 Pursuant to the subcontract, Zitting Brothers was to provide and did provide framing labor  
7 and materials for the Manhattan West project for the duration of the project until it was shut down on  
8 or about December 15, 2009. Under the terms of the subcontract, payments made by APCO  
9 Construction to Zitting Brothers were progress payments and Zitting Brothers is unable to provide a  
10 detailed statement of the work applicable to each payment.

11 The following payments were made by APCO Construction to Zitting Brothers during the  
12 course of the project:

<u>Date</u>	<u>Amount</u>
1/30/08	\$800,000.00
2/11/08	\$368,785.00
3/5/08	\$567,148.14
3/20/08	\$408,225.33
5/9/08	\$495,604.60
5/22/08	\$424,688.70
7/2/08	\$156,574.24
8/13/08	\$27,971.12
11/20/08	\$33,847.55

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19 Please also see documents bates labeled ZBC1112 - 1166. Discovery is continuing and  
20 Zitting Brothers reserves the right to supplement this Response as necessary.

21 **INTERROGATORY NO. 5:**

22  
23 State the amount of any payments made to you by CAMCO PACIFIC CONSTRUCTION  
24 COMPANY, INC. ("Camco Pacific"), the date each payment was made, and the work that the  
25 payment covered.

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28 **RESPONSE:**

1           Objection. This Interrogatory is vague, ambiguous, overbroad, and burdensome, in that it  
2 seeks to have Zitting Brothers identify to an unreasonable detail the work it performed on the  
3 Manhattan West project. Subject to and without waiving the foregoing objections, Zitting Brothers'  
4 responds as follows:

5           None. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
6 Response as necessary.

7 **INTERROGATORY NO. 6:**  
8

9           State the amount of any payments made to you by Gemstone, the date each payment was  
10 made, and the work that the payment covered.

11 **RESPONSE:**

12           Objection. This Interrogatory is vague, ambiguous, overbroad, and burdensome, in that it  
13 seeks to have Zitting Brothers identify to an unreasonable detail the work it performed on the  
14 Manhattan West project. Subject to and without waiving the foregoing objections, Zitting Brothers'  
15 responds as follows:

16           None. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
17 Response as necessary.

18 **INTERROGATORY NO. 7:**

19           Please identify and state with specificity facts that you intend to rely upon to support your  
20 allegation that you have complied with the provisions of Chapter 108 of the Nevada Revised Statutes  
21 relative a lien that you recorded against the Project.

22 **RESPONSE:**

23           Objection. This Interrogatory is overbroad, compound, burdensome, and calls for a legal  
24 conclusion. Additionally, this Interrogatory seeks proof of the entire case on paper, which is  
25 improper. Subject to and without waiving the foregoing objections, Zitting Brothers responses as  
26 follows:  
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1 On or about April 17, 2007, Zitting Brothers entered into a subcontract with APCO  
2 Construction to provide framing labor and materials for the Manhattan West project. Pursuant to the  
3 subcontract, Zitting Brothers began performing its work on or about November 19, 2007, and  
4 continued doing so until approximately December 15, 2008, when Zitting Brothers was advised that  
5 the project was shutting down. All work was performed properly and APCO Construction and/or  
6 Gemstone received value for Zitting Brothers' services. At that time the project closed down, there  
7 was an outstanding balance of \$750,807.16 for work performed by Zitting Brothers that had not been  
8 paid by APCO Construction and/or Gemstone. Due to the unpaid balance, Zitting Brothers took  
9 steps to record a mechanic's lien against the Manhattan West project and complied with the  
10 requirements of NRS 108 as follows:

11 1) In compliance with NRS 108.245, Zitting Brothers provided its Notice of Right to  
12 Lien via certified mail to Gemstone and APCO Construction on January 14, 2008.

13 2) On December 4, 2008, Zitting Brothers sent its Notice of Intent to Lien to Gemstone  
14 and APCO Construction via certified mail in accordance with 108.226(6).

15 2) In compliance with NRS 108.226, Zitting Brothers recorded its Notice of Lien on  
16 December 23, 2008, and provided a copy of the same to Gemstone and APCO Construction via  
17 certified mail on December 24, 2008.

18 4) On April 7, 2010, Zitting Brothers recorded its Amended Notice of Lien and served it  
19 on APCO Construction and/or Gemstone via certified mail the same day.

20 5) Zitting Brothers filed its Complaint Re: Foreclosure on April 30, 2009.

21 6) Zitting Brothers provided a Notice of Foreclosure on or about June 16, 2009, and  
22 caused the same to be published in accordance with NRS 108.239. The Affidavit of Publication was  
23 filed on June 30, 2009; and

24 7) Zitting Brothers provided its Notice of Lis Pendens on April 30, 2009.

25 Discovery is continuing and Zitting Brothers reserves the right to supplement this Response  
26 as necessary.

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1 **INTERROGATORY NO. 8:**

2 Please identify and state with specificity facts that you intend to rely upon to support your  
3 allegation that you have fully performed your obligations under your subcontract with APCO  
4 including all conditions precedent except as have been excused by the respective breaches by APCO.  
5

6 **RESPONSE:**

7 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
8 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
9 identify at this time each and every fact that it will rely on to support its claims in this matter.  
10 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
11 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
12 follows:

13 See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
14 the right to supplement this Response as necessary.

15 **INTERROGATORY NO. 9:**

16 Please identify and state with specificity facts that you intend to rely upon to support your  
17 allegation that you have fully performed your obligations under any contract with Camco Pacific  
18 relative the Project, including all conditions precedent except as have been excused by the respective  
19 breaches of Camco Pacific.

20 **RESPONSE:**

21 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
22 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
23 identify at this time each and every fact that it will rely on to support its claims in this matter.  
24 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
25 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
26 follows:  
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1           Zitting Brothers never entered into a written contract with Camco Pacific. Discovery is  
2 continuing and Zitting Brothers reserves the right to supplement this Response as necessary.

3 **INTERROGATORY NO. 10:**  
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5           Please identify and state with specificity facts that you intend to rely upon to support your  
6 allegations that you have fully performed you obligations under any contract with Gemstone on the  
7 Project, including all conditions precedent except as have been excused by the respective breaches  
8 by Gemstone.

9 **RESPONSE:**  
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11           Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
12 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
13 identify at this time each and every fact that it will rely on to support its claims in this matter.  
14 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
15 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
16 follows:

17           Zitting Brothers never executed a written contract with Gemstone. Discovery is continuing  
18 and Zitting Brothers reserves the right to supplement this Response as necessary.

19 **INTERROGATORY NO. 11:**  
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21           Please identify and state with specificity facts that you intend to rely upon to support your  
22 allegation that APCO has failed to fully pay for materials and services provided by you on the  
23 Project.

24 **RESPONSE:**  
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26           Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
27 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
28 identify at this time each and every fact that it will rely on to support its claims in this matter.  
Discovery is on going and additional facts may be indentified that will support Zitting Brothers'

1 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
2 follows:

3 See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
4 the right to supplement this Response as necessary.

5 **INTERROGATORY NO. 12:**  
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7 Please identify and state with specificity facts that you intend to rely upon to support your  
8 allegation that Camco Pacific has failed to fully pay for the materials and services provided by you  
9 on the Project.

10 **RESPONSE:**  
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12 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
13 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
14 identify at this time each and every fact that it will rely on to support its claims in this matter.  
15 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
16 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
17 follows:

18 See Response to Interrogatory No. 9. Discovery is continuing and Zitting Brothers reserves  
19 the right to supplement this Response as necessary.

20 **INTERROGATORY NO. 13:**  
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22 Please identify and state with Specificity facts that you intend to rely upon to support your  
23 allegation that Gemstone has failed to fully pay for the materials and services provided by you on the  
24 Project.

25 **RESPONSE:**  
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27 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
28 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
identify at this time each and every fact that it will rely on to support its claims in this matter.

1 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
2 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
3 follows:

4 See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
5 the right to supplement this Response as necessary.

6 **INTERROGATORY NO. 14:**

7  
8 Please identify and state with specificity facts that you intend to rely upon to support your  
9 allegation that APCO has been unjustly enriched.

10 **RESPONSE:**

11 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
12 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
13 identify at this time each and every fact that it will rely on to support its claims in this matter.  
14 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
15 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
16 follows:

17 See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
18 the right to supplement this Response as necessary.

19 **INTERROGATORY NO. 15:**

20  
21 Please identify and state with specificity facts that you intend to rely upon to support your  
22 allegation that APCO breached the implied covenant of good faith and fair dealing by failing to pay  
23 for work provided by you on the Project.

24 **RESPONSE:**

25 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
26 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
27 identify at this time each and every fact that it will rely on to support its claims in this matter.  
28

1 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
2 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
3 follows:

4 See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
5 the right to supplement this Response as necessary.

6 **INTERROGATORY NO. 16:**

7  
8 Please identify and state with specificity facts that you intend to rely upon to support your  
9 allegation that APCO negligently or intentionally prevented, obstructed, hindered or interfered with  
10 your performance of the work on the Project.

11 **RESPONSE:**

12 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
13 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
14 identify at this time each and every fact that it will rely on to support its claims in this matter.  
15 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
16 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
17 follows:

18 In addition to its failure to pay Zitting Brothers for its work at the project, APCO  
19 Construction continually delayed the formal approval of change orders to Zitting Brothers work.  
20 This directly resulted in Zitting Brothers being unable to obtain payment for change orders that were  
21 completed at the direction of APCO Construction and/or Gemstone. Discovery is continuing and  
22 Zitting Brothers reserves the right to supplement this Response as necessary.

23 **INTERROGATORY NO. 17:**

24 Please identify and state with specificity facts that you intend to rely upon to support your  
25 allegation that Camco and/or Gemstone breached the implied covenant of good faith and fair dealing  
26 by failing to pay for work provided by you on the Project.  
27  
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1 **RESPONSE:**

2       Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
3 calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to  
4 identify at this time each and every fact that it will rely on to support its claims in this matter.  
5 Discovery is on going and additional facts may be indentified that will support Zitting Brothers'  
6 claims. Subject to and without waiving the foregoing objections, Zitting Brothers responds as  
7 follows:

8       See Response to Interrogatory No. 3. Discovery is continuing and Zitting Brothers reserves  
9 the right to supplement this Response as necessary.

10 **INTERROGATORY NO. 18:**

11       Identify, sufficiently to permit service of subpoena, each witness to this action known to you,  
12 your attorney, agent, or any investigator or detective employed by you or your attorney or anyone  
13 acting on your behalf, which you intend to have testify relative the work supplied by you and  
14 provide a brief statement of their anticipated testimony.

15 **RESPONSE:**

16       See Response to Interrogatory No. 1.

17 **INTERROGATORY NO. 19:**

18  
19       Identify all documents, records, writings, etc., that support your Answers to these  
20 Interrogatories and your responses to Requests for Admissions.

21 **RESPONSE:**

22       See documents bates labeled ZBC0001 - 1223 produced in connection with Plaintiff Zitting  
23 Brothers Construction, Inc.'s Initial Early Case Conference List of Witnesses and Identification of  
24 Documents. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
25 Response as necessary.

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1 **INTERROGATORY NO. 20:**

2 If you or any officer, director, or employee of Zitting Brothers has had any conversations  
3 with APCO regarding the facts alleged to be the basis of your complaint against APCO, please state  
4 the dates of each conversation, the parties involved, the contents of the conversation and what was  
5 said.  
6

7 **RESPONSE:**

8 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and burdensome.  
9 Subject to and without waiving the foregoing objections, Zitting Brothers responds as follows:

10 During the course of the project, Zitting Brothers worked with APCO Construction on a daily  
11 basis and presumably had numerous conversations regarding Zitting Brothers' work, APCO  
12 Construction's payments to Zitting Brothers, and other factual issues underlying the claims in this  
13 case. Most, if not all, of all of these conversations were verbal and it is not reasonable to expect  
14 Zitting Brothers to recall and describe each conversation. If any conversations have occurred  
15 between Zitting Brothers and APCO Construction after the filing of Zitting Brothers' Complaint,  
16 they were brief and conversational in nature, and did not address Zitting Brothers' Complaint or the  
17 facts underlying its claims in any meaningful manner. Discovery is continuing and Zitting Brothers  
18 reserves the right to supplement this Response as necessary.

19 **INTERROGATORY NO. 21:**

20 If you or any officer, director, or employee of Zitting Brothers has had any conversations  
21 with Camco Pacific regarding the facts alleged to be the basis of your complaint, please state the  
22 dates of each conversation, the parties involved, the contents of the conversation and what was said.  
23

24 **RESPONSE:**

25 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and burdensome.  
26 Subject to and without waiving the foregoing objections, Zitting Brothers responds as follows:  
27  
28

1           None. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
2 Response as necessary.

3 **INTERROGATORY NO. 22:**  
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5           If you or any officer, director, or employee of Zitting Brothers has had any conversations  
6 with Gemstone regarding the facts alleged to be the basis of your complaint, please state the dates of  
7 each conversation, the parties involved, the contents of the conversation and what was said.

8 **RESPONSE:**  
9

10           Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and burdensome.  
11 Subject to and without waiving the foregoing objections, Zitting Brothers responds as follows:

12           None. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
13 Response as necessary.

14 **INTERROGATORY NO. 23:**  
15

16           If you or any officer, director, or employee of Zitting Brothers has had any conversations  
17 with any third person regarding the facts alleged to be the basis of your complaint, please state the  
18 dates of each conversation, the parties involved, the contents of the conversation and what was said.

19 **RESPONSE:**  
20

21           Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
22 seeks information protected by the attorney-client and/or the attorney work product privilege.

23 Subject to and without waiving the foregoing objections, Zitting Brothers responds as follows:

24           None. Discovery is continuing and Zitting Brothers reserves the right to supplement this  
25 Response as necessary.

26 **INTERROGATORY NO. 24:**  
27

28           Please identify each person you expect to call as an expert witness at the time of trial in this  
action. With respect to each person to call as an expert witness, please state the subject matter on

1 which each expert is expected to testify, a summary of the grounds for each opinion; whether written  
2 document was prepared by such expert and if so, identify it; and the professional title, educational  
3 background, qualifications and work experience of each such expert.  
4

5 **RESPONSE:**

6 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and seeks  
7 information protected by the attorney-client and/or the attorney work product privilege. Subject to  
8 and without waiving the foregoing objections, Zitting Brothers responds as follows:

9 The time for designating experts in this matter has not yet passed. At this time, Zitting  
10 Brothers has not designated any experts and is unable to accurately determine whether expert  
11 testimony will be necessary at trial. Discovery is continuing and Zitting Brothers reserves the right  
12 to supplement this Response as necessary.

13 **INTERROGATORY NO. 25:**

14 Please identify any exhibits which you intend to produce at the time of trial in this matter as  
15 it relates to the claims brought against APCO and the work furnished by you on the Project and as to  
16 each such exhibit, please state:

- 17 i. The origin of the exhibit;  
18 ii. Location of the original exhibit; and  
19 iii. If the exhibit is a copy, whether or not the exhibit has been authenticated and  
20 by whom.  
21

22 **RESPONSE:**

23 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and burdensome.  
24 Additionally, Zitting Brothers is not prepared, nor is it required, to identify at this time each and  
25 every exhibit that may or may not be used at trial in this matter. Discovery is on going and  
26 additional facts may be indentified that will support Zitting Brothers' claims. Subject to and without  
27 waiving the foregoing objections, Zitting Brothers responds as follows:  
28



1 Please see all documents produced in connection with Plaintiff Zitting Brothers Construction,  
2 Inc.'s Initial Early Case Conference List of Witnesses and Identification of Documents. Discovery is  
3 continuing and Zitting Brothers reserves the right to supplement this Response as necessary.  
4

5 **INTERROGATORY NO. 26:**

6 Please state and identify each and every fact setting forth the alleged breach by APCO.

7 **RESPONSE:**

8 See Response to Interrogatory No. 3.  
9

10 **INTERROGATORY NO. 27:**

11 Please state and identify each and every fact setting forth the alleged breach by Camco and/or  
12 Gemstone.

13 **RESPONSE:**

14 See Response to Interrogatory No. 3.  
15

16 **INTERROGATORY NO. 28:**

17 Please identify each and every fact that you intend to rely upon to support your allegations as  
18 to what amount APCO owes you for the work furnished by you on the Project through the date of  
19 APCO's termination of its contract with Gemstone, which amount your content remains unpaid and  
20 due from APCO.

21 **RESPONSE:**

22 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, confusing,  
23 burdensome, and calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it  
24 required, to identify at this time each and every fact that it will rely on to support its claims in this  
25 matter. Discovery is on going and additional facts may be indentified that will support Zitting  
26 Brothers' claims. Subject to and without waiving the foregoing objections, Zitting Brothers  
27 responds as follows:  
28

1 See Response to Interrogatory No. 3. Additionally, all work performed by Zitting Brothers  
2 was done in connection with its subcontract with APCO Construction and, as such, all amounts  
3 owed to Zitting Brothers are attributed to APCO Construction even if certain tasks were not fully  
4 completed until APCO Construction left the project. Discovery is continuing and Zitting Brothers  
5 reserves the right to supplement this Response as necessary.

6 **INTERROGATORY NO. 29:**  
7

8 Please identify each and every fact that you intend to rely upon to support your allegations as  
9 to what amount Cameo and/or Gemstone owes you for the work furnished by you on the Project  
10 through the date of APCO's termination of its contract with Gemstone including for any work that  
11 you may have performed after APCO's termination of its contract with Gemstone, which amount  
12 you contend remains unpaid and due.

13 **RESPONSE:**  
14

15 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, confusing,  
16 burdensome, and calls for a legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it  
17 required, to identify at this time each and every fact that it will rely on to support its claims in this  
18 matter. Discovery is on going and additional facts may be indentified that will support Zitting  
19 Brothers' claims. Subject to and without waiving the foregoing objections, Zitting Brothers  
20 responds as follows:

21 See Response to Interrogatory No. 28. Discovery is continuing and Zitting Brothers reserves  
22 the right to supplement this Response as necessary.

23 **INTERROGATORY NO. 30:**  
24

25 Please describe in detail the contract terms that you agreed to with APCO regarding the work  
26 furnished by you on the Project.

27 ///

28 ///

1 **RESPONSE:**

2       Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
3 calls for a legal conclusion. Additionally, this information is readily available to APCO  
4 Construction and it is improper and unnecessary for Zitting Brothers to recite each and every term of  
5 the subcontract as the document speaks for itself. Discovery is continuing and Zitting Brothers  
6 reserves the right to supplement this Response as necessary.

7 **INTERROGATORY NO. 31:**

8       Please describe in detail the contract terms that you agreed to with Camco and/or Gemstone  
9 regarding the work furnished by you on the Project.  
10

11 **RESPONSE:**

12       Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
13 calls for a legal conclusion. Subject to and without waiving the foregoing objections, Zitting  
14 Brothers responds as follows:

15       Zitting Brothers did not enter into a written subcontract with either Camco Pacific or  
16 Gemstone for its work at the project. Discovery is continuing and Zitting Brothers reserves the right  
17 to supplement this Response as necessary.

18 **INTERROGATORY NO. 32:**

19       Please state each and every fact to support your claim of priority as set forth in the Seventh  
20 Cause of Action of your Complaint.  
21

22 **RESPONSE:**

23       Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
24 calls for a legal conclusion. Subject to and without waiving the foregoing objections, Zitting  
25 Brothers responds as follows:

26       Please see Response to Interrogatory Nos. 2 & 3. Additionally, APCO Construction has  
27 informed Zitting Brothers that work on the project began prior to Zitting Brothers starting its work at  
28

1 the site and prior to the applicable Deeds of Trust that were recorded against the project. Discovery  
2 is continuing and Zitting Brothers reserves the right to supplement this Response as necessary.

3 **INTERROGATORY NO. 33:**

4  
5 For each of the Request for Admissions, which were served upon you concurrently with  
6 these Interrogatories, and which you denied, either in whole or in part, please state with particularity  
7 all facts upon which you relied in asserting this denial and identify the sources of your information  
8 upon which you rely in asserting this denial, including the names of persons who have knowledge of  
9 such facts, and further identify all documents which evidence, refer or relate in any way to such  
10 facts.

11 **RESPONSE:**

12 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, and burdensome.  
13 Subject to and without waiving the foregoing objections, Zitting Brothers responds as follows:

14 Request No. 3: This Request was denied because it is likely that the contractual provisions  
15 cited to are void under Nevada law and Nevada public policy as stated in NRS 624.628(3) and  
16 624.624.

17 Request No. 4: This Request was denied because it is likely that the contractual provisions  
18 cited to are void under Nevada law and Nevada public policy as stated in NRS 624.628(3) and  
19 624.624. Moreover, this Request fails to reflect the changes to the relevant contractual provisions  
20 that were agreed to by Zitting Brothers and APCO Construction.

21 Request No. 5: This Request was denied because it is likely that the contractual provisions  
22 cited to are void under Nevada law and Nevada public policy as stated in NRS 624.628(3) and  
23 624.624.

24 Request No. 6: This Request was denied because it is likely that the contractual provisions  
25 cited to are void under Nevada law and Nevada public policy as stated in NRS 624.628(3) and  
26 624.624. Moreover, this Request fails to reflect the changes to the relevant contractual provisions  
27 that were agreed to by Zitting Brothers and APCO Construction.

1 Request No. 7: This Request was denied because under the subcontract APCO Construction  
2 is liable to Zitting Brothers for all unpaid amounts.

3 Request No. 8: This Request was denied because Zitting Brothers cannot affirmatively state  
4 that APCO Construction was not paid by Gemstone for amounts owed to Zitting Brothers.

5 Request No. 9: This Request was denied because Zitting Brothers is informed that APCO  
6 Construction received significant payments from Gemstone for its work and work performed by  
7 Zitting Brothers on the project.

8 Request No. 10: This Request was denied because Zitting Brothers cannot identify each and  
9 every reason why APCO Construction terminated its contract with Gemstone.

10 Request No. 11: This Request was denied because, although Zitting Brothers was aware that  
11 APCO Construction left the project, Zitting Brothers cannot conclusively identify the manner in  
12 which it came to this knowledge.

13 Request No. 12: This Request was denied because Subsection 9 of the subcontract does not  
14 allow termination of the subcontract in the manner utilized by APCO Construction.

15 Request No. 13: This Request was denied because Zitting Brothers did not enter into a  
16 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

17 Request No. 14: This Request was denied because Zitting Brothers did not enter into a  
18 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

19 Request No. 15: This Request was denied because Zitting Brothers did not enter into a  
20 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

21 Request No. 16: This Request was denied because Zitting Brothers did not enter into a  
22 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

23 Request No. 17: This Request was denied because Zitting Brothers did not enter into a  
24 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

25 Request No. 18: This Request was denied because Zitting Brothers did not enter into a  
26 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

1 Request No. 19: This Request was denied because Zitting Brothers did not enter into a  
2 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

3 Request No. 20: This Request was denied because Zitting Brothers did not enter into a  
4 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

5 Request No. 21: This Request was denied because under the subcontract APCO  
6 Construction is liable to Zitting Brothers for all unpaid amounts.

7 Request No. 22: This Request was denied because under the subcontract APCO  
8 Construction is liable to Zitting Brothers for all unpaid amounts.

9 Request No. 23: This Request was denied because under the subcontract APCO  
10 Construction is liable to Zitting Brothers for all unpaid amounts.

11 Request No. 24: This Request was denied because Zitting Brothers did not enter into a  
12 Ratification and Amendment of the Subcontract Agreement with Camco Pacific.

13 Request No. 26: This Request was denied because under the subcontract APCO  
14 Construction is liable to Zitting Brothers for all unpaid amounts.

15 Request No. 27: This Request was denied because APCO Construction received value for  
16 Zitting Brothers' work at the project and because under the subcontract APCO Construction is liable  
17 to Zitting Brothers for all unpaid amounts.

18 Request No. 28: This Request was denied because APCO Construction received value for  
19 Zitting Brothers' work at the project and because under the subcontract APCO Construction is liable  
20 to Zitting Brothers for all unpaid amounts.

21 Request No. 29: This Request was denied because Zitting Brothers is unaware of any claims  
22 by Gemstone that its work at the project was not done in a good and workmanlike manner.

23 Request No. 30: This Request was denied because all of Zitting Brothers work at the project  
24 was completed in a good and workmanlike manner in compliance with all the pertinent plans,  
25 specifications, codes, and industry standards.

26 Request No. 31: This Request was denied because under the subcontract APCO  
27 Construction is liable to Zitting Brothers for all unpaid amounts.  
28

1 Request No. 33: This Request was denied because under the subcontract APCO  
2 Construction is liable to Zitting Brothers for all unpaid amounts.

3 Request No. 34: This Request was denied because under the subcontract APCO  
4 Construction is liable to Zitting Brothers for all unpaid amounts.

5 Request No. 36: This Request was denied because Zitting Brothers is informed that APCO  
6 Construction received significant payments from Gemstone for its work and work performed by  
7 Zitting Brothers on the project.

8 Discovery is continuing and Zitting Brothers reserves the right to supplement this Response  
9 as necessary.

10 **INTERROGATORY NO. 34:**

11 With respect to the Complaint you asserted against APCO, state:

- 12 (a) What is the dollar amount of damages, if any, that you are seeking?
- 13 (b) If the dollar amount set forth in answer (a) is a composite of several different  
14 elements of damages, set forth each of those elements and every fact or document that  
15 form the basis for the amount of damages attributable to said damages or each  
16 element thereof.
- 17 (c) State precisely how you calculated the amounts set forth in (a) and (b) above.
- 18 (d) Precisely what did APCO do which gives rise to this claim for damages?
- 19 (e) Identify the documents that you intend to rely upon in making this claim for damages.
- 20 (f) Identify the witness who you expect to testify with respect to such damages, and set  
21 forth a summary of their expected testimony.
- 22

23 **RESPONSE:**

24 Objection. This Interrogatory is vague, ambiguous, compound, overbroad, burdensome, and  
25 calls for a legal conclusion. Subject to and without waiving the foregoing objections, Zitting  
26 Brothers responds as follows:

27

28

1 Zitting Brothers' damages are comprised of the \$750,807.16 stated in Zitting Brothers'  
2 amended lien plus any and all statutory and/or contractual fees, costs, and interest. Zitting Brothers'  
3 lien amount is generally comprised of unpaid retention of \$403,365.49 and unpaid change orders of  
4 \$347,441.67. Documents supporting these amounts were previously produced by Zitting Brothers  
5 and can be found at ZBC1112 -- 1166 and ZBC1177 -- 1229. The witnesses that may provide  
6 testimony relative to these amounts can be found in Plaintiff Zitting Brothers Construction, Inc.'s  
7 Initial Early Case Conference List of Witnesses and Identification of Documents. Discovery is  
8 continuing and Zitting Brothers reserves the right to supplement this Response as necessary.

9 **INTERROGATORY NO. 35:**

10  
11 Please provide a breakdown of the sum of \$788,405.41, which you claim remains due you for  
12 the work furnishes on the Project, including, but not limited to, the date when each portion of the  
13 work was performed.

14 **RESPONSE:**

15 Objection. This Interrogatory is vague, ambiguous, overbroad, and burdensome, in that it  
16 seeks to have Zitting Brothers identify to an unreasonable detail the work it performed on the  
17 Manhattan West project. Subject to and without waiving such objections, Zitting Brothers' responds  
18 as follows:

19 See Response to Interrogatory No. 34. Discovery is continuing and Zitting Brothers reserves  
20 the right to supplement this Response as necessary.

21 **INTERROGATORY NO. 36:**

22  
23 Please identify each and every fact that you intend to rely to refute that Zitting Brothers  
24 should indemnify APCO for any and all losses, damages or expenses that APCO sustains as a result  
25 of any claims by Gemstone for damages that Gemstone allegedly sustained due to Zitting Brothers'  
26 improper workmanship on the Project, including, but not limited to, any damage amount and the  
27 attorney's fees and costs incurred by APCO relative thereto.



1  
2 **RESPONSE:**

3       Objection. This Interrogatory is vague, ambiguous, overbroad, burdensome, and calls for a  
4 legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to identify at this  
5 time each and every fact that it will rely on to support its claims or refute the claims of other parties  
6 in this matter. Subject to and without waiving such objections, Zitting Brothers' responds as  
7 follows:

8       Zitting Brothers is unable to meaningfully respond to this Interrogatory as it is currently  
9 unaware of any claims being asserted by Gemstone that could require Zitting Brothers to indemnify  
10 APCO Construction. Discovery is continuing and Zitting Brothers reserves the right to supplement  
11 this Response as necessary.

12 **INTERROGATORY NO. 37:**

13       Please identify each and every fact that you intend to rely to refute that any obligations or  
14 responsibilities of APCO under Subcontract Agreement with Zitting Brothers has been replaced,  
15 terminated, voided, cancelled or otherwise released by the ratification entered into between Zitting  
16 Brothers and Camco Pacific and that as a result therefore, APCO no longer bears any liability under  
17 the Subcontract Agreement.  
18

19 **RESPONSE:**

20       Objection. This Interrogatory is vague, ambiguous, overbroad, burdensome, and calls for a  
21 legal conclusion. Additionally, Zitting Brothers is not prepared, nor is it required, to identify at this  
22 time each and every fact that it will rely on to support its claims or refute the claims of other parties  
23 in this matter. Subject to and without waiving such objections, Zitting Brothers' responds as  
24 follows:

25       APCO Construction has not been released from any of its contractual duties to Zitting  
26 Brothers. Zitting Brothers and Camco Pacific never entered into any contractual agreements relative  
27  
28

1 to Zitting Brothers work at the Manhattan West project. Discovery is continuing and Zitting  
2 Brothers reserves the right to supplement this Response as necessary.

3 **INTERROGATORY NO. 38:**  
4

5 Please state each and every fact to support your claim that APCO violated Chapter NRS 624  
6 in administration of the Project.

7 **RESPONSE:**  
8

9 See Response to Interrogatory No. 3.

10 **INTERROGATORY NO. 39:**  
11

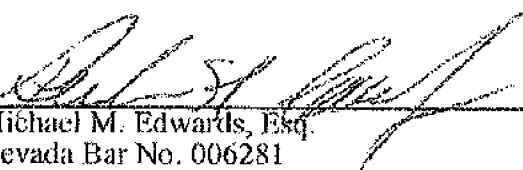
12 Please state each and every fact to support your claim that APCO failed to timely pay its  
13 subcontractors, including you, on this project, as required under NRS 624.606 to 624.630, et. seq.

14 **RESPONSE:**  
15

16 See Response to Interrogatory No. 3.

17 DATED this 7<sup>th</sup> day of April, 2010.

18 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**


19   
20 Michael M. Edwards, Esq.  
21 Nevada Bar No. 006281  
22 Reuben H. Cawley, Esq.  
23 Nevada Bar No. 009384  
24 415 South Sixth Street, Suite No. 300  
25 Las Vegas, Nevada 89101  
26 Attorneys for Zitting Brothers Construction, Inc.  
27  
28

VERIFICATION

STATE OF Utah }  
COUNTY OF Wasatch } ss:

Sam Zitting being first duly sworn, deposes and says:

That I am the President of ZITTING BROTHERS CONSTRUCTION, INC. Plaintiff in the above-entitled action; that I am a representative of ZITTING BROTHERS CONSTRUCTION, INC. duly authorized to execute this Verification to Defendant's Interrogatories; and that I have read the foregoing **RESPONSES TO APCO CONSTRUCTION'S INTERROGATORIES** and know the contents thereof, and that the same is true of my own knowledge except for those matters therein stated on information and belief, and as for those matters I believe them to be true.

  
Representative of SAM ZITTING

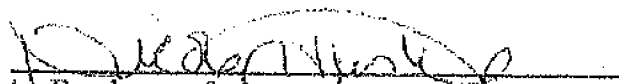
SUBSCRIBED AND SWORN to before me  
this 9 day of April, 20010.

  
NOTARY PUBLIC in and for said  
County and State



CERTIFICATE OF ELECTRONIC SERVICE

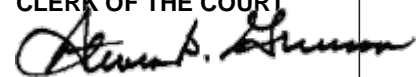
I certify that I am an employee of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, and that on this 9<sup>th</sup> day of April, 2010, I did cause a true copy of the foregoing Responses to Interrogatories through the EFP Vendor System to all registered parties pursuant to the Order for Electronic Filing and Service.



An Employee of  
WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

# **EXHIBIT B**

# **EXHIBIT B**



1 **MPSJ**  
2 JORGE RAMIREZ, ESQ.  
3 Nevada Bar No. 6787  
4 I-CHE LAI, ESQ.  
5 Nevada Bar No. 12247  
6 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
7 300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
8 Las Vegas, NV 89101-6014  
9 Telephone: (702) 727-1400  
10 Facsimile: (702) 727-1401  
11 [Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)  
12 [I-Che.Lai@wilsonelser.com](mailto:I-Che.Lai@wilsonelser.com)  
13 *Attorneys for Lien Claimant,*  
14 *Zitting Brothers Construction, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation,

Defendant.

CASE NO. A571228  
DEPT. NO. XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319


AND ALL RELATED MATTERS

**ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT AGAINST APCO CONSTRUCTION**

Under Nev. R. Civ. P. 56(b), Zitting Brothers Construction, Inc. ("Zitting"), a lien-claimant, respectfully requests that this Court grant summary judgment against APCO Construction ("APCO") on its breach of contract claim and claim under Chapter 108 of the Nevada Revised Statutes. The undisputed material facts show that APCO breached its contract with Zitting by refusing to pay the full amount owed for Zitting's work on the Manhattan West Condominiums (the "Project"). Zitting explains this further in the supporting memorandum of points and authorities, which is supported by the attached exhibits, the records of this Court, and any oral arguments that this Court may entertain at the hearing on this motion.

1 DATED this 31st day of July, 2017

2 WILSON ELSEER MOSKOWITZ EDELMAN &  
3 DICKER LLP

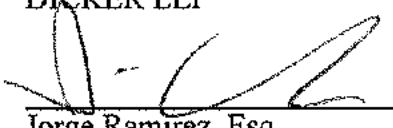
4   
5 Jorge Ramirez, Esq.  
6 Nevada Bar No. 6787  
7 I-Che Lai, Esq.  
8 Nevada Bar No. 12247  
9 300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
10 Las Vegas, NV 89101  
11 Telephone: (702) 727-1400  
12 Facsimile: (702) 727-1401  
13 *Attorneys for Lien Claimant,*  
14 *Zitting Brothers Construction, Inc.*

15 **NOTICE OF HEARING ON ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION**  
16 **FOR PARTIAL SUMMARY JUDGMENT**

17 Please take notice that Zitting will bring its Motion for Partial Summary Judgment for  
18 September 5, 2017 at 9:00  
19 hearing in Department XIII of the above-captioned court on \_\_\_\_\_, at \_\_\_\_\_  
20 a.m., or as soon thereafter as this matter may be heard.

21 DATED this 31st day of July, 2017.

22 WILSON ELSEER MOSKOWITZ EDELMAN &  
23 DICKER LLP

24   
25 Jorge Ramirez, Esq.  
26 Nevada Bar No. 6787  
27 I-Che Lai, Esq.  
28 Nevada Bar No. 12247  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Telephone: (702) 727-1400  
Facsimile: (702) 727-1401  
*Attorneys for Lien Claimant,*  
*Zitting Brothers Construction, Inc.*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 This case involves the construction of the Project, which was owned and developed by  
4 Gemstone Development West, Inc. ("Gemstone"). Zitting was one of the many sub-contractors hired  
5 by APCO to provide material and labor for the Project. After Zitting completed its approved scope  
6 of work on two buildings for the Project, but before Zitting received full payment for that work,  
7 Gemstone stopped construction on the Project due to its purported loss of financing for the  
8 construction.

