

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

APCO CONSTRUCTION, INC., A  
NEVADA CORPORATION,

Appellant,

vs.

ZITTING BROTHERS  
CONSTRUCTION, INC.,

Respondent.

Case No.: 75197

Electronically Filed  
Dec 20 2018 10:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Eighth Judicial District  
Court, the Honorable Mark Denton  
Presiding

**APPELLANT'S APPENDIX TO APPELLANT'S RESPONSE TO ORDER  
TO SHOW CAUSE**

**(Volume 2, Bates Nos. 251–500)**

**MARQUIS AURBACH COFFING**

Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Cody S. Mounter, Esq.  
Nevada Bar No. 11220  
Tom W. Stewart, Esq.  
Nevada Bar No. 14280  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
mechols@maclaw.com  
cmounter@maclaw.com  
tstewart@maclaw.com

**SPENCER FANE LLP**

John Randall Jefferies, Esq.  
Nevada Bar No. 3512  
Mary E. Bacon, Esq.  
Nevada Bar No. 12686  
300 S. Fourth Street, Suite 950  
Las Vegas, NV 89101  
Telephone: (702) 408-3400  
Facsimile: (702) 408-3401  
rjeffries@spencerfane.com  
mbacon@spencerfane.com

*Attorneys for Appellant, APCO Construction, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPELLANT'S APPENDIX TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE, VOLUME 2,** was filed electronically with the Nevada Supreme Court on the 19th day of December, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jorge Ramirez, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

I-Che Lai, Esq.  
Wilson, Elser, Moskowitz, Edelman & Dicker LLP  
300 South 4th Street, 11th Floor  
Las Vegas, Nevada 89101-6014  
Attorneys for Respondent, Zitting Brothers Construction, Inc.

/s/ Leah Dell

\_\_\_\_\_  
Leah Dell, an employee of  
Marquis Aurbach Coffing

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19. That Counterclaimant, Insulpro, is entitled to recovery on the basis of the theory of Quantum Meruit.

20. That Counterclaimant, Insulpro is entitled to judgment against APCO in the amount of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36), plus reasonable attorney's fees and costs of suit.

#### FOURTH CAUSE OF ACTION

(Unjust Enrichment)

21. Counterclaimant, Insulpro, repeats and realleges each and every allegation contained in paragraphs 1 through 4 of its General Allegations, paragraphs 5 through 13 of its First Cause of Action, paragraphs 14 through 17 of its Second Cause of Action and paragraphs 18 through 20 of its Third Cause of Action as though fully set forth herein..

22. That Insulpro furnished the labor and materials for the installation of insulation for the benefit of APCO at the specific instance and request of the APCO.

23. That APCO accepted, used and enjoyed the benefit of the work and materials.

24. That APCO knew or should have known that Insulpro expected to be paid for the labor and materials.

25. That Insulpro demands APCO pay the sum outstanding for the labor and materials in the total amount of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36).

26. That to date, APCO, and each of them, have failed, neglected and refused to pay said sum to the detriment of Insulpro.

27. That APCO has been unjustly enriched to the detriment of Insulpro.

28. It has become necessary for Insulpro to retain the services of an attorney to commence this lien action, and Insulpro is, therefore, entitled to reasonable attorney's fees for the preparation, verification, services and recording of the liens and costs of suit.

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1           8.     That on or about August 26, 2008, Insulpro and CAMCO entered into a Ratification and  
2 Amendment of Subcontract Agreement whereby Insulpro was to supply labor and materials for the  
3 installation of insulation on The West Manhattan Condominium  
4

5           9.     That pursuant to the Agreement, CAMCO agreed to pay all sums due and owing, upon  
6 presentation of invoices.

7           10.    That the labor and materials furnished by Insulpro to the property, the subject of this  
8 action, total the sum of Three Hundred Thousand Twenty-Six Two Hundred Fifteen and 00/100's  
9 (\$326,215.00).

10          11.    That to date, Insulpro has not been paid for such sums due and owing, and the sum of  
11 Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36) plus interest remains  
12 due and owing.  
13

14          12.    That Insulpro has demanded payment of such sums, together with interest, but CAMCO  
15 has failed and refused and continues to fail and refuse to pay the sums due to Insulpro.

16          13.    That all conditions precedent to payment have been satisfied and CAMCO's refusal to  
17 pay Insulpro is a material breach of the agreement between Insulpro and CAMCO.  
18

19          14.    That as a direct and proximate result of CAMCO's material breach, Insulpro has been  
20 damaged in the sum of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36).

21          15.    It has become necessary for Insulpro to retain the services of an attorney to commence  
22 this lien action, and Insulpro is, therefore, entitled to reasonable attorney's fees for the preparation,  
23 verification, services and recording of the liens and costs of suit.

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1 **SECOND CAUSE OF ACTION**

2 (Account Stated CAMCO)

3 16. Third-Party Plaintiff, Insulpro repeats and realleges each and every allegation contained  
4 in paragraphs 1 through 6 of its General Allegations and paragraphs 7 through 15 of its First Cause of  
5 Action as though fully set forth herein.  
6

7 17. That as an alternative to the foregoing Claims (theories) for Relief, in the event the Court  
8 finds that there is no express or implied contract, Insulpro alleges that an account was stated between  
9 Insulpro and CAMCO for the sum of Three Hundred Thousand Twenty-Six Two Hundred Fifteen and  
10 00/100's (\$326,215.00).

11 18. That the sum of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars  
12 (\$95,659.36) with interest remains due and owing.  
13

14 19. That it has been necessary for Insulpro to retain the services of an attorney to prosecute  
15 this action, and Insulpro is therefore entitled to reasonable attorney's fees.

16 **THIRD CAUSE OF ACTION**

17 (Quantum Meruit CAMCO)

18 20. Third-Party Plaintiff Insulpro repeats and realleges each and every allegation contained  
19 in paragraphs 1 through 6 of its General Allegations, paragraphs 7 through 15 of its First Cause of  
20 Action, and paragraphs 16 through 19 of its Second Cause of Action as though fully set forth herein.  
21

22 21. That Third-Party Plaintiff, Insulpro, is entitled to recovery on the basis of the theory of  
23 Quantum Meruit.

24 22. That Third-Party Plaintiff, Insulpro is entitled to judgment against CAMCO in the  
25 amount of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36), plus  
26 reasonable attorney's fees and costs of suit.  
27

28 ///

1 **FOURTH CAUSE OF ACTION**

2 (Unjust Enrichment CAMCO)

3 23. Third-Party Plaintiff, Insulpro, repeats and realleges each and every allegation contained  
4 in paragraphs 1 through 6 of its General Allegations, paragraphs 7 through 15 of its First Cause of  
5 Action, paragraphs 16 through 19 of its Second Cause of Action and paragraphs 20 through 22 of its  
6 Third Cause of Action as though fully set forth herein..

7  
8 24. That Insulpro furnished the labor and materials for the installation of insulation for the  
9 benefit of CAMCO at the specific instance and request of the CAMCO.

10 25. That CAMCO accepted, used and enjoyed the benefit of the work and materials.

11 26. That CAMCO knew or should have known that Insulpro expected to be paid for the  
12 labor and materials.

13  
14 27. That Insulpro demands CAMCO pay the sum outstanding for the labor and materials in  
15 the total amount of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars (\$95,659.36).

16 28. That to date, CAMCO, and each of them, have failed, neglected and refused to pay said  
17 sum to the detriment of Insulpro.

18 29. That CAMCO has been unjustly enriched to the detriment of Insulpro.

19 30. It has become necessary for Insulpro to retain the services of an attorney to commence  
20 this lien action, and Insulpro is, therefore, entitled to reasonable attorney's fees for the preparation,  
21 verification, services and recording of the liens and costs of suit.

22 **FIFTH CAUSE OF ACTION**

23 (Bond Proceeds FIDELITY)

24  
25 31. Third-Party Plaintiff, Insulpro repeats and realleges each and every allegation contained  
26 in paragraphs 1 through 6 of its General Allegations, paragraphs 7 through 15 of its First Cause of  
27 Action, paragraphs 16 through 19 of its Second Cause of Action, paragraphs 20 through 22 of its Third  
28

1 Cause of Action and paragraphs 23 through 30 of its Fourth Cause of Action as though fully set forth  
2 herein.

3 32. Fidelity at and all times relevant to this action, was a duly licensed insurance company  
4 operating within the state of Nevada.

5 33. That on or about July 24, 2008, Fidelity executed a State Contractor's Bond Number  
6 8739721, for the sum of \$50,000.0 (Fifty Thousand and 00/100's) on behalf of CAMCO naming Dewain  
7 Emerson Campbell, Christian Todd Veje and Melanie Ann Thummel as principals.

8 34. That pursuant to the terms of said bond, Fidelity agreed to pay the claims of Insulpro on  
9 the failure of CAMCO to pay for construction contracts and for materials furnished on its projects.

10 35. That Insulpro supplied material on the real property, the subject of this action.

11 36. That CAMCO agreed to pay for the materials supplied by Insulpro to such real property.

12 37. That Fidelity is indebted to Insulpro in the sum of Ninety-Five Thousand Six Hundred  
13 Fifty-Nine and 36/100 Dollars (\$95,659.36), together with interest as allowed by law, under the terms  
14 of the Bond, Number 8739721.

15 38. It has become necessary for Insulpro to retain the services of an attorney to commence  
16 this lien action, and Insulpro is, therefore, entitled to reasonable attorney's fees for the preparation,  
17 verification, services and recording of the liens and costs of suit.

18 *WHEREFORE*, Insulpro, expressly reserves the right to amend its Statement of Facts at or before  
19 the time of trial of the action herein to include all items of damages not yet ascertained, demands  
20 judgment against the Defendants, and each of them, as follows, upon each cause of action:

21 1. That this Court enter judgment against the Respondent, Counterdefendant and Third-  
22 Party Defendants in the amount of Ninety-Five Thousand Six Hundred Fifty-Nine and 36/100 Dollars  
23 (\$95,659.36), together with interest thereon at the legal rate until paid;

24 ///

2. That this Court enter judgment against the above-named Respondent, Counterdefendant and Third-Party Defendants for a reasonable sum as and for the costs of preparation, verification, services and filing of the liens;

3. For reasonable attorney's fees;

4. For costs of suit;

5. That the Court declare the rank and priority of all the lien claims and secured claims and that the liens be ascertained and adjudged as valid liens;

6. That the liens be enforced according to law;

7. That the Court direct a foreclosure sale of the properties;

8. That the properties be sold and the proceeds applied to the payment of the sums found due to Lien Claimant/Counterclaimant/Third-Party Plaintiff;

9. That the Court enter such deficiency judgment against the above-named Respondent, Counterdefendant and Third-Party Defendants and each of them, as may be proper in the premises; and

10. For such other and further relief as this Court may deem just and proper in the premises.

DATED this 24<sup>th</sup> day of March, 2009.

~~DOBBERSTEIN & ASSOCIATES~~

ERIC DOBBERSTEIN, ESQ.

Nevada Bar No. 003712

1399 Galleria Drive, Suite 201

Henderson, Nevada 89014

(702) 382-4002

Attorneys for Insulpro Projects, Inc.

**CERTIFICATE OF MAILING AND/OR FACSIMILE SERVICE**

STATE OF NEVADA       )  
                                  ) ss.  
COUNTY OF CLARK       )

I, the undersigned say: I am and was at all times herein mentioned a resident of the County of Clark, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 1399 Galleria Drive, Suite 201, Henderson, Nevada 89014.

That on March 24, 2009, I served the within documents: Statement of Facts Constituting Liens on the interested parties in said action or proceeding by placing a true copy thereof, enclosed in a sealed envelope addressed as follows:

Gwen Rutar Mullins, Esq.  
HOWARD & HOWARD, P.C.  
3800 Howard Hughes Pkwy, Ste. 1400  
Las Vegas, NV 89169  
(702) 567-1568  
Attorneys for APCO Construction

Marilyn G. Fine, Esq.  
MEIER & FINE  
2300 W. Sahara Ave., Ste. 430  
Las Vegas, NV 89102  
(702) 673-1001  
Attorneys for Scott Financial Corporation

Donald H. Williams, Esq.  
WILLIAMS & WIESE  
612 S. Tenth Street  
Las Vegas, NV 89101  
(702) 320-7760  
Attorneys for Harsco Corporation

Jeffrey R. Albreghts, Esq.  
SANTORO DRIGGS  
400 S. Fourth St., 3<sup>rd</sup> Floor  
Las Vegas, NV 89101  
(702) 791-1912  
Attorneys for Arch Aluminum and Glass Co.

Martin A. Little, Esq.  
JOLLEY URGAL WIRTH WOODBURY &  
STANDISH  
3800 Howard Hughes Pkwy., 16<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702) 699-7555  
Attorneys for Steel Structures, Inc. and  
Nevada Prefab Engineers, Inc.

Gregory S. Gilbert, Esq.  
HOLLAND & HART  
3800 Howard Hughes Pkwy., 10<sup>th</sup> Floor  
Las Vegas, NV 89169  
(702) 669-4650  
Attorneys for Gemstone Development West, Inc.

Nikola Skrinjaric, Esq.  
NEVADA TITLE COMPANY  
2500 N. Buffalo, #150  
Las Vegas, NV 89128  
(702) 251-3186  
Attorney for Nevada Construction Services

T. James Truman, Esq.  
T. JAMES TRUMAN & ASSOCIATES  
3654 N. Rancho Dr.  
Las Vegas, NV 89130  
(702) 396-3035  
Attorney for Noorda Sheet Metal

///

///

1 Justin L. Watkins, Esq.  
2 WATT, TIEDER, HOFFAR &  
3 FITZGERALD  
4 3993 Howard Hughes Pkwy., Ste. 400  
5 Las Vegas, NV 89169  
6 (702) 822-2650  
7 Attorneys for Cabintec, Inc.

Jennifer Lloyd-Robinson, Esq.  
PEZZILLO ROBINSON  
6750 Via Austi Pkwy., Ste. 170  
Las Vegas, NV 89119  
(702) 233-4252  
Attorneys for Tri-City Drywall, Inc.

6 D. Shane Clifford, Esq.  
7 DIXON TRUMAN FISHER & CLIFFORD  
8 221 N. Buffalo Dr., #A  
9 Las Vegas, NV 89145  
10 (702) 259-9759  
11 Attorneys for Ahern Rental, Inc.

10 ☒ (BY MAIL) I caused a true copy of each document, placed in a sealed envelope with  
11 postage fully paid to be placed in the United States mail at Henderson, Nevada.


12 ☐ (BY OVERNIGHT DELIVERY) I personally caused a true copy of each document,  
13 placed in a sealed envelope with delivery fees provided for, to be deposited with the  
14 *Federal Express*.

15 ☐ (BY FACSIMILE) By use of facsimile machine number (702) 382-1661 I served a copy  
16 of the within document(s) on the above-listed interested parties at the facsimile numbers  
17 listed above. The transmission report was properly issued by the transmitting facsimile  
18 machine.

19 ☐ (BY PERSONAL SERVICE) I delivered each such document by hand to each  
20 addressee above.

21 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true  
22 and correct.

23 Executed on 20th March, at Henderson, Nevada.

24   
25 An Employee of Dobberstein & Assoc.

# EXHIBIT “A”



**Receipt/Conformed Copy**

APN: 163-32-101-019

Recording requested by and mail documents and tax statements to:

Name: Gale Building Products  
Address: 1401 Trade Drive  
City/State/Zip: North Las Vegas, NV 89030

Requestor:  
GALE BUILDING PRODUCTS  
12/30/2008 10:47:42 T20080324876  
Book/Instr: 20081230-0001766  
Mech Lien Page Count: 1  
Fees: \$14.00 N/C Fee: \$0.00

**MECHANIC'S LIEN**

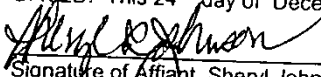
Debbie Conway  
Clark County Recorder

Pursuant to the provisions of the Nevada Revised Statutes 108.221 to 108.246, inclusive .

NOTICE IS HEREBY GIVEN THAT: the "Claimant" (whether singular or plural), Sacramento Insulation Contractors, Inc. dba Gale Building Products fka Insulpro Projects, Inc. claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph Five (5) below, and states the following:

1. That demand of Claimant after deducting all just credits and offsets, is \$95,659.36 together with interest thereon at the rate of 18% per annum from 12/24/08.
2. That the name of the owner(s) or reputed owner(s) of said property, is (are); Gemstone Development West, Inc.
3. Claimant furnished work and materials under contract with, or at the request of: Apco Construction and Camco Pacific Construction Co.
4. That Claimant did from 03/10/08 until 10/27/08, perform labor and/or supply materials as follows: Mirrors/Enclosures for the construction, alteration or repair of said buildings, improvements or structures, which labor, or materials, or both of them were in fact used in the construction, alteration or repair of said buildings, improvements or structures, the location of which is set forth in Paragraph Five (5) below. Terms of contract: Net 30 Days.
5. That the property upon which said lien is being placed on is commonly known as: The West Manhattan Condominiums, Buildings #8 & #9, 9205 West Russell Road, City of Spring Valley, County of Clark, State of Nevada, and more described as PT NE4 NW4 SEC 32 TWP 21 RNG 60.

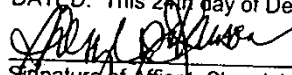
DATED: This 24<sup>th</sup> day of December, 2008.

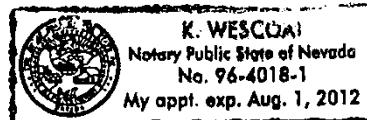
  
Signature of Affiant, Sheryl Johnson, Office Manager  
Sacramento Insulation Contractors, Inc. dba Gale Building Products fka Insulpro Projects, Inc.

STATE OF NEVADA )  
COUNTY OF CLARK )

Sheryl Johnson, being first duly sworn, deposes and says that Sacramento Insulation Contractors, Inc. dba Gale Building Products fka Insulpro Projects, Inc. the Claimant herein, is a Nevada Corporation and that affiant is the Office Manager and for that reason she makes his affidavit on behalf of said Gale Building Products that she has read the same and knows the contents thereof, and that the statements therein contained are true; and that it contains, among other things a correct statement of demand of Claimant, after deducting all just credits and offsets.

DATED: This 24<sup>th</sup> day of December, 2008.

  
Signature of Affiant, Sheryl Johnson, Office Manager  
Sacramento Insulation Contractors, Inc. dba Gale Building Products fka Insulpro Projects, Inc.



STATE OF NEVADA )  
COUNTY OF CLARK )

On this 24<sup>th</sup> day of December, 2008 personally appeared before me, a Notary Public, Sheryl Johnson, personally known to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed this instrument. Witness my hand and official seal.

Notary Public 

My Commission Expires: 8-01-12

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|---|----|
| Postage   | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

Sent to Camco Pacific Const. Co. Inc.  
 Street Apt. No. 2925 E. Patrick Ln. #G  
 City, State, ZIP+4 LV, NV 89120

PS Form 3800, August 2006 See Reverse for Instructions



Insulpro Projects, Inc.  
 Gale Building Products  
 1401 TRADE DRIVE  
 N. LAS VEGAS, NV 89030

**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:  
Camco Pacific Const. Co. Inc.  
2925 E. Patrick Ln. #G  
Las Vegas, NV 89120

2. Article Number  
 (Transfer from service label)  
7007 2560 0001 9590 5602

PS Form 3811, February 2004 Domestic Return Receipt

**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 ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

**CERTIFIED MAIL<sup>TM</sup>**



7007 2560 0001 9590 5602



Camco Pacific Construction Co., Inc.  
 2925 E. Patrick Lane, Suite G  
 Las Vegas, NV 89120

2095 0656 1000 0952 2002

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| Postage \$  |  |
| Certified Fee                                     |  |
| Return Receipt Fee<br>(Endorsement Required)      |  |
| Restricted Delivery Fee<br>(Endorsement Required) |  |
| Total Postage & Fees \$                           |  |

Postmark Here

Sent to Gemstone LVS, LLC  
7700 LV Blvd S. # 3  
Las Vegas, NV 89123

PS Form 3800, August 2006  
 PS Form 3800, August 2006

**MASCO**  
 Contractor  
 Services

Insulpro Projects, Inc.  
 Gale Building Products  
 1401 TRADE DRIVE  
 N. LAS VEGAS, NV 89030

**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 LVS, LLC  
7700 Las Vegas Blvd.S,  
Suite #3  
Las Vegas, NV 89123

2. Article Number  
 (Transfer from service label) 7007 2560 0001 9590 5596

PS Form 3811, February 2004 Domestic Return Receipt

**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 ☐ No  
 If YES, enter delivery address below:

3. Service Type ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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**UNITED STATES POSTAGE**  
**PITNEY BOWES**  
**\$ 005.320**  
 02 1P  
 0002792077 JAN 22 2008  
 MAILED FROM ZIP CODE 89118

Gemstone LVS, LLC  
 7700 Las Vegas Blvd., S., Suite #3  
 Las Vegas, NV 89123

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| Certified Fee                                  |  |
| Return Receipt Fee (Endorsement Required)      |  |
| Restricted Delivery Fee (Endorsement Required) |  |
| Total Postage & Fees \$                        |  |

Postmark  
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Sent To  
 Street, Apt. No.,  
 or PO Box No.  
 City, State, ZIP+4<sup>®</sup>

Apco Construction  
 3432 N. 5th St.  
 NV, NV 89032

PS Form 3800, August 2005

See Reverse for Instructions



Insulpro Projects, Inc.  
 Gale Building Products  
 1401 TRADE DRIVE  
 N. LAS VEGAS, NV 89030

**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 Construction Co., Inc.  
 3432 N. 5th St.  
 N. Las Vegas, NV 89032

**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

2. Article Number  
 (Transfer from service label) 7007 2560 0001 9590 5589

PS Form 3811, February 2004 Domestic Return Receipt

102595-02-M-1540

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7007 2560 0001 9590 5589



Apco Construction  
 3432 North 5<sup>th</sup> Street  
 N. Las Vegas, NV 89032

● ORIGINAL ●

33

104

1 **STAT**

2 **HOWARD & HOWARD ATTORNEYS PLLC**

3 Gwen Mullins, Esq.

4 Nevada Bar No. 3146

5 Wade B. Gochnour, Esq.

6 Nevada Bar No. 6314

7 3800 Howard Hughes Parkway

8 Suite 1400

9 Las Vegas, NV 89169

10 Telephone : (702) 257-1483

11 Facsimile (702) 567-1568

12 E-mails: [grm@h2law.com](mailto:grm@h2law.com)

13 [wbg@h2law.com](mailto:wbg@h2law.com)

14 Attorneys for Defendant APCO Construction

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **THE MASONRY GROUP NEVADA, INC.,**  
13 **A Nevada corporation**

14 **Plaintiff,**

15 **vs.**

16 **CAMCO PACIFIC CONSTRUCTION**  
17 **COMPANY, INC., GEMSTONE**  
18 **DEVELOPMENT WEST, INC.; FIDELITY**  
19 **AND DEPOSIT COMPANY OF**  
20 **MARYLAND and and DOES 1 through 500,**  
21 **inclusive,**

22 **Defendants.**

23 **APCO CONSTRUCTION, a Nevada**  
24 **corporation,**

25 **Lienclaimant/Plaintiff in**  
26 **Intervention,**

27 **vs.**

28 **GEMSTONE DEVELOPMENT WEST, INC.,**  
**a Nevada corporation; and DOES I through X,**  
**Defendants.**

**FILED**

**MAR 26 4 31 PM '09**

*Earl D. Smith*  
CLERK OF THE COURT

CASE NO.: A584730  
DEPT. NO.: XI

**APCO CONSTRUCTION'S STATEMENT  
OF FACTS CONSTITUTING LIEN  
CLAIM and COMPLAINT IN  
INTERVENTION**



**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

**CLERK OF THE COURT**

**MAR 26 2009**

**RECEIVED**

**APCO CONSTRUCTION'S STATEMENT OF FACTS CONSTITUTING  
LIEN CLAIM and COMPLAINT IN INTERVENTION**

Lienclaimant/Plaintiff in Intervention APCO CONSTRUCTION (hereinafter "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, hereby asserts the following Statement of Facts Constituting Lien Claim and Complaint in Intervention (hereinafter "Complaint") against GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone"):

**GENERAL ALLEGATIONS**

1. APCO is, and was at all times relevant hereto, a corporation duly organized under the laws of the State of Nevada doing business as a licensed general contractor.

2. Upon information and belief, Gemstone is a corporation duly organized under the laws of the State of Nevada.

3. The true names and capacities, whether individual, corporate, associate or otherwise of third-party defendants named herein as Does 1 through 10 and Roe Corporations 1 through 10, inclusive, are unknown to APCO, who, therefore, sues said defendants by such fictitious names and APCO will ask leave to amend this Complaint to show their true names and capacities when the same have been ascertained. APCO believes that each defendant named Does 1 through 10 and Roe Corporations 1 through 10, inclusive, is responsible in some manner for the events referred to herein.

4. APCO and Gemstone entered into the Manhattan West General Construction Agreement for GMP, dated September 6, 2007 (the "Agreement").

5. The Agreement was drafted by Gemstone.

6. Pursuant to the Agreement, APCO was to act as the General Contractor for the construction of the Manhattan West Mixed-Use development project located on the Property (the "Project").

7. The Project was to be constructed in two phases, with the first Phase consisting of the construction of five (5) buildings.

8. APCO performed its work on the Project pursuant to the Agreement.

1           9.     Almost from the beginning of the Project, APCO had difficulty obtaining  
2 required information from Gemstone.

3           10.    Gemstone also began making changes to the plans and specifications from the  
4 beginning of APCO's work on the Project.

5           11.    During the course of the construction of the Project, Gemstone continued to  
6 make changes in the plans and specifications, including changes to the electrical, plumbing and  
7 HVAC plans.

8           12.    As changes were made, APCO would submit requests for change orders to  
9 Gemstone.

10          13.    Many of the changes made by Gemstone affected the timing and sequence of  
11 the Project. As a result, APCO also made several requests for an extension of time to complete  
12 the buildings, which were part of Phase I of the Project.

13          14.    With very limited exceptions, Gemstone would find excuses to ignore or  
14 otherwise refuse to approve the change orders submitted by APCO.

15          15.    This included a refusal to approve requests for extensions of the Agreement  
16 schedule.

17          16.    In order to keep the Project moving, APCO continued to work on the Project  
18 and incorporate the changes made despite Gemstone's refusal to approve the change orders.

19          17.    On or about June 20, 2008, APCO submitted its Application and Certification  
20 For Payment for the month ending May 31, 2008, requesting a total amount of \$3,230,671.71  
21 (the "May Application").

22          18.    Without prior warning, on or about July 2, 2008, Gemstone sent a letter to  
23 APCO, giving APCO notice of Gemstone's intent to withhold the sum of \$226,360.88 from  
24 APCO's May Application, which represented APCO's fee for the billing period.

25          19.    On or about July 8, 2008, APCO provided Gemstone its written notice of  
26 APCO's dispute of the intended withholding.

27          20.    As of July 17, 2008, Gemstone still had not paid APCO any sums due for the  
28 May Application.

21. As a result of Gemstone's failure to make any payment, APCO provided Gemstone with written notice of APCO's intent to stop work pursuant to NRS 624.610, if APCO was not paid in full for the May Application, by July 28, 2008.

22. After receiving the stop work notice, Gemstone paid APCO all amounts except for the sum of \$226,360.88.

23. As a result of Gemstone's failure to make full payment, APCO stopped work on the Project.

24. After APCO stopped work on the Project, Gemstone paid APCO the outstanding sum of \$226,360.88 from the May Application, and as a result, APCO returned to work on the Project.

25. During this time, APCO and Gemstone exchanged correspondence regarding many of the change order requests submitted by APCO, and Gemstone's failure and/or refusal to act upon or otherwise respond to the change order requests.

26. NRS 624.610(1)(d) provides:

(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 . . .

27. NRS 624.610(3) provides:

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



1 services that are the subject of the request for a change  
2 order; and

3 (d) The owner shall pay the prime contractor for  
4 such labor, materials, equipment or services with the next  
5 payment made to the prime contractor.

6 28. On or about July 18, 2008, APCO submitted its Application and Certification  
7 For Payment for the month ending June 30, 2008, requesting a total amount of \$6,566,720.38  
8 (the "June Application").

9 29. Because Gemstone had simply not responded to several change order requests  
10 submitted by APCO, the June Application included these undisputed change order requests as  
11 provided for in NRS 624.610.

12 30. After submission of the June Application, some discussions were held between  
13 APCO and Gemstone, and APCO agreed to accept less than all of the undisputed change  
14 orders.

15 31. Even after this agreement, on or about August 6, 2008, Gemstone provided  
16 APCO with notice of its intent to withhold the additional sum of \$1,770,444.28, representing  
17 "all unapproved change order requests included in the June Progress Payment."

18 32. As of August 8, 2008, the date payment was due for the June Application,  
19 Gemstone had not made any payment for the June Application.

20 33. As a result of Gemstone's failure to make any payment on the June Application,  
21 APCO sent its notice of intent to stop work on Monday, August 11, 2008, noting that if APCO  
22 was not paid by August 21, 2008, APCO would stop work on the Project.

23 34. After receipt of APCO's written notice of intent to stop work for non-payment,  
24 Gemstone sent a letter on Friday, August 15, 2008, claiming that APCO was in breach of the  
25 contract and that Gemstone would terminate the Agreement for cause if the alleged breaches  
26 were not cured by Sunday, August 17, 2008 (the "Termination Letter").

27 35. The Termination Letter actually set out what Gemstone stated were "Immediate  
28 Termination Breaches" and the "Curable Breaches."

1           36. As part of the "Immediate Termination Breaches," Gemstone included several  
2 items of work that had been completed by APCO months before, as Gemstone's grounds for  
3 termination of the Agreement. More specifically, Gemstone claimed APCO to be in breach for  
4 failure to supply rebar and concrete workers for concrete work. APCO and its subcontractors  
5 completed this work months before Gemstone's notice.

6           37. APCO, through its counsel, responded to each of the alleged grounds for  
7 termination on August 15, 2008, the same day that APCO received the Termination Letter, and  
8 noted that APCO would continue to work on the Project.

9           38. Also on August 15, 2008, despite the cure period still being in effect, Gemstone  
10 improperly contacted several of APCO Subcontractors for the Project, notifying them that  
11 Gemstone was terminating its Agreement with APCO as of Monday, August 18, 2008, and that  
12 Gemstone already had a replacement general contractor in place.

13           39. On Monday, August 18, 2008, while at the Project site, Gemstone's CEO, Alex  
14 Edelstein, asked the APCO site personnel why they were still on the Project since they had  
15 been terminated.

16           40. As a result of these statements, APCO asked for written confirmation of  
17 Gemstone's position, and noted that APCO intended to continue to work on the Project until  
18 Gemstone no longer allowed APCO on the Project site, or until the deadline for APCO's stop  
19 work notice had run.

20           41. Ultimately, APCO was not paid for the June Application and stopped work on  
21 the Project on August 21, 2008, and provided Gemstone with written notice of APCO's intent  
22 to terminate the Agreement on September 5, 2008.

23           42. Gemstone, without valid cause or reason, informed APCO that it was  
24 proceeding with its improper termination and ordered APCO off of the Project by Saturday,  
25 August 23, 2008.

26           43. Since payment for the June Application was not made in full by Gemstone, the  
27 Agreement terminated pursuant to APCO's notice of termination on September 5, 2008,  
28 pursuant to NRS 624.610.

1           44.     After improperly removing APCO from the Project, Gemstone agreed to issue  
2 joint checks to some of the subcontractors in an effort to induce the subcontractors to return to  
3 work on the Project for the replacement General Contractor.

4           45.     Gemstone has further notified APCO of Gemstone's intent to withhold any  
5 further payment to APCO.

6                                   **FIRST CAUSE OF ACTION**  
7                                   **(Lien Foreclosure)**

8           46.     APCO repeats and realleges each and every allegation contained in paragraphs 1  
9 through 45 as though fully set forth herein.

10          47.     The whole of the property of the Project is reasonably necessary for the  
11 convenient use and occupation of all of the improvements made by APCO.

12          48.     The terms, time given and conditions of the contract are: APCO furnished  
13 materials on the Project, pursuant to an agreement with Gemstone. The terms of the contract  
14 provided that APCO was to receive payment as the work progressed.