9 Although APCO does not dispute the unpaid balance owed for Zitting's work on the Project,  
10 APCO has repeatedly refused to pay Zitting that balance. This refusal arises solely from APCO's  
11 misplaced reliance on the "pay-if-paid" provisions in the subcontract between APCO and Zitting.  
12 Those provisions only require APCO's payment to Zitting when APCO receives actual payment  
13 from Gemstone. The provisions relied upon by APCO, however, are void and unenforceable under  
14 Nevada law. Therefore, there is no triable issue of APCO's breach of the subcontract, and Zitting is  
15 entitled to judgment on its breach of contract claim and claim under Chapter 108 of the Nevada  
16 Revised Statutes as a matter of law.

17 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

18 On September 6, 2007, Gemstone entered into a written contract with APCO for APCO to  
19 serve as the prime contractor for the Project. (Ex. C at ZBCI002103.) About two months later,  
20 APCO and Zitting entered into a written subcontract for Zitting to provide framing materials and  
21 labor for the Project. (Ex. D at APCO00044592, APCO0044607.) Under the terms of the  
22 subcontract, APCO would pay Zitting 90% of the amount owed for satisfactory work completed on a  
23 periodic basis. (*Id.* at APCO00044593-APCO00044595.) The remaining 10% of the amount owed to  
24 Zitting would be withheld as the "retention amount." (*Id.* at APCO00044595.) APCO would pay  
25 Zitting the retention amount for work on a building once the building is "complete." (*Id.*) The  
26 subcontract deemed Zitting's work on a building to be "complete" as soon as "drywall [for the  
27 building] is completed." (*Id.*) Nevertheless, in the event that APCO's contract with Gemstone is  
28 terminated, APCO would pay Zitting the entire amount owed for the work completed. (*Id.* at



1 APCO00044601.) APCO could only terminate its subcontract with Zitting for cause upon written  
2 notice. (*Id.* at APCO00044600.)

3 Zitting began its work under the subcontract around November 19, 2007, and continued its  
4 work until approximately December 15, 2008, when Zitting received notice that the Project was  
5 shutting down. (Ex. A (Zitting Decl.) at ¶ 6.) By the time the Project shut down, Zitting completed  
6 its contracted work that cost \$4,033,654.85, including \$423,654.85 in owner-requested change  
7 orders that was approved by operation of law. (*Id.* at ¶ 10.) The completed work included Zitting's  
8 entire scope of work for Buildings 8 and 9 of the Project. (*Id.* at ¶ 7.) The drywall was completed in  
9 those two buildings, and Zitting had submitted close-out documents for its work, including as-built  
10 drawings. (*Id.* at ¶¶ 7-8.)

11 To date, Zitting only received \$3,282,849.00 in payment. (*Id.* ¶ 14.) APCO refused to pay  
12 Zitting \$750,807.16 of the amount remaining owed for Zitting's work completed prior to APCO's  
13 departure from the Project, including \$347,441.67 in unpaid change orders and \$403,365.49 in  
14 unpaid retention amount. (*Id.* ¶¶ 12-13, 15; Ex. F at ZBCI002037; Ex. G at ZBCI002032.)

15 Gemstone had terminated its contract with APCO for cause in August 2008. (Ex. B (Benson  
16 Dep.) at 34:7-36:13.) Zitting never received a written notice of termination for cause from APCO.  
17 (Ex. A at ¶ 16.)

18 Zitting took steps to comply with all requirement of Chapter 108 of the Nevada Revised  
19 Statutes for the perfection of its lien:

- 20 ▪ On January 14, 2008, Zitting served its Notice of Right to Lien to APCO and Gemstone  
21 via certified mail. (Ex. J; Ex. U at 9:1-24.)
- 22 ▪ On December 4, 2008, Zitting served its Notice of Intent to Lien to APCO and Gemstone  
23 via certified mail. (Ex. K; Ex. U at 9:1-24.)
- 24 ▪ On December 23, 2008, Zitting recorded its Notice of Lien on the Project and served the  
25 document on APCO and Gemstone via certified mail on December 24, 2008. (Ex. L; Ex.  
26 U at 9:1-24.)

- On April 30, 2009, Zitting filed its complaint for foreclosure and a Notice of Lis Pendens—approximately five months after recording the notice of lien. (Ex. M; Ex. N; Ex. U at 9:1-24.)
- Around June 16, 2009, Zitting provided a Notice of Foreclosure, and this notice was published in accordance in accordance with Nev. Rev. Stat. 108.239. (Ex. O; Ex. U at 9:1-24.)
- On April 7, 2010, Zitting recorded its Amended Notice of Lien and served the same on APCO and Gemstone via certified mail. (Ex. P; Ex. U at 9:1-24.)

### III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law” on any issues. Nev. R. Civ. P. 56(b), (c). The purpose of summary judgment is to obviate the need for trials when they would serve no useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 96, 378 P.2d 979, 980 (1963). Similarly, the United States Supreme Court, citing Nev. R. Civ. P. 56’s federal equivalent,<sup>1</sup> has explained that “[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986) (internal quotations omitted).

Once the moving party meets its burden of demonstrating an absence of evidence to support the non-moving party’s case, the burden shifts to the non-moving party to set forth specific facts demonstrating that there exists a genuine issue of material fact for trial. *Id.* at 325, 106 S. Ct. at 2554. Moreover, the non-moving party must raise factual disputes which are material—defined as those required to prove a basic element of a claim. *Id.* A failure to show that a dispute of material fact exists as to any of the basic elements of the non-moving party’s claim effectively “renders all other facts immaterial.” *Id.* at 323, 106 S. Ct. at 2552.

---

<sup>1</sup> The Nevada Supreme Court has adopted the federal standard for summary judgment as Nevada’s standard. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

1 A "genuine issue of material fact is one where the evidence is such that a reasonable jury  
2 could return a verdict for the non-moving party." *Posadas v. City of Reno*, 109 Nev. 448, 452, 851  
3 P.2d 438, 441-42 (1993). But the non-moving party cannot build its case on "gossamer threads of  
4 whimsy, speculation and conjecture." *Id.* at 452; *see also Garvey v. Clark County*, 91 Nev. 127, 130,  
5 532 P.2d 269, 271 (1975) (holding that mere allegations are insufficient to defeat summary  
6 judgment). Thus, "[a]lthough evidence presented in support of a motion for summary judgment is to  
7 be construed in the light most favorable to the nonmoving party, [the non-moving] party must set  
8 forth facts demonstrating the existence of a genuine issue in order to withstand a disfavorable  
9 summary judgment." *Sustainable Growth Initiative Committee v. Jumpers, LLC*, 122 Nev. 53, 61,  
10 128 P.3d 452, 458 (2006).

#### 11 **IV. ARGUMENT**

##### 12 **A. APCO breached its contract with Zitting by refusing to pay the full amount owed** 13 **for Zitting's work on the Project.**

14 There is no triable issue that APCO breached its contract with Zitting. To establish a breach  
15 of contract under Nevada law, there must be (1) the existence of a valid contract, (2) a breach by the  
16 defendant, and (3) damage as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 408 (1865). In  
17 this case, all of these elements are present.

##### 18 **1. Zitting had a valid and enforceable contract with APCO from about** 19 **November 19, 2007 to about December 15, 2008.**

20 The undisputed evidence establishes a contract between APCO and Zitting. Exhibit D is the  
21 written subcontract executed by APCO and Zitting on November 17, 2007. (Ex. A at ¶ 5; Ex. D.)  
22 Under the subcontract, APCO could only terminate it for cause upon written notice. (Ex. D at  
23 APCO00044598-44601.) Prior to the Project's shutdown, Zitting did not receive a written notice for  
24 termination of its contract for cause. (Ex. A at ¶ 16.) Although APCO's contract with Gemstone  
25 ended around August 2008 and the Project completely shut down in December 2008, (*Id.*; Ex. B at  
26 34:7-36:13, 40:13-15), the subcontract between Zitting and APCO is still valid and enforceable.

26 //

27 //

28 //

1                   **2. APCO's failure to pay the amount owed for Zitting's work on the Project**  
2                   **constitutes a breach of contract.**

3           APCO breached its subcontract with Zitting by refusing to pay Zitting all amounts owed  
4           under the subcontract. Under the subcontract, Zitting was required to provide framing materials and  
5           labor for certain buildings of the Project, and APCO was required to pay Zitting on a periodic basis  
6           for satisfactory work. (Ex. D at APCO00044593-APCO00044595, APCO00044607.) Zitting  
7           completed its scope of work on two buildings—Buildings 8 and 9 of the Project—without any issues  
8           with the timing or quality of the work. (Ex. A. at ¶¶ 7-9; Ex. B at 28:15-29:1.) However, as of today,  
9           APCO has not paid Zitting for the work completed on the owner-requested change orders before  
10          APCO left the Project and continues to withhold the retention amount. (Ex. A at ¶ 15; Ex. I.)

11          First, Zitting had requested payment of \$347,441.67 for satisfactory work on owner-  
12          requested change order completed before APCO left the Project. (Ex. A at ¶ 12; Ex. F.) This arose  
13          from Zitting's previous request for change orders from Gemstone and APCO to address owner-  
14          requested changes to the plans. (Ex. A at ¶¶ 10-12; Ex. E; Ex. F.) APCO and Gemstone failed to  
15          submit a written notice rejecting the change order after Zitting's request for the change orders. (Ex.  
16          A at ¶ 11; Ex. H at ZBCI001153.) As APCO must concede, by operation of law, its failure to reject  
17          the change order resulted in the approval of the change orders. (See Ex. H at ZBCI001153  
18          (discussing Nev. Rev. 624.626).) With statutory approval of the change orders, APCO owed Zitting  
19          \$347,441.67 for Zitting's completed work on the change orders.

20          Second, Zitting had requested payment of its retention amount—\$403,365.49—for its work  
21          on the completed Buildings 8 and 9. (Ex. A at ¶ 13; Ex. G.) Under Zitting's subcontract, Zitting  
22          would only receive 90% of the payment for its satisfactory work on the Project. (Ex. D at  
23          APCO00044594.) The subcontract called for the payment of the remaining 10%—the retention  
24          amount—upon completion of the building for which the work was done. (*Id.* at APCO00044595.)  
25          The contract considered work on a building to be “complete” as soon as “drywall [for the building]  
26          is completed.” (*Id.*)

27          Before the Project shut down, Zitting provided work that qualified for \$4,033,654.85 in  
28          payment, and \$403,365.49 of that amount was withheld as the retention amount for work on

1 Buildings 8 and 9 of the Project. (Ex. A at ¶ 10; Ex. G.) However, Zitting completed its scope of  
2 work on Buildings 8 and 9 and submitted its closeout documents to APCO. (Ex. A at ¶¶ 7-8.) The  
3 drywall was also completed for those buildings. (*Id.* at ¶ 7.) Zitting was therefore entitled to payment  
4 of the retention amount because they never received notice that the work done was not satisfactory.  
5 To the contrary, Zitting's "satisfactory" work was utilized for the completion of the drywall work.  
6 (*See* Ex. A at ¶¶ 5, 7.)

7 In any event, the termination of APCO's contract with Gemstone entitles Zitting to the  
8 payment of the retention amount. The contract was terminated in August 2008, and by that time,  
9 Zitting had completed its scope of work on Buildings 8 and 9. (Ex. A at ¶¶ 6-8.) Moreover, Section  
10 9.4 of Zitting's subcontract expressly requires payment for Zitting's completed work on the Project  
11 if there was a termination of the contract between Gemstone and APCO. (Ex. D at APCO00044601.)  
12 APCO therefore owes Zitting \$403,365.49 in retention amount.

13 **3. Zitting has suffered damages due to APCO's refusal to pay the amount owed**  
14 **under the contract.**

15 As a result of APCO's refusal to pay the amount owed for Zitting's work on the Project,  
16 Zitting has suffered damages. There is no dispute that \$750,807.16 remained unpaid for Zitting's  
17 work on the Project prior to APCO's departure from the Project. (Ex. A at ¶¶ 6-15; Ex. I.) APCO  
18 has compounded Zitting's damages by forcing Zitting to commence this action to recover the  
19 amount owed. Now, the damages suffered include attorney fees, cost, and interest.

20 **4. APCO's attempt to use the "pay-if-paid" provision of its contract with**  
21 **Zitting is disingenuous because it because it violates Nevada law.**

22 APCO relies on the "pay-if-paid" provision in its subcontract with Zitting as the sole basis  
23 for refusing the pay the amount owed for Zitting's work on the Project. (Ex. B at 40:16-41:4; Ex. T  
24 at 10:14-11:5.) This provision conditions APCO's payments to Zitting only "upon receipt of the  
25 actual payments by [APCO] from [Gemstone]." (Ex. D at APCO00044594.) But this provision is  
26 void by operation of Nevada law.

27 Nevada Supreme Court has held that "pay-if-paid" provisions are valid and "enforceable only  
28 in [the] limited circumstances" set forth in Nev. Rev. Stat. 624.624 through 624.626. *Lehrer*  
*McGovern Bovis v. Bullock Insulation, Inc.* ("Lehrer II"), 124 Nev. 1102, 1117 n. 50, 197 P.3d 1032,

1 1042 n. 50 (2008). This restriction arises from the strong public policy favoring “securing payment  
2 for labor and material contractors.” *Id.* at 1117, 197 P.3d at 1042. “Because a pay-if-paid provision  
3 limits a subcontractor’s ability to be paid for work already performed, such a provision impairs the  
4 subcontractor’s statutory right to place a mechanic’s lien on the construction project” and therefore  
5 violate public policy. *Id.* at 1117-18, 197 P.3d at 1042.

6 For a “written agreement with a lower-tiered subcontractor that does not contain a schedule  
7 for payments,” Nev. Rev. Stat. 624.626 requires the “higher-tiered contractor” to pay the “lower-  
8 tiered subcontractor”

9 (1) [w]ithin 30 days after the date the lower-tiered subcontractor  
10 submits a request for payment; or

11 (2) [w]ithin 10 days after the date the higher-tiered contractor receives  
12 payment for all or a portion of the work, labor, materials, equipment or  
services described in a request for payment submitted by the lower-  
tiered subcontractor, *whichever is earlier*.

13 Nev. Rev. Stat. 624.626(1)(b) (emphasis added). Any attempts to impair or waive such rights “is  
14 void and unenforceable.” Nev. Rev. Stat. 624.628(3).

15 Here, because APCO’s “pay-if-paid” provision fails to provide payment within the statutory  
16 period after a request for payment, the provision violates Nev. Rev. Stat. 624.624. This Court must  
17 therefore void the provision. Contrary to the contractual provision, APCO should have paid Zitting  
18 no later than 30 days after Zitting’s request for payment. *See* Nev. Rev. Stat. 624.624(1)(b). Since  
19 Zitting has yet to receive the payment owed, it is entitled to summary judgment on its breach of  
20 contract claim.

21 **B. Zitting is entitled to summary judgment on its claim under Chapter 108 of the**  
22 **Nevada Revised Statutes.**

23 Zitting’s claim under Chapter 108 of the Nevada Revised Statutes seeks to foreclose on  
24 Zitting’s lien against the Property and to recover “reasonable attorney’s fees, costs[,] and interest on  
25 the unpaid amount owed for Zitting’s work on the improvement to the Property. (Ex. M at ¶¶ 28-35.)  
26 APCO does not dispute that Zitting complied with all requirements to create, perfect, and foreclose  
27 on its lien under Chapter 108. (*See* Ex. Q at 4:19-8:8.) APCO only disputes that the Property subject  
28

1 to the lien has already been foreclosed upon and therefore Chapter 108 is inapplicable. This  
2 argument is misguided and falls short of a comprehensible reading of lien foreclosure law.

3 This Court previously ordered the sale of the Property, which precludes Zitting from  
4 continuing its foreclosure of the Property, and the distribution of the entire proceeds from the sale to  
5 Scott Financial Corporation. (See Ex. R at 3:18-20, 4:10-19; Ex. S at 2:7-16, 3:1-4.) In other words,  
6 Zitting did not receive any of the sale proceeds, so it cannot apply such proceeds towards the amount  
7 owed under its contract with APCO. Nevertheless, Nev. Rev. Stat. 108.239(12) allows Zitting to  
8 pursue a "personal judgment for the residue against the party legally liable for it." Therefore, Zitting  
9 is entitled to a personal judgment against APCO under Chapter 108 for the residual amount owed  
10 including those statutory provisions granting attorney fees, costs and interest.

11 **C. Zitting is entitled to judgment against APCO in the amount of the unpaid balance of**  
12 **\$750,807.16, interest, attorney's fees, and costs incurred to obtain the amount owed.**

13 This Court should award Zitting the amount owed for its completed work on the Project in  
14 the amount of \$750,807.16 plus interest, attorney's fees, and costs incurred to obtain the amount  
15 owed. Both Zitting's contract and Nevada law allow an award of interest and reasonable attorney's  
16 fees and costs in addition to the \$750,807.16 in unpaid work. Under the contract, "the prevailing  
17 party [in a lawsuit for any cause arising out of the subcontract is] entitled to all costs, attorney's  
18 fees[,] and any other reasonable expenses incurred therein." (Ex. D at APCO00044606.) Likewise,  
19 Nev. Rev. Stat. 108.237(1) awards the prevailing lien claimant "the cost of preparing and recording  
20 the notice of lien" and "the costs of the proceedings," including attorney's fees and interest. Courts  
21 calculate the interest based on

22 (a) The rate of interest agreed upon in the lien claimant's contract; or

23 (b) If a rate of interest is not provided in the lien claimant's contract,  
24 interest at a rate equal to the prime rate at the largest bank in Nevada,  
25 as ascertained by the Commissioner of Financial Institutions, on  
26 January 1 or July 1, as the case may be, immediately preceding the  
27 date of judgment, plus 4 percent, on the amount of the lien found  
28 payable. The rate of interest must be adjusted accordingly on each  
January 1 and July 1 thereafter until the amount of the lien is paid.  
Interest is payable from the date on which the payment is found to  
have been due, as determined by the court.

Nev. Rev. Stat. 108.237(2).

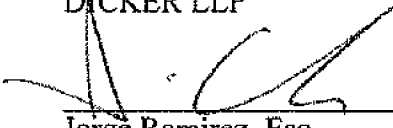
1 Although Zitting can successfully argue that the amount owed by APCO was due by the time  
2 APCO departed the Project, it is indisputable that the full unpaid balance—the lien amount—was  
3 due by the Project's shutdown date of December 15, 2008. Consequently, in order to simplify the  
4 analysis, Zitting uses this date by which interest is calculated under the statute. Judicial notice is  
5 requested of the fact that the prime rate has as determined by the Commissioner of Financial  
6 Institutions for the time period from December 15, 2008, to the present to be 3.75%.<sup>2</sup> See Nev. Rev.  
7 Stat. 47.130, 47.140, 47.170. As such, the rate to be used for the calculation of the applicable interest  
8 is 4% plus 7.75% or 7.75%. Based on this rate, the amount of interest accrued per day on the  
9 \$750,807.16 due to Zitting is \$159.31. Additionally, Zitting has incurred attorney's fees and costs.  
10 Thus, Zitting hereby requests a judgment against APCO in this amount plus \$159.31 per day in  
11 interest from December 15, 2008 until the lien is paid as well as all attorney's fees and costs incurred  
12 after that date.<sup>3</sup>

13 **V. CONCLUSION**

14 For the foregoing reasons, this Court should grant Zitting's motion in its entirety and enter  
15 summary judgment in Zitting's favor on its breach of contract claim and Chapter 108 claim.

16 DATED this 31st day of July, 2017

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26 <sup>2</sup> See This Nevada State Bar Website at  
27 [http://fid.nv.gov/uploadedFiles/fidnv.gov/content/Resources/Prime%20Interest%20Rate%20January%201,%202017-](http://fid.nv.gov/uploadedFiles/fidnv.gov/content/Resources/Prime%20Interest%20Rate%20January%201,%202017-PDF.pdf)  
28 PDF.pdf

<sup>3</sup> Zitting requests leave to submit a memorandum of fees and costs if this Court grants summary judgment in favor of Zitting.



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 31st day of July, 2017, I served a true and correct copy of the foregoing **ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST APCO CONSTRUCTION** document as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

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BY

  
An Employee of WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP

# EXHIBIT A

1 DECL  
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3 Nevada Bar No. 6787  
4 I-CHE LAI, ESQ.  
5 Nevada Bar No. 12247  
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13 Attorneys for Lien Claimant,  
14 Zitting Brothers Construction, Inc.

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DISTRICT COURT  
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation.

Plaintiff.

vs.

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation.

Defendant.

CASE NO. A571228  
DEPT. NO. XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

AND ALL RELATED MATTERS

**DECLARATION OF SAM ZITTING IN SUPPORT OF ZITTING BROTHERS  
CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AGAINST APCO CONSTRUCTION**

I, Sam Zitting, declare as follows:

1. I am over eighteen years of age and competent to testify in a court of law.
2. I am the President of Zitting Brothers Construction, Inc. ("Zitting").
3. I have personal knowledge of the facts set forth below, unless otherwise stated. If called upon to testify, I will do so truthfully.
4. I make this declaration in support of Zitting's Motion for Partial Summary Judgment against APCO Construction (the "Motion").



1           5.       Around November 17, 2007, I signed a written contract with APCO ("Subcontract")  
2 to provide framing materials and labor for the Manhattan West Condominiums (the "Project"). A  
3 representative of APCO had also signed this contract. Both parties had approved handwritten  
4 changes to the contract. Attached as Exhibit "D" to the Motion is a true and correct copy of the  
5 Subcontract executed by the APCO and Zitting.

6           6.       Zitting began its work on the Project around November 19, 2007 and continued its  
7 work until approximately December 15, 2008. That was approximately the date that I received notice  
8 that the Project was shutting down. APCO had left the Project sometime in August or September  
9 2008.

10          7.       By the time the Project shut down, Zitting had completed its scope of work for two  
11 buildings of the Project—Buildings 8 and 9. The drywall was completed for those two buildings.

12          8.       Zitting had submitted close-out documents for its scope of work, including as-built  
13 drawings and releases of claims for Zitting's vendors.

14          9.       I am not aware of any complaints with the timing or quality of Zitting's work on the  
15 Project. As far as I am aware, Gemstone Development West, Inc., the owner of the Project, has  
16 approved of the timing and quality of Zitting's work.

17          10.       The completed work on the Project amounted to \$4,033,654.85. This amount  
18 included

- 19               a. \$423,654.85 in owner-requested change orders (the "Change Orders"); and  
20               b. \$403,365.49 in the withheld retention amount for its work on the completed  
21               Buildings 8 and 9.

22          11.       The Change Orders were either approved or never disapproved in writing despite a  
23 written request for those change orders. Attached as Exhibit "E" to the Motion is a true and correct  
24 copy of Zitting's Change Order Summary Log indicating the change orders.

25          12.       Zitting had submitted a payment application to APCO for \$347,441.67 ("Change  
26 Order Payment Application"). This application sought the unpaid balanced owed for Zitting's  
27 satisfactory work on owner-requested change orders prior to APCO's departure from the Project.  
28 Attached as Exhibit "F" to the Motion is a true and correct copy of the payment application.

13. Zitting had also submitted a payment application to APCO for the retention amount ("Retention Payment Application"). Attached as Exhibit "G" to the Motion is a true and correct copy of the payment application.

14. To date, Zitting had only received \$3,282,849.00 for its work on the Project.

15. APCO had refused to pay any of the amount owed under the Change Order Payment Application and the Retention Payment Application. \$750,807.16 remained owed for those applications. Attached as Exhibit "T" to the Motion is a true and correct copy of the statement of account indicating the amount owed for those two applications.

16. Before the shutdown of the Project, I have not received a written notice of termination of the subcontract for cause from APCO.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 31, 2017 in Las Vegas, Nevada.

**SAM ZUTINO**

# EXHIBIT B

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

CASE NO. A571228  
DEPT. NO. XIII

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation; NEVADA  
CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
TITLE INSURANCE COMPANY; FIRST  
AMERICAN TITLE INSURANCE COMPANY  
and DOES I through X,

Defendants.

-----  
AND ALL RELATED MATTERS.  
-----

THE DEPOSITION OF

BRIAN DAVID BENSON

PMK on behalf of APCO Construction

Monday, June 5, 2017

9:07 a.m.

2300 West Sahara Avenue, Suite 770

Las Vegas, Nevada

June W. Seid, CCR No. 485

Deposition of BRIAN DAVID BENSON

June 5, 2017

(Prior to the commencement of the deposition, all of the parties present agreed to waive the statements by the court reporter pursuant to Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

Thereupon--

BRIAN DAVID BENSON,  
was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LAI:

Q. Good morning. Is it Mr. Benson?

A. Yes, sir.

Q. My name is I-Che Lai, and I'm one the attorneys for Zitting Brothers Construction. For shorthand I'll refer to them as Zitting; is that okay?

A. Sure.

Q. Can you state your name for the record.

A. Brian Daniel Benson.

Q. Is that B-e-n-s-o-n?

A. Yes.

Q. Have you ever had your deposition taken before?

1 condominium project, which I'll refer to as "the  
2 project," as shorthand today. Were you involved in the  
3 project?

4 A. Yes.

5 Q. What was your involvement with the project?

6 A. I was the general superintendent.

7 Q. Does that involve any oversight over Zitting  
8 Brothers?

9 A. Yes.

10 Q. And briefly for the record, can you describe  
11 the project?

12 A. It's a multi-use condominium project with  
13 multiple buildings.

14 Q. That's in Las Vegas, Nevada?

15 A. Yes, sir.

16 Q. What was APCO's role with respect to the  
17 project?

18 A. APCO is a general contractor hired by  
19 Gemstone to manage the project.

20 Q. And on September 6, 2007, APCO entered into a  
21 contract with Gemstone to be the general contractor,  
22 correct?

23 A. Yes.

24 MR. LAI: Let's mark this as Benson 4.

25 (Exhibit 4 marked

1 for identification.)

2 BY MR. LAI:

3 Q. Mr. Benson, the court reporter has handed you  
4 documents marked as Exhibit Benson 4. Have you ever  
5 seen this document before?

6 A. Yes.

7 Q. What is Exhibit Benson 4?

8 A. The agreement between Gemstone Development  
9 and APCO Construction.

10 Q. Do you know who prepared this contract?

11 A. I do not.

12 Q. Did APCO have any input in creating this  
13 contract?

14 A. I don't know.

15 Q. Do you know whether or not Gemstone had any  
16 input in creating this contract?

17 A. I don't know.

18 Q. Do you know whether Zitting Brothers  
19 Construction had any input in preparing this contract?

20 A. I don't know.

21 Q. Let's go through -- turning your attention to  
22 page 39. At the bottom it should say ZBCI002141, it's  
23 the last page. Do you recognize the signature on this  
24 page for Randy Nickerl?

25 A. Yes.

1 Q. Who is Randy Nickerl?

2 A. Randy Nickerl was the division manager for  
3 APCO at the time.

4 Q. Do you have any reason to dispute that this  
5 is his signature on this contract?

6 A. No.

7 Q. In the previous pages on Exhibit Benson 4, I  
8 see quite a few notations on the bottom right of those  
9 pages. Do you see those?

10 A. Do you have a specific page in mind?

11 Q. Turn to ZBCI0002114, it's page 12 of the  
12 contract. At the bottom right do you see a little R  
13 with a circle around it?

14 A. Yes, I do.

15 Q. Do you believe that to be the initial of  
16 Randy's?

17 A. I would assume so.

18 Q. Do you believe that the Exhibit Benson 4 is a  
19 true and correct copy of the contract between Gemstone  
20 and APCO for the project?

21 A. As I wasn't there when it was signed and  
22 presented, I can't say for sure. But of what I've seen  
23 represented, yes.

24 Q. No reason to dispute that?

25 A. No.



1 Q. As the general contractor for the project,  
2 APCO hired subcontractors to construct the project,  
3 right?

4 A. Yes.

5 Q. And these hired subcontractors included  
6 Zitting Brothers, correct?

7 A. Yes.

8 Q. Why did APCO hire Zitting Brothers for the  
9 project?

10 A. I believe Zitting Brothers was one of the  
11 contractors that APCO was requested to use since they  
12 did ManhattanEast for Mr. Edelstein.

13 Q. When you say requested to use, was that by  
14 Mr. Edelstein directly?

15 A. Yes.

16 Q. Did he explain why he requested to use  
17 Zitting Brothers?

18 A. I wasn't there for those conversations.

19 Q. Now, is it fair to say that Gemstone  
20 obviously approved the hiring of Zitting Brothers; is  
21 that correct?

22 A. Yes.

23 Q. On April 17, 2007 APCO entered into a  
24 subcontract with Zitting Brothers for the project,  
25 correct?

1 A. That sounds about correct.

2 MR. LAI: Benson 5.

3 (Exhibit 5 marked  
4 for identification.)

5 BY MR. LAI:

6 Q. Mr. Benson, the court reporter has handed you  
7 a document marked as Benson 5. Have you seen this  
8 document before?

9 A. Yes.

10 Q. What is this?

11 A. Subcontract agreement between Zitting  
12 Brothers and APCO Construction.

13 Q. Do you know who prepared this subcontract?

14 A. I believe it was Sean Bowen.

15 Q. Who is Sean Bowen?

16 A. He was one of the senior project managers for  
17 the project at the time.

18 Q. Is he still with APCO?

19 A. No, sir.

20 Q. Did Zitting Brothers have any input into the  
21 language for this subcontract?

22 A. I don't know about the language, but I know  
23 there are multiple notes throughout where they show  
24 their input.

25 Q. Can you give me an example of the notes

1 you're referring to?

2 A. If you go to page 10 where they voided out  
3 bonds, page 11 where they voided out the comprehensive  
4 liability.

5 Q. Is it fair to say that any time where we see  
6 handwritten changes to the typed language in the  
7 subcontract, you take that to mean those are input from  
8 Zitting Brothers?

9 A. It could be from either party actually.  
10 Generally when we do these subcontracts, when they do  
11 sit-down review, both parties sort of go back and forth  
12 on what changes they want and generally initialed by  
13 whose changes they are.

14 Q. Are all the handwritten changes to the typed  
15 language in the subcontract approved by APCO?

16 A. I would say yes, by the signature on the  
17 contract itself.

18 Q. So nobody is going to dispute that then?

19 A. No, sir.

20 Q. Did Gemstone have any input into the creation  
21 of this subcontract?

22 A. Not that I'm aware of.

23 Q. So is it fair to say that the creation of the  
24 subcontract, including the handwritten changes, is a  
25 joint effort between APCO and Zitting Brothers?

1 A. Yes, sir.

2 Q. Will you turn your attention to APCO  
3 00044606. At the bottom do you see where it says APCO  
4 Construction and it has a signature?

5 A. Yes.

6 Q. Do you know whose signature that is?

7 A. I believe it to be Sean Bowen.

8 Q. Let me direct you to the next page, APCO  
9 00044607. Do you believe that to be Sean Bowen's  
10 signature as well?

11 A. Yes.

12 Q. Do you believe that Exhibit Benson 5 is a  
13 true and correct copy of the subcontract between APCO  
14 and Zitting Brothers for the project?

15 A. That's been represented to me, yes.

16 Q. When you say it's been represented to you,  
17 who presented to you?

18 A. Well, what I'm saying is I wasn't there when  
19 they executed it, so from what I've seen presented to  
20 me, I would say yes.

21 Q. So no reason to dispute that?

22 A. No.

23 Q. Did Gemstone, OZ Architecture, Redwine  
24 Engineering, Jordan & Skala Engineers and WRG  
25 Engineering approve the subcontractor between APCO and

1 Zitting Brothers?

2 A. Not that I'm aware of.

3 Q. Can you explain Zitting Brothers' scope of  
4 work for the project briefly?

5 A. Basically the wood framing for buildings 8  
6 and 9, on drywall, the design, of those structures for  
7 their work specifically.

8 Q. So is safe to say that Zitting Brothers' work  
9 dealt mainly with the wood framing for the project?

10 A. Yes.

11 Q. Did Zitting Brothers provide this type of  
12 work on a per building basis?

13 A. From the -- what's in the subcontract, it  
14 looks as if so, yes.

15 Q. And they would be paid on a per building  
16 basis?

17 A. They would be paid per building, yes.

18 Q. Before Zitting Brothers could begin any work  
19 for the project, including changed and revised work,  
20 APCO and Gemstone had to approve the work, correct?

21 A. APCO verified the work being completed,  
22 Gemstone did all the reviews as it pertained to any  
23 type of pay apps.

24 Q. I'm talking about before that, before they  
25 can even begin to work on the project, they have to get

1 inspection would take place, for example, on a daily  
2 basis or monthly -- or a weekly basis, like that?

3 A. For the sake of pay applications it would be  
4 more of a monthly basis.

5 Q. Briefly can you describe the inspection  
6 process that would take place?

7 A. Generally you would go out and walk the  
8 building and check for the percentage of what they had  
9 completed on what they had on their pay app. You would  
10 walk the building and make sure that, for example, if  
11 they said they had a hundred percent of the framing  
12 done, you would walk the rooms against the plans and  
13 make sure a hundred percent of the framing is indeed  
14 done. Same thing with any sheathing, so forth.

15 Q. With respect to Zitting Brothers' work only,  
16 did Zitting Brothers' timely and satisfactorily  
17 complete its work, based on your inspections or APCO's  
18 inspections?

19 A. During those pay periods, yes.

20 Q. In other words, you're not aware of any  
21 issues with the quality and timing of Zitting Brothers'  
22 work based on APCO's inspections?

23 A. No issues with the quality, no.

24 Q. Has anyone ever complained about the timing  
25 or quality of Zitting Brothers' work?

1 A. Not that I was made aware of.

2 Q. Is it fair to say that before APCO left the  
3 project, as far as you know Gemstone did approve of all  
4 the work done by Zitting Brothers, other than the  
5 change order we mentioned earlier?

6 A. All the work that was on change order -- on  
7 pay applications that were submitted, yes.

8 Q. Has APCO ever declared a Zitting Brothers  
9 default under the subcontract?

10 MR. CHEN: Objection. Calls for a legal  
11 conclusion.

12 BY MR. LAI:

13 Q. You can answer.

14 A. Not that I'm aware of.

15 Q. Did APCO stop work on the project?

16 A. Yes, we did.

17 Q. When did APCO stop work?

18 A. August 21st, 2008.

19 Q. What was the reason for stopping work?

20 A. Failure for payment from Gemstone.

21 Q. Did this failure to pay include the amount  
22 owed to Zitting Brothers?

23 A. Yes, sir.

24 Q. Did APCO tell anyone it was stopping work on  
25 the project?

1 A. Yes, we did.

2 Q. Who did APCO tell?

3 A. All the subcontractors and the owner.

4 Q. When did this take place?

5 A. I believe there was an e-mail sent out by our  
6 counsel on August 20th.

7 Q. How was it conveyed?

8 A. Through e-mail and through faxes, is my  
9 understanding.

10 Q. Do you recall specifically what APCO said  
11 about stopping work?

12 A. Basically due to failure of payment by  
13 Gemstone, APCO was going to be pulling off the project.  
14 There's a brief summary of it, it was a two-page  
15 letter.

16 MR. LAI: Benson 7.

17 (Exhibit 7 marked  
18 for identification.)

19 BY MR. LAI:

20 Q. Mr. Benson, the court reporter has handed you  
21 a document marked as Exhibit Benson 7. Have you ever  
22 seen this document before?

23 A. Yes, sir.

24 Q. What is Exhibit Benson 7?

25 A. This was the notice from Mr. Edelstein to our



1 subcontractor saying that APCO was off the job, I  
2 believe.

3 Q. Let me clarify. Are you saying this letter  
4 came from your subcontractor?

5 A. I'm sorry, I stand corrected. I read through  
6 it too quickly. This was a letter Mr. Barker sent out  
7 terminating our agreement with Gemstone.

8 Q. Mr. Barker is with APCO, correct?

9 A. He's with our parent company, Las Vegas  
10 Paving.

11 Q. But for the purposes of this letter, APCO  
12 sent this letter that's marked Exhibit Benson 7,  
13 correct?

14 A. Correct.

15 Q. I see that the date on this letter is July  
16 18, 2008, correct?

17 A. Yes, sir.

18 Q. Did this go out on July 18, 2008?

19 A. I believe so, but this was for a prior notice  
20 of shutdown prior to the final actual shutdown.

21 Q. In the subject line I see where it says,  
22 "Deadline: Close of business Monday, July 28, 2008";  
23 do you see that?

24 A. Yes, sir.

25 Q. Now, you testified previously that APCO

1 A. Yes, sir.

2 Q. Did he ever fund the June draw?

3 A. No, sir.

4 Q. In the June draw would have included payments  
5 due to Zitting Brothers?

6 A. As well as others.

7 Q. Did APCO terminate its prime contract with  
8 Gemstone?

9 A. Yes, sir.

10 Q. When?

11 A. I believe it was August 21st of 2008.

12 Q. And the reason being is Gemstone did not make  
13 due on its payment owed to APCO and its subcontractors?

14 A. Yes, sir.

15 Q. How did APCO terminate the prime contract  
16 with Gemstone?

17 A. Based on the letter I discussed earlier that  
18 Mr. Barker sent.

19 Q. Let me direct your attention back to Benson  
20 6, Exhibit Benson 6. Let me direct you to the second  
21 page of the letter Bates stamped CAMCO-MW0030. Let me  
22 direct your specific attention to the fifth paragraph  
23 where it says APCO was terminated by Gemstone for cause  
24 in 2008.

25 A. Yes, sir.

1 Q. Do you have any reason why Scott Financial  
2 Corporation would state that APCO was terminated by  
3 Gemstone and not the other way around?

4 A. Because they were directly tied in with  
5 Gemstone.

6 Q. Did APCO ever receive any written  
7 communications, or any communications at all from  
8 Gemstone indicating that Gemstone was terminating its  
9 contract with APCO?

10 A. Yes, we did.

11 Q. And do you recall whether -- the reasons  
12 given for the termination of APCO?

13 A. I believe they listed delay of schedule and  
14 hold-ups to them.

15 Q. And did APCO ever address that concern with  
16 Gemstone or anyone?

17 A. Yes, sir.

18 Q. And what was the response to that, to the  
19 termination for delay of schedule?

20 A. We laid out on how that -- they were  
21 incorrect, on how they were actually responsible for  
22 holding up the project and delaying the schedule.

23 Q. Do you recall when that discussion took  
24 place?

25 A. There was multiple letters through this time

1 period back and forth.

2 Q. Was it in August of 2008?

3 A. I believe even before August. I think some  
4 of them were in July.

5 Q. Have you actually ever seen a communication  
6 from Gemstone that it was, in fact, terminating the  
7 prime contract with APCO?

8 A. Yes, sir.

9 Q. Do you recall when that letter was received?

10 A. I do not.

11 Q. Was it before or after APCO terminated the  
12 contract on August 21st?

13 A. I don't recall.

14 Q. When APCO left the project how much work had  
15 Zitting Brothers complete?

16 A. I would say about 80 percent of the contract.

17 Q. Do you know how many buildings they  
18 completed?

19 A. Well, they were only 80 completed of the  
20 total, so that's buildings 8 and 9 specifically.

21 (Exhibit 9 marked  
22 for identification.)

23 (Exhibit 10 marked  
24 for identification.)

25 BY MR. LAI:

1 A. I believe so.

2 Q. Do you recall what the communication was  
3 about?

4 A. I believe it was between the attorneys, just  
5 discussing our actions against Gemstone.

6 Q. Other than the lawsuit -- sorry, scratch  
7 that.

8 With respect to the construction of the  
9 project itself and not about the lawsuit, were there  
10 any communications between APCO and Zitting Brothers  
11 after APCO left?

12 A. Not that I was personally aware.

13 Q. Did the project close around December 15,  
14 2008?

15 A. Yes, sir.

16 Q. Let's talk about the lawsuit between APCO and  
17 Zitting Brothers. What is APCO's position that it did  
18 not need to pay any of the unpaid balance owed to  
19 Zitting Brothers under the subcontract?

20 A. Throughout our contract it's stated that if  
21 the owner were to fail or go defunct, that as a group  
22 we would all -- for lack of a better word, suffer, I  
23 guess. Probably not a good word.

24 Q. Let me see if I can make it a little easier  
25 to say then. Is it fair to say that the only reason

1 that APCO claimed it did not need to pay Zitting  
2 Brothers was the fact that unless Gemstone pays APCO,  
3 Zitting Brothers would not get paid?

4 A. Yes.

5 Q. Does APCO have any bond or insurance that  
6 would cover payments for the unpaid balance allegedly  
7 owed to its subcontractors on the project?

8 A. I can't speak to that.

9 MR. LAI: I'll pass the witness.

10 (Whereupon, a recess was taken.)

11 EXAMINATION

12 BY MR. TAYLOR:

13 Q. All right, my name is John Taylor. I  
14 represent National Wood Products, Inc. They were a  
15 supplier to Cabinetec. First question would be  
16 relating to National Wood Products, have you ever had  
17 any dealings with National Wood Products?

18 A. No.

19 Q. Were you aware that National Wood Products  
20 was a supplier to Cabinetec?

21 A. No.

22 Q. With regard to Cabinetec, do you know how  
23 they were selected to be a subcontractor on this  
24 project?

25 A. I do not.

CERTIFICATE OF REPORTER

STATE OF NEVADA   )  
                              )   ss:  
COUNTY OF CLARK   )

I, June W. Seid, a Certified Court Reporter  
licensed by the State of Nevada, certify: That I  
reported the deposition of BRIAN DAVID BENSON, on  
Monday, June 5, 2017, at 9:07 a.m.;

That prior to being deposed, the witness was  
duly sworn by me to testify to the truth. That I  
thereafter transcribed my said stenographic notes via  
computer-aided transcription into written form, and  
that the typewritten transcript is a complete, true and  
accurate transcription of my said stenographic notes.  
That review of the transcript was requested.

I further certify that I am not a relative,  
employee or independent contractor of counsel or of any  
of the parties involved in the proceeding; nor a person  
financially interested in the proceeding; nor do I have  
any other relationship that may reasonably cause my  
impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
15th day of June, 2017.

*June W. Seid*

JUNE W. SEID, CCR NO. 485

# EXHIBIT C



**ManhattanWest**  
**General Construction Agreement for GMP**

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**ManhattanWest  
General Construction Agreement for GMP**

This General Construction Agreement for GMP (the "Agreement") is made as of September 6, 2007 (the "Effective Date") between Gemstone Development West, Inc. ("Developer") and Asphalt Products Corporation, (dba APCO Construction, "General Contractor") for the ManhattanWest mixed-use development project described in the Contract Documents (the "Project") and located at the following Assessors Parcel Numbers: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010, and 163-32-101-014 (the "Project Site").

Developer and General Contractor hereby agree as set forth below.

**ARTICLE I  
GENERAL PROVISIONS**

**1.01 Contract Documents.** General Contractor has received the list of exclusions, express inclusions, and documents set forth on Exhibit A attached to this Agreement, and such exclusions, express inclusions, documents are hereby incorporated into this Agreement (the "Contract Documents"). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by General Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Upon delivery to General Contractor of any updates to the Contract Documents, such updates shall be automatically incorporated into this Agreement.

**1.02 Defined Terms.** Unless otherwise defined in this Agreement, all capitalized terms contained in this Agreement are defined in the Glossary of Defined Terms attached to this Agreement as Exhibit B.

**1.03 Schedule of Values.** Within 10 days of the Effective Date, General Contractor shall submit the Schedule of Values to Developer for approval. Upon receipt of the Schedule of Values, Developer shall either request revisions to its allocations or approve it in writing.

**ARTICLE II  
GENERAL CONTRACTOR RESPONSIBILITIES**

In exchange for the consideration to be provided to General Contractor pursuant to Article V, General Contractor shall provide the following services (the "Services").

**2.01 General.**

(a) General Contractor agrees to (i) complete the Work, (ii) furnish efficient business administration and superintendence, and (iii) use its best

efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of Developer.

(b) Developer maintains the right to perform work related to the Project and to award separate contracts in connection with other work at the Project Site, and General Contractor agrees to cooperate with such efforts. If part of the Work depends for proper execution upon the construction or operations by Developer or a separate contractor, General Contractor shall, prior to the point at which it would cause a delay, report to Developer apparent discrepancies or defects in such other construction or operations that would render it unsuitable for such proper execution and results.

## **2.02 Third-Party Service Providers.**

(a) General Contractor shall engage contractors, subcontractors, sub-subcontractors, service providers, professionals, engineers, agents, vendors and suppliers (the "Third-Party Service Providers") to perform the Work. General Contractor shall incorporate the terms and obligations of this Agreement into its contracts, purchases orders, and other agreements with any Third-Party Service Providers (the "Third-Party Agreements").

(b) Within 10 days of the execution of any Third-Party Agreement, General Contractor shall furnish to Developer copies of such Third-Party Agreement and the company name, company principal's name, billing address, contact information, project manager's name, superintendent's name, and contractor license number of each Third-Party Service Provider.

(c) General Contractor shall propose only Third-Party Service Providers who have demonstrated the ability to provide good workmanship and have provided evidence of being in a financially stable position. Developer may require the replacement of any Third-Party Service Provider that will not provide Upgrades at a reasonable price, as determined by Developer in its sole discretion.

(d) General Contractor shall afford Developer's separate contractors reasonable opportunity for introduction and storage of their materials and equipment for the execution of their work. General Contractor shall incorporate and coordinate the Work with the work of Developer's separate contractors.

(e) Provided that all undisputed outstanding invoices have been paid by Developer, final unconditional waivers shall be obtained by General Contractor from all Third-Party Service Providers and from all other persons or entities that could possibly have any right to make a lien against the Project or the Project Site.

(f) General Contractor shall conduct a weekly safety meeting and a weekly coordination meeting with all of the Third-Party Service Providers and invite Developer to attend such meetings. Notwithstanding any provision of this Agreement, upon receipt of a written request from Developer to meet with any Third-Party Service Provider, General Contractor will immediately schedule, hold, and attend such meeting or meetings with Developer and such Third-Party Service Provider.

(g) Nothing contained in this Agreement shall create a contractual relationship between any Third-Party Service Provider and Developer, except that it is understood and agreed that Developer is an intended third-party beneficiary of all Third-Party Agreements.

#### **2.03 Pre-Construction Coordination.**

(a) General Contractor shall review the Contract Documents in a timely and comprehensive manner to ascertain the requirements of the Project and shall review such requirements with Developer.

(b) General Contractor shall review with Developer alternative approaches to design and construction of the Project and shall use its best efforts to establish, in consultation with Developer, the most cost-effective and time-effective approach to the Project.

#### **2.04 Construction Coordination.**

(a) Before starting the Work, General Contractor shall review the Contract Documents to insure that the Contract Documents are consistent with each other and adequately describe the Work, but General Contractor shall not be responsible for the design of the Project. If General Contractor observes that portions of the Contract Documents are at variance therewith, subject to Section 2.05(c), General Contractor shall promptly make all necessary changes to correct such variance at no cost to Developer. Developer shall not be liable for any additional costs or project delays for any such changes; provided however, that such additional costs, delays or changes have not been clarified by General Contractor pursuant to the review to be conducted by General Contractor pursuant to this Section 2.04(a). In the event that during the course of the Work, previously undetectable inconsistencies among the Contract Documents are discovered and General Contractor can demonstrate that such (i) inconsistencies were undetectable and (ii) the correction of such previously undetectable inconsistencies has been the sole cause of a delay in the Work, General Contractor may submit a Change Order requesting an adjustment to the Required Completion Dates for the directly affected Buildings, and Developer will consider such adjustment request in good faith.

(b) At all times, General Contractor shall be responsible for distributing current and coordinated Contract Documents to all of the Third-Party

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Service Providers. Developer shall not be responsible for any additional costs which result from General Contractor's failure to provide current and coordinated Contract Documents to the Third-Party Service Providers; provided however, that General Contractor has received the most current version of the Contract Documents.

(c) Prior to commencing the Work, General Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to General Contractor with the Contract Documents. Errors, omissions, discrepancies and inconsistencies shall be corrected immediately. The failure to take field measurements or verify field conditions shall not relieve General Contractor from the responsibility to perform the required Work without additional cost to Developer.

(d) General Contractor shall verify all information supplied by Developer to General Contractor. If the information provided by Developer is not sufficient, Developer shall furnish the services necessary to gather such additional necessary information. In the event that (i) Developer or the Architect makes a change to the Contract Documents and Developer or the Architect fail to provide General Contractor with such revised version of the Contract Documents prior to the commencement of the Work directly involving such change and (ii) it was not reasonably possible for General Contractor to notice the failure in advance, the resulting Change Order shall make provisions for adjusting the applicable Required Completion Date(s) and GMP to accommodate General Contractor for the lost time and costs associated with such failure.

## 2.05 Construction Changes.

(a) Within 72 hours of discovery, General Contractor will deliver to Developer written notice of anything which would impact any Completion Period or the Contract Sum.

(b) Any contemplated change by General Contractor of any Third-Party Service Provider after the Effective Date, must first be communicated in writing to Developer.

(c) General Contractor shall not make changes in the design or construction of the Project without the prior written consent of Developer. Any changes to the design of the Project shall be shown on the as-built drawings provided by General Contractor at Final Completion. Any savings derived from value engineering changes approved by Developer shall be distributed as follows:

Source of Savings	Developer	General Contractor
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Any Changes Instigated or Provided by Developer	100%	0%
Changes in Material Instigated by General Contractor	75%	25%
Changes in Construction Methods Instigated by General Contractor	50%	50%

Developer's share of any such savings are due as a credit against the Progress Payment immediately following the approval of the corresponding change by Developer.

## 2.06 Permitting, Regulation and Documentation.

(a) Subject to Section 3.02, General Contractor shall be solely responsible for obtaining any and all approvals, permits, fees, bonds, licenses, and inspections of the various government agencies, utility providers, or any other third-parties including, without limitation, the Certificate of Occupancy for each Building. General Contractor shall investigate the requirements, develop the necessary contacts and develop a professional relationship with the required governmental agencies so as not to delay any approval, permits, licenses and inspections. Failure of General Contractor to comply with these requirements shall not entitle General Contractor to any adjustment in the Contract Sum or any Completion Period; provided however, that if (i) such failure can be specifically and clearly traced to an action by Developer (that was not approved by General Contractor) or an inaction by Developer (that was requested in-advance and in writing by General Contractor) that materially damaged the professional relationship between General Contractor and the government agencies responsible for regulating the Project and (ii) such damage negatively impacted the Work or the Schedule, the resulting Change Order shall make reasonable provisions for adjusting the applicable Required Completion Date(s) and GMP to accommodate General Contractor for the lost time and costs associated with such damage, and Developer will consider such adjustment request in good faith. Inspection delays or, in the opinion of General Contractor, "unreasonable" code interpretations or requirements by inspectors, shall not be justification for any adjustment to the Contract Sum or any Completion Period.

(b) Subject to Section 3.02, General Contractor shall perform and coordinate all of the services required to obtain the ordering, coordination, construction, hook-up, installation, inspection, and commencement of any utility services required by the Project pursuant to the Schedule. Furthermore, General Contractor shall perform the Work in any order reasonably requested by Developer, or as required, to allow for the installation of permanent electrical power services from Nevada Power and permanent gas services from Southwest Gas as early as possible.

(c) General Contractor shall order, coordinate, and install all signage (i) set forth in the Contract Documents or (ii) necessary for the issuance of any Certificate of Occupancy.

(d) General Contractor shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

(e) General Contractor shall maintain, in good order, at the Project Site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, marked currently to record changes made during construction. These documents shall be delivered to Developer at Final Completion prior to the Final Payment. In addition, General Contractor shall develop and turn over to Developer one complete set of as-built drawings at Final Completion prior to the Final Payment.

(f) Subject to Section 3.02, tests, inspections and approvals of portions of the Work required by the Contract Documents or governing municipalities, laws, rules, regulations and ordinances shall be made at an appropriate time. General Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory acceptable to Developer. General Contractor shall inform Developer, in a timely manner, when tests will be conducted. General Contractor shall submit one copy of all test results to Developer.

(g) General Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to Developer. Provided that Developer executes General Contractor's standard non-disclosure agreement, Developer and Developer's accountants shall be afforded access to, and shall be permitted to audit and copy, General Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract Documents. General Contractor shall preserve these documents for a period of three years after Final Payment, or for such longer period as may be required by law. Developer shall ensure the confidentiality of all records obtained from General Contractor pursuant to this Section 2.06(g).

## 2.07 Construction.

(a) General Contractor shall perform or have performed the Work necessary to construct the Project pursuant to the Contract Documents and the Schedule.

(b) General Contractor shall furnish at all times an adequate supply of workers and materials to complete the Work pursuant to the Schedule.

(c) General Contractor shall provide, or cause to be provided, and shall pay for engineering, labor, materials, equipment, tools, cartage, construction services and Work, construction equipment and machinery, water, heat, utilities, transportation, safety precautions and programs, and other facilities and services necessary for proper construction, execution and completion of the Work, whether temporary or permanent. Notwithstanding the previous provisions of this Section 2.07(c), (i) upon issuance of the Certificate of Occupancy for a Building, the account with Nevada Power for the electrical power for such Building and the account with Southwest Gas for the gas service for such Building shall be established in the name of Developer; (ii) after Building Completion of such Building, the cost of the electrical power and gas for such Building shall be paid by Developer; and (iii) during the period of time between the Certificate of Occupancy for a Building and the Building Completion of such Building, the cost of the electrical power and gas for such Building shall be divided between Developer and General Contractor as follows:

Party	Portion of Electrical Cost
Developer	75%
General Contractor	25%

(d) General Contractor shall provide its own onsite trailer which shall be shared by General Contractor and Developer's representatives. The costs of such trailer shall be shared pro rata by the parties based on the number of General Contractor and Developer employees assigned to and primarily located at the Project Site.

(e) Services shall only be performed by General Contractor and qualified Third-Party Service Providers.

(f) General Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

(g) The compensation provided to General Contractor herein shall include, and General Contractor shall pay for, all sales, consumer, use and similar taxes in effect during the Project.

(h) General Contractor shall review, approve, and submit to Developer for approval, Final Working Drawings, product data, samples and similar submittals required by the Project or Contract Documents with reasonable promptness and in such sequence as to avoid delay in the Work or in the activities of Developer or any Third-Party Service Provider. Upon receipt of such documents and a written notice from General Contractor that the rapid resolution of the issues presented in such documents is essential to avoid delays

in the Project, Developer will use its best efforts to respond, or have its third-party service providers respond, within five business days.

(i) General Contractor shall perform no portion of the Work requiring submittal and review of Final Working Drawings, shop drawings, project data, samples or similar submittals until the respective submittal has been approved by Developer. Such Work shall be in accordance with approved submittals.

(j) General Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by General Contractor's operations and shall keep the Project Site neat, organized, clean and safe. Prior to Final Completion, General Contractor shall remove from and about the Project Site General Contractor's tools, equipment, machinery, surplus materials, waste materials and rubbish. In the event that General Contractor fails to perform pursuant to this Section 2.07(j), Developer may have the work performed at the sole cost of General Contractor.

(k) General Contractor shall provide adequate security to the Project Site to avoid theft and vandalism.

(l) During construction of a Building, upon receipt of a written request from Developer, General Contractor will provide Developer with any requested keys for such Building. No later than 24 hours after the receipt of the Certificate of Occupancy for a Building, General Contractor will deliver to Developer a complete set of keys for each lock in such Building.

(m) Developer shall have unlimited access to the Project Site, subject only to standard applicable safety policies. Developer may expel General Contractor, any Third-Party Service Providers, and any other third-party from the Project Site with reasonable cause.

(n) By 10:00 a.m. each morning, General Contractor shall provide Developer with access to copies of its daily reports from the previous day and such other reports as shall be requested by Developer. Such daily reports shall (i) be presented in a format to be approved by Developer; (ii) include, without limitation, the outside air temperature, weather conditions, Project Site conditions, construction progress, material deliveries, inspection schedule and results, accidents, and a count of each individual that was working on the Project that day broken out by trade and applicable Third-Party Service Provider; and (iii) be on a time-lapsed basis; and (iv) be subsequently typed and delivered to Developer at the subsequent Monthly Review.

(o) Upon receipt of a written request from Developer, General Contractor shall, within 24 hours, provide Developer a copy of any correspondence or agreements with any Third-Party Service Provider.

(p) Within 24 hours of receipt by General Contractor, General Contractor shall deliver to Developer copies of any correspondence from any government or regulatory authority or any submittals or requests for information from any Third-Party Service Providers.

(q) General Contractor shall take adequate steps to prevent the Work from unduly disturbing the neighbors surrounding the Project.

(r) General Contractor shall be responsible for any cutting, fitting or patching required to complete the Work or to make its parts fit together properly. General Contractor shall not damage or endanger any portion of the Work or fully or partially completed construction of Developer or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

(s) General Contractor shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unduly encumber the Project Site with materials or equipment.

(t) For Buildings 2 and 3, General Contractor shall coordinate the integration of the tenant/buyer improvements into such buildings and their respective systems.

(u) For Buildings 2 and 3, General Contractor will construct the improvements of any gray shell spaces at an aggregate price for all materials and labor that is equal to \$70 per square foot for basic office space to be built pursuant to the Office Space Specifications. To the extent necessary, General Contractor shall allow for adjustments to the Office Space Specifications by individual buyers and negotiate, in good faith and pursuant to local market prices, any corresponding adjustment to the price per square foot.

## **2.08 Quality Control Corrective Work, and Warranty.**

(a) General Contractor shall keep Developer informed, on a regular and consistent basis, of the progress and quality of the Work and shall inform Developer within 48 hours of General Contractor's discovery of any fault or defect in the Work.

(b) General Contractor shall be responsible to Developer for acts, errors and omissions of General Contractor's employees, and parties in privity of contract with General Contractor, who perform a portion of the Work, including the Third-Party Service Providers and those in privity of contract with such parties.

(c) General Contractor warrants to Developer that all materials and equipment incorporated in the Work will be new, unless otherwise specified.

and that the Work will be good quality, free from faults and defects, and in conformance with the Contract Documents.

(d) Whether observed before or after Final Completion General Contractor shall correct (i) Work reasonably rejected by Developer, (ii) Work known to be defective, (iii) Work failing to conform to the Contract Documents or (iv) defective Work resulting from defective materials, defective construction or craftsmanship, or defective design documents generated by General Contractor. All corrections to the above inadequate or defective Work shall commence within 72 hours; provided however, that in an emergency situation, such corrections shall commence immediately. All corrections to the above inadequate or defective Work shall be corrected by the end of the shorter of the following time periods: (A) within 30 calendar days or (B) within the amount of time necessary to prevent a delay to any applicable Required Completion Date. The cost of correcting such Work shall be paid by General Contractor, including, without limitation, any additional testing, inspections, and compensation for the Architect's and engineers' services and expenses made necessary thereby. General Contractor shall not be responsible for repairing any damage caused by Developer or individual buyers during the move-in process; provided however, that until Building Completion, it shall be assumed that any damage, for which the cause cannot be clearly determined, was caused by the Third-Party Service Providers and not Developer or individual buyers. To the extent that corrective work is requested by an individual buyer or an owners association, all deadlines in this Section 2.08(a) are subject to any stricter deadlines that are set forth in Section 2.12.

(e) General Contractor shall ensure that a properly factory authorized qualified representative is present when systems, materials or equipment are installed for which a warranty is to be issued by the manufacturer, distributor, insurer or other named party as provided in the Contract Documents. For example, this requirement shall specifically apply to roofing, exterior coatings, and below grade waterproofing.

(f) General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Developer's approval of Final Working Drawings, shop drawings, product data, samples or similar submittals unless General Contractor has specifically informed Developer in writing of such deviation at the time of submittal and Developer has given written approval to the specific deviation. General Contractor shall not be relieved of responsibility for errors or omissions in Final Working Drawings, shop drawings, product data, samples or similar submittals by Developer's approval thereof. The limitations on liability set forth in this Section 2.08(f) apply only to Developer and shall not be construed to limit the Architect's liability.

## 2.09 Inspections and Punch Lists.

(a) General Contractor shall inspect the Work daily for quality assurance purposes. In addition, at each of the following construction stages, General Contractor shall inspect and approve in writing, the work as of such stage, and such written approvals shall be delivered to Developer prior to commencement of the subsequent construction stage:

(i) Upon completion of the installation of the mechanical, electrical, and plumbing systems, and prior to the hanging of any drywall;

(ii) Upon completion of the drywall, tape, and texturing, and prior to the application of paint to the walls and trim; and

(iii) Upon completion of the Work, but prior to the joint General Contractor-Developer inspections set forth in Section 2.09(b).

(b) As soon as reasonably possible but no later than 60 days prior to the Required Completion Date for a given Building, General Contractor will determine the actual date that the Certificate of Occupancy will be attained (the "Estimated Certificate of Occupancy Date") and notify Developer of such date. Approximately 30 days prior to the Estimated Certificate of Occupancy Date, General Contractor and Developer will begin inspecting such Building and the Corresponding Common Area and creating lists of items to be corrected in each unit and the Corresponding Common Area (the "Developer Punch Lists"). Developer reserves the right to submit additional Punch Lists until Final Completion. General Contractor will have 15 days from the issuance of a Developer Punch List to make the required corrections and obtain written approval of such corrections from Developer (the "First Correction Period"). In the event that any items on a Developer Punch List are not corrected prior to the expiration of the First Correction Period, General Contractor shall pay as liquidated damages (and not as a penalty) \$500 for each unit that contains any such uncorrected Developer Punch List items.

(c) Upon receipt of written notice from Developer that an individual purchaser is available for an inspection, General Contractor, Developer, and such individual purchaser will schedule and conduct an inspection of the corresponding unit within the Building and create a list of items to be corrected (the "Buyer Punch Lists"). In the event that a given residential unit is not under contract for purchase after the end of the First Correction Period, Developer has the right to conduct additional purchaser inspections and submit additional Buyer Punch Lists until the earlier of the following (i) the completion of all of the other requirements for the corresponding Building Completion and (ii) the close of escrow on the purchase of such Unit. General Contractor will have 15 days from the issuance of a given Buyer Punch List to make the required corrections and obtain written approval of such corrections from Developer and Buyer (the "Second Correction Period"). In the event that any items on a Buyer Punch List are not corrected prior to the expiration of the

Second Correction Period, General Contractor shall pay as liquidated damages (and not as a penalty) \$500 for each unit that contains any such uncorrected Buyer Punch List items.

(d) General Contractor and Developer shall schedule a follow-up walk-through prior to the expiration of the Express Warranty period to review and document any deficient or defective items that were not caused by the occupants of the Project. Such deficient or defective items shall be corrected within five business days of such walk-through. Upon completion of such corrections, Developer will sign off on the Express Warranty.

#### **2.10 Completion.**

(a) The Work within or related to each Building shall be deemed completed upon the (i) completion of the Work in such Building and the Corresponding Common Area; (ii) issuance of the Certificate of Occupancy for such Building; (iii) completion of any corrections that are requested by Developer, set forth on a Developer Punch List or Buyer Punch List, or required by the Clark County Building Department; and (iv) delivery of the applicable Completion Documents (collectively, a "Building Completion"). The Project shall be deemed completed upon the Building Completion of each Building (collectively "Final Completion"). Notwithstanding the previous provisions of this Section 2.10(a), in the event that, because a given residential unit is not under contract for purchase by a buyer or a given buyer fails to submit a Buyer Punch List upon request, the corresponding Buyer Punch List for such residential unit is not available on the date that the other requirements of Sections 2.10(a)-(iv) are met by General Contractor, Building Completion will be deemed attained without regard to such non-existent Buyer Punch List; provided however, that upon the sale of such unit, the eventual buyer may submit a Buyer Punch List that shall be completed by General Contractor within 30 days.

(b) Once Building Completion is attained and the Architect has executed a written document stating that such Building and the Corresponding Common Area has been completed per the Contract Documents, Developer shall assume responsibility for such Building and the Corresponding Common Area's security, maintenance, heating, utilities, and insurance as well as any subsequent damage to such buildings or areas.

**2.11 Developer Acceptance.** If Developer prefers to accept Work which is defective or deficient and is not in accordance with the requirements of the Contract Documents, Developer may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be incorporated into a Change Order and shall be effective whether or not Payment has been made.

#### **2.12 Warranty.**



(a) In addition to performing any of the corrective work pursuant to this Article II, General Contractor shall extend to Developer such warranties as are customary in the industry within Nevada. In addition, General Contractor shall, for no less than two years from the date of the applicable Certificate of Occupancy, correct any Work that (i) does not conform to the Contract Documents or applicable industry standards, (ii) is not of good and workmanlike quality and free from faults and defects, and (iii) is not suitable for the use for which it is intended due to defects in construction (collectively, the "Express Warranty"); provided however, that such Express Warranty shall only apply to Buildings 2 and 3 for a period of one year instead of the two year period that applies to the other Buildings. To partially offset the potential cost of honoring the second year of the Express Warranty, Developer shall allow for a \$180,000 allowance to be added to the GMP via a Change Order. Such allowance shall only be used to cover the cost of Express Warranty items during the second year of the Express Warranty, and if such amount is not used, any remaining balance shall be returned to Developer at the end of the Express Warranty for the final Building. It is expressly understood that (i) such allowance is merely intended as a contribution and (ii) General Contractor is solely responsible for all other costs associated with honoring the Express Warranty.

(b) General Contractor will cooperate with Developer's customer service policies and representatives to the extent that such cooperation is required for the servicing of the Express Warranty. Upon receipt of a non-Emergency warranty complaint from Developer, any of the Project's owners associations, or an individual homeowner, at a minimum, General Contractor will (i) respond to every such complaint placed during working days within 24 hours, (ii) respond to every such complaint placed on weekends and holidays within 60 hours, (iii) begin work to correct the problem underlying such complaint within 24 hours, and (iv) to the extent reasonably possible, correct the problem underlying such complaint within five days but in no event later than 30 days. Upon receipt of any Emergency warranty item, General Contractor shall respond immediately to such inquiry and correct such Emergency problem within an additional eight hours.

(c) The Express Warranty relates only to specific obligations of General Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish General Contractor's liability with respect to General Contractor's obligations other than specifically to correct the Work.

(d) As between Developer and General Contractor, any applicable statute of limitation shall not commence to run prior to the applicable Building Completion even if the underlying actions took place prior to the underlying Building Completion.

(e) To further enhance General Contractor's commitment to the Project and the Express Warranty, within 10 days of the Effective Date, General Contractor shall enter into a standard purchase agreement with Developer and deliver the corresponding purchase deposit for the purchase of one residential unit from among the options presented by Developer and at a purchase price that is discounted by 2.5% for the first unit and 5% for any subsequent units.

## **2.13 General Contractor Staffing.**

(a) General Contractor shall provide the levels of on-site and off-site staffing necessary to furnish efficient business administration and supervision for the Project. Notwithstanding the previous sentence, for the construction of Buildings 2, 3, 7, 8, and 9 ("Phase I"), General Contractor shall provide, at a minimum, the following level of fulltime staffing for the Project:

- (i) One Project Manager
- (ii) One Project Supervisor
- (iii) Three Supervisors (one for each building type)
- (iv) Two Assistant Supervisors
- (v) Two Project Engineers
- (vi) One Project Administrator
- (vii) One Accountant

(b) Notwithstanding the final sentence of Section 2.13(a), (i) General Contractor may provide lower levels of staffing for Phase I if the only Work in progress is the foundations for Phase I and (ii) General Contractor will not be required to fill the positions set forth in Section 2.13(a)(iv) and (v); provided however, that if at any Monthly Review, a Recovery Schedule is required, General Contractor must, within 30 days, strictly comply with the staffing requirements set forth in the final sentence of Section 2.13(a) for the remainder of the Project. In the event that the Work on additional buildings is commenced prior to the completion of Phase I, additional staffing must be added. Furthermore, for each phase after Phase I, General Contractor must maintain a level of staffing that is commensurate with the level of staffing set forth in the final sentence of Section 2.13(a), as adjusted for the number of buildings then under construction.

(c) Each of the individuals serving in the above positions must have the level of skill and experience commensurate with such position as determined by General Contractor.

(d) Upon the written request of Developer, General Contractor shall provide the resumes of any General Contractor employee associated with the Project. Furthermore, Developer may, by providing a reasonable written explanation, require the removal of any General Contractor employee or affiliate associated with the Project.

(e) Primary communication must take place between Developer's authorized representative and General Contractor's Project Manager. All requests, directives, orders and/or changes must go through such team members before implementation can occur.

#### **2.14 Upgrades Coordination.**

(a) Developer will sell upgrades to various units within the Project (the "Upgrades") to be installed by Third-Party Service Providers to be selected by Developer and General Contractor (the "Upgrade Vendors"). General Contractor shall be responsible for the proper installation of such Upgrades as if they were incorporated into the Contract Documents as part of the Project.

(b) General Contractor shall execute independent agreements with each Upgrade Vendor.

(c) General Contractor will not be entitled to any extension of any Completion Period as a result of problems that arise in connection with the installation of the Upgrades unless a Change Order is executed by Developer expressly allowing such extension. If a fixture or appliance that is necessary for a given Upgrade is not available at the time that it must be installed, upon receipt of written notice of such unavailability from General Contractor, Developer will, within five business days, provide to General Contractor direction regarding an alternative fixture or appliance, as applicable. If Developer fails to provide such direction within such five business days, General Contractor may submit, and Developer will execute, a Change Order whereby the applicable Required Completion Dates are extended by the number of days equal to each day between the expiration of such five business day deadline and the date that the requested direction is actually provided, but only to the extent that such delay actually causes a delay to the Work.

(d) General Contractor understands that the Upgrades are subject to change, but the Schedule includes, or will include, dates after which no additional changes to the Upgrades will be allowed without the express written consent of General Contractor.

#### **2.15 Framing and Drywall Minimums.**

(a) There shall be a minimum of 50 (i) adequately trained drywall hangers working on each eight-hour shift for each individual Type I, Type IV, and Type V Building at anytime that the Schedule calls for the hanging of drywall in such Building and (ii) adequately trained framers working on each eight-hour shift for each individual Type I, Type IV, and Type V Building at anytime that the Schedule calls for the construction of framing in such Building; provided however, that such number of framers may be reduced to 40 during the framing of the first floor of such Building.

(b) At anytime that the Schedule calls for the hanging of drywall or the construction of framing, the Work shall be performed by the corresponding drywall hangers or framers in two separate eight-hour shifts per day. The number of members for each shift shall be subject to the minimums set forth in Section 2.15(a), and each of the 50 man crews for each such shift must be comprised of different individuals.

(c) It is the intent of Sections 2.15(a) and (b) that there will be 800 framing man-hours and 800 drywall hanging man-hours per day whenever framing and/or drywall hanging is called for by the Schedule. Notwithstanding Section 2.15(a) and (b), to the extent that there is insufficient daylight to allow for two eight-hour shifts of framers per day, General Contractor may reduce the length of the second shift; provided however, that the number of framers working during the first shift must be increased to maintain a minimum of 800 framing man-hours per day.

(d) The minimums set forth in Sections 2.15(a), (b), and (c) shall be maintained by General Contractor at no additional cost to Developer.

**2.16 Failure to Perform.** Notwithstanding any provision of this Agreement, in the event that General Contractor defaults or neglects to provide the Services or comply with any provision of this Article II, after providing 48 hours notice, Developer may, without prejudice to any other remedies, correct such deficiencies and charge all reasonable and related costs to General Contractor. Notwithstanding any provision of this Agreement, the cost of any dispute arising out of this Section 2.16, including reasonable legal fees and expenses, shall be solely borne by General Contractor.

### ARTICLE III OWNER RESPONSIBILITIES

**3.01 Contract Documents.** Developer shall provide General Contractor with the current Contract Documents.

**3.02 Fees.** Developer shall pay the fees required to obtain such permits, entitlements, approvals, licenses, and inspections required by Sections 2.06 (a), (b), and (i); provided however, that if the Work does not meet the requirements of any inspection, General Contractor will pay the fees required to have such Work re-inspected, including any overtime fees requested by Developer and agreed to by the relevant inspectors.