15          49.     Gemstone failed to pay APCO for the labor and materials furnished on the  
16 Project causing APCO to terminate its contract with Gemstone as allowed under Nevada law.

17          50.     APCO further recorded a Notice and Claim of Lien on November 6, 2008, in the  
18 office of the Clark County Recorder, in Book 20081106, as Instrument No. 003327 and an  
19 Amended and Restated Notice and Claim of Lien on February 4, 2009 in Book 20090204 as  
20 Instrument No. 004357 (the "Lien").

21          51.     Lien was duly recorded in the official records of Clark County.

22          52.     The Lien was served upon the owners of record of the Property or their  
23 authorized agents as required by Nevada law.

24          53.     APCO has complied with all requirements of the Nevada Revised Statutes to  
25 perfect the Lien on the Property.

26          54.     There may be other claimants whose liens may be subordinate to APCO Lien.

27          55.     APCO is entitled to foreclose on its Lien against the Project pursuant to the  
28 Nevada law and against the interests held by Defendants and any of them.

1           56.     It has become necessary for APCO to retain the services of an attorney to  
2 commence this lien action and APCO is therefore entitled to reasonable attorneys' fees for the  
3 preparation, verification, service and recording of the lien and costs of suit.

4                                   **SECOND CAUSE OF ACTION**  
5                                   **(Breach of Contract)**

6           57.     APCO repeats and realleges each and every allegation contained in paragraphs 1  
7 through 56 of its Cross Claim as though fully set forth herein

8           58.     There was a valid and enforceable contract between APCO and Gemstone.

9           59.     APCO complied with the material terms of the Agreement.

10          60.     Gemstone materially breached the Agreement by, among other things:

- 11               a.   Failing to make payments due to APCO;
- 12               b.   Interfering with APCO's relationships with its subcontractors;
- 13               c.   Refusing to review, negotiate or consider change order requests in good  
14                  faith;
- 15               d.   Failing to timely provide fully approved construction documents;
- 16               e.   Removing APCO from the Project without valid or appropriate grounds;  
17                  and
- 18               f.   Otherwise breaching the terms of the Agreement.

19          61.     As a result of Gemstone's material breach of the Agreement, APCO has been  
20 damaged in an amount in excess of \$10,000.

21          62.     APCO is entitled to pre-judgment and post-judgment interest on all amounts  
22 found due and owing.

23          63.     APCO has been forced to retain the services of an attorney in this matter and  
24 APCO is entitled to an award of attorney's fees and costs incurred.

25                                   **THIRD CAUSE OF ACTION**  
26                                   **(Breach of Covenant of Good Faith and Fair Dealing)**

27          64.     APCO repeats and realleges each and every allegation contained in  
28 Paragraphs 1 through 63 of its Complaint as though fully set forth herein.

1           65.     Gemstone has breached the covenant of good faith and fair dealing  
2 implied in all contracts.

3           66.     As a result of Gemstone's breach of the covenant of good faith and fair  
4 dealing, APCO has been damaged in an amount in excess of \$10,000.00.

5           67.     It has been necessary for APCO to engage the services of an attorney  
6 and APCO is entitled to reasonable attorneys' fees and costs as damages.

7                           **FOURTH CAUSE OF ACTION**  
8                           **(Indemnification)**

9           68.     APCO repeats and realleges each and every allegation contained in  
10 Paragraphs 1 through 67 of its Complaint as though fully set forth herein.

11           69.     The construction work performed by The Masonry Group Nevada, Inc.  
12 (hereinafter "Masonry Group") was performed on the Project being developed by Gemstone.

13           70.     APCO has received claims and demands for other subcontractors and/or  
14 suppliers who performed work or supplied materials to the Project, for which APCO has not  
15 received payment from Gemstone.

16           71.     Pursuant to the agreement between APCO and Gemstone, Gemstone  
17 agreed to pay for all labor and materials performed or furnished by APCO's subcontractors  
18 and/or suppliers on the Project, including that performed by Masonry Group.

19           72.     Gemstone obtained any benefit that would have been conferred by the  
20 construction work performed by Masonry Group, and any other subcontractor and/or supplier  
21 of APCO on the Project.

22           73.     Gemstone should equitably, or otherwise, indemnify APCO for any and  
23 all losses, damages or expenses APCO sustains as a result of the Complaint filed in the above  
24 action by Masonry Group and/or any other subcontractor and/or supplier of APCO and for any  
25 monies that APCO is forced to otherwise pay as a result of the action filed by Masonry Group,  
26 or any other subcontractor and/or supplier of APCO on the Project, including, but not limited,

27     ///

28     ///

1 any judgment award and the attorney's fees and costs incurred by APCO in defending the  
2 action filed by Masonry Group, and/or any other subcontractor and/or supplier of APCO on the  
3 Project.

4 74. APCO has been forced to retain counsel to bring this Complaint and  
5 APCO requests the Court to award attorney's fees and costs resulting therefrom.

6 **FIFTH CAUSE OF ACTION**  
7 **(Unjust Enrichment)**

8 75. APCO repeats and realleges each and every allegation contained in  
9 Paragraphs 1 through 74 of its Complaint as though fully set forth herein.

10 76. If a judgment is obtained by Masonry Group and/or any other  
11 subcontractor and/or supplier of APCO on the Project against APCO and APCO is forced to  
12 pay any sums thereof to Masonry Group and/or any other subcontractor of APCO on the  
13 Project, Gemstone will receive a benefit.

14 77. Unless Gemstone is required to reimburse APCO for these sums,  
15 Gemstone will be unjustly enriched to the detriment of APCO.

16 78. APCO has been forced to retain counsel to bring this Complaint and  
17 APCO requests the Court to award attorney's fees and costs resulting therefrom.

18 **SIXTH CAUSE OF ACTION**  
19 **(Fraud)**

20 79. APCO repeats and realleges each and every allegation contained in  
21 paragraphs 1 through 78 of its Complaint as though fully set forth herein.

22 80. Gemstone approached APCO to be the general contractor on the Project.

23 81. The original contract price for the work on the Project to be performed  
24 by APCO and its subcontractor was the sum of \$153,472,300.00.

25 82. Prior to the execution of the agreement, Gemstone made certain  
26 representations that were material and induced APCO to execute the agreement.

27 ///

1           83. More specifically, Gemstone represented to APCO that there was  
2 sufficient funding to pay for all the work to be performed by APCO and its subcontractors to  
3 complete the Project on the Property.

4           84. Gemstone further represented that they had the ability to pay for all the  
5 work performed by APCO and its subcontractors on the Project and that funding for the Project  
6 was in place.

7           85. Gemstone knew, or should have known, that the conditions for  
8 financing were not properly met and the representations made by Gemstone to APCO were  
9 false and Gemstone knew them to be false when they were made.

10          86. In reliance upon those representations, APCO entered into a contract for  
11 construction with Gemstone.

12          87. APCO would not have entered into the agreement had APCO known  
13 that those representations were false and untrue.

14          88. As a result of those false representations, which caused and induced  
15 APCO to enter into the agreement with Gemstone, APCO has been damaged in excess of  
16 \$10,000.00.

17          89. Gemstone's misrepresentations warrant the imposition of exemplary  
18 and/or punitive damages in excess of \$10,000.00.

19          90. It has been necessary for APCO to engage the services of an attorney  
20 and APCO is entitled to reasonable attorneys' fees and costs as damages.

21                           **SEVENTH CAUSE OF ACTION**  
22                           **(Negligent Misrepresentation Plead in the Alternative)**

23          91. APCO repeats and realleges each and every allegation contained in  
24 paragraphs 1 through 90 of its Complaint as though fully set forth herein.

25          92. Gemstone was negligent in their representations as set forth in  
26 paragraphs 83 and 84 above.

27          93. As a result of Gemstone's negligent representations, APCO executed the  
28 agreement.

1 94. As a direct, proximate and foreseeable result of APCO's reliance upon  
2 Gemstone's negligent representations, APCO has been damaged in an amount in excess of  
3 \$10,000.00.

4 95. It has been necessary for APCO to engage the services of an attorney  
5 and APCO is entitled to reasonable attorneys' fees and costs as damages.

6 WHEREFORE, APCO prays for judgment against Gemstone as follows:

- 7 1. For an award of damages in the sum in excess of \$10,000.00;  
8 2. For an award of attorneys' fees and costs incurred herein by APCO;  
9 3. That APCO be awarded special damages in excess of \$10,000;  
10 4. That APCO be awarded punitive or exemplary damages in excess of  
11 \$10,000;  
12 5. That APCO be awarded pre-judgment on all amounts found due and  
13 owing;  
14 6. For a reasonable sum as and for the costs of preparation, verification,  
15 service and recording of the Lien;  
16 7. That the Court declare the rank and priority of all lien claims and  
17 secured claims, and that APCO's Lien be ascertained and adjudged as a valid lien having  
18 priority over the deeds of trust;  
19 8. That APCO's Lien be enforced according to Nevada law;  
20 9. That the Court direct a foreclosure sale of the Property;  
21 10. That the Property be sold and the proceeds be applied to the payments of  
22 the sums found due to APCO;  
23 11. That the Court enter such deficiency judgment against Defendants as the  
24 Court deems proper in the premises;

25 ///

26 ///

27 ///

28 ///



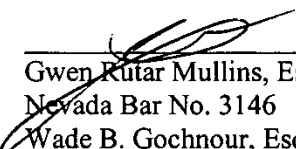
**HOWARD & HOWARD ATTORNEYS PLLC**  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

12. That APCO be awarded post-judgment interest on all amounts; and

13. For such other and further relief as this Court may deem just and proper.

DATED this 25 day of March, 2009.

**HOWARD & HOWARD ATTORNEYS PLLC**

  
Gwen Rutar Mullins, Esq.

Nevada Bar No. 3146

Wade B. Gochnour, Esq.

Nevada Bar No. 6314

3800 Howard Hughes Parkway, Ste. 1400

Las Vegas, Nevada 89169

*Attorneys for APCO Construction*

HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

**CERTIFICATE OF MAILING**

On the 26<sup>th</sup> day of March, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM and COMPLAINT, by U.S. Mail, postage prepaid, upon the following:

Ronald S. Sofen, Esq.  
Becky A. Pintar, Esq.  
GIBBS, GIDEN, LOCHER, TURNER & SENET LLP  
3993 Howard Hughes Pkwy, Ste. 530  
Las Vegas, Nevada 89169-5994  
Attorneys for Plaintiff  
THE MASONRY GROUP NEVADA, INC.

  
An employee of Howard and Howard Attorneys PLLC

ORIGINAL

31

1 **STAT**

2 T. James Truman, Esq.  
3 Nevada Bar No. 003620  
4 Stephen M. Dixon, Esq.  
5 Nevada Bar No. 10025  
6 T. JAMES TRUMAN & ASSOCIATES  
7 3654 North Rancho Drive  
8 Las Vegas, Nevada 89130  
9 Telephone: (702) 256-0156  
10 Attorneys for Lien Claimant Dave Peterson Framing, Inc.

FILED

MAR 27 4 05 PM '09

*E. Peterson*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

104  
11 APCO CONSTRUCTION, a Nevada  
12 corporation,

Plaintiff,

Case No. A571228

Dept. No. X

vs.

DAVE PETERSON FRAMING, INC.'S  
STATEMENT OF FACTS  
CONSTITUTING LIEN CLAIM,  
COMPLAINT AND THIRD PARTY  
COMPLAINT

13 GEMSTONE DEVELOPMENT WEST,  
14 INC., a Nevada corporation; NEVADA  
15 CONSTRUCTION SERVICES, a Nevada  
16 corporation; SCOTT FINANCIAL  
17 CORPORATION, a North Dakota  
18 corporation; COMMON WEALTH LAND  
19 TITLE INSURANCE COMPANY; FIRST  
20 AMERICAN TITLE INSURANCE  
21 COMPANY; and DOES I through X,

Defendants.

22 DAVE PETERSON FRAMING, INC., a  
23 Nevada corporation,

Lien Claimant,

vs.

24 GEMSTONE DEVELOPMENT WEST,  
25 INC., a Nevada corporation; DOES I through  
26 X, inclusive; and ROE CORPORATIONS I  
27 through X, inclusive;

Defendants.

28 DAVE PETERSON FRAMING, INC., a  
Nevada corporation,

Lien Claimant,

vs.

29 CAMCO PACIFIC CONSTRUCTION  
30 COMPANY, INC.; a foreign corporation;  
31 FIDELITY AND DEPOSIT COMPANY OF  
32 MARYLAND;

Third Party Defendants.

CE27

LAW OFFICES OF  
T. JAMES TRUMAN & ASSOCIATES  
A PROFESSIONAL CORPORATION  
3654 NORTH RANCHO DRIVE  
LAS VEGAS, NEVADA 89130  
www.trumanlegal.com

RECEIVED

MAR 27 2009

CLERK OF THE COURT

1 Lien Claimant, DAVE PETERSON FRAMING, INC., a Nevada corporation ("DPF"), by  
2 and through its attorneys, the law offices of T. James Truman & Associates, and for its Statement  
3 of Facts Constituting Lien Claim and Complaint and Third Party Complaint against the Defendants  
4 and Third Party Defendants GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation  
5 ("Gemstone"); CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; a foreign corporation  
6 ("CAMCO"); FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity"); DOES I  
7 through X, inclusive, and ROE CORPORATIONS I through X, inclusive, alleges and states as  
8 follows:

9 **GENERAL ALLEGATIONS**

10 1. Plaintiff DPF is and was at all times relevant hereto, a Nevada corporation authorized  
11 to do business in the County of Clark, State of Nevada and licensed by the Nevada State Contractor's  
12 Board under license number 0042437.

13 2. DPF is informed and believes, and therefore alleges, Defendant Gemstone is a Nevada  
14 corporation, licensed to and doing business in the County of Clark, State of Nevada. Plaintiff is  
15 informed and believes, and therefore alleges that Gemstone is the owner of the Manhattan West  
16 Project located at 9205 W. Russell Road, Las Vegas, NV, Assessor's Parcel Numbers 163-32-112-  
17 001 through 163-32-112-246 (formerly known as APN 163-32-101-019)(the "Project").

18 3. DPF is informed and believes, and therefore alleges, Third Party Defendant CAMCO  
19 is a Foreign corporation which was active and authorized to and doing business in the State of  
20 Nevada, Clark County during the time of the allegations set forth below, was authorized to do  
21 business in the County of Clark, State of Nevada, and is licensed by the Nevada State Contractors  
22 Board under license number 0037507, but was cancelled on February 1, 2009.

23 4. DPF is informed and believes, and therefore alleges that Third Party Defendant  
24 Fidelity provided bond number 8739721 in the amount of \$50,000.00 on behalf of Defendant  
25 CAMCO, for the purpose of allowing CAMCO to be licensed by the Nevada State Contractors  
26 Board. One of the purposes of the bond is to pay those laborers and suppliers of material who are  
27 not paid by CAMCO. DPF is within the class of persons for whose benefit the bond was provided.

28 5. The true names and characters of DOES I through X, inclusive, and ROE

1 CORPORATIONS I through X, inclusive, whether individual, corporate, associate, or otherwise, are  
2 unknown to Plaintiff, who, therefore, sues said defendants designated as DOES I through X and  
3 ROE CORPORATIONS I through X, as responsible in some manner for the events and happenings  
4 referred to herein and Plaintiff will ask leave of this Court to amend this Complaint to insert the true  
5 names and characters of DOES I through X, and/or ROE CORPORATIONS I through X, when the  
6 same have been ascertained, and to join such defendants in this action.

7 6. DPF is informed and believes, and therefore alleges, CAMCO is the General  
8 Contractor for the Project.

9 7. CAMCO subcontracted with DPF to perform certain of the work required by the  
10 Camco Pacific Construction Company, Inc. Agreement Between Contractor and Subcontractor  
11 ("Subcontract"). A true and correct copy of the Subcontract is attached hereto as **Exhibit "1."**

12 8. DPF performed the work as required under the Subcontract.

13 9. The original sum of the Subcontract is \$50,000.00. DPF has received no payments  
14 from CAMCO, therefore, DPF is owed the amount of \$50,000.00, exclusive of interest.

15 10. CAMCO has not paid DPF for the outstanding balance on the Subcontract, leaving  
16 the amount of \$50,000.00, exclusive of interest, due and owing to DPF.

17 11. DPF performed the work as required under the Subcontract.