**3.03 Representative.** Developer shall designate a qualified representative authorized to act on Developer's behalf with respect to the Project. Such representative will be employed fulltime and shall have the level of skill and experience commensurate with such position. Developer shall provide written notice if its designated representative is changed.

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**3.04 Responsiveness.** Developer shall render decisions and furnish required information and services to General Contractor with reasonable promptness in order to avoid delay in the orderly progress of the Services.

**3.05 Developer Observers.** Solely at its discretion, Developer may appoint additional on-site project representatives to observe the Work and to have such other responsibilities as Developer may determine in its sole discretion.

#### ARTICLE IV TIME

##### 4.01 Project Schedule.

(a) Attached as Exhibit C to this Agreement is the schedule for the Work (the "Schedule") separately setting forth the time period between the Authorized Start Date and the Required Completion Date for each Building Type (each referred to as a "Completion Period"). The "Authorized Start Date" is the date that Developer authorizes General Contractor, in writing, to begin the Work on a given Building and the Corresponding Common Areas. The "Required Completion Date" is the date that a given Building Completion must be attained based on the corresponding Authorized Start Date and Completion Period for such Building and the Corresponding Common Area. The Authorized Start Date for a given Building may not precede the date that Developer has obtained the permits necessary to begin the Work on such Building.

(b) The Schedule shall also set forth the trades required for each portion of the Work and the aggregate number of weeks of Work to be performed by each trade. The Schedule shall rely on the critical path scheduling method, and Developer, General Contractor, and all Third-Party Service Providers shall strictly adhere to all Critical Path Items.

(c) The Authorized Start Date for each Building will be established and may be revised by Developer in its sole and absolute discretion. In the event that the sequencing of the Authorized Start Dates after Phase 1 results in the simultaneous construction of more than five buildings and General Contractor can provide adequate evidence of an unavailability of adequate Third-Party Service Providers to perform such simultaneous Work, General Contractor may submit a Change Order requesting an adjustment to the Required Completion Dates for the Buildings in excess of the five that are then under construction, and Developer will consider and negotiate such adjustment request in good faith.

(d) General Contractor must anticipate weather patterns and delays. The Schedule will not be adjusted based on delays caused by weather falling within the historical weather patterns for Las Vegas, Nevada.

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(e) In addition to the updates to the Schedule required by this Section 4.01, General Contractor shall also deliver a two week look-ahead schedule at the end of every second week. Such schedule shall be in the format reasonably requested by Developer.

(f) General Contractor shall update the Schedule on a monthly basis until the applicable Building Completion. A separate copy of each updated Schedule shall be posted at the Project Site and delivered to Developer.

(g) Notwithstanding any provision of this Agreement, any changes to the Schedule that lengthen a Completion Period will require the execution of a Change Order by Developer expressly approving such change.

(h) General Contractor shall be responsible for coordinating all of the activities required for governmental inspections and all activities required to obtain a Certificate of Occupancy by any Required Completion Date.

(i) Completion Periods shall not be extended for delays to the Project which occur as a direct result of financial problems or financial failure of General Contractor or any Third-Party Service Provider(s).

(j) Notwithstanding any provision of this Agreement, Developer may delay the Authorized Start Date for any given Building and the Corresponding Common Areas. By delivering written notice to General Contractor, Developer may suspend any portion of the Work at anytime. If, prior to Final Completion, Developer completely stops the Work on all of the Buildings for more than 30 days and the Third-Party Service Providers actually remove their equipment from the Project Site, upon recommencement of the Work, Developer shall pay a re-mobilization fee equal to the sum of the (i) fees actually paid by General Contractor to have such equipment returned to the Project Site and (ii) costs incurred by General Contractor to return its equipment to the Project Site. For purposes of the Building Liquidated Damages, any suspension pursuant to this Section 4.01 (j) shall result in a unilateral adjustment by Developer of the Schedule to reflect the revised Authorized Start Date(s) and/or Required Completion Date(s).

**4.02 Schedule Supervision.** On the last business day of each month, Developer shall formally evaluate the progress of the Work compared to the amount of Work that should have been completed as of such date pursuant to the Schedule (the "Monthly Review"). To the extent that Developer determines at a Monthly Review, that the Work is behind Schedule on any given Building, General Contractor shall deliver, within 48 hours, a make-up schedule setting forth the actions that General Contractor will undertake to get the corresponding Work back on Schedule prior to the next Monthly Review (the "Recovery Plan"). Any additional costs associated with the additional manpower and overtime necessary to execute any Recovery Plan will be borne

by General Contractor. In the event that at any Monthly Review, Developer determines that General Contractor has failed to (a) deliver the revised schedules pursuant to Sections 4.01 (e) or (f), provide a requested Recovery Plan, or perform the Work set forth in any Recovery Plan pursuant to such Recovery Plan, Developer has the express right to immediately engage and supervise supplemental licensed third-party service providers to augment the performance of the Work, and the cost of such supplemental third-party service providers shall be paid by General Contractor as an offset to the subsequent Progress Payment.

#### **4.03 Liquidated Damages.**

(a) Time limits set forth in this Agreement are of the essence.

(b) Each Building Completion will be attained on or prior to the applicable Required Completion Date (as adjusted only by Change Orders approved by Developer). If the Building Completion for any Building is not attained on or prior to the corresponding Required Completion Date, Developer may retain as liquidated damages (and not as a penalty) an amount equal to \$15,000 for each and every calendar day after the Required Completion Date that Building Completion is delayed for such Building (the "Building Liquidated Damages").

(c) Developer and General Contractor acknowledge and agree that any liquidated damages assessed under Sections 2.09 (b) and (c), this Section 4.03, and/or Section 10.02(d)(i) are (i) due to the difficulty or impossibility of calculating actual costs and damages of delays, (ii) a reasonable approximation of the costs and damages that would be incurred by Developer for delays, and (iii) not a penalty. Developer's planning and costs for completing its entire construction process and marketing its condominiums include hiring of employees, purchase and lease of equipment, advertising, accepting deposits and reservations for the sales of units, and addressing closing costs all of which are adversely impacted by delays in Final Completion. In addition, delays in Final Completion may cause additional expenses for contract and construction administration, accounting, and cost of capital. Nothing in Sections 2.09 (b) or (c), this Section 4.03 or Section 10.02(d)(i) shall limit in any manner the remedies and/or damages that may be obtainable by Developer upon any other breach of this Agreement by General Contractor.

### **ARTICLE V COMPENSATION/PAYMENTS**

**5.01 Contract Sum.** In exchange for the Services, Developer shall pay to General Contractor an amount equal to **\$153,472,300** (the "Contract Sum"). In addition to the Contract Sum, in exchange for the services provided by General Contractor pursuant to Section 2.14, Developer shall pay to General Contractor an amount equal to the Cost of the Upgrade Work plus the General Contractor Upgrade Fee.

## 5.02 Guaranteed Maximum Price.

(a) The Contract Sum is guaranteed by General Contractor not to exceed **\$153,472,300** subject to additions and deductions only by Change Order as provided in Section 9.01 (the "GMP"). Any costs that are not approved by a Change Order as provided in Section 9.01 and would cause the GMP to be exceeded shall be paid by General Contractor without reimbursement or contribution by Developer, including, for purposes of example and not limitation, costs arising from unforeseen ground conditions, faulty coordination, errors or omissions in the Contract Documents, unexpected encounters with service mains, bad weather, industrial unrest, shortages of labor and materials, insolvency of suppliers and Third-Party Service Providers, fire, storm, or earthquakes. Furthermore, the GMP includes all allowances, overhead, costs, general terms and conditions, general contractor fees and profits related to the Work and the Project, including, without limitation the General Contractor Fees and Costs.

(b) Notwithstanding Section 5.02(a), the Cost of the Upgrade Work is not included in the GMP.

**5.03 Buy-Down Savings Split.** General Contractor will use its best efforts to reduce construction costs by negotiating better terms with the Third-Party Service Providers and such savings will be calculated based on the difference between the GMP and the actual cost of the Work as set forth on the aggregate applicable invoices (as opposed to individual line items) (the "Buy-Down Savings"); however, for purposes of the calculation of the portions of the Buy-Down Savings to be retained by General Contractor, the Buy-Down Savings shall not include (i) any value engineering changes which shall be paid pursuant to Section 2.05(c)) and (ii) reductions in the cost of General Contractor's self-performed Work. All Buy-Down Savings will be split between Developer and General Contractor as set forth below:

Party	Percentage of Savings
Developer	50%
General Contractor	50%

**5.04 Discounts, Rebates, and Refunds.** Discounts obtained on payments made by General Contractor shall accrue 50% to Developer and 50% to General Contractor if (a) before making the payment, General Contractor included such payments in an Application for Payment and received payment therefor from Developer or (b) Developer has deposited funds with General Contractor with which to make payments. In addition, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue



50% to Developer and 50% to General Contractor, and General Contractor shall make provisions so that they can be secured.

#### 5.05 Progress Payments.

(a) On the first business day of each month, General Contractor and Developer shall meet to review the Work that was completed during the previous month and the corresponding payment required for such Work. Two days after such meeting, General Contractor shall submit to Developer applications for payment for the previous month on forms similar to AIA G702 and G703 including separate SOV and AIA G703 pages for each Building as well as the Corresponding Common Areas and a corresponding approved Certificate for Payment (the "Application for Payment"). The form similar to AIA G702 shall set forth the aggregate of the Work completed on the form similar to AIA G703 pages. In addition, a separate report shall be provided setting forth, for each line on the form similar to AIA G703, the aggregate amount of retainage to be withheld in such Application for Payment pursuant to Section 5.07, any adjustments to such retainage made since the preceding Application for Payment, and the cumulative retainage that has been withheld pursuant to Section 5.07. The Application for Payment shall be supported by such data to substantiate its accuracy as Developer may require.

(b) Each Application for Payment shall be based on the Schedule of Values. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, and the General Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Developer may require.

(c) Applications for Payment shall show the Percentage of Completion of each portion of the Work as of the end of the period covered by the Application for Payment. The "Percentage of Completion" shall be the lesser of

(i) the percentage of that portion of the Work which has actually been completed; or

(ii) the percentage obtained by dividing (A) the expense that has actually been incurred by General Contractor on account of that portion of the Work for which General Contractor has made or intends to make actual payment prior to the next Application for Payment by (B) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

(d) Developer may refuse to approve all or a portion of any Application for Payment based on the existence of any of the following:

(i) A failure to complete, or demonstrate completion of, the Percentage of Completion set forth in a given Application of Payment, including, without limitation, a failure to prove the any reasonably requested back-up documentation;

(ii) Defective Work that has not been remedied;

(iii) Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Developer is provided by General Contractor;

(iv) Failure by General Contractor to make payments properly to Third-Party Service Providers for labor, materials, or equipment;

(v) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(vi) Damage to Developer or any Third-Party Service Provider;

(vii) Reasonable evidence that the Work will not be completed within a Completion Period and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(viii) Persistent failure by General Contractor to complete the Work in accordance with the Contract Documents; or

(ix) General Contractor's failure to obtain and deliver a Certificate for Payment.

(e) Upon receipt of an Application for Payment that is acceptable to Developer pursuant to Sections 5.05(a-d), Developer shall, within 12 calendar days, submit, to Developer's lender or such lender's authorized designee, the corresponding draw application for the undisputed amount to be paid pursuant to such Application for Payment (the "Draw Application"). Thereafter, Developer shall take such actions as are necessary for the payment of the amount owed to General Contractor pursuant to such Draw Application (the "Progress Payment"). In the event that the Draw Application is not submitted to Developer's lender or such lender's authorized designee within the above 12 calendar day period, Developer shall pay to General Contractor \$5,000 for each day that the submission of the Draw Application is delayed after such 12 calendar day period.

(f) Subject to other provisions of the Contract Documents, the amount of each Progress Payment shall be computed as follows:

(i) take that portion of the GMP properly allocable to completed Work as determined by multiplying the Percentage of Completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values.

(ii) add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation into the Work, or if approved in advance by Developer, suitably stored off of the Project Site at a location agreed upon in writing.

(iii) subtract the aggregate of previous Progress Payments made by Developer;

(iv) subtract the applicable Standard Retainage, Monthly Retainage, and Milestone Retainage calculated pursuant to Section 5.07.

(v) add the General Contractor Payment.

(vi) subtract the shortfall, if any, indicated by General Contractor in the documentation required by Section 5.05(c) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Developer's accountant in such documentation; and

(vii) subtract amounts, if any, (A) for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the AIA General Conditions or (B) that are disputed by Developer.

(g) Upon receipt of the Progress Payment, General Contractor shall promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of the Work Completed that was completed by such Third-Party Service Provider during the period covered by the corresponding Progress Payment. General Contractor shall, by appropriate agreement with each Third-Party Service Provider, require each Third-Party Service Provider to make payment to sub-contractors in a similar manner.

(h) General Contractor warrants that title to all Work covered by an Application for Payment will pass to Developer no later than the time of payment. General Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Developer shall, to the best of General Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of General Contractor, Third-Party Service Providers, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

(i) Subject to Section 9.01 but notwithstanding any other provision of this Agreement, the aggregate General Contractor Fees and Costs shall equal \$10,000,000. For the avoidance of doubt, the General Contractor Fees and Costs do not include the General Contractor Upgrade Fee and are not subject to the documentation requirements of Section 2.06(g).

#### **5.06 Final Payment.**

(a) A final payment, constituting the entire unpaid balance of the Contract Sum (the "Final Payment"), shall be made by Developer to General Contractor when the following conditions have been met:

(i) the General Contractor has fully performed the Contract except for any General Contractor's warranty as provided in Section 2.12 of this Agreement, and to satisfy other requirements, if any, which extend beyond Final Payment;

(ii) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

(iii) a written statement that General Contractor knows or has no reason to suspect that any additional costs or indebtedness exists in connection with the Work; and

(iv) a final Certificate for Payment has been issued by the Architect.

(b) Developer's accountants will review and report in writing on General Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by General Contractor. Based upon such costs and expenses as Developer's accountants report to be substantiated by General Contractor's final accounting, and provided the other conditions of Section 5.06(a) have been met, the Architect will, within seven days after receipt of the written report of Developer's accountants, either issue to Developer a final Certificate for Payment with a copy to General Contractor, or notify General Contractor and Developer in writing of the Architect's reasons for withholding such Certificate for Payment as provided in Section 9.5.1 of the AIA General Conditions. The time periods stated in this Section 5.06(b) supersede those stated in Section 9.4.1 of the AIA General Conditions.

(c) Notwithstanding and without limiting any other provision in the Contract Documents, the Final Payment is conditioned upon satisfaction of all conditions applicable to such payment imposed by any funding construction draws, as well as Developer's and Architect's reasonable approval. Prior to final

payment, and as a condition precedent, General Contractor shall furnish Developer with the following (the "Completion Documents"):

- (i) All maintenance and operating manuals;
  - (ii) Marked set of drawings and specifications reflecting "as-built" conditions, upon which General Contractor shall have transferred all changes in the location of concealed utilities, mechanical or electrical systems and components. Said "as-built" drawings for mechanical, electrical and plumbing systems shall be verified and approved, in writing, by the engineer of record.
  - (iii) The documents set forth in Section 2.06(e).
  - (iv) Any assignment and/or transfer of all guarantees and warranties from Third-Party Service Providers, vendors and suppliers and manufacturers.
  - (v) A list of the names, address and phone numbers of all parties providing guarantees and warranties, and
  - (vi) Verification that all waivers that should be issued to Developer concurrent with Final Payment.
- (d) Acceptance of Final Payment by General Contractor shall constitute a waiver of all claims by General Contractor except such claims as are previously made in writing and identified as unsettled at the time of the final Application for Payment.

#### **5.07 Retainage.**

- (a) Each Progress Payment shall be subject to retainage equal to 5% multiplied by the amount of such Progress Payment (the "Standard Retainage").
- (b) In addition to the Standard Retainage, in the event that at any Monthly Review, Developer determines that General Contractor has failed to perform the Work set forth in any Recovery Plan pursuant to such Recovery Plan, Developer may withhold from the subsequent Progress Payment an amount equal to (i) 1% multiplied by (ii) the amount of such Progress Payment attributable to the Building for which General Contractor failed to maintain the Recovery Plan (the "Monthly Retainage"). To the extent that multiple Recovery Plans are not met, the Monthly Retainage will accumulate separately for each Building and may accumulate cumulatively for each time that a Recovery Plan is not met for an individual Building.

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(c) Notwithstanding Section 5.07(b), the Monthly Retainage withheld by Developer for any failure by General Contractor to maintain a particular Recovery Plan will be released in the Progress Payment following the completion by General Contractor of the Work set forth in (i) the Recovery Plan for which the Monthly Retainage was initially withheld and (ii) any subsequent Recovery Plan imposed, for the same Building, pursuant to Section 5.07(b).

(d) Furthermore, on each occasion that any of the following milestones are not met by General Contractor for each separate Building prior to the corresponding date set forth in the Schedule, the Standard Retainage shall be increased by an additional 5% for such Building multiplied by the amount of such Progress Payments as pertain to such Building (the "Milestone Retainage");

(i) The foundation for a given Building must be completed prior to the applicable deadline for such Work as set forth in the Schedule.

(ii) A given Building must be drier-in (including the exterior paper, windows, and roof but excluding the stucco) prior to the applicable deadline for such Work as set forth in the Schedule.

(iii) A given Building must have passed its rough framing inspection (as such term is commonly used by Clark County Building Inspectors) prior to the applicable deadline for such Work as set forth in the Schedule.

(iv) Prior to the applicable deadline for such Work as set forth below, Buildings 2 and 3 must (A) meet the Minimum Requirements for Grey Shell Completion, set forth on Exhibit D hereto and (B) be ready for the Building 2 and 3 buyers to commence their improvements to the grey shell:

Building	Floor	Improvement Start Date
2	First	19-Apr-08
2	Second	21-Apr-08
2	Third	26-Apr-08
2	Fourth	1-May-08
3	First	26-Apr-08
3	Second	29-Apr-08
3	Third	4-May-08
3	Fourth	9-May-08

(v) The drywall must be completely hung in a given Building, including texture and paint, prior to the applicable deadline for such Work as set forth in the Schedule.

(vi) Prior to September 9, 2007, the first floor of Building 7 must be completed and the Temporary Certificate of Occupancy issued.

(vii) Building Completion for a given Building must be attained prior to the corresponding Required Completion Date.

(e) However, on any occasion that one of the unmet milestones set forth in Section 5.07(d) is subsequently met by General Contractor, any existing Milestone Retainage held in connection with such unmet milestone for the corresponding Building shall be reduced by 5% for the subsequent Progress Payments.

(f) Any remaining Standard Retainage, Monthly Retainage, and Milestone Retainage shall be released to General Contractor on the date that (i) Final Completion is attained and (ii) all outstanding disputes between Developer and General Contractor and Developer and any Third-Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed.

#### ARTICLE VI OWNERSHIP AND USE OF DOCUMENTS

**6.01 Ownership.** All documents related to the Work and the Project including documents that are furnished or obtained by General Contractor, including, without limitation, any drawings, specifications, or designs (the "Project Documents") are the sole property of Developer and may be used by Developer for any purpose.

**6.02 Liability.** Developer's ownership of the Project Documents furnished or obtained by General Contractor does not relieve General Contractor of its legal and professional responsibilities to Developer relating to such Project Documents for purposes of the Project.

**6.03 Subsequent Use.** To the extent that the Project Documents that are furnished or obtained by General Contractor are used by Developer for a subsequent project that does not involve General Contractor, General Contractor shall not be professionally liable for the use of such Project Documents on such subsequent project.

**6.04 Non-Publication.** Submission or distribution of any Project Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyrights or other reserved rights.

#### ARTICLE VII PROTECTION OF PERSONS AND PROPERTY

**7.01 Safety Precautions.** As a material obligation of this Agreement, General Contractor shall be solely responsible for initiating, providing and maintaining safety precautions and programs in connection with the Work.

**7.02 Reasonable Protection.** General Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees on the Project Site and other persons who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Project Site.

**7.03 Liability.** General Contractor shall be liable for damage or loss to the property at the Project Site to the extent caused by General Contractor, Third-Party Service Providers, or anyone directly or indirectly employed by General Contractor or Third-Party Service Providers, or by anyone for whose acts they may be liable.

**7.04 Expulsion.** Developer may expel from the Project Site any party, including, without limitation, General Contractor and any Third-Party Service Provider that fails to comply with any safety regulations or standards or otherwise endangers the safety of any party on the Project Site.

#### **ARTICLE VIII INSURANCE AND BONDS**

**8.01 Insurance.** The Agreement, Work and Project shall be subject to the insurance provisions set forth on Exhibit E hereto.

**8.02 Performance Bond and Payment Bond.** It is the intention of Developer and General Contractor that General Contractor will not be required to furnish bonds for the Project; provided however, that in the event that General Contractor is unable to convince Developer's lenders that such bonds are not necessary, (a) Developer shall have the right to require General Contractor to furnish such bonds and (b) Developer and General Contractor shall negotiate in good faith to determine the appropriate division of the cost of such bonds.

#### **ARTICLE IX CHANGES IN THE WORK**

**9.01 Change Orders.**

(a) A "Change Order" is a written order signed by Developer and General Contractor, authorizing a change in the Work and/or adjustment in the scope of the Project, the Contract Sum, or any Completion Period. Neither the Contract Sum nor any Completion Period can be changed without a validly executed Change Order.



(b) Developer, without invalidating this Agreement, may order changes in the Work consisting of additions, deletions or revisions. Upon receipt of such an order, General Contractor shall prepare, execute, and submit to Developer the corresponding Change Order setting forth the work to be performed, any corresponding increases or decreases to the Contract Sum, changes to the Completion Period, and an estimate of the applicable Change Order Fee. Such submitted Change Order shall only be deemed authorized upon its execution and return by Developer. The Work requested in a Change Order will not be completed until such Change Order has been executed by General Contractor and Developer. Any dispute arising over the terms of any proposed Change Order shall be treated as a Claim.

(c) As compensation for any additional work to be performed pursuant to a Change Order, General Contractor shall be paid a fee equal to 5% multiplied by any increase to the Contract Sum set forth in such Change Order; provided however, that no such fee shall be applied to Change Orders related to Upgrades. Furthermore, if pursuant to the terms of a Change Order, the Contract Sum is reduced, General Contractor shall deduct from the General Contractor Fees and Costs an amount equal to 5% multiplied by such decrease in the Contract Sum.

(d) Notwithstanding any provision of this Agreement, Developer may unilaterally terminate any Change Order prior to the completion of the Work set forth in such Change Order. Upon such termination, a deductive change order for the amount of the uncompleted Work set forth in the terminated Change Order shall be issued by Developer and no General Contractor Payment, Change Order Fee, or General Contractor Upgrade Fee shall be assessed in connection with such Change Order.

**9.02 Concealed Conditions.** To the extent that Concealed Conditions exist and adversely and materially affect the production or sequencing of the Work, General Contractor shall be entitled to an equitable adjustment of the Contract Sum to reflect the actual unforeseeable costs associated with such Concealed Conditions; provided however, that such adjustment shall be requested and approved as if it were a Change Order. However, if General Contractor was negligent in the performance of its responsibilities including its responsibility to review the Contract Documents including, without limitation, any soils reports and hydrology studies, and such negligence was a cause for the increased claim, the Contract Sum shall not be increased. The term "Concealed Conditions" shall include such conditions that (a) are concealed or unknown conditions; (b) discovered below grade; (c) are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided for by this Agreement; and (d) vary materially from those conditions set forth in the Contract Documents. Subject only to the previous sentence of this Section 9.02, General Contractor shall not be entitled to any Change Orders or adjustment in the Contract Sum made necessary by any unforeseen conditions including, without limitation, unforeseen gaps in or coordination issues arising from the Contract Drawings.

**ARTICLE X  
TERMINATION OF AGREEMENT**

**10.01 Termination by Developer Without Cause.**

(a) Developer may, without cause, terminate this Agreement in whole, or in part, at any time prior to the completion of the Work. It is expressly understood that such a partial termination may include, without limitation, the removal of the construction or completion of one or more of the Buildings from the scope of the Work. Developer shall give General Contractor 20 days written notice, specifying the extent of termination and the effective date. In the event of such termination, General Contractor shall only be entitled to recover from Developer (a) payment for any Work (including the applicable General Contractor Fees and Costs) completed since the Progress Payment prior to such termination and (b) General Contractor's reasonable demobilization costs not to exceed an aggregate of \$10,000. In no event shall General Contractor be entitled to profit or markup on services or work not performed.

(b) Upon receipt of written notice of termination of the Agreement or a portion of the Agreement pursuant to Section 10.01(a), General Contractor shall do the following:

(i) Cease operations, or such portion of the operations, as directed by Developer in such notice;

(ii) Take any action necessary, or that Developer may request, for the protection and preservation of the Work until the effective date of such termination;

(iii) Continue any Work that is not subject to such notice; and

(iv) Cooperate with, and take any actions necessary to support, any efforts by Developer to assign the Third-Party Agreements to Developer or its designees.

**10.02 Termination by Developer With Cause.**

(a) Developer may terminate the Agreement if General Contractor:

(i) Fails to supply enough properly skilled workers as set forth in Article F; fails to supply enough proper materials or manpower to complete any portion of the Work pursuant to the Schedule;

(ii) Fails to make payment to Third-Party Service Providers for materials or labor in accordance with this Agreement and the respective agreements between General Contractor and such Third-Party Service Providers;

(iii) Persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;

(iv) Fails to provide the revised Schedules as required by Sections 4.01 (e) and (f);

(v) Fails to conduct any meetings as required by Section 2.02(f); or

(vi) Otherwise breaches any provision of this Agreement and fails to cure such breach within 48 hours of receiving written notice of such breach from Developer.

(b) When any of the reasons set forth in Section 10.02(a) exist, Developer may without prejudice to any other rights or remedies available to Developer and after giving General Contractor seven days' written notice (in addition to the 48 hours notice for purposes of Section 10.02(a)(vi)), terminate employment of General Contractor and may do the following:

(i) Take possession of the Project Site, and all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor to the extent that such items are incorporated into the Buildings or the Project Site;

(ii) Accept assignment of any Third-Party Agreements pursuant to Section 10.04; and

(iii) Complete the Work by whatever reasonable method that Developer deems expedient.

(c) In the event of a termination pursuant to Section 10.02(b), (i) General Contractor shall not be entitled to receive any further payment until the Work is finished and the receipt of any such payment shall be subject to Section 10.02(d) and (ii) upon the request of General Contractor after the completion of the Work, Developer shall furnish to General Contractor within 10 calendar days a detailed accounting of the costs incurred by Developer to finish the Work pursuant to Section 10.02(b)(iii).

(d) In the event of a termination pursuant to Section 10.02(b), upon completion of the Work, one of the following shall be paid:

(i) If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for any additional

services, cost increases, damages, or expenses made necessary by such termination or breach, such excess balance shall be retained by Developer as liquidated damages (and not as a penalty) for the underlying breach.

(ii) If the cost of finishing the Work, including compensation for any additional services, cost increases, damages, or expenses made necessary by such termination or breach, exceeds the unpaid balance of the Contract Sum, such excess cost of finishing the Work shall be immediately paid by General Contractor to Developer.

**10.03 Retained Equipment.** Upon the termination of the Agreement pursuant to this Article X, Developer may elect to retain any equipment owned by General Contractor that is incorporated into the Project.

**10.04 Assignment.** Each Third-Party Agreement for a portion of the Work is hereby assigned by General Contractor to Developer provided that such assignment is effective only after termination of the Agreement by Developer for cause pursuant to Section 10.02 and only for those Third-Party Agreements which Developer accepts by notifying General Contractor and the applicable Third-Party Service Provider in writing. General Contractor shall execute and deliver all such documents and take all such steps as Developer may require for the purpose of fully vesting in Developer the rights and benefits of General Contractor under such documents. Upon the acceptance by Developer of any Third-Party Agreement, subject to the other terms of this Article X, Developer shall pay to the corresponding Third-Party Service Provider any undisputed amounts owed for any Work completed by such Third-Party Service Provider, prior to the underlying termination for which Developer had not yet paid General Contractor prior to such underlying termination.

## ARTICLE XI CLAIM AND DISPUTE RESOLUTION

**11.01 Definition.** The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of any Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between Developer and General Contractor arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**11.02 Time Limits on Claims.** Claims by either party must be initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

### **11.03 Resolution of Claims and Disputes by the Architect.**

(a) Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect, for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between Developer and General Contractor arising prior to the date that Final Payment is made, unless 30 days have passed after the Claim has been referred to the Architect with no decision has been rendered by the Architect. The Architect will not decide disputes between General Contractor and persons or entities other than Developer.

(b) The Architect will review each Claim, and within 10 days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

(c) The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or applicable Completion Period or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

(d) When a written decision of the Architect states that (i) the decision is final but subject to mediation and arbitration and (ii) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within such 30 days' period shall result in the Architect's decision becoming final and binding upon Developer and General Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

### **11.04 Mediation.**

(a) Any Claim shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

(b) The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the Construction Industry

Mediation Rules of the American Arbitration Association in effect as of the date that such Claim arises. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Las Vegas, Nevada. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **11.05 Arbitration.**

(a) Any Claim shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 11.04.

(b) Claims not resolved by mediation shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date that such Claim arises. The demand for arbitration shall be filed in writing with the other party to the Agreement, the American Arbitration Association, and the Architect.

(c) A demand for arbitration shall be made within the time limits specified in Sections 11.03(d) and 11.04(a) as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 2.12(d).

(d) 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.

(e) 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.

**11.06 Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Developer and General Contractor related to the Project or this Agreement, General Contractor shall diligently continue to prosecute the Work

to the full extent practicable pending resolution of the unresolved Claim, dispute, or controversy and Developer shall continue to make payment required under the this Agreement for all Work that is not directly implicated in the Claim, dispute, or controversy.

## ARTICLE XII MISCELLANEOUS PROVISIONS

**12.01 Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by electronic mail or facsimile, upon transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below or such other address as either party may specify in writing:

(i) If to General Contractor:

APCO Construction  
3432 N. 5th Street  
Las Vegas, NV 89032  
Attention: Shawn Bowne  
Phone: (702) 734-0198  
Fax: (702) 734-0396  
Email: [sbowne@apcoconstruction.com](mailto:sbowne@apcoconstruction.com)  
[mickeri@apcoconstruction.com](mailto:mickeri@apcoconstruction.com)

(ii) If to Developer

Gemstone Development West, Inc.  
9121 W. Russell Rd., Suite 117  
Las Vegas, NV 89148  
Attention: Peter Smith  
Phone: (702) 614-3193  
Email: [pete@gemstonedev.com](mailto:pete@gemstonedev.com)

**12.02 Injunctive Relief for Breach.** General Contractor's obligations under this Agreement are of a unique character that gives them particular value. A breach of any of such obligations will result in irreparable and continuing damage to Developer for which there will be no adequate remedy at law. In the event of such breach, Developer will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

**12.03 Merger Clause.** This Agreement represents the entire and integrated agreement between Developer and General Contractor related to the subject matter hereof and supersedes all prior negotiations, representations,

or agreements, either written or oral, expressly excluding the Grading Agreement, dated April 17, 2007, between General Contractor and Developer.

**12.04 Amendment and Termination.** Subject to Article X and Section 4.01(j), this Agreement may be amended or terminated only by written instrument executed by both Developer and General Contractor.

**12.05 Assignment of this Agreement.** Developer may freely assign this Agreement but shall provide written notice of any assignment to General Contractor. Except as set forth in this Agreement, General Contractor may not subcontract, assign, or otherwise delegate its obligations under this Agreement without Developer's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of General Contractor's and Developer's successors and assigns, and will be binding on any assignees; provided however, that this Agreement shall not be construed to create a contractual relationship for the benefit of any third-party, including, without limitation, the Architect or any Third-Party Service Provider.

**12.06 Governing Law; Venue.** This Agreement shall be governed in all respects by the laws of the State of Nevada, as such laws are applied to agreements entered into and to be performed entirely within Nevada between Nevada residents and without regard to any conflict of law provisions. Subject to Article XI, any action or proceeding arising from or relating to this Agreement may only be brought in the applicable court in Las Vegas, Nevada, and each party hereby irrevocably submits to the jurisdiction and venue of such courts.

**12.07 Attorney's Fees:** Subject to Section 2.16, in the event that any negotiation, suit, action, arbitration, or mediation is instituted to enforce or interpret any provision in this Agreement or to resolve any dispute arising from or related to the Work, the prevailing party in such negotiation, suit, action, arbitration, or mediation shall be entitled to recover, in addition to any other relief to which it is entitled, from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**12.08 Unenforceability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.



**12.09 Waivers and Non-Waiver of Remedies.** No waiver by Developer of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by General Contractor of the same or any other provision. Developer's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Developer's consent to or approval of any subsequent act by General Contractor. Developer's failure to declare a breach of this Agreement for a particular default by General Contractor shall not be a waiver of any preceding or subsequent breach by General Contractor. Unless expressly stated otherwise in this Agreement, nothing in this Agreement shall limit the rights and remedies available to any party for any breach of this Agreement by the other party.

**12.10 Headings.** The table of contents and the headings of Articles and Sections are for convenience only and shall not modify rights and obligations created by this Agreement.

**12.11 Indemnification.**

(a) General Contractor agrees to defend, indemnify and hold harmless Developer and Developer's agents and employees from any claims, demands, losses and liabilities to or by any and all persons or entities (including without limitation, Developer, General Contractor, and any Third-Party Service Provider and their respective employees, agents, licenses, or representatives) arising out of or from the (i) any breach of this Agreement by General Contractor; (ii) the negligence or willful misconduct of General Contractor or any Third-Party Service Provider or any of their agents or employees; and (iii) the Services.

(b) Notwithstanding Section 12.11 (a), General Contractor's duty to defend and indemnify and hold Developer harmless shall not apply to liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the sole negligence of Developer or Developer's agents or employees.

(c) Provided that Developer has paid all undisputed outstanding invoices for a given Third-Party Service Provider, in the event that Developer is joined as a party in a lawsuit or arbitration filed by such Third-Party Service Provider concerning sums allegedly due to such party, General Contractor shall provide a bond or other security agreeable to Developer to protect the interests of Developer. The amount of bond or security provided by General Contractor shall be equal to 150% of the amount allegedly due the Third-Party Service Provider or supplier.

**12.12 Building Type References.** All references to "Types" of Buildings in this Agreement are referring to the five building types (I, II, III, IV, and V) in the Contract Documents.

**12.13 Business Days.** Unless it is expressly set forth that a "day" is a "business day", it shall be assumed that such day is a calendar day.

**12.14 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Signatures to this Agreement may be transmitted via facsimile or PDF, and such signatures shall be deemed to be originals.

**12.15 Insurance Binder.** Developer must deliver reasonable evidence of the existence of the OCIP within four business days of the Effective Date.


[Signature Page Attached]

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This Agreement is entered into as of the Effective Date.


**DEVELOPER:**

Gemstone Development West, Inc.

  
\_\_\_\_\_  
Alexander Edelstein  
Chief Executive Officer

**GENERAL CONTRACTOR:**

Asphalt Products Corporation (dba:APCO Construction)

  
\_\_\_\_\_  
By: Randy Nickerl  
Its: Division Manager

8.28.07

[APCO Agreement Signature Page]

# EXHIBIT D

## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-3 APCO Construction Project No. 168  
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, 303.861.5704 Huron Street, Denver, CO, 80202, Redwine Engineering (303) 575-9510 700 17th Street, Denver, CO 80202, Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102, WRG Engineering (702) 990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor")  
3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0396. Nevada  
Contractors License No. 14563.

And

Zitting Brothers Construction, Inc. (hereinafter called the "Subcontractor").  
P.O. Box 178  
Hurricane, UT 84737  
P 435-635-4068 F 435-635-4137

Subcontractor's NV Contractor's License No. 58955

Limit: Unlimited

Contractor and Subcontractor agree as follows:

### 1. Contract Documents

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering and approved by Gemstone Development West, Inc. and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").
- 1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

APCO Construction   
Subcontractor 

- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

- 2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work And Exhibit "B": ZBC S2 Bid proposal #REV5574 Dated 10-05-07
- 2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

- 2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.
- 2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. Contract Price and Payments

- 3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work. And exhibit "B": Z.B.C. (Subcontractor) S2 bid proposal #REV5574 Dated 10-05-07
- 3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and

APCO Construction   
Subcontractor SZ

furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25<sup>th</sup> of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25<sup>th</sup> of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to

assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.

3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.

3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for it's scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (Forms attached). If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work. *(F) Building is considered complete as soon as skywall is completed.* *SZ*

3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner. *Unless contractor has executed & approved change order directing subcontractor to perform certain changes in writing and certain changes have been completed by subcontractor.* *SZ*

3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

#### 4. Prosecution of Work

4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.

(a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size

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24"x36" including one (1) sepia & five (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled "The Manhattanwest Condominiums". Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.

- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.
- 4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
- 4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.

**5. Changes and Claims**

- 5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.
- 5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.
- 5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.
- 5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

6. **Assignments**

- 6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

7. **Taxes**

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. **Default and Termination**

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.

- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/ or appliances shall be returned to

Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor – At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Construction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.

- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for Convenience *Nonperformance*

- 9.1 Right to Terminate for ~~Convenience~~ *Nonperformance*. The Contractor shall have the right to terminate for ~~convenience~~ *Nonperformance*, at any time, and with ~~or without~~ cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

- 9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for ~~convenience~~ *Nonperformance* notice by the Subcontractor.

- 9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
- B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
- C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
- D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
- E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
- F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
- G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
- H. Take any other action toward termination as directed by the General Contractor.

- 9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.
- 9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:
- A. The direct cost of the work performed by Subcontractor prior to termination.
  - B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.
  - C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.
- 9.6 Items Not Compensated. The Subcontractor shall not be compensated for.
- A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.
  - B. Unabsorbed overhead and anticipated lost profits.
- 9.7 Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.
- 9.8 Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.
- 9.9 Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

10. Bonds

- 10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligor, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

11. Indemnity and Insurance -

11.1 INSURANCE REQUIREMENTS – Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.
2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only.** "Claims Made" is not acceptable. The limits of liability shall not be less than:  

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  - a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,
  - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. **Excess Liability:** Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
5. **The Project is covered by an OCIP.** Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC. and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."

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Subcontractor SZ


8. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; (see attached samples) (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

## 11.2 INDEMNIFICATION

- a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss, damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.
- b) **Indemnity Not Limited:** In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

## 12. Warranty and Guarantee

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

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**13. Patents**

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

**14. Compliance with Regulations, Applicable Law and Safety**

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.
- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.

**15. Damage to Work**

- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.

*other than that of fire* **SZ**  
*MA*

**16. Inspection and Approvals**

- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to

APCO Construction *MA*  
Subcontractor **SZ**

correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.

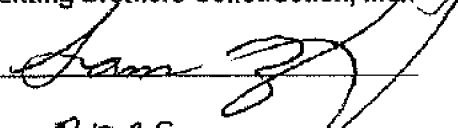
- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with a request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.
17. Arbitration
- 17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- 17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.
- 17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- 17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- 17.7 This Agreement to arbitrate shall not apply to any claim of contrition or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- 17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

18. Miscellaneous

- 18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.
- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.
- 18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Zitting Brothers Construction, Inc.

  
pres  
TITLE

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction   
Subcontractor 

**EXHIBIT 'A'**  
**Subcontractor Scope of Work**  
APCO Contract No. 0168

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_\_ through \_\_\_\_ Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.


The Scope of Work shall specifically include but not be limited to the following list of bid items:

**Wood Framing, Sheathing, and Shimming Complete:** Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes and Necessary Insurance to install and complete all ~~glass~~ <sup>labor</sup> and ~~cladding~~ <sup>materials</sup>, including ~~spandrel glass~~ <sup>supplements</sup> per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering (see attached Project Drawing List) for the amount of **Fourteen Million Four Hundred and Sixty One Thousand and no/100, (\$14,461,000.00)** for the project. The breakdown for these costs are as follows: SZ


Building Type 1 Podium:	\$ 1,805,000.00 X 6 BUILDING'S = 10,830,000.00
Building Type 4 Podium:	\$ 1,400,000.00 X 1 BUILDING = 1,400,000.00
Building Type 5 Podium:	\$ 1,115,500.00 X 2 BUILDING'S = 2,231,000.00
	<u>Total = 14,461,000.00</u>

Our understanding of the clarifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all alternate/option items of work as shown on your proposal at the stated alternate price during the course of construction

Zitting Brothers Construction, Inc.

  
pres.  
TITLE

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction   
Subcontractor SZ

## SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the Owner/General Contractor jobsite office area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.  
*Enclosed with security fence. S2*
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing its debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employee's.
- (k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.
- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project. *S2 See exhibit "B" for exception on material pricing.*

**Request for Taxpayer  
Identification Number and Certification**

Give form to the  
requester. Do not  
send to the IRS.

Print or type See specific instructions on page 2.	Name (as reported on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶	<input type="checkbox"/> Exempt from backup withholding
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								

or

Employer identification number								

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part III Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶

**Purpose of Form**

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes you are considered a person if you are:

- an individual who is a citizen or resident of the United States,
- a partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or

- any estate (other than a foreign estate) or trust. See Regulation section 301.7701-6(a) for additional information.

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

## APPENDIX "C"

[illegible]

APC000044610

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<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 01/03/2003
PRODUCER	<i>All Liability Insurance to be provided by OCIP</i>	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED		INSURERS AFFORDING COVERAGE
		INSURER A: INSURER B: INSURER C: INSURER D: INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XOL Included <input checked="" type="checkbox"/> Bkt Contractual GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one lit) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
*	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				EL EACH ACCIDENT \$ 1,000,000 EL DISEASE - EA EMPLOYEE \$ 1,000,000 EL DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

APCO Construction, its directors, officers, employees, and the Owner are included as Additional Insured under the General Liability policy per the terms and conditions of the contract.

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER	CANCELLATION
APCO Construction 3432 N. 5th Street N. Las Vegas, NV 89032		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE

APCO00044611



POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE**

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Coverage is primary and non-contributing with respect to insurance carried by \*additional insureds.

AS RESPECTS:

\_\_\_\_\_  
Authorized Signature

# APPLICATION AND CERTIFICATE FOR PAYMENT TO GENERAL CONTRACTOR

PROJECT:

PAGE 1 OF 1

APPLICATION NO:  
PERIOD:  
PROJECT NOS:  
CONTRACT DATE:

Distribution to:  
☐ OWNER  
☐ ARCHITECT  
☐ CONTRACTOR

FROM SUBCONTRACTOR:

VIA ARCHITECT:

## CONTRACT FOR:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation sheet is attached.

The undersigned contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner, and that current payment shown herein is now due.

### 1. ORIGINAL CONTRACT SUM

2. Net change by Change Orders \$

3. CONTRACT SUM TO DATE (Line 1 + 2) \$

4. TOTAL COMPLETED & STORED TO DATE (Column G on schedule of values) \$

### 5. RETAINAGE

a. 10% of completed work (Columns D + E on G703) \$

b. 10% of Stored Material (Columns F on G703) \$

Total Retainage (line 5a 5b or total in column I on G703) \$

6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total) \$

### 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

(Line 6 from prior Certificate) \$

### 8. CURRENT PAYMENT DUE

\$

### 9. BALANCE TO FINISH, INCLUDING RETAINAGE

(Line 3 less Line 6) \$

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
TOTAL CHARGES APPROVED IN PREVIOUS MONTHS BY OWNER	0	-
Total approved this Month	0	0
TOTALS	0	-
NET CHARGES by change order		

### CONTRACTOR

By: Date:

State of: Nevada

County of: Clark

Subscribed and sworn to before me this 2007 day of

Notary Public:

My Commission Expires:

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observation and data comprising this application, the Architect certifies to the Owner that to the best of the quantity of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for, initial all figures on this application and on the Continuation sheet that are changed to conform to the amount certified)

ARCHITECT:

By: Date:

This Certificate is not negotiable. The amount certified is payable to the contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**APPLICATION AND CERTIFICATE FOR PAYMENT.**  
 containing Contractor's signed certification, is attached.

Page 1 of 1

## LABOR PAYMENT AFFIDAVIT

Property Name \_\_\_\_\_

Property Location \_\_\_\_\_

Undersigned's Customer \_\_\_\_\_

Payment Period Through \_\_\_\_\_

The undersigned subcontractor declares under penalty of perjury that the signatures appearing herein below constitute a complete list of all persons who have performed labor on behalf of the subcontractor for the project designated above during the specified period and whom the undersigned has paid for their labor performed on behalf of the subcontractor for said specified period, and provides the indemnity set forth below.

SUBCONTRACTOR: \_\_\_\_\_  
(Type or Print Name of Subcontractor)

BY: \_\_\_\_\_  
(Signature of Person Authorized to Sign for Subcontractor)

The undersigned persons performing labor for the subcontractor represent, warrant and affirm by signing this affidavit that each person has been paid in full for all labor supplied to the above designated project through the Payment Period. Each of the undersigned further represents, warrants and affirms that there are no checks or other conditional instruments of payment that have not cleared the bank and payment has actually been received by each of the undersigned. **IF YOU HAVE NOT BEEN PAID, DO NOT SIGN THIS AFFIDAVIT.**

The subcontractors and each of the undersigned indemnifies and agrees to defend for all costs, losses, fees and expenses incurred by Nevada Construction Services in the event that any representation or warranty or affirmation in this Labor Payment Affidavit is untrue.

**NOTICE: THIS DOCUMENT IS A REPRESENTATION AND WARRANTY BY YOU THAT YOU HAVE BEEN PAID. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT.**

LABORER'S NAME	DATE	LABORER'S SIGNATURE



3432 N. 5th Street • North Las Vegas, NV 89032  
Phone: (702) 734-0198 • Fax: (702) 734-0396  
E-mail: apcoconstruction.com • NGL: 14666

UNCONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Amount of Disputed Claims: \_\_\_\_\_

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a Conditional Release form.



3432 N. 5th Street • North Las Vegas, NV 89032  
Phone: (702) 734-0198 • Fax: (702) 734-0396  
E-mail: apcoconstruction.com • NGL: 14568

*CONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT*

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Payment Period: \_\_\_\_\_  
Amount of Disputed Claims: \_\_\_\_\_

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

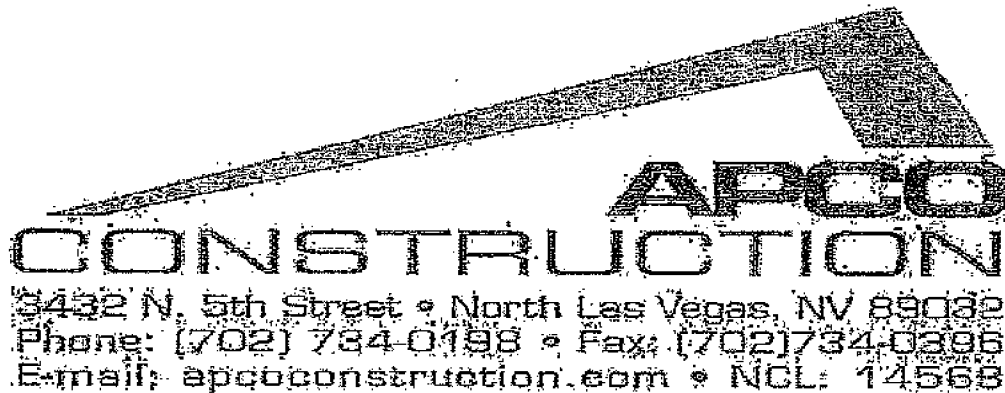
This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of the document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

APCO00044617



*CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT*

Property Name: \_\_\_\_\_

Property Location: \_\_\_\_\_

Undersigned's Customer: \_\_\_\_\_

Inv./Pmt Application No: \_\_\_\_\_

Payment Amount: \_\_\_\_\_

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that are not paid. Before any recipient of the document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

APCO00044618



3432 N. 5th Street • North Las Vegas, NV 89032  
Phone: (702) 734-0198 • Fax: (702) 734-0396  
E-mail: apccoconstruction.com • NGL: 14568

**UNCONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Inv./Pmt Application No: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that are not paid. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of the waiver and release.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Notice:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a Conditional Release form.



ZITTING BROTHERS CONSTRUCTION, INC.

BID

PO BOX 178

HURRICANE UT 84737

TEL: 435/635-4068

FAX: 435/635-4137

EXHIBIT "B"

DATE	BID #
10/8/2007	5679

NAME / ADDRESS	JOB REFERENCE:
APCO CONSTRUCTION ATTN: SHAWN BOWNE FAX:702-734-0396	MANHATTAN WEST

DESCRIPTION	TOTAL
BID INCLUDES LABOR ,LUMBER,TRUSSES,FASTENERS,HARDWARE AND LIFTING EQUIPMENT AS REQUIRED TO COMPLETE ROUGH CARPENTRY AS PER PRINTS AND SPECS	
BUILDING TYPE 1 1,805,000.00 X 6 BLDGS	10,830,000.00
BUILDING TYPE 4 1,4000,000.00 X 1 BLDG	1,400,000.00
BUILDING TYPE 5 1,115,500.00 X 2 BLDGS	2,231,000.00
NOTE* BID EXCLUDES INSTALLATION OF WINDOWS/FLASHING BID IS NET OF ALL LIABILITY INSURANCE COSTS BID INCLUDES H.D. IMBEDS ONLY BID INCLUDES ALL OTHER IMBEDDED ITEMS BID INCLUDES ALL ALL LIFTING EQUIPMENT/CRANE BID EXCLUDES ALL STRUCT. STEEL/ERECTION BID EXCLUDES DECKING & RAILING AT DECKS BID INCLUDES SETTING H.D. BOLTS AT P.T. DECKS  LUMBER PRICING IS BASED ON CURRENT EDITION OF RANDOM LENGTHS PUBLICATION COMPOSITE PRICING. ZITTING AGREES TO HOLD AND GUARANTEE LUMBER PRICING AS CONTAINED IN QUOTE FOR UP TO 30 MONTHS FROM THE SIGNING OF CONTRACT. ALL MATERIALS PERTAINING TO ANY UNFINISHED BUILDINGS AT THE END OF SAID 30 MONTHS WILL BE REPRICED USING A THEN CURRENT RANDOM LENGTHS PUBLICATION COMPOSITE PRICING INDEX TO DETERMINE A PRICE ADD OR DEDUCT WHICH EVER THE CASE MAY BE. IT IS FURTHER AGREED THAT A SUPPLEMENT TO CONTRACT WILL BE ISSUED FROM CONTRACTOR TO REFLECT SUCH CHANGES.	
	TOTAL

I accept bid, authorize work and purchase of materials

SIGNATURE

DATE \_\_\_\_\_

\_\_\_\_\_

ZITTING BROTHERS CONSTRUCTION, INC.

BID

PO BOX 178

HURRICANE UT 84737

TEL: 435/635-4068

FAX: 435/635-4137

EXHIBIT "B"

DATE	BID #
10/8/2007	5679

NAME / ADDRESS	JOB REFERENCE:
APCO CONSTRUCTION ATTN: SHAWN BOWNE FAX: 702-734-0396	MANHATTAN WEST

DESCRIPTION	TOTAL
<p>CHANGES TO BUILDING TYPE 1 THAT RESULT IN COST INCREASE/DECREASE THAT REQUIRES A CHANGE ORDER WILL ALSO BE CONSIDERED COST INCREASE/DECREASE TO BLDG TYPES 4 &amp; 5 AND A SUPPLEMENT TO CONTRACT WILL BE ISSUED FROM CONTRACTOR TO REFLECT SUCH COST IMPACT USING A COST PER FOOT ALLOCATION TO DETERMINE COST IMPACT ON TYPES 4 &amp; 5 ACCORDINGLY</p> <p>IF BUILDINGS ARE NOT COVERED UP WITH DRYWALL/STUCCO WITHIN 60 DAYS OF ERECTION ZITTING BROTHERS INC WILL NOT BE HELD RESPONSIBLE FOR PERFORMING ADDITIONAL PICK UP AND REPLACEMENT. IF ZBC HAS NOT BEEN ABLE TO PERFORM "FINAL" PICKUP DUE TO OTHER TRADES NOT COMPLETING WORK WITHIN THE ABOVE TIME FRAME, THEN CONTRACTOR WILL BE RESPONSIBLE FOR ADDITIONAL MATERIAL AND LABOR TO CORRECT EXCESSIVE PROBLEMS CAUSED BY WEATHER AND OR OTHER TRADES.</p>	
	<b>TOTAL</b> \$14,461,000.00

I accept bid, authorize work and purchase of materials

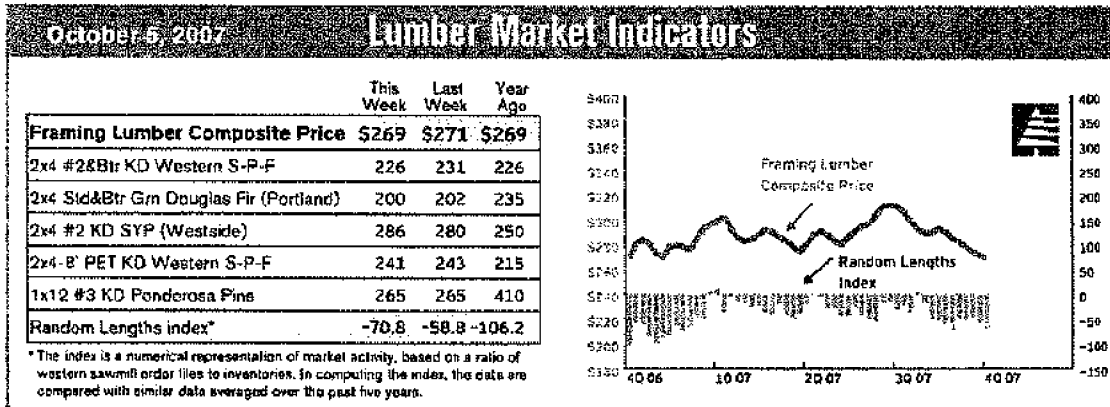
SIGNATURE

DATE \_\_\_\_\_

\_\_\_\_\_

# EXHIBIT "B"

## 4 **RANDOM LENGTHS** Lumber Market Report



### Market Overview

September's dismal conclusion extended into early October, with traders hard-pressed to cite reasons for optimism in the fourth quarter. Despite prices near or falling below mill break-even points, it was the lack of liquidity that most troubled traders. While curtailments in the West helped to ease downward pressure on prices, traders widely anticipated more production cut-backs as third-quarter financial results become available. Few new announcements had been made through Thursday.

Trading was especially quiet in Western and Eastern S-P-F. These producers favored Canadian markets, which offered better returns, but were forced to accept lower prices in the U.S. to move volume. The pace of sales in Southern Pine also quieted as the week progressed. The narrow widths, one of the few standouts in the market over the past month, continued to advance, although sales slowed noticeably. Timbers, however, helped pick up some of the slack in dimension sales, with 4x4s and 6x6s posting double-digit gains.

Elsewhere, western producers reported a slight uptick in sales Wednesday and Thursday, but it did little to halt a tortuous downward grind in prices. Buyers cherry-picked key lengths and held out for the specified tallies they desired. Wholesalers mostly traded back to back. Some buyer remorse was evident, as earlier purchases bought at perceived values proved difficult to turn. Urgency to cover shorts was lacking as well.

The Random Lengths Framing Lumber Composite Price dipped to a new low for the year to date. With traders on high alert for credit problems, many took note of the irony in reports that Lumbermens Credit Association had closed. While no confirmation was forthcoming, the firm's phone number was disconnected and its Chicago office appeared to be vacated.

### Dry Framing Lumber

**Spruce-Pine-Fir** Sales were a struggle at Western S-P-F mills, which trimmed prices and opened to counters. Sales continued to lag production by a wide margin, generating more speculation about mill curtailments but prompting no new announcements through Thursday. Prices slipped \$2-10 across the widths of Std/#2&Btr. In #2&Btr 2x4, 8/16' tallies sold in a \$220-225 range, while 8/20' tallies mostly sold at around \$225-228. 2x6-2x10 slipped \$2-4, while 2x12 fell \$10 for the week and was readily available at around \$400 in late trading. Utility and #3 prices eroded, with some deeper discounting on blocks reported; Utility 2x4 was offered as low as \$160 in late trading. MSR sales were slow; cuts in 8/20' tallies were largely in a \$2-5 range. 2x6 2100f slipped, but traders largely concurred that this item remained a standout.

Some Eastern S-P-F mills dug in, refusing to accept offers below their established lists. Others limited price cuts to single digits. Producers routinely shifted #1&2 output to Canadian markets for better returns despite \$C5-10 discounts in the Toronto area. In the Great Lakes zone, #1&2 2x10 held, 2x8 led decliners, and 2x4 and 2x6 trended downward. Northeast markets followed a similar pattern. #3 2x4 declined more than 2x6 in the U.S., but both items were equally weak in Canada. In MSR, 2x4 2100f held up better than other items, but prices of all stress-grade items softened.

**Southern Pine** Sales were slow to steady Monday and Tuesday, but activity diminished as the week progressed. Eastside mills reported the most difficulty selling the week's production, while those on the west-side fared best. Upward momentum in the narrow widths lost steam. This was especially noticeable in #2 2x6. Prices of #2 2x4 finished with mild increases in all producing zones; 16s were strong, with truss plants purchasing for multifamily and commercial jobs. 2x6

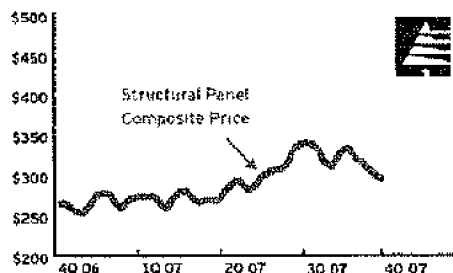
Continued on page 9...

October 5, 2007

## Panel Market Indicators

	This Week	Last Week	Year Ago	Weekly Changes(\$)
<b>Structural Panel Composite Price</b>	<b>\$294</b>	<b>\$296</b>	<b>\$263</b>	<b>52-Week Trend</b>
Oriented Strand Board Composite	180	180	193	
Southern Pine Plywood Composite	451	453	360	
Western Fir Plywood Composite	518	532	499	
15/32" 4-ply Exterior Southern	328-345	322-345	245-265	
1/2" 4-ply Exterior Western	325	343	311	
7/16" OSB (North Central)	157	157	170	
23/32" AG Sanded Western	775	775	785	
Fir 1/10" CD Veneer Mix	46.75	47.50	42.25	

For a list of items included in each composite, go to [www.rflpi.com](http://www.rflpi.com) and click on In Depth > Useful Data > Monthly Composite Prices



**Oriented Strand Board** Sales of OSB were unremarkable, and most prices finished flat or with small adjustments on either side of published levels. The Canadian market remained a bright spot for some producers. Southern Ontario in particular was brisk, and slightly lower quotes from mills drew in numerous buyers for small blocks. 7/16-inch delivering into Toronto finished at \$C170, a level last seen in 1997. By Friday morning, most mills had sold next week's output and quoted shipments for the week of October 15.

Activity in the Southeast and Mid-Atlantic regions perked up, allowing producers to raise quotes off a bottom. Buyers in those regions said prices that had dipped to their lowest levels since January 2001 encouraged them to purchase a few extra loads. However, most said demand in the field remained in the doldrums. North Central producers focused on truckload sales into local markets, as shipments from the Southeast provided stiff price competition in rail markets. Better returns on 23/32-inch T&G continued to allow producers more leeway in price negotiations on this thickness. Activity in the West was muted, and prices were flat to lower.

**Southern Plywood** Westside mills listened to counters on thicker sheathing early in the week, and sold modest volumes at the lower levels. Westside 15/32-inch 4-ply sheathing prices firmed after a major producer announced plans to shift veneer production into engineered wood products instead of sheathing. Eastside producers sold steady volumes of thinner sheathing near last week's levels, but thicker panels needed moderate discounts to entice buyers. Some central zone mills raised prices of 15/32-inch 4-ply after booking orders into the week of October 22.

On the westside, 15/32-inch 4-ply sheathing gained steadily to \$328; truckloads and mixes reached the low \$340s. Sales of 19/32-inch sheathing were sluggish; some westside and central zone producers accepted double-digit discounts to move accumulations. On the eastside, prices of 19/32- and 23/32-inch sheathing dropped about \$5 early, and then firmed. Prices of thinner sheets mostly held. Underlayment sales were weak in all regions; 23/32-inch generally eroded \$10-15. Concrete form 23/32-inch prices posted \$10 gains on the westside, but that item was unchanged on the eastside.

**Western Plywood** Sales of sheathing and underlayment picked up at midweek, with eastbound and California sales sparked in part by a Southern Pine mill halting sheathing production. Buyers insisted on lower prices, however. With shipment times for next week or sooner, mills gave in, and prices slipped as much as \$25. Shipments remained available for next week. Wholesalers covered some short positions and traded back to back. The commercial segment was active, but buyers in this sector and stocking distributors held back in anticipation of lower prices. Sensing mills were nearing breakeven levels, traders watched for curtailments.

Most mills dipped into the mid- to high \$320s to sell 1/2-inch 4-ply, but refused to sell at \$320. 1/2-inch 5-ply developed a \$45 premium to 4-ply because of tighter supplies. The reported price of 23/32-inch underlayment fell to \$562, as its premium to sheathing narrowed. Prices of CCX eroded despite stronger sales into Canada. Mills heavy to output of specialties extended order files into the weeks of October 15 and 22. Shipment times for concrete form were extended, and prices rose.

**Veneer** With their own sales backing off, producers of plywood and LVL stepped back from the veneer market, leaving unsold dry and green veneer on the market. Prices of green CD 1/10 wides fell about \$1, with 1/8 off an equivalent \$1.25. Prices of Fir and white wood 1/6 slipped. Prices of Fir inner plies declined about 25 to 50 cents. AB prices were firm, as demand for face veneer remained strong. Traders noted recent significant relief in Fir log prices, taking some of the sting out of recent veneer price drops.

**Particleboard** Sharp hikes in resin costs swept through the non-structural panel market. Traders called the resin price increases "unprecedented" and by far the steepest on record. Producers scrambled to adjust. Mills estimated that the resin hikes would add at least \$14 to industrial particleboard production costs and as much as \$25 to MDF. Traders debated how producers could pass on the higher costs amid lackluster demand. Flakeboard's shutdown of its 4-foot line in Albany drew attention. Financial troubles at a Canadian particleboard plant disrupted production and helped a few competitors garner additional business. Sales were otherwise lackluster, although a few mills reported surprisingly brisk activity.

October 5, 2007

## Panel Weekly Price Changes

Oriented Strand Board	9/21	9/28	This Week	Chg 3 Weeks	Plywood/Veneer	9/21	9/28	This Week	Chg 3 Weeks
7/16" (North Central)	-5	-3	0	-8	15/32" CD Exterior (Southern-West 4-ply)	-2	-8	+6	-4
7/16" (Eastern Canada)	-5	-2	0	-7	1/2" CD Exterior (Western 4-ply)	-13	-22	-18	-53
7/16" (Southwest)	-8	0	0	-8	23/32" Underlayment (Southern-West)	-13	-20	-15	-48
23/32" T&G (North Central)	-8	-4	-8	-20	23/32" Underlayment (Western)	-12	-18	-23	-53
23/32" T&G (Eastern Canada)	-5	-3	-7	-15	23/32" AC exterior (Western)	0	0	0	0
23/32" T&G (Southwest)	-8	0	0	-8	1/10" Douglas Fir CD 54" Veneer	-1.50	-1.00	-1.00	-3.50

Net, f.o.b. Mill, Unless Otherwise Noted • Prices Per Thousand Square Feet

## ORIENTED STRAND BOARD

	NORTH CENTRAL	WESTERN CANADA	EASTERN CANADA	SOUTH WEST	SOUTH EAST	MID ATLANTIC	TORONTO
1/4"	-	-	138	-	-	-	165
3/8"	152	143	143	145	125	133	168
7/16"	157	148	148	150	130	138	168
15/32"	177	162	166	175	155	163	188
1/2"	190	177	176	185	165	173	208
19/32" T&G	243	217	224	220	223	234	260
23/32" T&G	290	247	250	275	260	264	300

## DELIVERED PRICES

	3/8"	7/16"	15/32"	19/32" T&G	23/32" T&G
Chicago	-	170	190	-	310
Seattle	175	179	190	262	310
Portland	177	181	192	265	313
Sacramento <sup>1</sup>	183	192	211	275	325
Los Angeles <sup>2</sup>	185	198	217	280	330
Denver	181	194	212	275	325
Salt Lake City	183	197	215	275	325
Phoenix <sup>3</sup>	185	198	217	280	330
Vancouver <sup>4</sup>	180	180	200	265	325
Calgary <sup>4</sup>	175	175	195	260	320

1—Plants in Tex., La., Ark., and Okla. 2—Plants in Ga., Ala., Miss., S.C., and Tenn. 3—Plants in Va., W. Va., N.C.  
4—Prices delivered in Canadian funds, GST not included. 5—Add 10-15 for Struct.

SOUTHERN PLYWOOD<sup>1</sup>

## SHEATHING

From:	CD Exterior	CENTRAL	EAST	MILL Grade	WEST	CENTRAL	EAST
3/8"	260	285	265	WEST	235	235	230
15/32" 3-ply	325	-	345	255	250	225	
15/32" 4-ply	328	338	345	305	285	310	
19/32" 4-ply	355	380	385	315	325	330	
23/32"	470	480	480	450	450	465	

## SANDED

From:	AC Exterior	BC Exterior	WEST	EAST	UNDERLAYMENT	CX-Hand, T&G	WEST	CENTRAL	EAST
1/4"	365	365	345	350	19/32"	445	490	475	
11/32"	380	395	365	365	23/32"	535	570	560	
19/32"	460	465	455	450	CONCRETE FORM	19/32"	645	-	625
19/32"	550	565	545	550	23/32"	720	-	700	
23/32"	670	685	655	650					

## SIDINGS, Rough Sawn, 8-foot, 6-patch

From:	WEST	EAST
11/32"	350	370
19/32" Grooved 4" or 6" o.c.	550	605
19/32" RBB	600	605

1—West—Plants in Tex., La., Ark.; Central—Plants in Ala., Miss.; East—Plants in Ga., Fla., S.C., also N.C. and Va. where prices are slightly higher.

For Plywood Service Charges, see [www.randomlengths.com](http://www.randomlengths.com). Go to In Depth > Useful Data > Plywood Service Charges, or call Random Lengths at 1-888-686-9925.

## WESTERN PLYWOOD

## SHEATHING

	CD Exterior	CD Struct.	CC Exterior	CC Plugged & Touch Sanded	Mill Grade
3/8"	292	290	295	415	260
1/2" 3-ply	320	-	-	-	300
1/2" 4/5-ply	325/370	385	390	535	300
3/8" 4/5-ply	428/475	495	500	625	335
3/4" 4/5-ply	522/536	595	600	695	465

## SANDED

Exterior	AC	BC	AB	AA
1/4"	455	400	595	610
11/32"	495	440	635	650
15/32"	605	550	745	760
19/32"	695	640	835	850
23/32"	775	720	915	930

## UNDERLAYMENT,

## CX-Hand, T&amp;G

	6-Patch	11/32"	19/32" RBB	11/32"	19/32" RBB
19/32"	545	635	975	985	
23/32"	562	835	1,170	1,180	
1-1/8"	870	900	1,235	1,245	
CONCRETE FORM	18-Patch	11/32"	525	745	755
3/8"	835	19/32"	765	985	995
3/4"	865	19/32" RBB	820	1,040	1,050

## WEST COAST VENEER

CD—8"	54"	27"	RW	F/T	Mix <sup>1</sup>
Douglas Fir 1/10"	52.50	40.50	24.25	21.00	46.75
Douglas Fir 1/8"	65.75	50.00	30.25	26.00	58.50
Douglas Fir 1/6"	85.00	70.00	43.00	33.00	-
White Woods 1/8"	78.50	65.00	38.00	27.00	-

## AB—8"

Douglas Fir	54"	27"	17"	RW
1/10"	124.00	114.00	28.50	18.50
1/8"	-	-	35.50	22.50

1—75% 54", 10% 27", 10% RW, 5% F/T. 2—White Fir, Hemlock, Spruce

## PARTICLEBOARD

Industrial	WESTERN	SOUTHERN	Interior Underlayment	Melamine <sup>3</sup>	WEST	EAST
3/8"	225	230	230	220	-	-
1/2"	240	245	240	235	-	-
5/8"	270	270	260	260	520	455
1 1/16"	-	-	295	295	-	-
3/4"	305	305	310	310	290	545 500
1-1/8"	-	-	485	480	-	-

1—Western Ore. 2—Eastern Ore. 3—Ark., La., Miss., Ala. 4—Ga., S.C. 5—Thermally fused. Coated on both sides, commodity face grade (80 gram), standard white.

## MEDIUM DENSITY FIBERBOARD

	3/8"	1/2"	5/8"	3/4"
WEST <sup>1</sup>	295	320	390	440
EAST <sup>2</sup>	280	330	380	435

1—Plants west of the Mississippi River. 2—Plants east of the Mississippi River

# EXHIBIT E

# Change Order Summary Log - External

ZITTING BROTHERS CONSTRUCTION

Date: 4/6/2010

F-01-07085 MANHATTAN WEST

Number	Date	Description	Original Contract	Denied	Unapproved	Approved	Revised Contract
1	5/20/08	WINDOW INSTALLATION				41,000.00	
2	5/25/08	CHANGES TO PLANS *AR				257,957.00	
3	11/18/08	OPTIONS AT BUILDINGS 8 AND 9				17,108.55	
5	6/15/08	CHANGES TO PLANS * GR				107,589.30	
F-01-07085 MANHATTAN WEST totals			14,461,000.00			423,654.85	14,884,654.85
Report totals			14,461,000.00			423,654.85	14,884,654.85

# EXHIBIT F



# APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: APCO CONSTRUCTION

PROJECT: MANHATTAN WEST

APPLICATION NO: 509

PERIOD TO: 6/30/2008

PROJECT NOS: F-01-07085  
OWNER  
ARCHITECT  
CONTRACTOR

CONTRACT DATE:

FROM CONTRACTOR: ZITTING BROTHERS CONSTRUCTION  
P.O. BOX 178

VIA ARCHITECT:

HURRICANE, UT 84737

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract.  
Continuation Sheet is attached.

1-ORIGINAL CONTRACT SUM..... 14,461,000.00  
2-Net change by Change Orders ..... 423,654.85  
3-CONTRACT SUM TO DATE (line 1 + line 2)..... 14,884,654.85  
4-TOTAL COMPLETED & STORED TO DATE..... 4,033,654.85

### 5-RETAINAGE:

a. 10.00 % of Completed Work ..... 403,365.49  
b. 10.00 % of Stored Material

Total Retainage ..... 403,365.49  
6-TOTAL EARNED LESS  
RETAINAGE..... 3,630,289.36  
7-LESS PREVIOUS CERTIFICATES FOR PAYMENT... 3,282,347.69  
8. CURRENT PAYMENT DUE..... 347,441.67

### 9-BALANCE TO FINISH, INCLUDING RETAINAGE

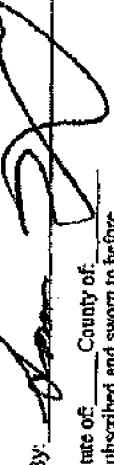
(Line 3 less Line 6) ..... 11,254,365.49

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS:		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that the current payment shown herein is now due.