18 12. Because it was not paid the balance due of \$50,000.00 for the aforementioned work,  
19 DPF recorded a Notice of Lien on December 30, 2008 in the office of the Clark County Recorder  
20 in Book No. 20091230 as Instrument No. 0001396 (the "Lien"). A copy of said lien is attached as  
21 **Exhibit "2."**

22 13. Defendant CAMCO has failed and refused and continues to fail and refuses to pay  
23 the balance of \$50,000.00, together with interest accruing thereon, costs and attorney's fees incurred  
24 in these proceedings. Judgment should now be entered against all Defendants in the amount of  
25 \$50,000.00, jointly and severally, and in favor of Plaintiff, together with interest, costs, and attorneys  
26 fees incurred herein.

27 ///

28 ///

**FIRST CLAIM FOR RELIEF**

**(Lien Foreclosure)**

14. DPF repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

15. DPF entered into an agreement with CAMCO for DPF to provide various work, labor, and materials toward the construction and improvement of the Project and that CAMCO would fully pay DPF for its work, labor, and supplied materials pursuant to the Subcontract.

16. DPF provided the agreed upon work, labor, and materials toward the construction and improvements of the Project. However, DPF has not been fully paid for its work, labor, and materials.

17. Because CAMCO failed to fully pay DPF for its work, labor, and materials, DPF recorded the Lien with the Clark County Recorder's Office.

18. DPF is entitled to recover in this action the costs and fees incurred in preparing, recording, and serving its Lien.

19. DPF's Lien is charged against the Property where the Subcontract is located and has been properly perfected pursuant to NRS Chapter 108. DPF is therefore entitled to an Order from this Court directing that the subject Property be sold and foreclosed upon and that from the proceeds of the sale, DPF be paid the principal sum of \$50,000.00, together with interest accrued thereon, plus reimbursement of the cost of suit and attorneys fees that DPF has incurred and continues to incur in connection with this action.

20. It has been necessary for DPF to retain the services of an attorney and to incur attorneys' fees and costs to prosecute this action and, therefore, DPF is entitled to reimbursement for those attorneys' fees and costs incurred herein.

**SECOND CAUSE OF ACTION**

**(Breach of Contract against CAMCO)**

21. DPF repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

22. The Defendant failed to and refused to pay DPF for its work, labor, and materials

1 supplied to the Project.

2 23. The Defendant has breached the Subcontract with DPF by failing to pay DPF for its  
3 work, labor, and materials supplied to the Project.

4 24. As a direct and proximate result of CAMCO's breach of the Subcontract, there is now  
5 due and owing to DPF the sum of \$50,000.00, together with interest accruing thereon at the highest  
6 legal rate, costs and attorney's fees in these proceedings for which judgment should now be entered  
7 against the Defendant CAMCO, and in favor of DPF.

8 **THIRD CAUSE OF ACTION**

9 **(Unjust Enrichment against CAMCO, and Gemstone)**

10 25. DPF repeats, realleges, and incorporates each and every paragraph contained above  
11 as though fully set forth herein at length.

12 26. DPF has conferred a benefit upon the above named Defendants for services provided  
13 to CAMCO pursuant to the Subcontract and Ratification, and for services provided to Gemstone as  
14 the owner of the Project, and Defendants are unjustly retaining the benefits of DPF's services.

15 27. The reasonable value of the work, labor, and materials that DPF completed, at the  
16 request of the Defendants is \$50,000.00, not including interest, fees, and costs. This amount is now  
17 due and owing to DPF by the Defendants CAMCO, and Gemstone, jointly and severally, together  
18 with the interest thereon.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of Good Faith and Fair Dealing against CAMCO)**

21 28. DPF repeats, realleges, and incorporates each and every paragraph contained above  
22 as though fully set forth herein.

23 29. Implied by law in every agreement is the covenant of good faith and fair dealing.

24 30. The Defendant CAMCO agreed and promised to fully pay DPF for its work, labor,  
25 and materials supplied to the Project.

26 31. The Defendant has failed and refused to pay DPF for its work, labor, and materials  
27 supplied to the Project.

28 32. The Defendant's failure and refusal is a breach of their covenant of good faith and

1 fair dealing.

2 33. As a direct and proximate result, DPF has suffered damages in excess of \$10,000.00,  
3 plus interest at the legal rate.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Monies Due and Owing against CAMCO)**

6 34. DPF repeats, realleges, and incorporates each and every paragraph contained above  
7 as though fully set forth herein.

8 35. CAMCO owes to DPF the sum of \$50,000.00, together with interest, attorneys' fees  
9 and costs accruing thereon, for work, labor, and materials supplied to the Project by DPF, and  
10 although demand has been made upon CAMCO for payment of said sum, CAMCO has failed,  
11 neglected and refused, and continues to fail, neglect and refuses to pay the same.

12 36. DPF is entitled to judgment against CAMCO, in the amount of \$50,000.00, together  
13 with interest thereon at the highest legal rate until paid in full and DPF's reasonable costs and  
14 attorney's fees incurred herein.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Bond Claim against Fidelity)**

17 37. DPF repeats, realleges, and incorporates each and every paragraph contained above  
18 as though fully set forth herein.

19 38. Fidelity provided bond number 8739721 in the amount of \$50,000.00 for the purpose  
20 of allowing CAMCO to be licensed by the Nevada State Contractors Board. One of the purposes  
21 of the bond is to pay those laborers and suppliers of material who are not paid by CAMCO. DPF  
22 is within the class of persons for whose benefit the bond was provided.

23 39. DPF is entitled to judgment against Fidelity in the amount of \$50,000.00 as a result  
24 of the work, materials and services provided by DPF under the agreement with CAMCO for the  
25 improvement of the Project.

26 WHEREFORE, DPF prays for the following:

27 1. That this Court enter a Judgment against Defendant CAMCO and Third Party  
28 Defendant Gemstone, jointly and severally, in an amount in excess of \$10,000.00, plus interest at



1 the legal rate from the date the amount became due until paid;

2 2. For judgment in favor of Plaintiff and against Third Party Defendant Fidelity in an  
3 amount in excess of \$10,000.00;

4 3. That this Court enter Judgment against Defendant CAMCO and Third Party  
5 Defendant Gemstone, jointly and severally, for reasonable attorneys fees and cost of the suit incurred  
6 herein; and

7 4. That the Court declare the rank and priority of the lien claims and secured claims and  
8 that the Lien recorded by DPF be ascertained and adjudged as a valid lien with priority over all the  
9 claims;

10 5. That the Lien be enforced according to law;

11 6. That the Court direct a foreclosure sale of the subject Property;

12 7. That the Property be sold and the proceeds be applied to the payment of sums found  
13 due to DPF;

14 8. That the Court enter such deficiency Judgment against Defendant CAMCO and Third  
15 Party Defendant Gemstone, jointly and severally, as may be proper on the premises; and

16 9. For such other and further relief as the Court may deem just and proper.

17 DATED this 26 day of March, 2009.

18 T. JAMES TRUMAN & ASSOCIATES

19 By: 

20 T. James Truman, Esq.  
21 Nevada State Bar No. 003620  
22 Stephen M. Dixon, Esq.  
23 Nevada State Bar No. 10025  
24 3654 N. Rancho Dr.  
25 Las Vegas, Nevada 89130  
26 Attorneys for Lien Claimant  
27 Dave Peterson Framing, Inc.  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of T. JAMES TRUMAN & ASSOCIATES and that on the 27th day of March, 2009, I placed a true and correct copy of the foregoing **DAVE PETERSON FRAMING, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM, COMPLAINT AND THIRD PARTY COMPLAINT** in the United States mails at Las Vegas, Nevada, with 1st class postage prepaid and addressed as follows:

Gwen Rutar Mullins, Esq.  
Wade B. Gochnour, Esq.  
Howard & Howard  
3800 Howard Hughes Pkwy., #1400  
Las Vegas, NV 89169  
Attorneys for Apco Construction

Martin A. Little, Esq.  
Jolley Urga Wirth Woodbury & Standish  
3800 Howard Hughes Pkwy., 16th Floor  
Las Vegas, NV 89169  
Attorneys for Steel Structures, Inc. and  
Nevada Prefab Engineers, Inc.

Gregory S. Gilbert, Esq.  
Sean D. Thueson, Esq.  
Holland & Hart  
3800 Howard Hughes Pkwy., 10th Floor  
Las Vegas, NV 89169  
Attorneys for Gemstone Development West

Justin L. Watkins, Esq.  
Watt, Tieder, Hoffar & Fitzgerald  
3993 Howard Hughes Pkwy., #400  
Las Vegas, NV 89169  
Attorneys for Cabinetec, Inc.

Nikola Skrinjaric, Esq.  
2500 N. Buffalo, Ste. 250  
Las Vegas, NV 89128  
Attorney for Nevada Construction Services

D. Shane Clifford, Esq.  
Robin E. Perkins, Esq.  
Dixon, Truman, Fisher & Clifford  
221 N. Buffalo Dr., #A  
Las Vegas, NV 89145  
Attorneys for Ahern Rental, Inc.

Marilyn G. Fine, Esq.  
Meier & Fine, LLC  
2300 W. Sahara Ave., #430  
Box 11  
Las Vegas, NV 89102  
Attorneys for Scott Financial Corporation

Steven L. Morris, Esq.  
Woodbury, Morris & Brown  
701 N. Green Valley Parkway, #110  
Henderson, NV 89074  
Attorney for Camco Pacific Construction Co.,  
Inc.

Donald H. Williams, Esq.  
Williams & Wiese Law Offices  
612 S. Tenth St.  
Las Vegas, Nevada 89101  
Attorneys for Harsco Corporation

Jennifer R. Lloyd-Robinson, Esq.  
Pezzillo Robinson  
6750 Via Austi Pkwy., #170  
Las Vegas, NV 89119  
Attorneys for Tri-City Drywall, Inc.

Jeffrey R. Albregts, Esq.  
Sanford, Driffs, Walch, Kearney, Holley &  
Thompson  
400 S. Fourth St., 3rd Floor  
Las Vegas, NV 89101  
Attorneys for Arch Aluminum and Glass Co.

Christopher R. McCullough, Esq.  
McCullough, Perez & Associates  
601 S. Rancho Dr., #A-10  
Las Vegas, NV 89106  
Attorneys for Cell Crete Fireproofing of NV,  
Inc.

  
An Employee of T. James Truman & Associates

# **EXHIBIT "1"**

**CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AGREEMENT BETWEEN  
CONTRACTOR AND SUBCONTRACTOR**

This "Agreement" is hereby made as of: **December 5, 2008 (the "Effective Date")**

Between the "Contractor"

CAMCO PACIFIC CONSTRUCTION COMPANY  
2925 E. Patrick Lane, Suite G  
Las Vegas, Nevada 89120  
California License No. 676205  
**Nevada License No. 0037507**  
**Utah License No. 6169863-5501**  
License Limit: Unlimited  
Telephone: (702) 798-6611

And the "Subcontractor"

Dave Peterson Framing, Inc.  
9081 W. Sahara  
Suite 209  
Nevada License No: 42437  
Federal Tax ID No. /FICA No.: \_\_\_\_\_  
Designated Contract Representative:  
\_\_\_\_\_

For the following "Project"

ManhattanWest

At the following "Job Site"

Russell Road and the 215 Beltway  
Clark County, Nevada 89148

Developed by the following "Owner"

Gemstone Development West, Inc.

For the following scope:

Rough Framing – Buildings 8 & 9

Cost Code:

06100S.2  
See **Addendum 1** for the expanded description of  
Subcontractor's scope of work ("Contract Work")

With the following "Retention":

10% *Labor only*

For the following "Contract Price":

The following amounts per Building:

| Building      | Amount                 |
|---------------|------------------------|
|               |                        |
|               |                        |
|               |                        |
| Building 8    |                        |
| Building 9    |                        |
| <b>Total:</b> | <b>\$50,000.00 NTE</b> |

*Contract to Include Signed Proposal*

*DP*

DAVE  
PETERSON  
~FRAMING~ INC.

9081 W. SAHARA # 290  
Las Vegas, Nevada 89117  
(702) 360-5784 FAX: 360-5786

Nevada Contractor's License #42437

DECEMBER 05, 2008

**PROPOSAL:**

Attn: JANICE ROBBINS  
GEMSTONE DEVELOPMENT  
CAMCO PACIFIC

**PROJECT :**

MANHATTAN WEST ( BUILDING 8 & 9 )  
RUSSEL & 215

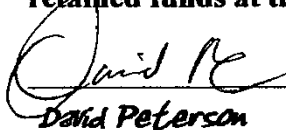
**DAVE PETERSON FRAMING PROPOSES TO FURNISH & INSTALL  
ROUGH CARPENTRY LABOR, LUMBER, & HARDWARE FOR THE ABOVE  
MENTIONED PROJECT. PROPOSAL IS FOR FRAMING REPAIRS & CHANGE  
ORDERS ONLY. NO NEW CONSTRUCTION**

**INCLUSIONS/EXCLUSIONS:**

1. Concrete and masonry imbeds furnished and installed by others.
2. Hardware supplied is Simpson call out only in our scope of work .All other hardware and/or miscellaneous steel furnished and installed by others.
3. All draft stops ( sheetrock/drywall), vents and turbines furnished and Installed by others.
4. All work is to be Time & Material. Labor @ \$60.00 per hour, material @ cost plus 15 %. Not exceed \$ 50,000.00
5. Work includes roof supports, repair tub platforms, a/c headouts & floor repairs.

**NOTE:** Temporary power is to be supplied within 200' of all working areas, along with a holding compound for materials. General contractor is responsible for maintaining temporary power and it is to be O.S.H.A. approved. Any changes and/or extras will be billed accordingly and agreed upon before work on changes and/or extras commences .

**Payments are to be made as weekly draws through a progress system. Final payment 100% upon framing inspection. Any contracts requiring retention will be subject to a 5% surcharge for the amount of contract and interest charges for retained funds at the rate of 2% per month until retention is paid.**

  
David Peterson

12-05-08

DATE

DATE

Cell: 303-3000

**THIS BID IS GOOD FOR 10 DAYS**

614-0669

## **I. THE CONTRACT WORK.**

**A. Project Site.** Contractor has executed a prime contract with Owner (the "Prime Contract") to perform all of the work required for the Project (the "Project Work") at the Job Site. The Project Work must be performed in accordance with the intent set forth in the Prime Contract and the addenda, reports, (including soils), drawings and plans and specifications made a part thereof and provided pursuant to **Addendum 2** hereto (the "Project Contract Documents").

**B. Plans and Specifications; Laws; Scope.** The work for the portion of the Project to be performed by Subcontractor shall be performed in strict accordance with: (1) this Agreement; (2) the Project Schedule (defined below); (3) the intent set forth in the Project Contract Documents applicable to the Contract Work and all modifications thereto as permitted herein; and (4) all applicable federal, state and local codes, laws, permits, orders, ordinances and any rules and regulations promulgated thereunder (collectively "Laws"). Subcontractor recognizes that the scope of the Contract Work set forth on **Addendum 1** cannot identify each and every component of the Contract Work but that the Contract Work shall include everything necessary to accomplish the results intended by the Project Contract Documents. The Contract Work shall include all labor, materials, tools, appliances, equipment, supplies, supervision, construction plant and machines, transportation, fuel, shop drawings and samples, as-built drawings, accessories, warranties/guarantees, training and all other facilities and incidentals necessary to produce the intended results, as and when required. The Contract Work shall also include such incidental work which may not be expressly indicated in the Project Contract Documents, but which is considered to be Subcontractor's obligations to provide under construction industry standards, customs, and practices. Subcontractor recognizes and accepts that it must accomplish everything necessary so as to provide good and workmanlike construction, in a complete and acceptable condition to Contractor and Owner. Subcontractor accepts the risk of any error or omission in its estimating or construction process as well as its means, methods, techniques, sequences and procedures. If there is any dispute between Contractor and Subcontractor over the Scope of the Contract Work, Subcontractor shall not stop the Contract Work but will prosecute the Contract Work diligently to completion. The Dispute will be mediated in accordance with Section XI(F).