CONTRACTOR: Zitting Brothers Construction

Date: 01/30/09

By:   
State of \_\_\_\_\_ County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:  
My Commission expires:

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

### AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: \_\_\_\_\_ Date: \_\_\_\_\_

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

## CONTINUATION SHEET

APPLICATION NO: 509

APPLICATION DATE: 6/30/08

PERIOD TO: 6/30/08

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-001-0005	1ST LEVEL-LABOR/EQUIP	123,377.00						123,377.00	
0-001-0010	1ST LEVEL-LUMBER/HARI	152,454.00						152,454.00	
0-001-0015	2ND LEVEL-LABOR/EQUIP	109,815.00						109,815.00	
0-001-0020	2ND LEVEL-LUMBER/HAR	142,304.00						142,304.00	
0-001-0025	3RD LEVEL-LABOR/EQUIP	109,815.00						109,815.00	
0-001-0030	3RD LEVEL-LUMBER/HAR	140,130.00						140,130.00	
0-001-0035	4TH LEVEL-LABOR/EQUIP	100,449.00						100,449.00	
0-001-0040	4TH LEVEL-LUMBER/HARI	91,024.00						91,024.00	
0-001-0045	ROOF LEVEL-LABOR/EQU	34,800.00						34,800.00	
0-001-0050	ROOF LEVEL-LUMBER/TR	111,332.00						111,332.00	
0-004-0005	1ST LEVEL-LABOR/EQUIP	123,377.00						123,377.00	
0-004-0010	1ST LEVEL-LUMBER/HARI	152,454.00						152,454.00	
0-004-0015	2ND LEVEL-LABOR/ EQUI	109,815.00						109,815.00	
0-004-0020	2ND LEVEL-LUMBER/HAR	142,304.00						142,304.00	
0-004-0025	3RD LEVEL-LABOR/EQUII	109,815.00						109,815.00	
0-004-0030	3RD LEVEL-LUMBER/HAR	140,130.00						140,130.00	
0-004-0035	4TH LEVEL-LABOR/EQUIP	100,449.00						100,449.00	
0-004-0040	4TH LEVEL-LUMBER/HARI	91,024.00						91,024.00	
0-004-0045	ROOF LEVEL-LABOR/EQU	34,800.00						34,800.00	
0-004-0050	ROOF LEVEL-LUMBER/TR	111,332.00						111,332.00	
0-005-0005	1ST LEVEL-LABOR/EQUIP	199,015.00						199,015.00	
0-005-0010	1ST LEVEL-LUMBER/HAR	245,918.00						245,918.00	
0-005-0015	2ND LEVEL-LABOR/EQUII	177,141.00						177,141.00	
0-005-0020	2ND LEVEL-LUMBER/HAR	229,547.00						229,547.00	
0-005-0025	3RD LEVEL-LABOR/EQUIP	177,141.00						177,141.00	
0-005-0030	3RD LEVEL-LUMBER/HAR	226,039.00						226,039.00	
0-005-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						162,032.00	
0-005-0040	4TH LEVEL-LUMBER/HARI	146,941.00						146,941.00	
0-005-0045	ROOF LEVEL-LABOR/EQU	61,646.00						61,646.00	

## CONTINUATION SHEET

APPLICATION NO: 509

APPLICATION DATE: 6/30/08

PERIOD TO: 6/30/08

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-008-0050	ROOF LEVEL-LUMBER/TR	179,580.00						179,580.00	
0-008-0005	1ST LEVEL-LABOR/EQUIP	199,015.00						199,015.00	
0-008-0010	1ST LEVEL-LUMBER/HAR	245,918.00						245,918.00	
0-008-0015	2ND LEVEL-LABOR/EQUIP	177,141.00						177,141.00	
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00						229,547.00	
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00						177,141.00	
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00						226,039.00	
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						162,032.00	
0-008-0040	4TH LEVEL-LUMBER/HAR	146,941.00						146,941.00	
0-008-0045	ROOF LEVEL-LABOR/EQUIP	61,646.00						61,646.00	
0-008-0050	ROOF LEVEL-LUMBER/TR	179,580.00						179,580.00	
0-008-0005	1ST LEVEL - LABOR/EQUIP	199,015.00	199,015.00			199,015.00	100.00		19,901.50
0-008-0010	1ST LEVEL - LUMBER/HAR	245,918.00	245,918.00			245,918.00	100.00		24,591.80
0-008-0015	2ND LEVEL - LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		17,714.10
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00	229,547.00			229,547.00	100.00		22,954.70
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		17,714.10
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00	226,039.00			226,039.00	100.00		22,603.90
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00	162,032.00			162,032.00	100.00		16,203.20
0-008-0040	4TH LEVEL-LUMBER/HAR	146,941.00	146,941.00			146,941.00	100.00		14,694.10
0-008-0045	ROOF LEVEL-LABOR/EQUIP	61,646.00	61,646.00			61,646.00	100.00		6,164.60
0-008-0050	ROOF LEVEL- LUMBER/ TR	179,580.00	179,580.00			179,580.00	100.00		17,958.00
0-009-0005	1ST LEVEL- LABOR/EQUIP	199,015.00	199,015.00			199,015.00	100.00		19,901.50
0-009-0010	1ST LEVEL-LUMBER/HAR	245,918.00	245,918.00			245,918.00	100.00		24,591.80
0-009-0015	2ND LEVEL- LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		17,714.10
0-009-0020	2ND LEVEL-LUMBER HAR	229,547.00	229,547.00			229,547.00	100.00		22,954.70
0-009-0025	3RD LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		17,714.10
0-009-0030	3RD LEVEL- LUMBER/HAR	226,039.00	226,039.00			226,039.00	100.00		22,603.90
0-009-0035	4TH LEVEL-LABOR/EQUIP	162,032.00	162,032.00			162,032.00	100.00		16,203.20

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APPLICATION NO: 509

APPLICATION DATE: 6/30/08

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ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-009-0040	4TH LEVEL-LUMBER/HAR	146,941.00	146,941.00			146,941.00	100.00		14,694.10
0-009-0045	ROOF LEVEL-LABOR/EQUI	61,646.00	61,646.00			61,646.00	100.00		6,164.60
0-009-0050	ROOF LEVEL-LUMBER/TR	179,580.00	179,580.00			179,580.00	100.00		17,958.00
0-010-0005	1ST LEVEL-LABOR/EQUIF	199,015.00							
0-010-0010	1ST LEVEL-LUMBER/HAR	245,918.00						199,015.00	
0-010-0015	2ND LEVEL-LABOR/EQUIF	177,141.00						245,918.00	
0-010-0020	2ND LEVEL-LUMBER/HAF	229,547.00						177,141.00	
0-010-0025	3RD LEVEL-LABOR/EQUIF	177,141.00						229,547.00	
0-010-0030	3RD LEVEL-LUMBER/HAF	226,039.00						177,141.00	
0-010-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						226,039.00	
0-010-0040	4TH LEVEL-LUMBER/HAR	146,941.00						162,032.00	
0-010-0045	ROOF LEVEL-LABOR/EQ	61,646.00						146,941.00	
0-010-0050	ROOF LEVEL-LUMBER/TF	179,580.00						61,646.00	
0-011-0005	1ST LEVEL-LABOR/EQUI	199,015.00						179,580.00	
0-011-0010	1ST LEVEL-LUMBER/HAF	245,918.00						199,015.00	
0-011-0015	2ND LEVEL-LABOR/EQUI	177,141.00						245,918.00	
0-011-0020	2ND LEVEL-LUMBER/HAF	229,547.00						177,141.00	
0-011-0025	3RD LEVEL-LABOR/EQUIF	177,141.00						229,547.00	
0-011-0030	3RD LEVEL-LUMBER/HAR	226,039.00						177,141.00	
0-011-0035	4TH LEVEL-LABOR/EQUIF	162,032.00						226,039.00	
0-011-0040	4TH LEVEL-LUMBER/HAR	146,941.00						162,032.00	
0-011-0045	ROOF LEVEL-LABOR/EQ	61,646.00						146,941.00	
0-011-0050	ROOF LEVEL-LUMBER/TF	179,580.00						61,646.00	
0-012-0005	1ST LEVEL-LABOR/EQUIP	155,223.00						179,580.00	
0-012-0010	1ST LEVEL-LUMBER/HAR	191,803.00						155,223.00	
0-012-0015	2ND LEVEL-LABOR/EQUIF	138,160.00						191,803.00	
0-012-0020	2ND LEVEL-LUMBER/HAR	179,034.00						138,160.00	
0-012-0025	3RD LEVEL-LABOR/EQUIF	136,160.00						179,034.00	
0-012-0030	3RD LEVEL-LUMBER/HAR	176,298.00						136,160.00	

ZBCI002040

## CONTINUATION SHEET

APPLICATION NO: 509

APPLICATION DATE: 6/30/08

PERIOD TO: 6/30/08

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-012-0035	4TH LEVEL-LABOR/EQUIP	126,376.00						126,376.00	
0-012-0040	4TH LEVEL-LUMBER/HARI	114,606.00						114,606.00	
0-012-0045	ROOF LEVEL-LABOR/EQU	40,341.00						40,341.00	
0-012-0050	ROOF LEVEL-LUMBER/TR	140,000.00						140,000.00	
	<b>Subtotal</b>	<b>14,461,000.00</b>	<b>3,610,000.00</b>			<b>3,610,000.00</b>		<b>10,851,000.00</b>	<b>361,000.00</b>
C-000-0001	WINDOW INSTALLATION:	41,000.00	20,500.00	20,500.00		41,000.00	100.00		4,100.00
C-000-0002	CHANGES TO PLANS *AR	257,957.00		257,957.00		257,957.00	100.00		25,795.70
C-000-0004	OPTIONS ON BLDGS 6 & 7	17,108.55	17,108.55			17,108.55	100.00		1,710.85
	<b>Subtotal</b>	<b>316,065.55</b>	<b>37,608.55</b>	<b>278,457.00</b>		<b>316,065.55</b>			<b>31,606.56</b>
CO-000-0004	CHANGES TO PLANS * GF	107,589.30		107,589.30		107,589.30	100.00		10,758.93
	<b>Subtotal</b>	<b>107,589.30</b>		<b>107,589.30</b>		<b>107,589.30</b>			<b>10,758.93</b>
	<b>Totals</b>	<b>14,884,654.85</b>	<b>3,647,608.55</b>	<b>386,046.30</b>		<b>4,032,654.85</b>	<b>27.10</b>	<b>10,851,000.00</b>	<b>403,365.49</b>

ZBCI002041

# EXHIBIT G

# APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: APCO CONSTRUCTION

PROJECT: MANHATTAN WEST

APPLICATION NO: 509

PERIOD TO: 11/30/2008

OWNER

PROJECT NOS: F-01-07083

ARCHITECT

CONTRACTOR

CONTRACT DATE:

VIA ARCHITECT:

FROM CONTRACTOR: ZITTING BROTHERS CONSTRUCTION  
P.O. BOX 178  
HURRICANE, UT 84737

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract.  
Continuation Sheet is attached.

1-ORIGINAL CONTRACT SUM..... 14,461,000.00  
2-Net change by Change Orders ..... 423,654.85  
3-CONTRACT SUM TO DATE (line 1 + line 2)..... 14,884,654.85  
4-TOTAL COMPLETED & STORED TO DATE..... 4,033,654.85

### 5-RETAINAGE:

a. .00 % of Completed Work ..... 0.00  
b. .00 % of Stored Material

Total Retainage ..... 0.00  
6-TOTAL EARNED LESS  
RETAINAGE..... 4,033,654.85  
7-LESS PREVIOUS CERTIFICATES FOR PAYMENT... 3,630,289.36  
8. CURRENT PAYMENT DUE..... 403,365.49

### 9-BALANCE TO FINISH, INCLUDING RETAINAGE

(Line 3 less Line 6)  
10,851,000.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total charges approved in previous months by Owner		
Total approved this Month		
TOTALS:		
NET CHANGES by Change Order		

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that the current payment shown herein is now due.

CONTRACTOR: Zitting Brothers Construction

By:  Date: 01/30/09

State of \_\_\_\_\_ County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:

My Commission expires:

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

### AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

## CONTINUATION SHEET

APPLICATION NO: 509

APPLICATION DATE: 11/30/08

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ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-001-0005	1ST LEVEL-LABOR/EQUIP	123,377.00						123,377.00	
0-001-0010	1ST LEVEL-LUMBER/HARI	152,454.00						152,454.00	
0-001-0015	2ND LEVEL-LABOR/EQUIF	109,815.00						109,815.00	
0-001-0020	2ND LEVEL-LUMBER/HAR	142,304.00						142,304.00	
0-001-0025	3RD LEVEL-LABOR/EQUIF	109,815.00						109,815.00	
0-001-0030	3RD LEVEL-LUMBER/HAR	140,130.00						140,130.00	
0-001-0035	4TH LEVEL-LABOR/EQUIP	100,449.00						100,449.00	
0-001-0040	4TH LEVEL-LUMBER/HARI	91,024.00						91,024.00	
0-001-0045	ROOF LEVEL-LABOR/EQU	34,800.00						34,800.00	
0-001-0050	ROOF LEVEL-LUMBER/TR	111,332.00						111,332.00	
0-004-0005	1ST LEVEL-LABOR/EQUIP	123,377.00						123,377.00	
0-004-0010	1ST LEVEL-LUMBER/HARI	152,454.00						152,454.00	
0-004-0015	2ND LEVEL-LABOR/EQUI	109,815.00						109,815.00	
0-004-0020	2ND LEVEL-LUMBER/HAR	142,304.00						142,304.00	
0-004-0025	3RD LEVEL-LABOR/EQUII	109,815.00						109,815.00	
0-004-0030	3RD LEVEL-LUMBER/HAR	140,130.00						140,130.00	
0-004-0035	4TH LEVEL-LABOR/EQUIP	100,449.00						100,449.00	
0-004-0040	4TH LEVEL-LUMBER/HARI	91,024.00						91,024.00	
0-004-0045	ROOF LEVEL-LABOR/EQU	34,800.00						34,800.00	
0-004-0050	ROOF LEVEL-LUMBER/TR	111,332.00						111,332.00	
0-005-0005	1ST LEVEL-LABOR/EQUIP	199,015.00						199,015.00	
0-005-0010	1ST LEVEL-LUMBER/HAR	245,918.00						245,918.00	
0-005-0015	2ND LEVEL-LABOR/EQUII	177,141.00						177,141.00	
0-005-0020	2ND LEVEL-LUMBER/HAR	229,547.00						229,547.00	
0-005-0025	3RD LEVEL-LABOR/EQUIF	177,141.00						177,141.00	
0-005-0030	3RD LEVEL-LUMBER/HAR	226,039.00						226,039.00	
0-005-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						162,032.00	
0-005-0040	4TH LEVEL-LUMBER/HARI	146,941.00						146,941.00	
0-005-0045	ROOF LEVEL-LABOR/EQU	61,646.00						61,646.00	



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			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-008-0050	ROOF LEVEL-LUMBER/TR	179,580.00						179,580.00	
0-008-0005	1ST LEVEL-LABOR/EQUIP	199,015.00						199,015.00	
0-008-0010	1ST LEVEL-LUMBER/HAR	245,918.00						245,918.00	
0-008-0015	2ND LEVEL-LABOR/EQUIP	177,141.00						177,141.00	
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00						229,547.00	
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00						177,141.00	
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00						226,039.00	
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						162,032.00	
0-008-0040	4TH LEVEL-LUMBER/HAR	146,941.00						146,941.00	
0-008-0045	ROOF LEVEL-LABOR/EQUIP	61,646.00						61,646.00	
0-008-0050	ROOF LEVEL-LUMBER/TR	179,580.00						179,580.00	
0-008-0005	1ST LEVEL - LABOR/EQUIP	199,015.00	199,015.00			199,015.00	100.00		
0-008-0010	1ST LEVEL - LUMBER/HAR	245,918.00	245,918.00			245,918.00	100.00		
0-008-0015	2ND LEVEL - LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00	229,547.00			229,547.00	100.00		
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00	226,039.00			226,039.00	100.00		
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00	162,032.00			162,032.00	100.00		
0-008-0040	4TH LEVEL-LUMBER/HAR	146,941.00	146,941.00			146,941.00	100.00		
0-008-0045	ROOF LEVEL-LABOR/EQUIP	61,646.00	61,646.00			61,646.00	100.00		
0-008-0050	ROOF LEVEL - LUMBER/TR	179,580.00	179,580.00			179,580.00	100.00		
0-008-0005	1ST LEVEL-LABOR/EQUIP	199,015.00	199,015.00			199,015.00	100.00		
0-008-0010	1ST LEVEL-LUMBER/HAR	245,918.00	245,918.00			245,918.00	100.00		
0-008-0015	2ND LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00	229,547.00			229,547.00	100.00		
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00	226,039.00			226,039.00	100.00		
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00	162,032.00			162,032.00	100.00		
0-008-0040	4TH LEVEL-LUMBER/HAR	146,941.00	146,941.00			146,941.00	100.00		
0-008-0045	ROOF LEVEL-LABOR/EQUIP	61,646.00	61,646.00			61,646.00	100.00		
0-008-0050	ROOF LEVEL-LUMBER/TR	179,580.00	179,580.00			179,580.00	100.00		
0-008-0005	1ST LEVEL-LABOR/EQUIP	199,015.00	199,015.00			199,015.00	100.00		
0-008-0010	1ST LEVEL-LUMBER/HAR	245,918.00	245,918.00			245,918.00	100.00		
0-008-0015	2ND LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0020	2ND LEVEL-LUMBER/HAR	229,547.00	229,547.00			229,547.00	100.00		
0-008-0025	3RD LEVEL-LABOR/EQUIP	177,141.00	177,141.00			177,141.00	100.00		
0-008-0030	3RD LEVEL-LUMBER/HAR	226,039.00	226,039.00			226,039.00	100.00		
0-008-0035	4TH LEVEL-LABOR/EQUIP	162,032.00	162,032.00			162,032.00	100.00		

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APPLICATION NO: 509

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ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-009-0040	4TH LEVEL-LUMBER/HAR	146,941.00	146,941.00			146,941.00	100.00		
0-009-0045	ROOF LEVEL-LABOR/EQU	61,646.00	61,646.00			61,646.00	100.00		
0-009-0050	ROOF LEVEL-LUMBER/TR	179,580.00	179,580.00			179,580.00	100.00		
0-010-0005	1ST LEVEL- LABOR/EQUIF	199,015.00						199,015.00	
0-010-0010	1ST LEVEL-LUMBER/HAR	245,918.00						245,918.00	
0-010-0015	2ND LEVEL- LABOR/EQUII	177,141.00						177,141.00	
0-010-0020	2ND LEVEL -LUMBER HAF	229,547.00						229,547.00	
0-010-0025	3RD LEVEL-LABOR/EQUIF	177,141.00						177,141.00	
0-010-0030	3RD LEVEL- LUMBER/HAF	226,039.00						226,039.00	
0-010-0035	4TH LEVEL-LABOR/EQUIP	162,032.00						162,032.00	
0-010-0040	4TH LEVEL-LUMBER/HAR	146,941.00						146,941.00	
0-010-0045	ROOF LEVEL- LABOR/ EQ	61,646.00						61,646.00	
0-010-0050	ROOF LEVEL- LUMBER/ TI	179,580.00						179,580.00	
0-011-0005	1ST LEVEL- LABOR/ EQUII	199,015.00						199,015.00	
0-011-0010	1ST LEVEL-LUMBER/HAF	245,918.00						245,918.00	
0-011-0015	2ND LEVEL- LABOR/ EQUI	177,141.00						177,141.00	
0-011-0020	2ND LEVEL- LUMBER/HAF	228,547.00						228,547.00	
0-011-0025	3RD LEVEL-LABOR/EQUIF	177,141.00						177,141.00	
0-011-0030	3RD LEVEL-LUMBER/HAR	226,039.00						226,039.00	
0-011-0035	4TH LEVEL- LABOR/EQUIF	162,032.00						162,032.00	
0-011-0040	4TH LEVEL-LUMBER/HAR	146,941.00						146,941.00	
0-011-0045	ROOF LEVEL- LABOR/EQI	61,646.00						61,646.00	
0-011-0050	ROOF LEVEL- LUMBER/TF	179,580.00						179,580.00	
0-012-0005	1ST LEVEL-LABOR/EQUIP	155,223.00						155,223.00	
0-012-0010	1ST LEVEL LUMBER/HAR	191,803.00						191,803.00	
0-012-0015	2ND LEVEL-LABOR/EQUIF	138,160.00						138,160.00	
0-012-0020	2ND LEVEL-LUMBER/HAR	179,034.00						179,034.00	
0-012-0025	3RD LEVEL-LABOR/EQUIF	138,160.00						138,160.00	
0-012-0030	3RD LEVEL-LUMBER/HAR	176,298.00						176,298.00	

## CONTINUATION SHEET

APPLICATION NO: 509

APPLICATION DATE: 11/30/08

PERIOD TO: 11/30/08

ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED	TOTAL COMPLETED AND STORED TO DATE	%	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD					
0-012-0036	4TH LEVEL-LABOR/EQUIP	126,376.00						126,376.00	
0-012-0040	4TH LEVEL-LUMBER/HARI	114,505.00						114,505.00	
0-012-0045	ROOF LEVEL-LABOR/EQU	40,341.00						40,341.00	
0-012-0050	ROOF LEVEL-LUMBER/TR	140,000.00						140,000.00	
	Subtotal	14,461,000.00	3,610,000.00			3,610,000.00		10,851,000.00	
C-000-0001	WINDOW INSTALLATION:	41,000.00	41,000.00			41,000.00	100.00		
C-000-0002	CHANGES TO PLANS *AR	257,957.00	257,957.00			257,957.00	100.00		
C-000-0004	OPTIONS ON BLDGS 8 & 9	17,108.55	17,108.55			17,108.55	100.00		
	Subtotal	316,065.55	316,065.55			316,065.55			
CO-000-0004	CHANGES TO PLANS * GF	107,589.30	107,589.30			107,589.30	100.00		
	Subtotal	107,589.30	107,589.30			107,589.30			
	Totals	14,884,654.85	4,033,654.85			4,033,654.85	27.10	10,851,000.00	

# EXHIBIT H



July 18, 2008

**AMENDED NOTICE**

**VIA FACSIMILE (702-614-0669)**  
**AND U.S. MAIL**

Mr. Alexander Edelstein, CEO  
Gemstone Development  
9121 W. Russell Road, Suite 117  
Las Vegas, Nevada 89148

**RE: MANHATTAN WEST MIXED USE DEVELOPMENT**  
**APCO CONSTRUCTION - NOTICE OF INTENT TO STOP WORK**  
**DEADLINE: CLOSE OF BUSINESS, MONDAY, JULY 28, 2008.**

Dear Mr. Edelstein:

We have previously written to Gemstone regarding the balance that is past due and outstanding for services provided by APCO Construction ("APCO") for work on the Manhattan West Mixed Use Project (the "Project"). Specifically, Gemstone has failed to pay \$3,434,396.50 for Application for Payment No. 8, Owner Draw No. 7, which was submitted to Gemstone on June 20, 2008, and was due no later than July 11, 2008 pursuant to NRS 624.609(1). Accordingly, **THIS LETTER SHALL SERVE AS APCO'S NOTICE OF INTENT TO STOP WORK PURSUANT TO NRS 624.606 THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS PAID THE TOTAL AMOUNT OF \$3,434,396.50 FOR ITS WORK ON THE PROJECT.**

As a reminder, NRS 624.609 provides that:

1. Except as otherwise provided in subsections 2 and 4 and subsection 4 of NRS 624.622, if an owner of real property enters into a written or oral agreement with a prime contractor for the performance of work or the provision of materials or equipment by the prime contractor, the owner must:

(a) Pay the prime contractor on or before the date a payment is due pursuant to a schedule for payments established in a

Mr. Alexander Edelstein, CEO  
July 18, 2008  
APCO Construction's Notice of Intent to Stop Work  
Page 2

written agreement; or

(b) If no such schedule is established or if the agreement is oral, pay the prime contractor within 21 days after the date the prime contractor submits a request for payment.

NRS 624.610 provides:

1. If:

(a) An owner fails to pay the prime contractor in the time and manner required by subsection 1 or 4 of NRS 624.609;

...  
(c) After receipt of a notice of withholding given pursuant to subsection 3 or 4 of NRS 624.609, the prime contractor gives the owner written notice pursuant to subsection 4 of NRS 624.609 and thereby disputes in good faith and for reasonable cause the amount withheld or the condition or reason for the withholding; or

(d) Within 30 days after the date that a written request for a change order is submitted by the prime contractor to the owner, the owner fails to:

(1) Issue the change order; or

(2) If the request for a change order is unreasonable or does not contain sufficient information to make a determination, give written notice to the prime contractor of the reasons why the change order is unreasonable or explain that additional information and time are necessary to make a determination,  
the prime contractor may stop work after giving written notice to the owner at least 10 days before stopping work.

...  
3. If an owner fails to issue a change order or give written notice to the prime contractor pursuant to the provisions of paragraph (d) of subsection 1:

(a) The agreement price must be increased by the amount sought in the request for a change order;

(b) The time for performance must be extended by the amount sought in the request for a change order;

(c) The prime contractor may submit to the owner a bill or invoice for the labor, materials, equipment or services that are

Mr. Alexander Edelstein, CEO  
July 18, 2008  
APCO Construction's Notice of Intent to Stop Work  
Page 3

the subject of the request for a change order; and  
(d) The owner shall pay the prime contractor for such  
labor, materials, equipment or services with the next payment made to  
the prime contractor.

Progress Payments are addressed in Section 5.05 of the General Construction Agreement for GMP (the "Agreement"). While Section 5.05 discusses the process for making and approving progress payments, there is no payment schedule set forth in the Agreement. Accordingly, pursuant to NRS 624.609(1)(b), payment was due to APCO within 21-days of its request for payment (again, no later than July 11, 2008). To date, no payment has been made.

APCO also understands that Gemstone may also seek to withhold a portion of the payment due pursuant to NRS 624.609(3), as set forth in your letter of July 2, 2008. As stated in our response of July 8, 2008, APCO disputes in good faith and for reasonable cause the amount withheld and the condition and reasons given for the withholding. In addition to the reasons set forth in APCO's July 8, 2008 letter, the proposed withholding is improper under the express terms of NRS 624.609. Under NRS 624.609(2), if sufficient and actual good faith grounds for withholding had been asserted, Gemstone would only have been entitled to retain sums "reasonably necessary to correct or repair any work which is the subject of the request for payment . . . ." Gemstone's proposed withholding is not to correct or repair any work. The basis for the withholding set forth by Gemstone (to cover a speculative and self serving claim for liquidated damages) is not one of the grounds set forth in the statute, and is therefore void and unenforceable under NRS 624.622(2).

As a final matter, Gemstone has failed to comply with its duty to act in good faith by failing to issue written change orders, or otherwise dispute written requests for change orders, within 30 days as required pursuant to NRS 624.610(1)(d). As set forth in the statute, these change order requests are now part of the Contract Sum, and the applicable Completion Periods are to be extended for the days sought. Moreover, please be advised that APCO will be submitting its invoice for the change order requests that are now part of the Contract Sum shortly and expect to receive payment from Gemstone with the next payment that is to be made to APCO as required under NRS 624.610.

If APCO has not been paid for Application for Payment No. 8, Owner Construction Draw No. 7, in the amount of \$3,434,396.50 by the close of business on Monday, July 28, 2008, APCO reserves the right to stop work on the Project anytime after that date. While, APCO is willing to continue to work with Gemstone to get these issues resolved, APCO is not waiving its

Mr. Alexander Edelstein, CEO

July 18, 2008

APCO Construction's Notice of Intent to Stop Work

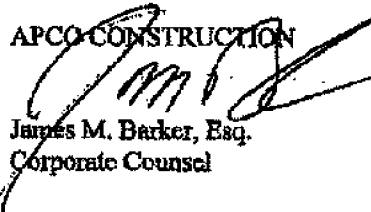
Page 4

right to stop work any time after July 28, 2008, if APCO continues to work on the Project or otherwise attempts to resolve these issues with Gemstone.

Thank you for your attention to this matter.

Sincerely,

APCO CONSTRUCTION

  
James M. Barker, Esq.  
Corporate Counsel

Cc: Peter Smith, Gemstone  
Craig Colligan, Gemstone  
All Subcontractors



# EXHIBIT I

# Statement of Account

APCO CONSTRUCTION (APCOCON)

256 West 100 South/PO Box 178  
Hurricane, Utah 84737  
Phone (435) 635-4068  
Fax(435) 635-4137

Statement of Account as of 4/6/2010

Invoice	Description	Date	Charges	Credits	Retainage	Finance Charge
<b>F-01-07085 MANHATTAN WEST</b>						
73903	Invoice	06/30/2008	347,441.67			
73957	Invoice	11/30/2008	403,365.49			
	<b>F-01-07085 MANHATTAN WEST Totals</b>		<b>750,807.16</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
	<b>Statement Totals:</b>		<b>750,807.16</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

Current	Over 30	Over 60	Over 90	Over 120	Outstanding Amount	Retainage Balance
0.00	0.00	0.00	0.00	750,807.16	750,807.16	0.00

# EXHIBIT J

## NOTICE OF RIGHT TO LIEN

Gemstone Development  
9121 West Russell Road, Unit 117  
Las Vegas, Nevada 89148

To Whom It May Concern:

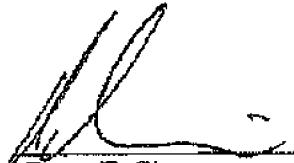
NOTICE IS HEREBY GIVEN by Ryan E. Simpson, the duly authorized agent for Zitting Brothers Construction, 256 West 100 South, Hurricane, Utah 84737. That Zitting Brothers Construction has supplied materials or equipment or performed work or services as follows:

rough carpentry/framing

for improvement of property identified Manhattanwest Condominiums 9205-9255 West Russell Road, Las Vegas, Nevada 89148 under contract with APCO, 3432 North Fifth Street, Las Vegas, Nevada, 89032.

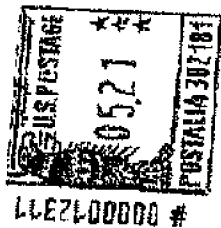
**THIS IS NOT A NOTICE THAT THE UNDERSIGNED HAS NOT BEEN  
OR DOES NOT EXPECT TO BE PAID, BUT A NOTICE REQUIRED BY  
LAW THAT THE UNDERSIGNED MAY, AT A FURTHER DATE,  
RECORD A NOTICE OF LIEN AS PROVIDED BY LAW AGAINST THE  
PROPERTY IF THE UNDERSIGNED IS NOT PAID.**

Dated this 14 day of January, 2008.

  
\_\_\_\_\_  
Ryan E. Simpson  
Agent for Zitting Brothers Construction

TURNER & SIMPSON  
ATTORNEYS AT LAW

7006 2760 0005 6041 2543



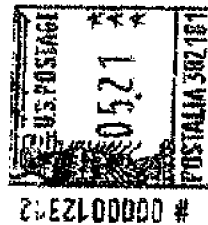
Gelstone Development  
9121 West Russell Road  
Unit 117  
Las Vegas, Nevada 89148

REGISTERED MAIL

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84108

TURNER & SIMPSON  
ATTORNEYS AT LAW

7006 3450 0002 5722 4957



APCO  
3432 North Fifth Street  
Las Vegas, Nevada 89032

ZBCI000123

# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gemstone Development  
9121 West Russell Rd,  
Unit 117  
Las Vegas, NV 89142

2. Article Number  
(Transfer from service label)

7006 2760 0005 6043 2543

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

# COMPLETE THIS SECTION ON DELIVERY

- A. Signature  
☒ Agent  
☐ Addressee
- B. Received by (Printed Name)  
C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail  
☐ Registered  
☐ Insured Mail  
☐ Express Mail  
☒ Return Receipt for Merchandise  
☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APCO  
3432 North 5th St.  
Las Vegas, NV 89032

2. Article Number  
(Transfer from service label)

7006 3450 0002 5722 4957

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

# COMPLETE THIS SECTION ON DELIVERY

- A. Signature  
☒ Agent  
☐ Addressee
- B. Received by (Printed Name)  
C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail  
☐ Registered  
☐ Insured Mail  
☐ Express Mail  
☒ Return Receipt for Merchandise  
☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

ZBCI000124

# EXHIBIT K

Recorded at the Request of and Return  
Recorded Document to:

Ryan E. Simpson  
File No.: 13774  
2115 South Dallin Street  
Salt Lake City, Utah 84109

### NOTICE OF INTENT TO LIEN

**PLEASE BE ADVISED THAT SHOULD THE AMOUNT DUE AND OWING TO ZITTING BROTHERS CONSTRUCTION NOT BE PAID WITHIN FIFTEEN (15) DAYS OF THIS NOTICE OF INTENT TO LIEN, ZITTING BROTHERS CONSTRUCTION SHALL CAUSE A CLAIM OF LIEN TO BE RECORDED AGAINST THE PROPERTY IDENTIFIED BELOW IN THE PRINCIPAL AMOUNT OF \$723,899.16**

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$14,519,108.55
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$396,746.85
3. The total amount of all payments received to date is: \$647,608.55
4. The amount of the lien, after deducting all just credits and offsets, is: \$723,899.16
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: APCO of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: rough carpentry and framing.

Dated this 4 day of December, 2008.

  
\_\_\_\_\_  
Ryan E. Simpson  
Agent for Zitting Brothers Construction

ZBCI000177

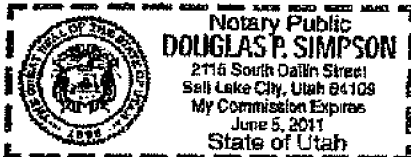


STATE OF UTAH                     )  
  )ss  
COUNTY OF SALT LAKE    )

Ryan E. Simpson, being first duly sworn on oath according to law deposes and says: I have read the foregoing Notice of Intent to Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.

  
\_\_\_\_\_  
Ryan E. Simpson  
Agent for Zitting Brothers Construction

Subscribed and sworn to before me this 4 day of December, 2008.



## LEGAL DESCRIPTION

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

### PARCEL 1:

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

Assessor's Parcel No.: 163-32-101-003

### PARCEL 2:

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

Assessor's Parcel No.: 163-32-101-004

### PARCEL 3:

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

Assessor's Parcel No.: 163-32-101-005

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**Assessor's Parcel No.: 163-32-101-014**

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

**Assessor's Parcel No.: 163-32-101-010**

**NOTE: THE NEW PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019**

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

**TURNER & SIMPSON**  
ATTORNEYS AT LAW

**CERTIFIED MAIL**



7008 1140 0003 8596 4350



# 0000019745



Genstone Development West, Inc.  
9121 West Russell Road #117  
Las Vegas, Nevada 89148

ZBC1000181

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Cremedone Development  
West, Inc.  
9121 West Russell Road  
#117  
Las Vegas, Nevada 89148*

2. Article Number  
(Transfer from service label)

*7008 1140 0003 8596 4350*

PS Form 3811, February 2004

Domestic Return Receipt

49255-02-M-194a

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
**X**

B. Received by (Printed Name)

C. Date of Delivery

☐ Agent  
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below: ☐ No

3. Service Type  
☒ Certified Mail  
☐ Registered  
☐ Insured Mail  
☐ C.O.D.  
☐ Express Mail  
☒ Return Receipt for Merchandise

4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

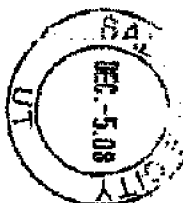
**CERTIFIED MAIL**

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

**TURNER & SIMPSON**  
ATTORNEYS AT LAW



7008 1140 0003 8596 4367



# 000001746



**APCO**  
3432 North Fifth Street  
Las Vegas, Nevada 89032

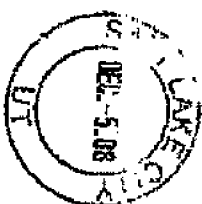
**CERTIFIED MAIL**

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

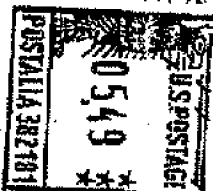
**TURNER & SIMPSON**  
ATTORNEYS AT LAW



7008 1140 0003 8596 4367



# 000001746



**APCO**  
4420 Decatur Blvd  
Las Vegas, Nevada 89103

ZBC1000183

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
1. Article Addressed to: APCO 4420 Decatur Blvd Las Vegas, Nevada, 89105		B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span>	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7008 1140 0003 8596 4343		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
1. Article Addressed to: APCO 3432 North Fifth Street Las Vegas, Nevada 89105		B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span>	
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, February 2004		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7008 1140 0003 8596 4367		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
1. Article Addressed to: Gemstone Development West, Inc. 10000 R. Russell Road		B. Received by (Printed Name) <span style="float: right;">C. Date of Delivery</span>	
PS Form 3811, February 2004		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	

ZBC1000184

# EXHIBIT L



Recorded at the Request of and Return  
Recorded Document to:

Ryan B. Simpson  
File No.: 12462  
2115 South Dallin Street  
Salt Lake City, Utah 84109  
163-32-101-019

20081223-0003690  
Fee: \$17.00 RPTT: \$0.00  
N/C Fee: \$25.00  
12/23/2008 13:29:43  
T20080319140  
Requestor:  
PREMIUM TITLE  
Debbie Conway ADF  
Clark County Recorder Pgs: 4

### NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$14,461,000.00
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$423,644.55
3. The total amount of all payments received to date is: \$3,647,608.55
4. The amount of the lien, after deducting all just credits and offsets, is: \$788,405.41
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: APCO of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: See Exhibit "A"

Dated this 23 day of December, 2008.