**C. Submittals.** Subcontractor shall, to the extent required by the Contract Work, submit such shop drawings, product data, samples and similar submittals (collectively, the "Submittals") to Contractor that are required to accomplish the Contract Work with promptness and in such sequence so as to cause no delay in the Contract Work. It is generally encouraged that all "Submittals" be provided to Contractor within five days of the Effective Date. Contractor shall review all Submittals with reasonable promptness. Approval of Submittals which do not comply with the Project Contract Documents shall not release

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Subcontractor from its obligation to comply with the Project Contract Documents.

**D. List of Suppliers and Subcontractors.** Subcontractor shall, within five days of the execution of this Agreement, submit to Contractor a "Supplier Statement" in the form attached hereto as **Addendum 3** setting forth the names and addresses of all persons from whom Subcontractor expects to request, or has requested services, materials, fixtures, or machinery and equipment for use or installation in connection with the Contract Work. No additions to or changes of such statement will be made without the prior written consent of Contractor.

**E. Protection of the Contract Work.** Subcontractor shall take all steps, necessary to reasonably protect the Contract Work from loss or damage by the elements. Subcontractor shall, promptly replace and restore any damaged portion thereof at its expense, where such reasonable caution was not taken. Subcontractor shall also take all steps necessary to protect adjacent surfaces and work performed by others from damage due to Subcontractor's performance of the Contract Work. In the case of minor repairs to newly furnished surfaces (not covered by property insurance in place) the cost of repairs shall be paid for by Subcontractor that caused such damage.

**F. Reduction in the Contract Work.** Upon written notice to Subcontractor, Contractor shall have the right to reduce the amount of the Contract Work to be completed by Subcontractor under this Agreement, with a corresponding reduction in Contract Price occurring. Contractor may require the replacement of any Subcontractor at anytime with or without cause.

**G. Confidentiality.** Subcontractor shall keep all information and data relating to or connected with the Contract Work, and all documents relating thereto, confidential in all respects.

**H. Design Documents.** All documents related to or prepared in connection with the Contract Work, including, without limitation, documents that are furnished or obtained by Subcontractor, including, without limitation, any drawings, specifications, or designs and their digital counterparts (the "Design Documents") are the sole property of Owner and may be used by Owner for any purpose. By this reference the Design Documents are hereby incorporated into the Project Contract Documents, notwithstanding their potential omission from **Addendum 1**. Owner's ownership of the Design Documents furnished or obtained by Subcontractor does not relieve Subcontractor of its legal and professional design responsibilities to Owner or Contractor relating to such Design Documents. Notwithstanding any provision of this Agreement, upon receipt of a written request from Owner or Contractor, Subcontractor shall immediately deliver all Design Documents to Owner.

**I. Specific Articles.** Whenever any manufactured article, implement or series of articles or implements is identified by trade name, it is intended to establish a

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standard of quality or merit and Subcontractor shall furnish such specific article or implement. The intent of this paragraph is to require quality materials and workmanship. Substitutes of equal merit may be used by Subcontractor, only with the prior written consent of Contractor and Owner. By requesting an alternate or substitution, Subcontractor represents such alternate or substitute to be of equal quality and in conformance with the Project Contract Documents.

**J. Job Site Excavation.** If the Contract Work requires earth excavation, it shall be done in a safe manner and in accordance with all state, local and federal safety regulations. All backfilling of excavated material shall be performed by replacing material in 6" layers and mechanically compacting before placing the next layer. Compacting shall be by a suitable method as necessary to obtain a minimum density of 90% of maximum density by the "Modified Proctor" unless a higher density is required by other Project Contract Documents. If additional or less water in the material is required to obtain this density, it shall be added or removed as necessary. If, in the opinion of Contractor or Owner, the compaction does not meet this requirement, Contractor or Owner may have an independent soil testing laboratory perform tests to determine the degree of compaction. If the tests show the compaction to be less than required, Subcontractor shall reimburse Owner or Contractor for the costs of the re-tests and take action to compact or rebackfill the excavated areas until the requirements of this provision are satisfied.

**K. Project Schedule.** Attached hereto as **Addendum 4** is the ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008 setting forth the sequence and time requirements for all Project Work (the "Project Schedule"). Subcontractor hereby acknowledges (1) the Project Schedule and (2) that Subcontractor's performance of the Contract Work, as and when required, is material to Contractor's performance under the Prime Contract, accordingly, time is of the essence. Contractor may from time to time revise the Project Schedule as necessary, with Subcontractor's cooperation. If Subcontractor is behind on the schedule, Subcontractor shall, at its own expense, engage such extra labor and equipment, (or work such overtime), as may be required or requested by Contractor to timely complete the Contract Work in accordance with this Agreement and the Project Schedule. Contractor shall have control of the Job Site and shall have the right to decide the time and order in which various portions of the Project Work shall be performed. If Subcontractor fails to take any of the action described above, within 24 hours, after receiving notice from Contractor, Contractor may take action to attempt to put the Contract Work on schedule and deduct the entire costs thereof from amounts due, or to become due, Subcontractor.

**L. Delay.** If Subcontractor is delayed in the performance or completion of the Contract Work in accordance with Project Schedule by acts of God or any unforeseeable elements when unforeseeable or unpredictable, the time fixed for completion of the Contract Work shall be extended by the actual number of days that Subcontractor has thus been delayed. Subcontractor shall make claim

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therefor in writing to Contractor within 48 hours of the beginning of such delay. Subcontractor shall not be entitled to any additional compensation for any delays. If any act or omission of Subcontractor in the prosecution of the Contract Work causes delay to the Project Work, Subcontractor shall be liable for all costs, liabilities, and damages including consequential, liquidated, and sustained, or for which Contractor may be liable to Owner, or any other person because of Subcontractor's default.

**M. Meetings.** Subcontractor shall attend any meetings held by Contractor. Owner may meet independently with any Subcontractor at anytime, and each Subcontractor shall attend such meetings.

## **II. CONTRACT PRICE AND PAYMENT.**

**A. Contract Price.** For and in consideration of Subcontractor's agreement to perform all of the terms and conditions of this Agreement, and in consideration of the faithful and full performance by Subcontractor, Contractor shall pay, subject to increases or decreases as provided in this Agreement, the Contract Price. The Schedule of Values for the Contract Work, Unit Prices, if any, and Allowances, as applicable, are as set forth in **Addendum 5** attached hereto. Subcontractor acknowledges that the Contract Price includes an appropriate contingency and all applicable charges, fees, and sales, use, and other taxes. Contractor and Subcontractor expressly acknowledge that all payments due to Subcontractor under this Agreement shall be made by Contractor solely out of funds actually received by Contractor from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein, in the risk that Owner may for any reason, including, but not limited to, insolvency or an alleged dispute, fail to make one or more payments to Contractor for all or a portion of the Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition precedent to Contractor's obligation to pay Subcontractor; it being understood that Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives the corresponding payment from Owner. Upon receipt of such payment from Owner, Contractor will then promptly pay Subcontractor and also agrees that, in no event, shall Contractor be responsible for payment to Subcontractor if Subcontractor's failure to perform its obligations under this Agreement have been asserted as a reason for Owner's failure to make such payments to Contractors.

**B. Invoices.** All applications for payment ("Invoices") shall be on Contractor's standard subcontract Payment Request form, and shall be submitted no later than the 25th calendar day of each month, for the entire month. The Schedule of Values attached hereto as part of **Addendum 5** shall serve as the schedule of values for this Agreement. All Invoices shall be accompanied by a list of all suppliers; materialmen, and subcontractors whose materials or services have

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been utilized, during the pay period by Subcontractor to perform the Contract Work described in the Invoice. In addition, the Invoice will be accompanied by all required conditional and/or unconditional and/or final lien releases, as may be required by Contractor, Owner, or its lender to assure that all funds are being properly allocated by Subcontractor.

**C. Monthly Progress Payments.** So long as Subcontractor adheres to Contractor's periodic payment procedure, submits proper Invoices, and is not in conflict with the provisions of this Agreement, Contractor shall pay to Subcontractor, in monthly progress payments, 90% of labor and materials placed in position by Subcontractor during such preceding month. The remaining 10% shall be held as the Retainage. Contractor shall pay to Subcontractor in monthly progress payments with funds received from Owner. Progress Payments shall be made no later than the 10th day after Contractor's receipt from Owner of the corresponding payment. If Subcontractor fails to submit an Invoice for any Invoice period, Contractor may at its option, include in its monthly application an amount Contractor believes proper for the Contract Work for the missed Invoice Period. Subcontractor agrees to accept such amount in lieu of the amount Subcontractor may claim due. If Owner fails to make any payment to Contractor when due, Subcontractor shall cooperate with Contractor in Contractor's efforts to collect all amounts due from Owner and shall forbear collection efforts against Contractor until Owner pays Contractor or until all reasonable efforts of collection have been exhausted. Subcontractor shall be entitled to all of its mechanic's lien rights.

**D. Final Payment.** Subcontractor shall not be entitled to payment of the balance of the Contract Price, including, without limitation, the Retainage, until (1) the Contract Work has been completed to the satisfaction of Contractor, (2) Subcontractor has submitted to Contractor an Invoice for the final payment accompanied by (i) a final complete list of all suppliers and subcontractors whose materials or services have been utilized by Subcontractor, (ii) all closeout documents including, warranties, guarantees, as-builts, drawings, operating and maintenance manuals and such other items required of Subcontractor have been provided and such have been accepted by Owner, (iii) executed unconditional lien releases and waivers from Subcontractor and all of its mechanics, subcontractors, and suppliers for the Contract Work covered by all preceding progress payments, and (iv) executed unconditional lien releases and waivers upon final payment from all mechanics, subcontractors, and suppliers who have previously received final payment, and conditional lien releases and waivers upon final payment from Subcontractor and each mechanic, subcontractor, and supplier for which an unconditional lien release and waiver upon 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

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not later than 91 days after Contractor determines in good faith that the Contract Work has been performed completely and in an acceptable manner and (6) all outstanding disputes related to the Project have been resolved, and any liens against the Project have been removed.

**E. No Waiver.** No payment made shall (1) be considered conclusive evidence of the performance by Subcontractor of the Contract Work or acceptance of the Contract Work by Contractor and (2) not be construed to be acceptance of any delayed or defective Contract Work, or improper or defective materials.

**F. Payments to Others.** Contractor shall have the right to make payment to Subcontractor by checks payable jointly to Subcontractor and its employees, subcontractors, suppliers, or other mechanics.

**G. Establishment of Fund.** All sums earned by Subcontractor, by the partial or complete performance of the Contract Work, shall constitute a fund for the purpose of; (1) full completion of the Contract Work; (2) payment of any backcharges or claims due Contractor from Subcontractor on the Project; (3) payment to the subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims on valid and enforceable bond claims (if the Project is bonded by Contractor or Subcontractor). Such tentative earnings shall not be due or payable to Subcontractor, or anyone else claiming in Subcontractor's place and stead, including, without limitation, a trustee in bankruptcy, receiver or assignee of Subcontractor, until and unless the Contract Work is fully and satisfactorily completed and any amounts described above are fully paid and satisfied. Contractor may, at any time, demand written evidence of Subcontractor's financial capability to perform and that Subcontractor has made appropriate payments.

**H. Withholding of Payments.** Notwithstanding any applicable statutes, Contractor may withhold payments from Subcontractor for any of the following reasons: (1) Subcontractor's omission of any Contract Work required by this Agreement; (2) Subcontractor's failure to cure defective or damaged Contract Work; (3) Subcontractor's failure to submit all information required under this Agreement; (4) the filing or recording of mechanics' liens, materialmen's liens, stop notices or bonded claims related to the Contract Work or Subcontractor or reasonable evidence that such may occur; (4) Subcontractor's failure to make payments properly to subcontractors, suppliers, materialmen, laborers, or other persons entitled to file a lien; (5) Subcontractor's failure to complete the Contract Work, or any reasonable indication that the Contract Work will not be completed within the time of performance required in this Agreement; and (6) any other grounds for withholding payment permitted by State or Federal Law, or as otherwise permitted by this Agreement. Contractor may withhold 100% of the amount claimed in any lien, or notice of claim, by Subcontractor's suppliers or subcontractors or a reasonable amount to conclude Subcontractor's work or the requirements of this Agreement.

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I. **Payment of Withheld Amount.** Whenever the grounds giving rise to the above withholding have been removed, Contractor shall pay Subcontractor the amount withheld, less any expenses incurred by Contractor or damages sustained by Contractor. Any payment made by Contractor directly to any Subcontractor's laborers, subcontractors, suppliers or materialmen or for their benefit shall be deemed payment to Subcontractor and shall be credited against the Contract Price.

### III. **JOB SITE CONDITIONS AND SUPERVISION.**

A. **Supervision of the Contract Work.** Subcontractor shall, enforce strict discipline and good order among its employees (and those of its subcontractors and suppliers), faithfully and rigidly observe and ensure that its agents, employees, suppliers and subcontractors so observe, all laws and prudent business practices and all rules established by Contractor. Subcontractor shall not employ or allow at the Job Site any unfit person or anyone not skilled in the work assigned to such person. Subcontractor shall employ a competent Project Superintendent. Such Superintendent shall be in attendance at the Job Site as required during the progress of the Contract Work and shall attend relevant on site meetings and shall have regular quality control inspections. Subcontractor shall be solely responsible for examining, accepting and securing, at the time of delivery all materials or equipment furnished to Subcontractor, and shall thereafter handle, store and install such items with such skill and care as to insure compliance with its obligations hereunder. Any loss to materials or equipment due to Subcontractor's violation of this covenant, or otherwise, shall be the responsibility of Subcontractor. Any person adjudged by Contractor to be incompetent, disorderly or otherwise unsatisfactory shall be immediately removed from the Job Site and shall not again be employed at the Job Site. Subcontractor shall not permit its employees or any other persons associated with the Contract Work to consume alcoholic beverages or illegal substances at the Job Site. Subcontractor shall prohibit barbeques, parties, pets, children, guests, loud music and unnecessary noise, at or near the vicinity of the jobsite.

B. **No Defects.** Subcontractor's commencement of the Contract Work constitutes Subcontractor's acknowledgment that the work of other subcontractors, completed or commenced prior to commencement of the Contract Work, are free of defects that would in any way impair or otherwise adversely affect Subcontractor's performance of the Contract Work. If Subcontractor discovers a defect in the Project Contract Documents, the Contract Work, or in the work of others, Subcontractor shall immediately notify Contractor in writing of such defect prior to commencing or continuing any of the Contract Work that may be affected thereby.

C. **Signs.** Subcontractor shall not post any sign or advertisement at or in the vicinity of the Job Site. Subcontractor shall adhere, and shall cause its mechanics, subcontractors, and suppliers to so adhere to, and observe all signs posted at the Job Site.

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**D. Integration of the Work.** Contractor shall take such steps as are necessary to integrate the Contract Work with the work of others at the Job Site. Subcontractor shall not alter the work of others. Subcontractor shall cooperate with Contractor and other subcontractors and shall participate in the preparation of coordinated drawings and work schedules in areas of congestion, to minimize interference to all.

**E. Hazardous Material.** Subcontractor shall not permit any Hazardous Material to be located, used, incorporated into the Contract Work or brought onto the Job Site in connection with the Contract Work. Subcontractor shall comply with all Laws (inclusive of Proposition 65) and prudent business practices concerning any Hazardous Material required and approved to be located, used, incorporated into the Contract Work or brought onto the Job Site or required and approved to be transported on, to, from or about the Job Site. If Subcontractor encounters any material, matter or substance reasonably believed to be Hazardous Material, or becomes aware of any circumstance or incident involving Hazardous Material at the Job Site, Subcontractor shall immediately stop the Contract Work in the area so affected and shall immediately report in writing such encounter or knowledge to Contractor. Subcontractor shall be liable for all on and off-site disposal or transport of Hazardous Material (and shall sign any manifest in connection with the transport or storage of such Hazardous Material) and for any discharge, release, injury to any person, or injury or damage to any property resulting from use of Hazardous Material in the performance of the Contract Work and shall be responsible for obtaining all required permits and approvals necessary to remove such Hazardous Material or otherwise remedy any problem resulting from the use of the Hazardous Material. "Hazardous Material" shall mean (1) any "Hazardous Material" as defined by Federal, State, or Local Agency Law or Code, (2) any substance or matter that results in liability to any person or entity from discharge of or exposure to such substance or matter under any statutory or common law theory, (3) pesticides, asbestos, formaldehyde, polychlorinated biphenyls, solvents, petroleum and motor fuel hydrocarbon material, and (4) any other substance or matter that becomes subject to any Federal, State, or Local Agency order or requirement for removal, treatment or remedial action. Subcontractor shall indemnify, defend (at Subcontractor's sole cost and with legal counsel acceptable to Contractor), protect and hold Contractor and Owner and their respective officers, directors, agents, employees, representatives, shareholders, partners, affiliates, successors and assigns, free from and against any and all claims, demands, losses, damages, disbursements, liabilities, fines, actions, causes of action, suits, expenses costs, professional and consultants' expenses, when removing or remediating any Hazardous Materials located, used, incorporated or brought onto or about the Job Site or transported on, to, from or about the Job Site by Subcontractor. This indemnity shall be effective after completion of the Contract Work, as well as during the progress of the Contract Work and shall survive any termination of this Agreement.

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**F. Cleanup, Storage, Reserved Gate and Safety.** Subcontractor shall maintain the Job Site and the vicinity thereof, in a clean, neat and safe condition, to Contractor's satisfaction and shall (1) store all materials, supplies, equipment and goods in appropriate containers or enclosures, (2) remove from the Job Site all excess material and debris daily and all equipment, unused material and supplies and temporary structures upon completion, (3) return each fence, barrier and obstruction that is temporarily relocated or displaced by Subcontractor to its original position and condition immediately to ensure adequate and continuous protection of construction personnel as well as the general public at all times. It is understood that Contractor may charge Subcontractor for trash dumpster usage, if Subcontractor uses Contractor's dumpster. If Subcontractor fails to so maintain the Job Site, Contractor may, perform all work necessary to cause the Job Site to be so maintained and charge all costs related thereto to Subcontractor plus a 20%, handling fee. Subcontractor shall take all reasonable safety precautions in the performance of the Contract Work, including complying with Contractor's Superintendent and/or safety officer, all OSHA safety laws, orders, codes, rules, ordinances and regulations. Subcontractor shall not load, nor permit any part of the structure to be loaded, with weight that will endanger its safety. Subcontractor shall immediately notify Contractor of any injury to any individual occurring at the Job Site. If the Job Site is picketed and Contractor establishes a reserve gate for Subcontractor's purpose, Subcontractor shall make use of such reserve gate, and continue performance of the Contract Work without interruption or delay. Subcontractor shall also be solely responsible for all traffic control necessary to perform the Contract Work in a manner acceptable to Contractor and in compliance with all Laws. Subcontractor shall require all of its employees to attend weekly Job Site safety meetings, either sponsored by Contractor or Subcontractor. In addition to the above, Contractor, may seize 1.5% of Subcontractor's total contract amount as a penalty for not maintaining the job site, and the vicinity thereof, in a clean, neat and safe condition to Contractor's satisfaction.

**G. Layout.** Contractor shall establish principal axis lines, control points and datum point. Subcontractor shall lay out the Contract Work and shall be responsible for its accuracy, including the placement of all conduits, pipes, inserts, embeds, grounds, blockouts, and so on, as required to properly perform the Contract Work.

**H. Use of Job Site Equipment.** Subcontractor assumes all responsibility for, and shall hold Contractor and Owner harmless from, all claims, actions, demands, resulting from the use of Contractor's or Owner's equipment or facilities by Subcontractor.

**I. Scaffolding, Staging and Hoisting.** As part of the Contract Work, Subcontractor shall provide, and at all times continuously maintain, in safe operational condition, all necessary scaffolding, staging, bracing, hoisting, planks, ladders, rigging, barricades, protective devices and coverings, and all

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other associated equipment and accessories required for the continuous safe and satisfactory accomplishment of the Contract Work, including use by others than Subcontractor's employees. Subcontractor shall also be responsible for all transportation, unloading, erection and removal of same from the Job Site. Usage of any equipment of Contractor or Owner shall be permitted only with prior written approval from Contractor, and at the sole risk of Subcontractor. SUBCONTRACTOR HEREBY RELEASES CONTRACTOR AND OWNER FROM ANY AND ALL CLAIMS, WHETHER RELATING TO BODILY INJURY OR PROPERTY DAMAGE, RESULTING FROM THE USE OF ANY FACILITIES OR EQUIPMENT AT THE JOB SITE.

#### **IV. EXAMINATION BY SUBCONTRACTOR.**

**A. Review of all Relevant Matters.** Subcontractor has examined, investigated and familiarized itself with: (1) the Project Contract Documents; (2) the nature and location of the Job Site and all actual conditions thereof as well as those that could be expected during performance of the Contract Work; (3) the conformation of the ground and improvements of other subcontractors on which the Contract Work is to be performed; (4) the character, quality and quantity of the materials, equipment and facilities necessary to complete the Contract Work in a good and workmanlike manner and to the best of industry standards and pursuant to the Project Schedule; (5) the general and local conditions relating to the Contract Work; and (6) all other matters that may affect Subcontractor's performance of the Contract Work.

**B. No Reliance on Contractor.** Subcontractor enters into this Agreement relying solely on its own examination and investigation of the foregoing matters and not on any verbal representation or verbal information relating to the Job Site or the Contract Work (or the completion thereof) made by Contractor or Owner or any agent thereof. No estimate or bid of Subcontractor either before or after execution of this Agreement shall affect any of the terms or obligations contained herein. Subcontractor assumes the risk of Job Site conditions and releases Contractor and Owner from any claim for additional compensation resulting from any known or anticipatable Job Site conditions.

**C. Satisfaction with Plans.** If the Project Contract Documents require clarification of any inadequacy, discrepancy inconsistency or omission, or are in conflict with the Submittals, Subcontractor shall immediately request clarification in writing from Contractor. Subcontractor's failure to request clarification, suspected or reasonably inferred inadequacy, inconsistency, omission or conflict shall not relieve Subcontractor of its obligation to perform in accordance with Contractor's interpretations of those portions of the Project Contract Documents. Subcontractor shall not be entitled to any additional compensation for performing the Contract Work pursuant to Contractor's interpretation of the Project Contract Documents. Subcontractor shall notify Contractor at least 72 hours in advance of making any deviation from the Project Contract Documents by submitting to Contractor the proposed deviation and the cause therefore. If the deviation will result in a change to the Contract Price, Subcontractor shall

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promptly furnish Contractor with a Change Order Estimate pursuant to Section VI. Under no circumstances may any approved deviation fail to comply with all Laws, and Subcontractor assumes all responsibility for compliance with all Laws, notwithstanding any permitted deviation or change to the Contract Work. Subcontractor shall not be entitled to an increase of the Contract Price or time extension, due to compliance with Laws, in place as of the Effective Date.

**V. INSURANCE.**

**A. Coverage.** Subcontractor shall maintain in effect at all times and at its own expense the following insurance coverages:

**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:

**i. Comprehensive General Liability:** \$1,000,000 combined single limit bodily property damage per occurrence or,

**ii. 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. OCIP.** The Project is covered by an OCIP. Subcontractors shall enroll into this OCIP. Subcontractors shall be responsible for a deductible/SIR equal to that of the subcontractor's non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium trade contractors and \$75,000 for high trade contractors.

**6. Deductibles and Retention.** Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.

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**7. Form Requirements.** Liability Policy forms must include: (a) premises and operation with no X, C or U exclusions; (b) products and completed operations coverage (Subcontractor agree to maintain this coverage for a minimum of one year following completion of the Contract Work); (c) full blanket contractual coverage; and (d) broad form property damage including completed operations or its equivalent.

**B. General Requirements.** Before starting the Work, Subcontractor shall furnish Contractor certificates of insurance, endorsements, or copies of policies that demonstrate that Subcontractor has obtained the required coverage from carriers reasonably acceptable to Contractor. All policies must be written by insurance companies domiciled in the United States and qualified to do business in Nevada. Each policy of insurance shall (1) provide that the coverage may not be terminated or modified without 30 days prior written notice being received by all Additional Insureds, (2) name Contractor and Owner and any other required interest as additional insureds, (3) stipulate that the coverage afforded to the additional insureds is primary and any other coverage maintained by such additional insureds shall be excess and non-contributing and (4) must be an "occurrence" form ("Claims Made" and modified "Occurrence" forms shall not be acceptable).

**C. Waivers of Subrogation.** Contractor and Subcontractor waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Agreement or any Prime Contract, except such rights as they have to proceeds of such insurance held by Contractor or Owner as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**D. Beneficiaries.** Subcontractor's insurance obligations set forth in this Section V shall be for the benefit of Contractor, Owner and their respective successors and assigns.

## **VI. CHANGES IN THE CONTRACT WORK.**

**A. Request for Change.** Contractor may, at any time and from time to time, without affecting the validity of this Agreement, order additions, deletions or other modifications to the Contract (the "Change Request"). Contractor's Designated Representative shall be the only person authorized to make Change Requests. Upon written acceptance of Subcontractor's Change Order Estimate (as defined below) by Owner and Contractor, Subcontractor shall execute Contractor's standard form Change Order which shall, incorporate all of the terms and conditions of this Agreement (the "Change Order"). All labor, materials or equipment utilized shall be consistent with the terms of the

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Agreement and the Change Request. Subcontractor shall maintain complete records of all duly authorized modifications made to the Contract Work. Upon completion of the Project Work, Subcontractor shall provide Contractor with a redlined set of Project Contract Documents, showing any modifications of the Contract Work. Contractor is relying on Subcontractor's specialized knowledge related to performance of the Contract Work. Subcontractor shall be liable to Contractor and Owner for all additional costs created by or arising out of any unauthorized changes to the Contract Work.

**B. Change Order Estimate.** Upon receipt of a Change Request, Subcontractor shall promptly furnish to Contractor a statement in the form of **Addendum 6** (the "Change Order Estimate") setting forth in detail, with a labor and material breakdown by trades and work classifications. Subcontractor's prices for Change Order modifications shall be consistent with the contract prices covered by this Agreement. Contractor shall have the option to engage another third-party to perform the work set forth in any Change Request. Subcontractor shall have no claim for additional compensation as a result of the Change Request unless the Change Order is accepted by Contractor in writing. Expeditious handling of such Change Requests by Subcontractor is material to Contractor's entering into this Agreement with Subcontractor.

**C. Value Engineering.** In the event that Contractor delivers written notice to Subcontractor of a specific value engineering initiative (the "VE Initiative"), Subcontractor will provide to Contractor, within three days, a revised Contract Price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Contractor (the "Value Engineering Deduct"). Notwithstanding any provision of this Agreement, in the event that Subcontractor fails to comply with the previous sentence of this Section VI(C), Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly. Notwithstanding any provision of this Agreement, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Contractor, Contractor shall have the right to obtain an alternate price from a third-party, and if Subcontractor fails to meet such price, Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly.

**D. Owner's Approval of Change Estimate.** If the work for which Subcontractor claims extra compensation, is determined by Owner not to entitle Contractor to a Change Order, Contractor shall not be liable to Subcontractor for any extra compensation for such work, unless, Contractor agreed, in writing, to such extra compensation specifically excluding Owner's approval and payment.

## **VII. WARRANTY, TESTING AND CORRECTION.**

**A. Warranty of Materials and Workmanship.** Subcontractor expressly warrants that all labor, material, equipment, and fixtures furnished or installed by it (or by

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its subcontractors or materialmen) under the terms of this Agreement shall be of good quality and to the best of industry standards, free of any faults and defects whatsoever, and shall be completed in accordance with and shall meet or exceed the requirements of the Project Contract Documents and applicable Laws and standards. Subcontractor shall promptly provide sufficient evidence of such conformance, if requested. This warranty shall survive for so long as Contractor or Owner may be held liable for the matters warranted hereunder (in their respective roles as contractor, builder or seller) but in no event less than a period of two years from the date of completion and final acceptance of the Contract Work. The above express warranty of Subcontractor shall not limit or affect other warranties or guarantees expressly or impliedly made by Subcontractor or any of its subcontractors or materialmen and shall not limit or affect any remedies that are awarded by law with respect to express or implied warranties or negligent or willful acts or omissions of Subcontractor or any of its subcontractors or materialmen. The above warranties issued by Subcontractor shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Test and Inspection of the Contract Work.** Contractor shall not be responsible for reviewing or accepting, the safety or design of the Contract Work or any part thereof or a determination of conformance with Laws or other requirements of any public utility. However, Contractor shall be entitled (but not required) to test and inspect the Contract Work or cause the same to be accomplished without notice to Subcontractor. Subcontractor shall notify Contractor in writing of any prudent, reasonable, or required inspection or testing that must be performed, within a certain time period, so as not to require modification of the Contract Work or the work of others in connection with the inspection, testing and approval. Failure of Subcontractor to so notify Contractor shall result in Subcontractor assuming full responsibility for, and all costs of the uncovering of the Contract Work, or the work of others, in order to allow the required inspection, testing and approval. As part of the Project Work, Subcontractor shall be responsible for the execution of all inspections, tests and testing required by the specifications, and by all governmental authorities having jurisdiction.

**C. Correction and Removal of Defective Contract Work.** Subcontractor shall, at its own expense, provide all materials and labor to correct any defects in the Contract Work's materials or equipment (together with any damage to all finishes, fixtures, equipment and personal property damage as a result of such defects) and to remedy any violation of Laws in a manner reasonably satisfactory to Contractor. Subcontractor shall begin all corrective and remedial work necessary to cure any defect in the Contract Work, materials or equipment and to remedy any violation of Laws within 48 hours after receipt of a notice from Contractor. However, any defect related to life saving systems, plumbing, heating, electrical and roofing shall be completed immediately after the notice to repair is delivered to Subcontractor. Subcontractor shall diligently pursue all corrective and remedial work to completion. Subcontractor shall provide a written report to Contractor's office immediately upon completion of the

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corrective or remedial work. If Contractor remedies any defect for Subcontractor, Subcontractor shall pay to Contractor the costs of all corrective work plus a 20% handling charge.

**VIII. INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY.**

**A. Indemnification.**

1. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, Owner, and their respective subsidiaries, owners, affiliates, directors, shareholders, members, officers, managers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out or resulting from or in connection with (a) any breach of this Agreement by Subcontractor; (b) the negligence or willful misconduct of Subcontractor or any subcontractor or supplier of Subcontractor or any of their respective agents or employees; or (c) the Contract Work.

2. Provided that Subcontractor has paid all undisputed outstanding invoices, in the event that Contractor is joined as a party in a lawsuit or arbitration filed by Subcontractor or any subcontractor or supplier of Subcontractor concerning sums allegedly due to such party, Subcontractor shall provide a bond or other security agreeable to Contractor to protect the interests of Contractor and Owner. The amount of bond or security provided by Subcontractor shall be equal to 150% of the amount allegedly due to Subcontractor or the applicable subcontractor or supplier of Subcontractor.

3. Subcontractor further agrees to indemnify, hold harmless and defend Contractor from and against any loss, including but not limited to fines, penalties and corrective measures that Contractor may sustain by reason of Subcontractor's failure to comply with all applicable federal, state and local laws, ordinances, rules, regulations and other acts of any governmental authority, in performance of the Contract Work.

4. The primary duty for the safety of Subcontractor's employees, materials, conditions and equipment shall lie with Subcontractor. Subcontractor will furnish an active and enacted Safety Program to Contractor's Superintendent prior to personnel or material entering the Project Site. Subcontractor further agrees to indemnify, hold harmless, protect and defend Contractor and Owner, its successors or assignees, its clients and the user of Subcontractor's goods and services against all suits and from all claims, demands, judgements, costs and attorneys fees for actual or alleged infringement of letters, patents, trademarks and copyrights in connection with goods and services supplied hereunder provided that they are used as normally intended.

5. Any indemnification set forth in this Section VIII(A) shall be effective after completion of the Contract Work as well as during the progress of the Contract

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Work, and shall not be limited by the insurance requirements of Section V. Any indemnity provided for in this Section VIII(A) shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Release.** Subcontractor hereby expressly waives and releases Contractor and Owner from all claims, demands, expenses, debts, damages and liabilities, including, without limitation, lost wages, pain and suffering, permanent or temporary disability, medical and hospital expenses, attorneys' fees and costs of repair and replacement of Subcontractor's property, which in any way arise from or relate to (1) the physical condition, security, or maintenance of the Job Site and the vicinity thereof; (2) vandalism, theft or any other willful or negligent act by any person or entity at the Job Site or in the vicinity thereof, including, without limitation, the operation of a motor vehicle; or (3) the activities, omissions or behavior, whether or not negligent, of suppliers and other contractors and subcontractors, whose services have been or are being utilized by or on behalf of Contractor, as well as the activities, omissions or behavior of their agents and employees, whether or not actively or passively negligent. Nothing in this Section VIII(B) shall be construed to release the Indemnified Parties or any of them from their exclusive (i) willful or (ii) grossly negligent acts.