Ryan B. Simpson  
Agent for Zitting Brothers Construction

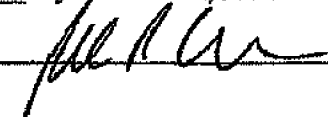
STATE OF UTAH                    )  
  )ss  
COUNTY OF SALT LAKE        )

Ryan B. Simpson, being first duly sworn on oath according to law deposes and says: I have read the foregoing Notice of Intent to Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.



  
\_\_\_\_\_  
Ryan B. Simpson  
Agent for Zitting Brothers Construction

Subscribed and sworn to before me this 23 day of December, 2008.

  
\_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

**PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

**PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019**

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>APCO 4420 Decatur Blvd LU, NV 89003</p>		<p>A. Signature</p> <p>X</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7006 1140 0003 6596 4275</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>3. Signature Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee)</p> <p><input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>102548-02-M-1540</p>	

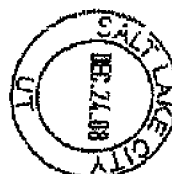
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>APCO 3432 N. Fifth St. LU, NV 89002</p>		<p>A. Signature</p> <p>X</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7006 1140 0003 6596 4268</p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>3. Signature Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee)</p> <p><input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>102548-02-M-1540</p>	

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84108

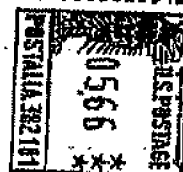
**TURNER & SIMPSON**  
ATTORNEYS AT LAW



7008 1140 0003 6596 4268



# 0000020043



**APCO**  
3432 North Fifth Street  
Las Vegas, Nevada 89032

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84108

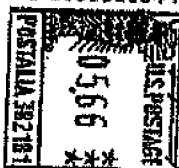
**TURNER & SIMPSON**  
ATTORNEYS AT LAW



7008 1140 0003 6596 4275



# 0000020041



**APCO**  
4420 Decatur Blvd  
Las Vegas, Nevada 89103

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

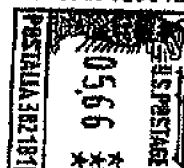
GENITIVE MAIL



7008 1140 0003 6596 4282



# 2700200000



TURNER & SIMPSON  
ATTORNEYS AT LAW

Gemstone Development West, Inc.  
9121 West Russell Road #1117  
Las Vegas, Nevada 89148

PS Form 3811, February 2004  
Domestic Return Receipt  
102299 02-14-1940

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return this card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <b>X</b>	
1. Article Addressed to: <b>Genetone Development West Inc. 9121 W. Russell Road #117 LV, NV 89148</b>		B. Received by (Printed Name)  C. Date of Delivery  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
2. Article Number (Transfer from service label) <b>7002 1140 0003 8576 4262</b>		D. Is delivery address different from item 1? If YES, enter delivery address below:  <input type="checkbox"/> Yes <input type="checkbox"/> No	
PS Form 3811, February 2004		E. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> O.D.D.	
Domestic Return Receipt		F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No	



# EXHIBIT M

ORIGINAL

FILED

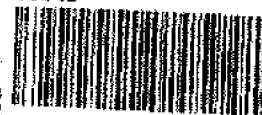
APR 30 2 03 PM '09

*Ed [Signature]*  
CLERK OF THE COURT

15  
1 **COMP**  
2 **MICHAEL M. EDWARDS**  
3 Nevada Bar No. 006281  
4 **REUBEN H. CAWLEY**  
5 Nevada Bar No. 009384  
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
7 400 South Fourth Street, Suite 500  
8 Las Vegas, Nevada 89101  
9 (702) 893-3383  
10 FAX: (702) 893-3789  
11 E-Mail: [medwards@lbbslaw.com](mailto:medwards@lbbslaw.com)  
12 E-Mail: [cawley@lbbslaw.com](mailto:cawley@lbbslaw.com)  
13 Attorneys for Plaintiff  
14 Zitting Brothers Construction, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

A-09-589195-C  
79348



12 **ZITTING BROTHERS CONSTRUCTION, INC.,**  
13 a Utah corporation,

14 Plaintiff,

15 v.

16 **GEMSTONE DEVELOPMENT WEST, INC.,** a  
17 Nevada Corporation; **APCO CONSTRUCTION,** a  
18 Nevada corporation; and **DOES I through X; ROE**  
19 **CORPORATIONS I through X; BOE BONDING**  
20 **COMPANIES I through X and LOE LENDERS I**  
21 through X, inclusive,

22 Defendants.

Case No. *A-09-589195-C*  
Dept. No. *V*

**ZITTING BROTHERS  
CONSTRUCTION, INC.'S COMPLAINT  
RE: FORECLOSURE**

*(Exemption from Arbitration - Concerns  
Title to Real Estate)*

21 Plaintiff Zitting Brothers Construction (hereinafter "Zitting Brothers"), by and through its  
22 attorneys Lewis Brisbois Bisgaard & Smith LLP, as for its Complaint against the above-named  
23 Defendants complains, avers and alleges as follows:

24 **THE PARTIES**

25 1. Zitting Brothers is and was at all times relevant to this action a Utah corporation, duly  
26 authorized and qualified to do business in Clark County, Nevada.

27 2. Zitting Brothers is informed and believes and therefore alleges that Defendant Gemstone  
28 Development West, Inc. ("Gemstone"), and Doe/Roe Defendants are and were at all times relevant to

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4813-0009-7539.1

-1-

17

1 this action, the owners, reputed owners, or the persons, individuals and/or entities who claim an  
2 ownership interest in that certain real property commonly referred to as Manhattan West mixed use  
3 development project and generally located at 9205 W. Russell Road, Clark County, Nevada, and more  
4 particularly described as set forth in the Legal Description of the Notice of Lien attached hereto as  
5 **Exhibit 1**; and further more particularly described as Clark County Assessor Parcel Number 163-32-  
6 101-019, and including all easements, rights-of-way, common areas and appurtenances thereto, and  
7 surrounding space which may be required for the convenient use and occupation thereof, upon which  
8 Owner caused or allowed to be constructed certain improvements (the "Property").

9 3. The whole of the Property are reasonably necessary for the convenient use and  
10 occupation of the improvements.

11 4. Zitting Brothers is informed and believes and therefore alleges that Defendant APCO  
12 Construction ("APCO") and Doe/Roe Defendants, are and were at all times relevant to this action,  
13 doing business as licensed contractors authorized to conduct business in Clark County, Nevada.

14 5. Zitting Brothers does not know the true names of the individuals, corporations,  
15 partnerships and entities sued and identified in fictitious names as Does I through X, Roe Corporations  
16 I though X, Boe Bonding Companies I through X, and Loe Lenders I through X, Zitting Brothers alleges  
17 that such Defendants claim an interest in or to the Project and/or are responsible for damages suffered  
18 by Zitting Brothers as more full discussed under the claims for relief set forth below. Zitting Brothers  
19 will request leave of this Honorable Court to amend this Complaint to show the true names and  
20 capacities of each such fictitious Defendant when Zitting Brothers discovers such information.

21 **FIRST CAUSE OF ACTION**  
22 **(Breach of Contract - Against All Defendants)**

23 6. Zitting Brothers repeats and realleges each and every allegation contained in the  
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

25 7. Zitting Brothers entered into an Agreement with APCO Construction and/or Gemstone  
26 (the "Agreement") to provide certain construction services and other related work, materials, and  
27 equipment for a project located in Clark County, Nevada (the "Work").  
28 . . .

1 8. Zitting Brothers furnished the Work for the benefit of and at the specific instance and  
2 request of APCO.

3 9. Pursuant to the Agreement, Zitting Brothers was to be paid an amount in excess of Ten  
4 Thousand Dollars (\$10,000) (hereinafter "Outstanding Balance") for the Work.

5 10. Zitting Brothers furnished the Work and has otherwise performed its duties and  
6 obligations as required by the Agreement.

7 11. APCO and/or Gemstone as well as Doe/Roe Defendants, have breached the Agreement  
8 by, among other things:

- 9 a. failing and/or refusing to pay the monies owed to Zitting Brothers for the Work.
- 10 b. failing to adjust the Agreement price to account for extra work and/or changed
- 11 work, as well as suspensions, delays of Work caused or ordered by APCO,
- 12 Gemstone, and/or their representatives.
- 13 c. failing and/or refusing to comply with the Agreement; and
- 14 d. negligently or intentionally preventing, obstructing, hindering, or interfering
- 15 with Zitting Brothers performance of the Work.

16 12. Zitting Brothers is owed an amount in excess of Ten Thousand Dollars (\$10,000) for the  
17 Work.

18 13. Zitting Brothers has been required to engage the services of an attorney to collect the  
19 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
20 interest therefore.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of Implied Covenant of Good Faith & Fair Dealing - Against All Defendants)**

23 14. Zitting Brothers repeats and realleges each and every allegation contained in the  
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

25 15. There is a covenant of good faith and fair dealing implied in every agreement, including  
26 the Agreement between Zitting Brothers and APCO and/or Gemstone.

27 ...

28 ...

1 16. APCO and/or Gemstone breached their duty to act in good faith by performing the  
2 Agreement in a manner that was unfaithful to the purpose of the Agreement, thereby denying Zitting  
3 Brothers's justified expectations.

4 17. Due to the actions of APCO and/or Gemstone, Zitting Brothers suffered damages in an  
5 amount to be determined at trial for which Zitting Brothers is entitled to judgment plus interest.

6 18. Zitting Brothers has been required to engage the services of an attorney to collect the  
7 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
8 interest therefore.

9 **THIRD CAUSE OF ACTION**  
10 **(Unjust Enrichment or in the Alternative Quantum Meruit - Against All Defendants)**

11 19. Zitting Brothers repeats and realleges each and every allegation contained in the  
12 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as  
13 follows:

14 20. Zitting Brothers furnished the Work for the benefit of and at the specific instance  
15 requested of the Defendants.

16 21. As to APCO and/or Gemstone, this cause of action is being pled in the alternative.

17 22. APCO and/or Gemstone accepted, used and enjoyed the benefit of Zitting Brothers's  
18 Work.

19 23. APCO and/or Gemstone knew or should have known that Zitting Brothers expected  
20 to be paid for the Work.

21 24. Zitting Brothers has demanded payment of the Outstanding Balance.

22 25. To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding  
23 Balance.

24 26. The Defendants have been unjustly enriched, to the detriment of Zitting Brothers.

25 27. Zitting Brothers has been required to engage the services of an attorney to collect the  
26 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
27 interest therefore.

28 . . .

**FOURTH CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien - Against All Defendants)**

28. Zitting Brothers repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

29. The provision of the Work was at the special instance and request of APCO and/or Gemstone for the improvement of the Property.

30. As provided by NRS 108.245, APCO and/or Gemstone had actual knowledge of Zitting Brothers's delivery of the Work to the Property or Zitting Brothers provided a Notice of Right to Lien, as prescribed by Nevada law.

31. Zitting Brothers demanded payment of an amount in excess of Ten Thousand and no/100 Dollars (\$10,000), which amount remains past due and owing.

32. On or about December 23, 2008, Zitting Brothers timely recorded a Notice of Lien in Book 20081223 of the Official Records of Clark County, Nevada, as Instrument No. 0003690 (the "Lien"), attached hereto as Exhibit 1.

33. The Lien was in writing and was timely recorded against the Property for the outstanding balance due to Zitting Brothers in the amount of Seven Hundred Eighty Eight Thousand Four Hundred and Five Dollars and Forty-One Cents (\$788,405.41), with payment to be made upon Project progress.

34. The Lien was served upon the record Owners and/or their authorized agents, as required by law.

35. Zitting Brothers is entitle to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

**FIFTH CAUSE OF ACTION**  
**(Claim for Priority - Against LOE LENDER Defendants)**

36. Zitting Brothers repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

37. Zitting Brothers is informed and believes and therefore alleges that physical work of the improvement to the Property commenced before the recording of Defendant Loe Lenders' Deed(s) of Trust and/or other interest(s) in the Property and/or any leasehold estates.

1 38. Zitting Brothers's claims against the Property and/or any leasehold estates are superior  
2 to the claim(s) of Loe Lenders and/or any other Defendant.

3 39. Zitting Brothers has been required to engage the services of an attorney to collect the  
4 Outstanding Balance due and owing for the Work, and Zitting Brothers is entitled to recover its  
5 reasonable costs, attorney's fees and interest therefore.

6 **SEVENTH CAUSE OF ACTION**  
7 **(Violation of NRS 624)**

8 40. Zitting Brothers repeats and realleges each and every allegation contained in the  
9 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

10 41. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as APCO),  
11 to, among other things, timely pay their subcontractors (such as Zitting Brothers), as provided in the  
12 Statute.

13 42. In violation of the Statute, APCO has failed and/or refused to timely pay Zitting Brothers  
14 monies due and owing.

15 43. APCO's violation of the Statute constitutes negligence per se.

16 44. By reason foregoing, Zitting Brothers is entitled to a judgment against APCO in the  
17 amount of the Outstanding Balance.

18 45. Zitting Brothers has been required to engage the services of an attorney to collect the  
19 outstanding Balance and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
20 interests therefore.

21 **WHEREFORE**, Zitting Brothers prays that this Honorable Court:

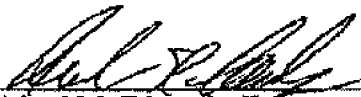
- 22 1. Enters judgment against the Defendants, and each of them, jointly and severally, for  
23 Zitting Brothers's reasonable costs and attorney's fees incurred in the collection of the  
24 Outstanding Balance;
- 25 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
26 Zitting Brothers's reasonable costs and attorney's fees incurred in the collection of the  
27 Outstanding Balance, as well as an award of interest thereon;
- 28

- 1           3.     Enters a judgment declaring that Zitting Brothers has a valid and enforceable mechanic's  
2           lien against the Property, with priority over all Defendants, in an amount of the  
3           Outstanding Balance;  
4           4.     Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable  
5           attorney's fees, costs and interest thereon, and that this Honorable Court enter an Order  
6           that the Property, and improvements, such as may be necessary, be sold pursuant to the  
7           laws of the State of Nevada, and that the proceeds of said sale be applied to the payment  
8           of sums due Zitting Brothers herein; and  
9           5.     For such other and further relief as this Honorable Court deems just and proper in the  
10          premises.

11          Dated this 30<sup>th</sup> day of April, 2009.

12                                   LEWIS BRISBOIS BISGAARD & SMITH LLP

13  
14          By

  
\_\_\_\_\_  
Michael M. Edwards, Esq.  
Nevada Bar No. 006281  
Reuben H. Cawley, Esq.  
Nevada Bar No. 009384  
400 South Fourth Street, Suite 500  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff  
Zitting Brothers Construction, Inc.



**EXHIBIT 1**

**EXHIBIT 1**

Recorded at the Request of and Return  
Recorded Document to:

Ryan E. Simpson  
File No.: 12462  
2115 South Dalfin Street  
Salt Lake City, Utah 84109  
163-32-101-019



20081223-0003690

Fee: \$17.00 RPTT: \$0.00  
N/C Fee: \$25.00  
12/23/2008 13:29:43  
T20080319140  
Requestor:  
PREMIUM TITLE  
Debbie Conway ADF  
Clark County Recorder Pgs: 4

## NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$14,461,000.00
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$423,644.55
3. The total amount of all payments received to date is: \$3,647,608.55
4. The amount of the lien, after deducting all just credits and offsets, is: \$786,405.41
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: APCO of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: See Exhibit "A"

Dated this 23 day of December, 2008.

Ryan E. Simpson  
Agent for Zitting Brothers Construction


STATE OF UTAH            )  
                                  )ss  
COUNTY OF SALT LAKE    )

Ryan B. Simpson, being first duly sworn on oath according to law deposes and says: I have read the foregoing Notice of Intent to Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.



  
\_\_\_\_\_  
Ryan B. Simpson  
Agent for Zitting Brothers Construction

Subscribed and sworn to before me this 23 day of December, 2008.

  
\_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

**PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 09763 of Official Records.

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

**PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019**

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION OF DELIVERY</b>	
1. Article Addressed to: <div style="font-size: 2em; text-align: center;">             APCO              4420 Decatur Blvd              L.V. 89103           </div>		1. Signature <div style="text-align: center;"> <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee         </div>	
2. Article Addressed to: (Provide from service label)		2. Received by (Printed Name) <div style="text-align: center;"> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee         </div>	
3. Article Addressed to: (Provide from service label)		3. Date of Delivery <div style="text-align: center;"> <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div>	
4. Article Addressed to: (Provide from service label)		4. Is delivery address different from item 1? If YES, enter delivery address below:	
5. Article Addressed to: (Provide from service label)		5. Delivery Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Airtel <input type="checkbox"/> Registered Mail <input checked="" type="checkbox"/> Registered Mail for Newsletters <input type="checkbox"/> C.O.D.	
6. Article Addressed to: (Provide from service label)		6. Registered Delivery? (Date Recd) <div style="text-align: center;"> <input type="checkbox"/> Yes  <input type="checkbox"/> No         </div>	
7. Article Number (Provide from service label)		7. Domestic Return Receipt	
8. Article Number (Provide from service label)		8. Domestic Return Receipt	

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
1. Article Addressed to: <div style="font-size: 2em; text-align: center;">APCO</div> <div style="font-size: 2em; text-align: center;">3432 N. FILL ST.</div> <div style="font-size: 2em; text-align: center;">LV, NV 89002</div>		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
2. Article Number (Transfer from service label) <div style="font-size: 1.5em; text-align: center;">7008 1140 0003 8546 4268</div>		B. Forwarded by (Printer/Name) C. Date of Delivery	
3. Article Addressed to: (If YES, enter delivery address below: )		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No		E. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Delivery Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> COD		F. Return Receipt for Merchandise <input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Restricted Delivery (Form 3811)		7. Restricted Delivery (Form 3811)	

2116 SOUTH DALLIN STREET SALT LAKE CITY, UTAH 84103

TURNER & SIMPSON  
ATTORNEYS AT LAW



7008 1140 0003 8596 4268



# 0000020043



APCO  
3432 North Fifth Street  
Las Vegas, Nevada 89032

2116 SOUTH DALLIN STREET SALT LAKE CITY, UTAH 84103

TURNER & SIMPSON  
ATTORNEYS AT LAW



7008 1140 0003 8596 4275



# 0000020041



APCO  
4420 Decatur Blvd  
Las Vegas, Nevada 89103

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UT 84119

TURNER & SIMPSON  
ATTORNEYS AT LAW



7008 1248 0003 8596 4262



# 0000020042



Gemstone Development West, Inc.  
9121 West Russell Road #117  
Las Vegas, Nevada 89148



SENDER: COMPLETE THIS SECTION		RECIPIENT: COMPLETE THIS SECTION	
<p>1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>Put your name and address on the reverse so that we can return the card to you.</p> <p>Attach this card to the back of the envelope, or on the front if space permits.</p>		<p>4. Signature</p> <p><b>X</b></p>	
<p>2. Article Addressed to:</p> <p><b>Geostone Development</b>  <b>West Inc.</b>  <b>9121 W. Russell Road</b>  <b>H417</b>  <b>LV, NV 89148</b></p>		<p>5. Received by (Printed Name)</p> <p><b>C. C. C.</b></p>	
<p>3. Article Number (Review item service label)</p> <p><b>7008 3140 0003 3596 4282</b></p>		<p>6. Delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>7. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Required</p>		<p>8. Restricted Delivery? (item 14)</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

# EXHIBIT N

ORIGINAL

50

1 **NOTC**  
2 **MICHAEL M. EDWARDS**  
3 Nevada Bar No. 006281  
4 **REUBEN H. CAWLEY**  
5 Nevada Bar No. 009384  
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
7 400 South Fourth Street, Suite 500  
8 Las Vegas, Nevada 89101  
9 (702) 893-3383  
10 FAX: (702) 893-3789  
11 E-Mail: [medwards@lbbbslaw.com](mailto:medwards@lbbbslaw.com)  
12 E-Mail: [cawley@lbbbslaw.com](mailto:cawley@lbbbslaw.com)  
13 Attorneys for Plaintiff  
14 Zitting Brothers Construction, Inc.

FILED

APR 30 2 04 PM '09

*E. H. Smith*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

A-09-589195-C  
78353



12 **ZITTING BROTHERS CONSTRUCTION, INC.,**  
13 a Utah corporation,

14 Plaintiff,

15 v.

16 **GEMSTONE DEVELOPMENT WEST, INC.,** a  
17 Nevada Corporation; **APCO CONSTRUCTION,** a  
18 Nevada corporation; and **DOES I through X; ROE**  
19 **CORPORATIONS I through X; BOE BONDING**  
20 **COMPANIES I through X and LOE LENDERS I**  
21 through X, inclusive,

22 Defendants.

Case No. **A-09-589195-C**  
Dept. No. **✓**

**NOTICE  
OF LIS PENDENS**

*(Exemption from Arbitration - Concerns  
Title to Real Estate)*

21 PLEASE TAKE NOTICE that an action was commenced and is pending in the above-entitled  
22 Court to enforce that certain Notices and Claims of Lien recorded by Lien Claimant Zitting Brothers  
23 Construction, Inc., in the Official Records of Clark County on September 10, 2008, in book 20080910,  
24 as instrument number 0002029 and December 11, 2008, in book number 20081211, instrument number  
25 0002636 effecting certain real property or portions thereof, owned or reputedly owned by Defendants  
26 and commonly referred to as the Manhattan West mixed use development project generally located at  
27 9205 W. Russell Road, Clark County, Nevada and more particularly described as Assessor's Parcel  
28 Number 163-32-101-019.

4842-6455-5267.1

-1-

2

CLERK OF THE COURT

APR 30 2009

RECEIVED

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

ZBCI001973

1 Plaintiff Zitting Brothers Construction, Inc., hereby places a Lis Pendens against the same  
2 affecting real properties referenced herein, located in Clark County, State of Nevada.

3 Dated this 22<sup>nd</sup> day of April, 2009.  
4

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By 

8 Michael M. Edwards, Esq.  
9 Nevada Bar No. 006281  
10 Reuben H. Cawley, Esq.  
11 Nevada Bar No. 009384  
12 400 South Fourth Street, Suite 500  
13 Las Vegas, Nevada 89101  
14 Attorneys for Plaintiff  
15 Zitting Brothers Construction, Inc.  
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28

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4842-6455-5267.1

-2-

ZBCI001974

# EXHIBIT O

1 **NOTC**

2 Michael M. Edwards, Esq.

3 Nevada Bar No. 006281

4 Reuben H. Cawley, Esq.

5 Nevada Bar No. 009384

6 **WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP**

7 415 South Sixth Street, Suite 300

8 Las Vegas, NV 89101

9 (702) 382-1414; FAX (702) 382-1413

10 michael.edwards@wilsonelser.com

11 reuben.cawley@wilsonelser.com

12 Attorneys for Plaintiff

13 Zitting Brothers Construction, Inc.

Electronically Filed  
06/11/2009 04:57:43 PM

  
CLERK OF THE COURT

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ZITTING BROTHERS CONSTRUCTION, INC., a )  
17 Utah corporation, )

18 Plaintiff,

19 v.

20 GEMSTONE DEVELOPMENT WEST, INC., a )  
21 Nevada Corporation, APCO CONSTRUCTION, a )  
22 Nevada corporation; and DOES I through X; ROE )  
23 CORPORATIONS I through X; BOE BONDING )  
24 COMPANIES I through X and LOE LENDERS I )  
25 through X, inclusive, )

26 Defendants.

CASE NO. A-09-589195-C  
DEPT NO. V

**NOTICE OF FORECLOSURE OF  
MECHANIC'S LIEN**

*(Exception from Arbitration – Concerns Title to Real  
Estate)*

27 TO: ALL PERSONS HOLDING MECHANIC'S LIENS UPON THE PROPERTY DESCRIBED  
28 HEREIN:

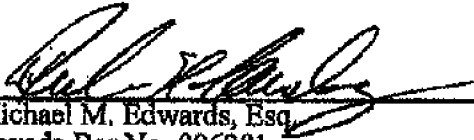
ANY AND ALL PERSONS holding or claiming a lien or liens under the provisions of NRS  
108.221 through 108.246, inclusive, upon real property in Clark County, Nevada, namely a real  
property commonly referred to as the Manhattan West mixed use development project and generally  
located at 9205 W. Russell Road, Clark County, Nevada, and more particularly described as  
Assessor's Parcel Number 163-32-101-019.

YOU ARE HEREBY NOTIFIED to file with the Clerk of the District Court of Clark  
County, Nevada, and serve on Plaintiff and also on Defendants a written statement of facts  
constituting their liens, including the dates and amounts thereof, within ten (10) days after the last

1 publication of this Notice of Foreclosure of Mechanic's Lien. Plaintiff filed a Complaint against the  
2 Defendants in the above-entitled Court to foreclose the Lien recorded by Zitting Brothers  
3 Construction, Inc., on December 23, 2008, in Book No. 20081223 as Instrument No. 0003690 in the  
4 amount of \$788,405.41 affecting that certain property situated in Clark County, State of Nevada.

5 DATED this 14<sup>th</sup> day of June 2009.

7 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

8  
9   
10 Michael M. Edwards, Esq.  
11 Nevada Bar No. 006281  
12 Reuben H. Cawley, Esq.  
13 Nevada Bar No. 009384  
14 415 South Sixth Street, Suite No. 300  
15 Las Vegas, Nevada 89101  
16 Attorneys for Plaintiff  
17 Zitting Brothers Construction, Inc.

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP and that on this 12 day of June, 2009, I did cause a true copy of the above and foregoing NOTICE OF FORECLOSURE OF MECHANIC'S LIEN to be placed in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

APCO Construction  
Gwen Mullins, Esq.  
Wade B. Gochmour, Esq.  
Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy.,  
Ste. 1400  
Las Vegas, NV 89169

Accuracy Glass & Mirror  
Company, Inc.  
c/o Bruce Cox, Esq., its RA  
6511 Deer Springs Way  
Las Vegas, NV 89131

Ahern Rental, Inc.  
c/o Don F. Ahern, its RA  
4241 S. Arville Street  
Las Vegas, NV 89103

Arch Aluminum & Glass Co., Inc. c/o  
The Corporation Trust Company of  
Nevada, its RA  
6100 Neil Road, Ste. 500  
Reno, NV 89511

Asphalt Solutions, LLC  
c/o Rite, Inc. its RA  
1905 South Eastern Ave.  
Las Vegas, NV 89104

Atlas Construction Supply, Inc.  
c/o Nevada Corporate Headquarters,  
Inc. its RA  
101 Convention Center Dr., Ste. 700  
Las Vegas, NV 89109

Law Offices of Robert L. Bachman  
4001 Meadows Lane  
Las Vegas, NV 89107

Buchele, Inc.  
Attn: Thomas Buchele  
4445 W. Red Coach Ave.  
North Las Vegas, NV 89031

Camco Pacific Construction  
Company, Inc. c/o The Prentice-Hall  
Corporation System, Nevada, Inc. its  
RA  
502 East John Street  
Carson City, NV 89706

Carpets-N-More, LLC  
c/o Gary E. Schnitzer, Esq., its RA  
8985 E. Eastern Ave., Ste. 200  
Las Vegas, NV 89123

Cell-Crete Fireproofing of Nevada,  
Inc. c/o Business Filings Incorporated,  
its RA  
6100 Neil Road, Ste. 500  
Reno, NV 89511

Creative Home Theatre, L.L.C.  
c/o Paige Arcuri, its RA  
5860 S. Valley View Blvd.  
Las Vegas, NV 89118

Dave Peterson Framing, Inc.  
Attn: David L. Peterson  
9081 W. Sahara Ave., Ste. 290  
Las Vegas, NV 89117

Design Space Modular Buildings, Inc.  
2700 East Sunset Road, Ste. 11  
Las Vegas, NV 89120

E & E Fire Protection, LLC  
c/o T. James Truman & Assoc. its RA  
3654 North Rancho Dr.  
Las Vegas, NV 89130

Eastridge Personnel of Las Vegas,  
Inc. c/o Ailsa Leech, its RA  
4220 S. Maryland Parkway, Ste. 204  
Las Vegas, NV 89119

Executive Plastering, Inc.  
c/o Springel & Pink LLP, its RA  
2475 Village View Dr.  
Henderson, NV 89074

Fast Glass  
c/o Sierra Corporate Services  
Reno, its RA  
100 West Liberty Street, 10<sup>th</sup> Floor  
Reno, NV 89505



1	Ferguson Fire & Fabrication, Inc. c/o	Freedom Fire Prevention, Inc.	Gale Building Products
2	CSC Services of Nevada, Inc. its RA	c/o John Grui, its RA	Attn: Robert D. Monroe
3	502 East John Street	1532 Owyhee Court	3326 Ponderosa Way, Ste. A
	Carson City, NV 89706	Las Vegas, NV 89110	Las Vegas, NV 89118
4	Geotek, Inc.	Graybar Electric Company, Inc.	HD Supply Waterworks, LP
5	c/o Brownstein Hyatt Farber Schreck,	c/o CSC Services of Nevada, Inc., its	c/o Corporate Creations Network, its
	LLP, its RA	RA	RA
6	100 City Parkway, Ste. 1600	502 East John Street	8275 South Eastern Ave. Ste. 200
	Las Vegas, NV 89106	Carson City, NV 89706	Las Vegas, NV 89123
7	HD Supply White Cap Construction	Harsco Corporation	Helix Electric of Nevada, LLC
8	4171 Distribution Circle, Ste. 107	c/o The Corporation Trust Company	c/o Peel Brimley LLP, its RA
	North Las Vegas, NV 89030	of Nevada, its RA	3333 East Sereno Ave., Ste. 200
9		6100 Neil Road, Ste. 500	Henderson, NV 89074
		Reno, NV 89511	
10	Hi-Tech Fabrication, Inc.	Hyde Consulting Services, LLC	HydroPressure Cleaning, Inc.
11	c/o Greg Griffith, its RA	c/o Seena Hyde, its RA	413 Dawson Dr.
	6600 W. Charleston Blvd., Ste. 116	1165 Forum Veneto Drive	Camarillo, CA 93012
12	Las Vegas, NV 89146	Henderson, NV 89052	
13	INQUIPCO	Interstate Plumbing & Air	J.P. Landscaping & Design, LLP
	c/o Maupin, Cox & Legoy, its RA	Conditioning, LLC	c/o Start Your Biz, its RA
14	4785 Caughlin Parkway	c/o Henry Lichtenberger, its RA	1701 N. Green Valley Pkwy.
	Reno, NV 89519	8363 West Sunset Road, Ste. 300	Henderson, NV 89014
15		Las Vegas, NV 89113	
16	Jensen Precast	John Deere Landscapes, Inc.	Larry Methvin Installations, Inc.
	3853 Losee Road	c/o The Corporation Trust Company	c/o Larry Methvin, Sr, its RA
17	North Las Vegas, NV 89030	of Nevada, its RA	4065 W. Mesa Vista Ave., Unit D
		6100 Neil Road, Ste. 500	Las Vegas, NV 89118
18		Reno, NV 89511	
19	Las Vegas Pipeline, LLC	Masonry Group Nevada Inc., The	Nevada Prefab Engineers, Inc.
	c/o Mark L. Blackwell, its RA	c/o Chad Herschi, its RA	c/o John Peters Lee, Esq., its RA
20	1489 W. Warm Springs Blvd., Ste.	4685 Berg Street	830 Las Vegas Blvd., South
	110	North Las Vegas, NV 89081	Las Vegas, NV 89101
21	Henderson, NV 89014		
22	Noorda Sheet Metal Company	Northstar Concrete Inc.	Otis Elevator Company
	c/o T. James Truman & Assoc., its	c/o Kenneth A. Wolson, Esq. its RA	c/o The Corporation Trust Company
23	RA	400 S. 4th St. 3rd Flr	of Nevada, its RA
	3654 North Rancho Drive	Las Vegas, NV 89101	6100 Neil Road, Ste. 500
24	Las Vegas, NV 89130		Reno, NV 89511
25	Pape Material Handling, Inc.	Paramount Scaffold, Inc.	Patent Construction Systems, c/o
	c/o The Corporation Trust Company	c/o Alejandro Hernandez, its RA	Harsco Corp
26	of Nevada, its RA	3224 Meade, Ste. D	c/o The Corporation Trust Company
	6100 Neil Road, Ste. 500	Las Vegas, NV 89103	of Nevada, its RA
27	Reno, NV 89511		6100 Neil Road, Ste. 500
			Reno, NV 89511

1 Philcor T.V. & Electronic Leasing, Inc. c/o	Pressure Grout Company, The c/o Incorp Services, Inc. its RA	Professional Staffing -A.B.T.S., Inc. c/o National Registered Agents, Inc.
2 Kenneth A. Wolson, Esq. its RA 400 S. 4 <sup>th</sup> St. 3 <sup>rd</sup> Flr	375 N. Stephanie Street, Ste. 1411	of NV, its RA
3 Las Vegas, NV 89101	Henderson, NV 89014	1000 East William Street, Ste. 204 Carson City, NV 89701
4 Renaissance Pools & Spas, Inc. c/o David A. Koch, Esq. its RA	Republic Crane Service, LLC c/o Richard A. Koch, Esq.	3460 West Cheyenne Ave., Ste. 100
5 11500 S. Eastern Ave., Ste. 100 Henderson, NV 89052	4520 South Pecos Road, Ste. 4 Las Vegas, NV 89121	North Las Vegas, NV 89032
6 S.R. Bray Corp. c/o Joseph Murray, its RA	SWPPP Compliance Solutions, LLC c/o Nicholas Lombardo, its RA	Sacramento Insulation Contractors c/o The Corporation Trust Company
7 3131 Olive Street Las Vegas, NV 89104	9365 Ft. Bayard Avenue Las Vegas, NV 89178	of Nevada, its RA
8		6100 Neil Road, Ste. 500 Reno, NV 89511
9 Selectbuild Nevada, Inc. c/o CSC Services of Nevada, Inc. its RA	Steel Structures, Inc. c/o John Peters Lee, Esq. its RA	Sunstate Companies, Inc. c/o Richard Gruber its RA
10 502 East John Street Carson City, NV 89706	830 Las Vegas Blvd., south Las Vegas, NV 89101	4435 E. Colton Ave. Las Vegas, NV 89115
11		
12 Sunstate Equipment Co, LLC c/o The Corporation Trust Company	Superior Traffic Services 5525 S. Valley View Blvd., Ste. 1	Supply Network, Inc. c/o The Corporation Trust Company
13 of Nevada, its RA 6100 Neil Road, Ste. 500	Las Vegas, NV 89119	of Nevada, its RA
14 Reno, NV 89511		6100 Neil Road, Ste. 500 Reno, NV 89511
15 Towey Equipment Co., Inc. c/o Lynette Towey, its RA	Tri-City Drywall, Inc. c/o Jones Vargas, Chartered its RA	Westward Ho, LLC c/o National Registered Agents, Inc.
16 3815 W. Torino Ave. Las Vegas, NV 89139	3773 Howard Hughes Pkwy, 3 <sup>rd</sup> flr S. Las Vegas, NV 89169	of NV, its RA
17		1000 East William St., Ste. 204 Carson City, NV 89701
18 Uintah Investments, LLC dba Sierra Reinforcing	Gemstone Development West, Inc. Gregory S. Gilbert, Esq.	K & G Construction, Inc. RA
19 Joseph G. Went, Esq. Georlen K. Spangler, Esq.	Sean D. Thueson, Esq.	3939 Belmont St.
20 Kolesar & Leatham, Chtd. 3320 W. Sahara Ave., Ste. 380	3800 Howard Hughes Pkwy. 10 flr Las Vegas, NV 89169	North Las Vegas, NV 89030
21 Las Vegas, NV 89102		
22 Summit Sand and Gravel, Inc. Ernie Hurtado, its RA	Nedco Supply Suzann Pennington	
23 831 Garden Breeze Way Las Vegas, NV 89120	Nedco Supply 4200 Spring Mountain Road Las Vegas, Nevada 89102	

  
An Employee of  
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

# EXHIBIT P

Inst #: 201004070002126  
Fees: \$18.00  
N/C Fee: \$25.00  
04/07/2010 11:25:00 AM  
Receipt #: 301766  
Requestor:  
AMERICAN LEGAL  
INVESTIGATION  
Recorded By: SUO Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN# 113-32-101-019

11-digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>

Amended Notice of Lien (15)

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

**Recording Requested By:**

Michael M. Edwards Esq.  
Reuben H. Cawley, Esq.