**C. Limitation of Liability.**

1. Subcontractor's right to recover damages or losses of any kind or nature resulting from any breach of this Agreement by Contractor shall be governed and limited by the provisions of this Section VIII(C). The terms of this Section VIII(C) shall create no separate right to recover damages.

2. Subcontractor shall keep on a daily and current basis, separate, accurate records of all man-hours, equipment, supplies, materials and tools that it claims it used and/or lost (and the value thereof) as a result of any breach of this Agreement by Contractor. With respect to each and every day that Subcontractor claims it has incurred any losses or increased costs or suffered any damages as a result of any breach of this Agreement by Contractor or otherwise incurred because of Contractor, Subcontractor shall deliver to Contractor on or before 1:00 p.m. (local time) of the following day, a written notice setting forth and describing in detail such, and the amount of the loss and/or damage claimed by Subcontractor for such day, attaching thereto a complete, true and accurate copy of the records required the previous sentence of this Section VIII(C)(2). Subcontractor shall give a daily notice and attach the material referred to by this Section VIII(C)(2).

3. If any arbitrator, court of competent jurisdiction or appellate court determines that Contractor is liable to Subcontractor as a result of any breach for any reason, the amount for which Contractor is liable shall not exceed the actual direct field costs incurred by Subcontractor, as per the actual daily direct field costs reflected in the daily records kept by Subcontractor and delivered to Subcontractor on a daily basis pursuant to Section VIII(C)(2). Contractor shall

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not be liable to Subcontractor for any costs, expenses, losses or damages of any kind if Subcontractor did not comply with the provisions of this Section VIII(C).

4. If Subcontractor commences an action against Contractor seeking recovery of damages or losses for breach of this Agreement, or other reasons caused by Contractor, Subcontractor shall be precluded from proving its costs and damages by "total cost", quantum meruit, "equitable adjustment" or in any way other than specifically identifying and proving the direct field costs that resulted each day from each separate breach, or other cause.

5. Notwithstanding any provision of this Agreement, Contractor shall not be liable to Subcontractor for loss, interest, loss of profit, nor for any indirect, special or consequential damages. Provided that Subcontractor's lien rights are not impaired, Subcontractor shall look solely to the property of Owner for all amounts due Subcontractor hereunder if (a) Subcontractor is not paid undisputed amounts otherwise due Subcontractor pursuant to this Agreement and (b) Contractor has not received payment from Owner of the undisputed amounts due Subcontractor.

**IX. AS-BUILTS, FINAL CLOSE OUT REQUIREMENTS.** All life safety systems, electrical, mechanical, plumbing, heating, air conditioning, fire sprinkler, drainage, and utility Subcontractors must, prior to receiving Final Payment, furnish Contractor with complete and accurate "as-built" records which shall be maintained at all times during construction showing exact location and dimensions of all control systems, shutoffs, emergency operators, main lines, branch lines, valves, drains, clean outs, etc. in accordance with the Project Contract Documents. All final close out documents (including, without limitation, all maintenance and operational manuals, start-up procedures, brochures, and as-built records as required herein or in any Project Contract Documents) must be provided to Contractor, in triplicate, before Final Payment, in a form reasonably acceptable to Contractor and Owner. Final close out documents must be provided by Subcontractor to Contractor before Contractor can release any monies, over 75% of the Contract Price.

**X. LIENS AND STOP NOTICES.** Subcontractor shall pay when due, all claims asserted by and debts in favor of persons or entities who furnish labor, material, services, fixtures or equipment applied to or utilized in the performance of the Contract Work. Subcontractor shall prevent the recordation of any claim of lien upon Owner's property, the imposition of any stop notice or bonded stop notice on funds held by a lender that are intended to be paid to Contractor or to Owner pursuant to an agreement to finance completion in whole or in part of the Project, and the garnishment or attachment of funds held by Contractor or Owner, by promptly satisfying all claims and debts that are or may be asserted against Subcontractor or Subcontractor's subcontractors by such persons or entities. Any sums paid to Subcontractor under this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor, materials and equipment to Subcontractor for the Contract Work. If

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Subcontractor fails to effect any release or dismissal Contractor may take such action as it deems appropriate to effect such release or dismissal and all costs thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor and if not so paid, shall be deducted from amounts due Subcontractor under this Agreement, or any other Agreement between the parties.

**XI. DEFAULT OF SUBCONTRACTOR; REMEDY; TERMINATION; DISPUTE RESOLUTION.**

**A. Default.** The term "Default" shall mean any failure by Subcontractor, at any time, to: (1) supply sufficient skilled workers or proper materials; (2) properly and diligently prosecute the Contract Work as required by this Agreement; (3) make prompt payment to its workers, sub-subcontractors, suppliers or consultants, or becomes delinquent with respect to contributions or payments required to be made to any insurance company, workman's compensation fund, health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust; (4) provide adequate insurance as required by Section V, (5) to provide Contractor with adequate assurance of its ability and willingness to perform pursuant to this Agreement within 48 hours of receiving a written notice from Contractor requesting such assurance, or (5) is otherwise in breach of a material provision of this Agreement. Immediately upon the occurrence of any Default, Contractor shall have the right, without prejudice to any other rights or remedies at law or in equity, to immediately invoke any and all of the remedies set forth in Section XI(C).

**B. Liquidated Damages.** In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against Contractor by Owner, as provided in the Prime Contract, for any Project delays caused by Subcontractor. Such damages shall be paid for each day the Contract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by Contractor, and granted by Owner. Subcontractor's obligation to pay the above liquidated damages shall be for the benefit of Contractor, Owner, and their respective successors and assigns.

**C. Remedies.** If Subcontractor fails to remedy any Default within 48 hours after receipt of written notice from Contractor, Contractor shall be entitled to any one or more of the following remedies, none of which shall be deemed exclusive of any other:

1. Contractor may immediately terminate the Agreement for cause.
2. Contractor may immediately terminate the right of Subcontractor to prosecute the performance of the Contract Work in whole or in part without liability to Subcontractor for any Contract Work thereafter performed by Contractor or anyone else.

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3. Upon receipt of written notice from Contractor, Subcontractor must immediately exit the Job Site leaving all materials and equipment in place and not return without the prior written permission of Contractor.

4. Upon receipt of written notice from Contractor, Subcontractor must immediately return all Design Documents to Contractor.

5. Subcontractor must (a) deliver all Subcontractor permits to Contractor and (b) execute and deliver all documents and take any additional actions necessary to transfer such permits to Contractor or its designee.

6. Contractor may pursue any other remedy provided elsewhere in this Agreement.

7. Contractor may withhold payment of any monies due until the Default of Subcontractor has been cured and a final accounting of Contractor's costs and appropriate deductions have been made as permitted under this Agreement, including without limitation, any liquidated damages attributable to or caused by Subcontractor's failure to prosecute the Contract work within the Project Schedule.

8. Contractor may set off the costs to complete the performance of the Contract Work and any other damages due Contractor against monies due under any other contract between Contractor (or any entity owned, controlled by, affiliated with or under common control with Contractor) and Subcontractor (or any entity owned, controlled by, affiliated with or under common control with Subcontractor), whether such contract shall be in effect prior or subsequent to this Agreement.

9. Contractor may pay any sums to any such persons, firms, itself or other entities to whom Subcontractor shall be obligated and to charge such sums paid to the account of Subcontractor without recourse by Subcontractor. If such sum is greater than the amount then due Subcontractor, the excess shall be a debt due from Subcontractor to Contractor and shall bear interest at the rate of 10% per annum from the date due until paid.

10. Contractor shall also be entitled to use any of Subcontractor's equipment and consume any materials on the Job Site (without further compensation to Subcontractor for such use) until it is completed. Subcontractor shall pay Contractor the cost of such completion or correction, plus a 20% handling charge. Subcontractor shall receive no additional payment until the Contract Work is completed.

11. Any Attorneys' fees and other damages incurred by Contractor as a result of a Default shall be considered a cost to complete the Contract Work and shall be paid by Subcontractor.

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12. Contractor may pursue any and all such other remedies as may be provided at law or in equity.

**D. Termination for Insolvency.** In addition to the rights of Contractor set forth in Sections XI(B) and (C), Contractor may immediately invoke the remedies set forth in Section XI(C) without waiting 48 hours upon the occurrence of any of the following: (1) the filing of a petition for relief under the Bankruptcy Code or the institution of any other insolvency proceedings by, against, or on behalf of Subcontractor or Owner, (2) the appointment of a receiver for Subcontractor or Owner, (3) the death, dissolution or liquidation of Subcontractor, (4) the transfer to others of more than 25% of the assets or ownership interest of Subcontractor, and (5) any act of insolvency by Subcontractor or Owner.

**E. Termination by Contractor.** Upon 48 hours written notice to Subcontractor, Contractor shall be entitled to terminate this Agreement for any cause whatsoever, regardless of whether Subcontractor has begun performance of the Contract Work. In such circumstance, Subcontractor shall be entitled to receive that portion of the Contract Price earned by Subcontractor for Contract Work performed to the satisfaction of Contractor, including shop drawings, submittals, and reasonable mobilization costs, less any payments made prior to the date of termination of this Agreement upon receipt by Contractor of payment from Owner. Subcontractor shall not be entitled to any additional compensation or damages as a result of termination of this Agreement pursuant to this Section XI(E). Subcontractor shall make all reasonable efforts to procure cancellation of all existing orders or contracts upon terms approved by Contractor.

**F. Dispute Resolution/Arbitration.**

1. **Claim.** 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 Contractor and Subcontractor 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.

2. **Mediation.**

(a) Any Claim shall 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.

### **3. Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section XI(F)(2).

(b) Any 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 and the American Arbitration Association.

(c) A demand for arbitration shall be made 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.

(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.

**4. Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Contractor and Subcontractor related to the Contract Work or this Agreement, Contractor shall diligently continue to perform the Contract Work to the full extent practicable pending resolution of the unresolved Claim, and Contractor shall continue to make payment required under this Agreement for all Contract Work that is not directly implicated in the Claim.

**XII. REPRESENTATIONS OF SUBCONTRACTOR.** To induce Contractor to enter into this Agreement, Subcontractor covenants, represents and warrants as follows:

**A. Authority.** Subcontractor is duly organized and in good standing under the laws of the State of Nevada, and has all necessary powers to carry on its business and has the right, power, legal capacity and authority to enter into this Agreement.

**B. Litigation.** Except as disclosed to Contractor, in writing, prior to the Effective Date, there is no bankruptcy, reorganization, suit, action, arbitration, or legal administrative or other proceeding, or non-insured workers' compensation claim or governmental investigation pending or threatened, against Subcontractor or to the knowledge of Subcontractor, against any affiliate, general partners or shareholders of Subcontractor.

**C. Financial Capability and Skill.** Subcontractor is and must continue to remain financially solvent and financially capable of discharging its obligations under this Agreement. Subcontractor and everyone acting on behalf of Subcontractor in connection with the performance of the Contract Work is skilled in performing the Contract Work and in the means, methods, techniques, sequences and procedures related to completing the Contract Work in the most expeditious and economical manner consistent with the interest of Contractor.

**D. Licenses/Permits.** Subcontractor has and shall maintain, or shall pay for and maintain, all necessary licenses, Subcontractor specific permits, and governmental fees necessary to perform the Contract Work and all other obligations of Subcontractor under this Agreement.

**XIII. MISCELLANEOUS.**

**A. Nondiscrimination.** Subcontractor shall abide by and comply with all procedures, rules and regulations concerning nondiscrimination issued by any governmental agency or authority, insofar as they apply to Subcontractor's performance of this Agreement.

**B. 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: (1) by personal delivery, when delivered personally; (2) by overnight courier, upon written or electronic verification of receipt; (3) by electronic mail or facsimile, upon transmission; or (4) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the first page of this Agreement or such other address as either party may specify in writing.

**C. Construction; No Waiver.** Whenever used in this Agreement, the singular shall include the plural and the plural the singular. Delay in the enforcement of any remedy in the event of a breach of any term or condition hereof or in the



exercise by either party of any right hereunder shall not be construed as a waiver. This Agreement and all of the addenda, attachments, schedules and exhibits hereto, which are hereby incorporated into this Agreement by this reference, constitute the entire Agreement between the parties.

**D. Injunctive Relief for Breach.** Subcontractor'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 Contractor for which there will be no adequate remedy at law. In the event of such breach, Contractor 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).

**E. Merger Clause.** This Agreement represents the entire and integrated agreement between Contractor and Subcontractor related to the subject matter hereof and supersedes all prior negotiations, representations, agreements, communications, bids, proposals, and estimates, whether written or oral.

**F. Amendment and Termination.** Subject to Section VI(C) and Sections XI(C) and (D), this Agreement may be amended or terminated only by written instrument executed by both Contractor and Subcontractor.

**G. Severability.** If any portion of this Agreement is declared by court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable portion had not been a part of this Agreement.

**H. Assignment.** Contractor and Owner may, at any time, assign the whole or any part of this Agreement. Subcontractor shall not assign or further subcontract (with the exception of those subcontractors listed by Subcontractor pursuant to Section xxx) any portion of the Contract Work without the prior written consent of Contractor. Contractor's consent to an assignment shall not relieve or release Subcontractor from all obligations of the Agreement. Subcontractor acknowledges the reasonableness of this provision due to the personal service nature of this Agreement.

**I. Title to Improvements.** Title to all materials, fixtures, plans and installations shall be deemed vested in Contractor when such has been installed, affixed permanently to the realty, or otherwise delivered to and accepted by Contractor. Contractor shall not be liable for loss or damage to any material or fixtures as to which title is not then vested in Contractor at the time of such loss or damage as herein provided, whether such material or fixtures are on the Job Site, in transit, or under the control of Contractor.

*Q.P.*

**J. Continuation of Work.** During all disputes, actions, claims or other matters arising out or relating to this Agreement or the breach thereof, Subcontractor shall carry on its duties hereunder and maintain the schedule for performance for the Contract Work. Subcontractor shall be paid for performance of undisputed Contract Work, in accordance with the terms of this Agreement.

**K. Interpretation and Governing Law; Time.** This Agreement shall not be construed against the party who prepared it, but shall be construed as though prepared by both parties; the parties thereby waiving the effect of any statute or law providing for uncertainties in a contract to be construed against the party who prepared the agreement. This Agreement shall be construed and governed by the laws of the State of Nevada. Subject to Section XI(F), any litigation or other proceedings regarding this Agreement shall be brought in the applicable court in Clark County, Nevada. It is mutually accepted that time is of the essence in this Agreement.

**L. Litigation Fees.**

**1. Payment to Prevailing Party.** It is expressly understood that this Agreement shall include an Arbitration Provision as shown in Section XI(F). 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. For purposes of this Agreement, the "prevailing party" shall be the party who recovers a greater percentage of the disputed amount, as well as a party who dismisses an action for recovery hereunder in exchange for greater settlement of the sums allegedly due.

**2. Attorneys' Fees in Third Party Litigation.** If any party is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim as well as any claim brought by Owner) because of the other party's breach or alleged breach of this Agreement, and such party is the prevailing party in such action or proceeding, such shall be entitled to its attorneys' fees.

**M. Independent Contractor.** Subcontractor is an independent contractor and shall, at Subcontractor's sole expense, and without increase in the Contract Price, comply with all Laws and pay all manufacturers' sales, use and processing taxes and all federal, state and local taxes.

*Q.P.*

**N. Survival of Obligations.** Any indemnity, guaranty, representation or warranty given by Subcontractor to Contractor in this Agreement shall survive the expiration or termination of this Agreement.

**O. Third Party Beneficiaries.**

1. Subject to Section XIII(O)(2) and as expressly set forth elsewhere in this Agreement, this Agreement is between Contractor and Subcontractor. Except as expressly set forth herein, no other person or entity is intended to be, nor shall be, benefited by the terms hereof, whether as a third party beneficiary or otherwise.