**Return Documents To:**

Name Michael M. Edwards Esq. & Reuben H. Cawley  
Address 415 South 16th Street Suite 300  
City/State/Zip Las Vegas NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

APN: 163-32-101-019  
Recorded at the Request of and Return  
Recorded Document to:


Michael M. Edwards, Esq.  
Reuben H. Cawley, Esq.  
Wislon Elser Moskowitz Edelman & Dicker  
415 South 6<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101-6947

#### AMENDED NOTICE OF LIEN

The undersigned claims a lien upon the property described in this Amended Notice for work, materials, or equipment furnished or to be furnished for the improvement of property:

1. The amount of the original contract is \$14,461,000.00.
2. The total amount of all additional or changed work, materials, and equipment, if any, is \$423,654.85.
3. The total amount of all payments received to date is: \$3,282,849.00.
4. The amount of the lien, after deducting all just credits and offsets, is: \$750,807.16.
5. The name of the owner, if know, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials, or equipment is: APCO Construction of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: See Exhibit "A."

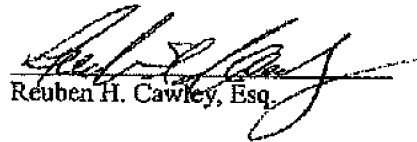
Dated this 7<sup>th</sup> day of April, 2010.

  
Michael M. Edwards, Esq.  
Reuben H. Cawley, Esq.  
Attorneys for Zitting Brothers  
Construction, Inc.


STATE OF NEVADA       )  
                                  ) ss  
COUNTY OF CLARK       )

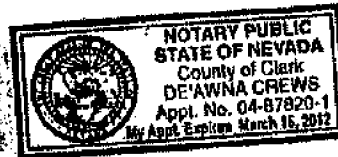
Reuben H. Cawley, Esq., being first duly sworn on oath according to law deposes and says: I have read the foregoing Amended Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.

Dated this 2<sup>nd</sup> day of April, 2010.

  
Reuben H. Cawley, Esq.

Subscribed and Sworn to Before Me  
This 7 day of April, 2010.

  
\_\_\_\_\_  
Notary Public, In and For Said  
County and State



**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

**PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019



Wilson, Elser, Mostowilz, Edelman & Dicker, LLP  
415 South Sixth Street, Suite 300  
Las Vegas, NV 89101-5937



7008 1830 0003 5537 7681

Gemstone Development West, Inc.  
Alexander Edelstein  
10170 W. Tropicana Ave., Ste. 156-159  
Las Vegas, NV 89147-8485

ZBCI001981

<b>SENDER COMPLETE</b> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		<b>RECIPIENT COMPLETE</b> A. Signature X <input type="checkbox"/> Agent B. Received by (Printed Name) <input type="checkbox"/> Addressee C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
1. Article Addressed to: Gemstone Dev. West Alexander Edelstein 10170 W. Tropicana Ave. Ste 156-169 Las Vegas, NV 89147-8465		3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label) PS Form 3811, February 2004		7006 1430 0003 5537 7661 Domestic Return Receipt	

ZBCI001982

Wilson, Elser Moskowitz, Edelman & Dicker, LLP  
3500 South Fifth Street, Suite 300  
Las Vegas, NV 89101-6937



7006 1830 0003 5537 2389

Gemstone Development West, Inc.  
9121 West Russell Road, Ste. 117  
Las Vegas, NV 89148

ZBCI001983

<p><b>SENDER</b></p> <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.                  ■ Print your name and address on the reverse so that we can return the card to you.                  ■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p><b>1. Article Addressed to:</b></p> <p>Gamstone Development, Inc                  9121 W. Russell Road                  #117                  Las Vegas, NV 89148</p>	
<p><b>2. Article Number</b>                  (Transfer from service label)</p> <p>7008 1830 0003 5537 2389</p>		<p><b>3. Service Type</b></p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> O.D.D.  <input type="checkbox"/> Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p><b>4. Article Number</b>                  (Transfer from service label)</p> <p>7008 1830 0003 5537 2389</p>		<p><b>Domestic Return Receipt</b></p> <p>PS Form 3811, February 2004</p>	

# **EXHIBIT A**

# **EXHIBIT A**

*Steven D. Grierson*

**FFCO**  
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*Attorneys for Lien Clamant,  
Zitting Brothers Construction, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation,

Defendant.

CASE NO. A571228  
DEPT. NO. XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

Hearing Date: November 16, 2017  
Hearing Time: 9:00 a.m.

AND ALL RELATED MATTERS

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING ZITTING**

**BROTHERS CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY**

**JUDGMENT AGAINST APCO CONSTRUCTION**

On November 16, 2017, this Court heard Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction. Jorge A. Ramirez and I-Che Lai of Wilson Elser Moskowitz Edelman & Dicker, LLP appeared at the hearing for Zitting Brothers Construction, Inc. ("ZBCI"). John Randall Jefferies of Spencer Fane LLP and Cody S. Mounteer of Marquis Aurbach Coffing appeared for APCO Construction, Inc. ("APCO"). Having considered ZBCI's motion, the pleadings and papers filed in this case, and oral arguments of counsel, this Court makes the following findings of fact and conclusions of law.

//

1 **FINDINGS OF FACT**

2 **A. APCO's Subcontract with ZBCI**

3 1. Around September 6, 2007, Gemstone Development West, Inc. ("Gemstone") and  
4 APCO entered into the ManhattanWest – General Construction Agreement for GMP ("Prime  
5 Contract"). Under the Prime Contract, APCO would serve as the general contractor for the  
6 ManhattanWest mixed-use development project located at the following Assessor's Parcel Numbers  
7 in Clark County, Nevada: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010, and  
8 162-32-101-014 (the "Project").

9 2. Around November 17, 2007, APCO and ZBCI entered into a Subcontract Agreement  
10 ("Subcontract"). Under the Subcontract, ZBCI would provide framing materials and labor for the  
11 Project.

12 3. The Subcontract requires APCO to pay ZBCI 100% of the value of the work  
13 completed on a periodic basis—less 10% retention of the value (the "Retention")—only after APCO  
14 receives actual payments from Gemstone.

15 4. The Subcontract requires APCO to pay ZBCI the Retention amount for each building  
16 of the Project upon (a) the completion of each building; (b) Gemstone's approval of ZBCI's work on  
17 the completed building; (c) APCO's receipt of final payment from Gemstone; (d) ZBCI's delivery to  
18 APCO all "as-built drawings for [ZBCI]'s scope of work and other close out documents"; and (e)  
19 ZBCI's delivery to APCO a release and waiver of claims from ZBCI's "labor, materials and  
20 equipment suppliers, and subcontractors providing labor, materials[,] or services to the Project...."  
21 The Subcontract deems work on a building to be "complete" as soon as "drywall is completed" for  
22 the building.

23 5. Alternatively, if the Prime Contract is terminated, the Subcontract requires APCO to  
24 pay ZBCI the amount due for ZBCI's completed work after receipt of payment from Gemstone.

25 6. The conditions precedent of the Subcontract requiring APCO's payment only upon  
26 receipt of payment from Gemstone are colloquially known as "pay-if-paid provisions."

27 7. The Subcontract only allows APCO to terminate—with written notice to ZBCI and  
28 with cause—the Subcontract for non-performance.

1           8.     If any party to the Subcontract "institute[s] a lawsuit ... for any cause arising out of  
2 the Subcontract..." the Subcontract expressly authorizes the prevailing party to recover "all costs,  
3 attorney's fees[,] and any other reasonable expenses incurred" in connection with the lawsuit. The  
4 Subcontract does not provide a rate of interest that would accrue on the amount owed under the  
5 Subcontract.

6           9.     If any term of the Subcontract is void under Nevada law, the Subcontract expressly  
7 provides that the void term would not affect the enforceability of the remainder of the contract.

8 **B.     ZBCI's Work under the Subcontract**

9           10.    Around November 19, 2007, ZBCI began its scope of work under the Subcontract.

10          11.    The Prime Contract was terminated in August 2008, and the Project had shut down on  
11 December 15, 2008. APCO never provided ZBCI with a written notice of termination with cause for  
12 non-performance.

13          12.    Prior to the Project's shutdown, ZBCI submitted written requests to APCO for change  
14 orders valued at \$423,654.85. APCO did not provide written disapproval of those change orders to  
15 ZBCI within 30 days of each request.

16          13.    Also prior to the Project's shutdown, ZBCI had completed its scope of work on  
17 Buildings 8 and 9 of the Project, including work on the change orders, without any complaints on the  
18 timing or quality of the work. ZBCI had submitted close-out documents for its work, including  
19 release of claims for ZBCI's vendors. The value of ZBCI's completed work amounted to  
20 \$4,033,654.85.

21          14.    At the time of the Project's shutdown, the drywall was completed for Buildings 8 and  
22 9.

23          15.    To date, ZBCI had only received \$3,282,849.00 for its work on the Project. ZBCI had  
24 completed work in the amount of \$347,441.67 on the change orders and \$403,365.49 of the  
25 Retention—totaling \$750,807.16— which remains unpaid.

26          16.    ZBCI demanded APCO pay the \$750,807.16 still owed on the contract. However,  
27 APCO refused to do so, causing ZBCI to initiate proceedings to recover the requested amount.



1 **C. Procedural History**

2 17. On January 14, 2008, ZBCI served its Notice of Right to Lien to APCO and  
3 Gemstone via certified mail.

4 18. On December 5, 2008, ZBCI served its Notice of Intent to Lien to APCO and  
5 Gemstone via certified mail.

6 19. On December 23, 2008, ZBCI recorded its Notice of Lien on the Project with a lien  
7 amount of \$788,405.41 and served this document on APCO and Gemstone via certified mail on  
8 December 24, 2008.

9 20. On April 30, 2009, ZBCI filed a complaint against Gemstone and APCO and a Notice  
10 of Lis Pendens. The complaint alleged 6 claims: (a) breach of contract, (b) breach of implied  
11 covenant of good faith and fair dealing, (c) unjust enrichment, (d) violation of Chapter 108 of the  
12 Nevada Revised Statutes, (e) claim for priority, and (f) violation of Chapter 624 of the Nevada  
13 Revised Statutes.

14 21. On June 10, 2009, APCO answered ZBCI's complaint. APCO's answer alleged 20  
15 affirmative defenses, including the tenth affirmative defense alleging that APCO's obligation to  
16 ZBCI had been satisfied or excused and the twelfth affirmative defense alleging that ZBCI's failure  
17 to satisfy conditions precedent barred ZBCI's breach of contract claim.

18 22. Around June 16, 2009, ZBCI provided a Notice of Foreclosure of Mechanic's Lien,  
19 and this notice was published in accordance with Nev. Rev. Stat. 108.239.

20 23. On April 7, 2010, ZBCI recorded its Amended Notice of Lien with a lien amount of  
21 \$750,807.16 and served this document on APCO and Gemstone via certified mail around the same  
22 date.

23 24. APCO does not dispute that ZBCI complied with all requirements to create, perfect,  
24 and foreclose on its lien under Chapter 108.

25 25. On April 29, 2010, APCO responded to ZBCI's interrogatories that requested, *inter*  
26 *alia*, APCO's explanation for refusing payment to ZBCI and APCO's grounds for the tenth and  
27 twelfth affirmative defenses. ZBCI had sent those interrogatories to obtain more details about  
28 APCO's defenses against ZBCI's complaint and to narrow the issues for discovery and trial.

1 APCO's interrogatory responses indicated that APCO would rely solely on the enforceability of the  
2 pay-if-paid provision in the Subcontract to excuse payment to ZBCI.

3 26. On April 23, 2013, this Court authorized the sale of the Project free and clear of all  
4 liens, including liens arising under Chapter 108 of the Nevada Revised Statutes. The sale resulted in  
5 the distribution of the entire net proceeds from the sale to Scott Financial Corporation (the "Lender")  
6 upon the Nevada Supreme Court's determination that the Lender's claim to the net proceeds is  
7 superior to the Chapter 108 lien claimants' claim.

8 27. On April 12, 2017, ZBCI served APCO with a set of interrogatories that are similar to  
9 the ones served in 2010. This set of interrogatories again requested, *inter alia*, APCO's explanation  
10 for refusing payment to ZBCI and APCO's grounds for the tenth and twelfth affirmative defenses.  
11 ZBCI sent those interrogatories to confirm APCO's prior discovery responses on APCO's defenses  
12 against ZBCI's complaint.

13 28. On May 12, 2017, APCO responded to ZBCI's interrogatories that again indicated  
14 APCO's sole reliance on the enforceability of the pay-if-paid provision in the Subcontract to excuse  
15 payment to ZBCI.

16 29. On June 5, 2017, ZBCI deposed APCO's Nev. R. Civ. P. 30(b)(6) witness regarding  
17 APCO's affirmative defenses. At the deposition, APCO's Nev. R. Civ. P. 30(b)(6) witness declined  
18 to update APCO's interrogatory responses and re-affirmed APCO's sole reliance on the  
19 enforceability of the pay-if-paid provision to excuse payment.

20 30. On July 19, 2017, ZBCI deposed APCO's Nev. R. Civ. P. 30(b)(6) witness regarding  
21 topics pertaining to APCO's accounting for the Project. At the deposition, APCO's Nev. R. Civ. P.  
22 30(b)(6) witness again declined to update APCO's interrogatory responses.

23 31. APCO did not supplement its discovery responses prior to the June 30, 2017  
24 discovery cutoff.

25 32. On July 31, 2017 and after the close of discovery, ZBCI moved for summary  
26 judgment against APCO on ZBCI's breach of contract and Nev. Rev. Stat. 108 claim—setting forth  
27 ZBCI's prima facie case for those claims and addressing the enforceability of the pay-if-paid  
28 provision in the Subcontract.

33. On August 21, 2017, APCO filed its opposition to ZBCI's motion, arguing—for the first time—other grounds for refusing payment of the amount owed to ZBCI. ZBCI objected to the admissibility of the evidence in support of APCO's opposition.

34. APCO's refusal to pay ZBCI the amount owed under the Subcontract had compelled ZBCI to incur attorney's fees and costs to collect the amount owed.

### CONCLUSIONS OF LAW

### A. Burden of Proof

1. Summary judgment is appropriate “when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

2. As the party moving for summary judgment, ZBCI bears the initial burden of production to show the absence of a genuine issue of material fact. *Id.* ZBCI also bears the burden of persuasion at trial on its breach of contract and Chapter 108 claims and therefore must present evidence that would entitle it to a judgment as a matter of law on those two claims in the absence of contrary evidence. *See id.*

### B. APCO's Breach of the Subcontract

3. To establish a breach of contract under Nevada law, ZBCI must provide admissible evidence of (1) the existence of a valid contract, (2) a breach by APCO, and (3) damage as a result of the breach. See *Richardson v. Jones*, 1 Nev. 405, 408 (1865). In this case, this Court concludes that ZBCI has presented sufficient admissible evidence on all elements of a breach of contract.

4. The Subcontract between the respective parties is a valid contract. However, as discussed in this Court's separate decision regarding the enforceability of the Subcontract's "pay-if-paid provisions," the pay-if-paid provisions are against public policy and are void and unenforceable under Nev. Rev. Stat. 624.628(e). The remaining terms of the Subcontract remain enforceable.

5. Nev. Rev. Stat. 624.626(3) automatically approves written requests for change orders unless the higher-tiered contractor denies the requests in writing within 30 days after the lower-tiered contractor submits the requests. Here, this Court concludes that because ZBCI did not receive any

1 written denials of its change order requests within 30 days of request, ZBCI's change order requests  
2 amounting to \$347,441.67 were approved by operation of law. ZBCI is therefore entitled to payment  
3 in the amount of \$347,411.67 for all of the change orders submitted.

4         6. Under Nevada law, compliance with a valid condition precedent requires only  
5 substantial performance. *See, e.g., Laughlin Recreational Enterprises, Inc. v. Zab Dev. Co., Inc.*, 98  
6 Nev. 285, 287, 646 P.2d 555, 556-57 (1982). ZBCI proved at least substantial compliance with the  
7 conditions precedent for payment of the Retention, entitling ZBCI to payment of \$403,365.49 for the  
8 Retention.

9         7. Alternatively, by the very terms of the Subcontract itself, the termination of the Prime  
10 Contract automatically entitles ZBCI to payment of \$403,365.49 for the Retention and \$347,441.67  
11 for the completed work on the change orders. This Subcontract language—exclusive of the void pay-  
12 if-paid provisions—coincides with a prime contractor's obligations to pay its subcontractors  
13 pursuant to Nev. Rev. Stat. 624.626(6).

14         8. APCO breached the Subcontract by refusing to pay ZBCI all of the amount owed for  
15 the Retention and the change orders, and as a result ZBCI is entitled to judgment on its Complaint as  
16 a matter of law. This gives rise to \$750,807.16 in damages, exclusive of attorney's fees, costs, and  
17 interest.

18 **C. ZBCI's Nev. Rev. Stat. 108 Claim**

19         9. There is no dispute that ZBCI complied with the requirements for enforcing its lien  
20 rights under Chapter 108 of the Nevada Revised Statutes.

21         10. Nev. Rev. Stat. 108.239(12) entitles ZBCI to a "personal judgment for the residue  
22 against" APCO.

23         11. Because ZBCI did not receive any of the proceeds from the Nev. Rev. Stat. 108 sale  
24 of the Project, there is no genuine issue that ZBCI is entitled to a personal judgment under Nev. Rev.  
25 Stat. 108.239 against APCO for \$750,807.16 as the lienable amount, plus any reasonable attorney's  
26 fees, costs, and statutory interest that the Court may award.

1 **D. Preclusion of APCO's Defenses**

2 12. This Court has considered APCO's arguments in response to ZBCI's motion for  
3 summary judgment and concluded that the arguments have no merit.

4 13. As discussed above, the pay-if-paid provisions in the Subcontract is unenforceable  
5 and therefore cannot excuse APCO's payment of the amount owed to ZBCI.

6 14. If APCO wanted to assert other grounds for refusing payment to ZBCI, Nev. R. Civ.  
7 P. 26(e)(2) required APCO to seasonably amend its prior interrogatory responses to include grounds  
8 for refusal other than the enforceability of the pay-if-paid provision. Pursuant to Nev. Rev. Stat.  
9 37(c)(1) and *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. Adv. Op. 37, 396 P.3d 783, 787 (2017),  
10 APCO's failure to seasonably amend precludes APCO from asserting any other defenses "at a trial,  
11 at a hearing, or on a motion" unless APCO substantially justifies this failure or such failure is  
12 harmless to ZBCI.

13 15. The facts of this case are clear and uncontested. APCO was aware of its alleged  
14 grounds for refusing payment of the \$750,807.16 owed to ZBCI before ZBCI filed its complaint  
15 against APCO. APCO could have asserted its other defenses, other than its belief in the  
16 enforceability of the pay-if-paid provision, at the time it served its April 29, 2010 responses to  
17 ZBCI's interrogatories. In any event, several extensions to discovery were granted in this case even  
18 up to a few weeks before dispositive motions were filed. APCO had ample opportunities to  
19 seasonably amend or supplement its discovery responses to assert additional defenses against paying  
20 ZBCI the amount owed under the Subcontract.

21 16. Yet, APCO failed to explain why during the seven years of litigation between APCO  
22 and ZBCI, it did not disclose any defenses other than its belief in the enforceability of the pay-if-paid  
23 provision. For example, APCO did not explain its decision to omit the other defenses in its April 29,  
24 2010 responses to ZBCI's interrogatories and May 12, 2017 responses to ZBCI's interrogatories.  
25 APCO also did not explain why it did not amend or supplement its discovery responses with the  
26 other defenses during discovery.

27 17. ZBCI reasonably relied on APCO's interrogatory responses to formulate its litigation  
28 plan, which included decisions to avoid certain discovery. For example, ZBCI limited its discovery

1 to taking APCO's Nev. R. Civ. P. 30(b)(6) depositions with truncated questioning. ZBCI also filed  
2 its motion for summary judgment that focused on the enforceability of the pay-if-paid provisions.

3 18. By raising defenses other than the enforceability of the pay-if-paid provisions for the  
4 first time in its opposition to ZBCI's motion for summary judgment, APCO has prejudiced ZBCI.  
5 The late defenses have prevented ZBCI from conducting discovery at a time when relevant  
6 information is available and fresh in witnesses' mind. APCO's prejudicial actions also forced ZBCI  
7 to incur time and costs to conduct discovery based on incomplete information.

8 19. APCO's late defenses are not justified and are extremely prejudicial to ZBCI. Those  
9 defenses are now too little, too late. Under Nev. R. Civ. P. 37(c)(1), APCO cannot introduce any  
10 evidence to support any defenses against ZBCI's claims because its prejudicial discovery responses  
11 only claimed that it relied on the void pay-if-paid provisions.

12 20. Due to the preclusion of the other defenses, ZBCI's evidentiary objections regarding  
13 those defenses are moot.

14 21. ZBCI is entitled to judgment on its breach of contract claim and its Nev. Rev. Stat.  
15 108 claims as a matter of law.

16 **E. Attorney's Fees, Costs, and Interest**

17 22. ZBCI is the prevailing party under the Subcontract and the prevailing lien claimant  
18 under Nev. Rev. Stat. 108.237(1).

19 23. Under the Subcontract, ZBCI is entitled to an award of interest, reasonable attorney's  
20 fees, and costs incurred to collect the amount owed to ZBCI.

21 24. Under Nev. Rev. Stat. 108.237(1), ZBCI is also entitled to the cost of preparing and  
22 recording the notice of lien, the costs of the proceedings, the costs for representation of the lien  
23 claimant in the proceedings, and any other costs related to ZBCI's efforts to collect the amount owed  
24 against APCO. This includes, without limitation, attorney's fees and interest.

25 25. Nev. Rev. Stat. 108.237(2)(b) provides the calculation of the interest that accrues  
26 under the amount awarded under Nev. Rev. Stat. 108.237(1). This interest is equal to the prime rate  
27 at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on  
28 January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 4 percent,

1 on the amount of the lien found payable. The rate of interest must be adjusted accordingly on each  
2 January 1 and July 1 thereafter until the amount of the lien is paid.

3 26. Interest is payable from the date on which the payment is found to have been due,  
4 which would be December 15, 2008 in this case. Interest will accrue on the lienable amount,  
5 attorney's fees, and costs until the entire amount is paid.

6 **ORDER**

7 **THEREFORE, IT IS HEREBY ORDERED** that ZBCI's Motion for Partial Summary  
8 Judgment Against APCO Construction is **GRANTED** in its entirety.

9 **IT IS FURTHER ORDERED** that ZBCI is awarded \$750,807.16 (the "Award") on its First  
10 Cause of Action (Breach of Contract) and Fourth Cause of Action (Foreclosure of Mechanic's Lien).

11 **IT IS FURTHER ORDERED** that ZBCI's remaining claims—Second Cause of Action  
12 (Breach of Implied Covenant of Good Faith & Fair Dealing), Third Cause of Action (Unjust  
13 Enrichment or in the Alternative Quantum Meruit), and Seventh Cause of Action (Violation of NRS  
14 624)—are moot.

15 **IT IS FURTHER ORDERED** that ZBCI is awarded attorneys' fees and costs incurred in  
16 connection with this litigation.

17 **IT IS FURTHER ORDERED** that interest shall accrue on the unpaid amount of the Award  
18 from ZBCI's complaint was filed, which was April 30, 2009, to the date the entire amount is paid.

19 **IT IS FURTHER ORDERED** that ZBCI has 30 days from the date of this order to submit a  
20 memorandum setting forth its attorney's fees and costs.

21 **IT IS FURTHER ORDERED** that APCO has 30 days after service of the memorandum to  
22 submit a response.

23 **IT IS FURTHER ORDERED** that ZBCI has 10 days after APCO's response to submit a  
24 reply to the response.

25 **IT IS FURTHER ORDERED** that this Court will address the sole issue of whether ZBCI is  
26 entitled to attorney's fees and costs set forth in the memorandum at a hearing before this Court on

27 January 18, 2018 at 9:00 a.m.  
28

1       **IT IS FURTHER ORDERED** that this Court will enter final judgment on ZBCI claims  
2 upon a decision on the fees and costs—consistent with this Findings of Fact, Conclusions of Law,  
3 and Order

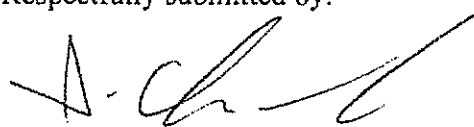
4       **IT IS FURTHER ORDERED** that the trial on ZBCI's complaint and all pending hearings  
5 associated with ZBCI's complaint are vacated.

6       **IT IS SO ORDERED.**

7       Dated this 26<sup>th</sup> day of December, 2017.

8   
9  
10 DISTRICT COURT JUDGE

11 Respectfully submitted by:

12   
13  
14 Jorge A. Ramirez, Esq.

15 I-Che Lai, Esq.

16 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**

17 300 South Fourth Street, 11th Floor

18 Las Vegas, Nevada 89101

19 *Attorneys for Lien Clamant,*

20 *Zitting Brothers Construction, Inc.*

21 Approved as to form and content by:

22 *declined to sign*

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

APCO CONSTRUCTION, INC., )

)

Appellant, )

)

v. ) No. 75197

)

ZITTING BROTHERS )

CONSTRUCTION, INC., )

)

Respondent. )

**RESPONDENT ZITTING BROTHERS CONSTRUCTION, INC.'S  
OPPOSITION TO APPELLANT'S MOTION FOR EXTENSION OF TIME  
TO FILE OPENING BRIEF AND APPENDIX**

Zitting Brothers Construction, Inc. ("Zitting"), the respondent, respectfully submits this Opposition to Appellant APCO Construction, Inc.'s Motion for Extension of Time to File Opening Brief and Appendix.

**I. APCO Construction, Inc. fails to demonstrate extraordinary and compelling circumstances for the requested extension of time to file its opening brief and appendix.**

APCO Construction, Inc. (“APCO”) fails to justify the requested extension of deadline to October 1, 2018. It has admitted that it previously requested by telephone and obtained a 14-day extension, which extended APCO’s briefing deadline to August 30, 2018. (Mot. at 1.<sup>1</sup>) APCO now argues “good cause” warrants an additional 30-day extension. (*Id.*) However, the “good cause” standard is not the standard that APCO must satisfy for the requested extension.

Nev. R. App. P. 26(b)(1)(B) (emphasis added) governs APCO’s requested extension and provides that “[t]he grant of [14-day extension of time by telephone] will bar any further motion for additional extensions of time to perform the same act unless such a motion, which must be in writing, demonstrates *extraordinary and compelling circumstances*.” Because of the prior extension, APCO must “demonstrate[] extraordinary and compelling circumstances” for the additional extension. *See id.* As discussed below, APCO fails to do so.

Specifically, APCO argues that the “complexity of the record[,] ... the issues in this case,” and the recent Nev. R. Civ.P. 54(b) certification warrant the requested extension. (Mot. at 1-2.) However, APCO supports its arguments only with

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<sup>1</sup> Zitting cites APCO’s Motion for Extension of Time to File Opening Brief and Appendix as “Mot.”

conclusory statements. (*See id.*) There is no explanation of how the other consolidated cases affects the disposition of this appeal or why APCO cannot complete its opening brief without the Nev. R. Civ. P. 54(b) certification. (*See id.*) APCO has therefore failed its burden to justify the requested extension.

Notwithstanding the consolidation of the cases or the purported recency of the Nev. R. Civ. P. 54(b) certification, this appeal is not complex as it involves only two parties. The underlying case arises from APCO's breach of its duty under its subcontract with Zitting to pay Zitting for the work Zitting performed on the ManhattanWest mixed-use development project. (*See* Ex. A at 3.) APCO and Zitting are the only parties to this subcontract. (*See* Ex. B at 15.) The other consolidated cases currently on appeal involve APCO's subcontracts with other subcontractors, and Zitting is not a party or in privity with any of the parties to those subcontracts. (*See* Ex. C at 1-50.<sup>2</sup>) More important for this appeal, however, is that Zitting's subcontract also differs from those subcontracts, as Zitting's subcontract involves original language from Zitting. (*See, e.g.,* Ex. B at 4.) Unlike the other subcontractors, Zitting has never signed a ratification agreement with the subsequent primary contractor on the project. (*Compare* Ex. A at 2-3 with Ex. C at 1-50.)

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<sup>2</sup> Zitting presents Exhibits C, F, G, and H *only* to support its opposition to APCO's motion. As discussed in this opposition, Zitting objects and plans to oppose any efforts by APCO to introduce any evidence and arguments not considered by the district court in its decision to grant summary judgment to Zitting.

Notably, the order granting Zitting’s summary judgment makes no reference to any other subcontractors—resolving only the dispute between Zitting and APCO. (*See generally* Exs B, D.) In other words, other than a single common issue of the enforceability of the pay-if-paid provisions in the subcontracts, (Ex. D at 2; Ex. E at 1-2), the material facts in Zitting’s case substantially differs from the facts in the other subcontractors’ cases.

For example, the district court found that the other subcontractors in the other appeal entered into a subcontract with another general contractor. (Ex. C at 30-33, 39-46.) This apparently absolved APCO of contractual liability under the original subcontract and imposed contractual liability on the new general contractor. (*See id.*; Ex F at 8-10.) Zitting did not enter into any subcontracts with anyone other than APCO. (*See* Ex. B at 15.)

APCO has not and cannot provide any “extraordinary and compelling reason” why this Court must consider the other cases to decide the appeal in Zitting’s case. There should only be two issues for appeal: (1) whether the district court abused its discretion to limit APCO to its pay-if-paid defense based on APCO’s litigation conduct in Zitting’s case and (2) whether the district court erred by concluding that the pay-if-paid provisions in Zitting’s subcontract were unenforceable as matter of law. This is true regardless of whether the district court certified Zitting’s summary judgment order under Nev. R. Civ. P. 54(b). So APCO does not need this

certification to prepare its opening brief. Given that Zitting's case is distinct from the others consolidated cases, there is no reason to delay the resolution of this appeal.

APCO concedes this in its motion for Nev. R. Civ. P. 54(b) certification. In that motion, APCO has represented to the district court that

[i]ndeed, because Zitting's claims against APCO were separated for the order granting summary judgment, it is most efficient to maintain the separation of those claims and issues through a final judgment with [Nev. R. Civ. P.] 54(b) certification of the order. As a result, the parties remaining in this action[, the other subcontractors,] will not suffer any prejudice if the order is deemed final. On the other hand, the potential prejudice to APCO in prolonging resolution of its filed appeal significantly outweighs any prejudice to other parties, including Zitting.

(Ex. G at 6.) Based on this representation, the district court certified the summary judgment order as final. (Ex. H at 2.) Under the doctrine of judicial estoppel, APCO cannot now claim that this Court should delay resolution of this appeal to consider the other consolidated cases. *See NOLM, LLC v. County of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (precluding a litigant from taking two inconsistent positions in judicial proceeding).

In any event, "[t]he district court is clearly in the best position to determine whether allowing an appeal [of an order certified under Nev. R. Civ. P. 54(b)] would frustrate the purpose for which the cases were consolidated." *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990). That rule "provides that a

judgment or order of the district court which completely removes a party or a claim from a pending action may be certified as final ‘only upon an express determination that there is no just reason for delay....’” *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). “If the claims asserted in an action, albeit separate, are so closely related that this court must necessarily decide important issues pending below in order to decide the issues appealed, there can be no finding that there is no just reason for delay....” *Mallin*, 106 Nev. at 610, 797 P.2d at 981. Phrased differently, if the district found that there was no just reason for delay, the claims involved in Zitting’s case are *not* “so closely related” to the claims involved in the other subcontractors’ cases that this Court must consider all of the claims in the consolidated cases together. *See id.*

APCO’s appellate conduct further undermines its claim regarding the complexity of this appeal. APCO has not filed a motion to consolidate the appeals under Nev. R. App. P. 3(b)(2) (providing for consolidation of appeal). Instead of first requesting a longer extension to file its opening brief and appendix, APCO decides to request a 14-day extension by telephone. (*See* Mot. at 1.) If APCO truly believes that this appeal is complex and warranted an October 1, 2018 deadline to file its opening brief, it should have requested this deadline from the outset. Its decision not to shows that there are no extraordinary and compelling circumstances for this Court to grant an additional extension.

**II. APCO's appellate conduct may violate Zitting's due process, which further undermines its request for an additional extension of time.**

APCO's efforts to improperly expand the scope of this appeal also militates against any extension of time. In APCO's motion to extend, APCO alludes to a plan to use in this appeal records from the other subcontractors' cases against APCO. (*See* Mot. at 1-2.) Such plan implicates Zitting's due process. Zitting has resolved all of its claims against APCO via summary judgment—months before the trial in the other subcontractors' cases against APCO. (*See, e.g., Ex. A.*) Zitting has not participated—and did not need to participate—in the trial of other subcontractors' claims against APCO. Nothing adduced after the district court's denial of APCO's motion to reconsider Zitting's summary judgment order can be used against Zitting. *See, e.g., Carson Ready Mix v. First Nat'l Bk.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (recognizing that this court “cannot consider matters not properly appearing in the record on appeal”). Doing so offend traditional notions of fair play and substantial justice.

Moreover, as APCO should be aware, it cannot introduce anything in this appeal that the district court did not consider *at the time* the district court considered whether to grant summary judgment to Zitting. *See, e.g., Windish v. State*, 93 Nev. 636, 637–38, 572 P.2d 210, 211 (1977). The record, especially the trial record, generated after the district court granted summary judgment to Zitting was never

considered by the district court. As such, it is improper for APCO to attempt to introduce it in this appeal. Such attempts cannot support the requested extension.

### **III. Conclusion**

For the foregoing reasons, this Court should deny APCO's motion for an extension of the time to file its opening brief and appendix.

Respectfully submitted on September 10, 2018,

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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 10th day of September, 2018, I have electronically filed and served Respondent Zitting Brothers Construction, Inc.'s Opposition to Appellant's Motion for Extension of Time to File Opening Brief and Appendix. Electronic service of the foregoing document is made in accordance with the Master Service List as follows:

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