2. Notwithstanding any provision of this Agreement, it is expressly agreed that Owner is a third-party beneficiary of Subcontractor's obligations under this Subcontractor Agreement, including without limitation, any indemnity, warranty, insurance, or liquidated damage provisions obtained by Contractors.

**P. Substance Abuse Testing.** Contractor shall have the right (but not the obligation) to require all personnel of Subcontractors, and its subcontractors, to be tested for substance abuse. Should any individual refuse to be so tested than that individual shall be considered an unfit person per Section III(A) and shall not work on the Project Site.

**Q. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Subcontractor**

*Dane Peterson Forestry Inc.*; a \_\_\_\_\_ (circle one)  
Corporation sole proprietorship, partnership,  
limited liability company

By: *Dane Peterson*  
Its: OWNER / President

**Contractor**

Camco Pacific Construction Company, Inc.,  
a California corporation

X

By: \_\_\_\_\_

Its:

Contractor's License Number: \_\_\_\_\_

Federal Tax ID or FICA No.: \_\_\_\_\_

## **ADDENDUM 1**

### **FURTHER DESCRIPTION OF THE CONTRACT WORK**

Subcontractor shall furnish and install all labor, material, supervision, equipment, tools, transportation, submittals, taxes, insurance, hoisting, scaffolding, specialty permits and incidentals as required for a complete Rough Carpentry job per the Project Contract Documents and the Project Schedule.

Furnish and install rough carpentry labor, lumber and hardware to complete framing repairs in both buildings 8 & 9

Not to exceed \$50,000.00

*D.P.*



## ADDENDUM 2

### PROJECT CONTRACT DOCUMENTS

Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction Drawings August 29, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to Subcontractor all of the shop drawings for the Project (collectively, the "Project Contract Documents"). Prior to the Effective Date, (a) Subcontractor received and reviewed the Project Contract Documents and (b) both parties hereby acknowledge that the version of such documents as of the Effective Date are hereby incorporated into this Agreement and shall serve as the relevant construction documents for purposes of this Agreement.

NO D.P.

Does Not Apply

### ADDENDUM 3

#### LIST OF SUPPLIERS AND SUBCONTRACTORS

The following is a list of all suppliers and subcontractors whose materials and services will be or have been utilized by Subcontractor in the performance of the Contract Work or as described in the Invoice, together with a description of the materials and services provided by such suppliers and subcontractors in connection with the Contract Work, and the price charged by such suppliers and subcontractors for such materials and services. If necessary, this list will be continued on an additional sheet. If this list is being submitted with an Invoice, attach a copy of each invoice submitted by the following suppliers and subcontractors representing all of the materials and services that Subcontractor has provided during the applicable Invoice period.

| Name and Address     | Material or Service Provided | Price Charged |
|----------------------|------------------------------|---------------|
| 1. Name:<br>Address: |                              |               |
| 2. Name:<br>Address: |                              |               |
| 3. Name:<br>Address: |                              |               |
| 4. Name:<br>Address: |                              |               |

Invoice Period: \_\_\_\_\_, 200\_\_ to \_\_\_\_\_, 200\_\_

Dave Peterson Framing, Inc.

\_\_\_\_\_  
By:  
Its:

**ADDENDUM 4**  
**PROJECT SCHEDULE**

## ADDENDUM 5

### CONTRACT PRICE, SCHEDULE OF VALUES, UNIT PRICES, AND ALLOWANCES

1. Contract Price: **\$50,000.00 NTE**
2. Schedule of Values: See Attached.
3. Unit Prices: See Attached.
4. Allowances: Contractor and Subcontractor acknowledge that the costs of certain options of the Project Work are incapable of exact determination at the time of execution of this Agreement. Contractor and Subcontractor have agreed upon reasonable estimates of such costs based upon all available information for such portion of the Contract Work. These estimates are called "Allowances."



**ADDENDUM 6**  
**FORM OF CHANGE ORDER ESTIMATE**

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**

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 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 to the following extent:

This release covers a progress payment for the work, materials and 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 or invoiced after the Payment Period.

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 his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Dave Peterson Framing, Inc.**

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.**

**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application Number:**  
**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 this 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 the final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Dave Peterson Framing, Inc.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC  
**Invoice/Payment Application**  
**Number:**  
**Payment Amount:**  
**Payment Period:**

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 or invoiced after the Payment Period.

Before any recipient of this 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 his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Dave Peterson Framing, Inc.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

**Property Name:** ManhattanWest  
**Property Location:** Russell Rd and 215 Beltway  
**Undersigned's Customer:** CAMCO PACIFIC CONSTRUCTION CO., INC.  
**Invoice/Payment Application Number:**  
**Payment Amount:**  
**Payment Period:**  
**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 he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_, 2008

**Dave Peterson Framing, Inc.**

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.**

# **EXHIBIT "2"**

20081230-0001396

**PREPARED BY, RECORDING REQUESTED  
BY AND RETURN TO:**

Dave Peterson Framing, INC.  
9081 W. Sahara Avenue, Suite 290  
Las Vegas, NV 89117

Parcel # 163-32-101-019

Fee: \$14.00

N/C Fee: \$0.00

12/30/2008

09:51:10

T20080324723

Requestor:

DAVE PETERSON FRAMING INC

Debbie Conway

ANI

Clark County Recorder Pgs: 1

**NOTICE OF LIEN**

(Nev. Rev. Stat. § 108.226)

**TO: Office of the County Recorder of Clark County**

**FROM: Claimant: Dave Peterson Framing, INC., 9081 W. Sahara Avenue, Suite 290, Las Vegas, NV 89117,  
Phone: (702) 360-5784, Fax: (702) 360-5786.**

PLEASE TAKE NOTICE that the Claimant claims a lien as follows:

1. The amount of the original contract if: \$50,000.00
2. The total amount of all changes and additions, if any, is: \$0.00
3. The total amount of all payments received to date is: \$0.00
4. The amount of the lien, after deducting all just credits and offsets, is: \$50,000.00 together with interest at the rate of 18.00% per annum from the date of 12/08/2008.
5. The name of the reputed Owner(s) is: Gemstone Development West, Inc., 9121 W. Russell Road, Suite 117, Las Vegas, NV 89148, Phone: (702) 614-3193, Fax: (702) 614-0669.
6. The name of the person by whom the lien claimant was employed or to whom the claimant furnished work, materials or equipment is: CAMCO Pacific Construction Company, Inc., 2925 E. Patrick Lane, Suite G, Las Vegas, NV 89120, Phone: (702) 798-6611, Fax: (702) 798-6655.
7. A brief statement of the terms of payment of the lien claimant's contract is: Invoicing submitted by the 25<sup>th</sup> of any month to be paid in full within 10 days of payment by Owner.
8. A description of the property to be charged with the lien is: Manhattan West, Buildings 8 & 9, 9265 and 9255 W. Russell Road, Las Vegas, NV 89148 in the County of Clark.

Dated 12/30/2008 for Dave Peterson Framing, INC., 9081 W. Sahara Avenue, Suite 290, Las Vegas, NV 89117,  
Phone: (702) 360-5784, Fax: (702) 360-5786.

By: David Peterson

David Peterson, Owner/President

**VERIFICATION**

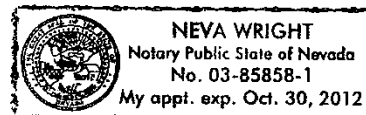
State of Nevada

County of Clark County

Sworn to and subscribed before me on this 30<sup>th</sup> day of December, 2008 the affiant, David Peterson, who is personally known to me.

Neva Wright  
(Signature of Notary Public - State of Nevada)

My commission expires: 10.30.2012



ORIGINAL

FILED

MAR 27 3 59 PM '09

*Earl D. ...*  
CLERK OF THE COURT

1 **STAT**

2 T. James Truman, Esq.  
3 Nevada Bar No. 003620  
4 Stephen M. Dixon, Esq.  
5 Nevada Bar No. 10025  
6 T. JAMES TRUMAN & ASSOCIATES  
7 3654 North Rancho Drive  
8 Las Vegas, Nevada 89130  
9 Telephone: (702) 256-0156  
10 Attorneys for Lien Claimant E&E Fire Protection, LLC

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **APCO CONSTRUCTION, a Nevada**  
14 **corporation,**

15 **Plaintiff,**

Case No. A571228

Dept. No. X

16 **vs.**

**E & E FIRE PROTECTION, LLC'S  
STATEMENT OF FACTS  
CONSTITUTING LIEN CLAIM,  
COMPLAINT AND THIRD PARTY  
COMPLAINT**

17 **GEMSTONE DEVELOPMENT WEST,**  
18 **INC., a Nevada corporation; NEVADA**  
19 **CONSTRUCTION SERVICES, a Nevada**  
20 **corporation; SCOTT FINANCIAL**  
21 **CORPORATION, a North Dakota**  
22 **corporation; COMMON WEALTH LAND**  
23 **TITLE INSURANCE COMPANY; FIRST**  
24 **AMERICAN TITLE INSURANCE**  
25 **COMPANY; and DOES I through X,**  
26 **Defendants.**

27 **E & E FIRE PROTECTION, LLC, a Nevada**  
28 **limited liability company,**

**Lien Claimant,**

**vs.**

**GEMSTONE DEVELOPMENT WEST,**  
**INC., a Nevada corporation; DOES I through**  
**X, inclusive; and ROE CORPORATIONS I**  
**through X, inclusive;**

**Defendants.**

**E & E FIRE PROTECTION, LLC, a Nevada**  
**limited liability company,**

**Lien Claimant,**

**vs.**

**CAMCO PACIFIC CONSTRUCTION**  
**COMPANY, INC.; a foreign corporation;**  
**FIDELITY AND DEPOSIT COMPANY OF**  
**MARYLAND;**

**Third Party Defendants.**

CE27

LAW OFFICES OF  
T. JAMES TRUMAN & ASSOCIATES  
A PROFESSIONAL CORPORATION  
3654 NORTH RANCHO DRIVE  
LAS VEGAS, NEVADA 89130  
www.trumanlegal.com

RECEIVED  
MAR 27 2009  
CLERK OF THE COURT

1 Lien Claimant, E & E FIRE PROTECTION, a Nevada limited liability company("E&E"),  
2 by and through its attorneys, the law offices of T. James Truman & Associates, and for its Statement  
3 of Facts Constituting Lien Claim and Complaint and Third Party Complaint against the Defendants  
4 and Third Party Defendants GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation  
5 ("Gemstone"); CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; a foreign corporation  
6 ("CAMCO"); FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity"); DOES I  
7 through X, inclusive, and ROE CORPORATIONS I through X, inclusive, alleges and states as  
8 follows:

9 **GENERAL ALLEGATIONS**

10 1. Plaintiff E&E is and was at all times relevant hereto, a Nevada corporation authorized  
11 to do business in the County of Clark, State of Nevada and licensed by the Nevada State Contractor's  
12 Board under license number 26348A.

13 2. E&E is informed and believes, and therefore alleges, Defendant Gemstone is a  
14 Nevada corporation, licensed to and doing business in the County of Clark, State of Nevada.  
15 Plaintiff is informed and believes, and therefore alleges that Gemstone is the owner of the Manhattan  
16 West Project located at 9205 W. Russell Road, Las Vegas, NV, Assessor's Parcel Numbers 163-32-  
17 112-001 through 163-32-112-246 (formerly known as APN 163-32-101-019)(the "Project").

18 3. E&E is informed and believes, and therefore alleges, Third Party Defendant CAMCO  
19 is a Foreign corporation which was active and authorized to and doing business in the State of  
20 Nevada, Clark County during the time of the allegations set forth below, was authorized to do  
21 business in the County of Clark, State of Nevada, and is licensed by the Nevada State Contractors  
22 Board under license number 0037507, but was cancelled on February 1, 2009.

23 4. E&E is informed and believes, and therefore alleges that Third Party Defendant  
24 Fidelity provided bond number 8739721 in the amount of \$50,000.00 on behalf of Defendant  
25 CAMCO, for the purpose of allowing CAMCO to be licensed by the Nevada State Contractors  
26 Board. One of the purposes of the bond is to pay those laborers and suppliers of material who are  
27 not paid by CAMCO. E&E is within the class of persons for whose benefit the bond was provided.

28 5. The true names and characters of DOES I through X, inclusive, and ROE

1 CORPORATIONS I through X, inclusive, whether individual, corporate, associate, or otherwise, are  
2 unknown to Plaintiff, who, therefore, sues said defendants designated as DOES I through X and  
3 ROE CORPORATIONS I through X, as responsible in some manner for the events and happenings  
4 referred to herein and Plaintiff will ask leave of this Court to amend this Complaint to insert the true  
5 names and characters of DOES I through X, and/or ROE CORPORATIONS I through X, when the  
6 same have been ascertained, and to join such defendants in this action.

7 6. E&E is informed and believes, and therefore alleges, CAMCO is the General  
8 Contractor for the Project.

9 7. CAMCO subcontracted with E&E to perform certain of the work required by the  
10 Camco Pacific Construction Company, Inc. Agreement Between Contractor and Subcontractor  
11 ("Subcontract"). A true and correct copy of the Subcontract is attached hereto as **Exhibit "1."**

12 8. E&E performed the work as required under the Subcontract.

13 9. The original sum of the Subcontract is \$3,823,529.00. The total amount of all  
14 additional or changed work, materials and equipment is \$1,323,635.00.. After payments received  
15 by CAMCO to E&E in the amount of \$1,092,121.34, E&E is still owed the amount of  
16 \$3,795,218.91.

17 10. CAMCO has not paid E&E for the outstanding balance on the Subcontract, leaving  
18 the amount of \$3,795,218.91 due and owing to E&E.

19 11. E&E performed the work as required under the Subcontract.

20 12. Because it was not paid the balance due of \$3,795,218.91 for the aforementioned  
21 work, E&E recorded a Notice of Lien on February 4, 2009 in the office of the Clark County Recorder  
22 in Book No. 20090204 as Instrument No. 0000167 (the "Lien"). A copy of said lien is attached as  
23 **Exhibit "2."**

24 13. Defendant CAMCO has failed and refused and continues to fail and refuses to pay  
25 the balance of \$3,795,218.91, together with interest accruing thereon, costs and attorney's fees  
26 incurred in these proceedings. Judgment should now be entered against all Defendants in the amount  
27 of \$3,795,218.91, jointly and severally, and in favor of Plaintiff, together with interest, costs, and  
28 attorneys fees incurred herein.

**FIRST CLAIM FOR RELIEF**

**(Lien Foreclosure)**

14. E&E repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

15. E&E entered into an agreement with CAMCO for E&E to provide various work, labor, and materials toward the construction and improvement of the Project and that CAMCO would fully pay E&E for its work, labor, and supplied materials pursuant to the Subcontract.

16. E&E provided the agreed upon work, labor, and materials toward the construction and improvements of the Project. However, E&E has not been fully paid for its work, labor, and materials.

17. Because CAMCO failed to fully pay E&E for its work, labor, and materials, E&E recorded the Lien with the Clark County Recorder's Office.

18. E&E is entitled to recover in this action the costs and fees incurred in preparing, recording, and serving its Lien.

19. E&E's Lien is charged against the Property where the Subcontract is located and has been properly perfected pursuant to NRS Chapter 108. E&E is therefore entitled to an Order from this Court directing that the subject Property be sold and foreclosed upon and that from the proceeds of the sale, E&E be paid the principal sum of \$3,795,218.91, together with interest accrued thereon, plus reimbursement of the cost of suit and attorneys fees that E&E has incurred and continues to incur in connection with this action.

20. It has been necessary for E&E to retain the services of an attorney and to incur attorneys' fees and costs to prosecute this action and, therefore, E&E is entitled to reimbursement for those attorneys' fees and costs incurred herein.

**SECOND CAUSE OF ACTION**

**(Breach of Contract against CAMCO)**

21. E&E repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

22. The Defendant failed to and refused to pay E&E for its work, labor, and materials

1 supplied to the Project.

2 23. The Defendant has breached the Subcontract with E&E by failing to pay E&E for its  
3 work, labor, and materials supplied to the Project.

4 24. As a direct and proximate result of CAMCO's breach of the Subcontract, there is  
5 now due and owing to E&E the sum of \$3,795,218.91, together with interest accruing thereon at the  
6 highest legal rate, costs and attorney's fees in these proceedings for which judgment should now be  
7 entered against the Defendant CAMCO, and in favor of E&E.

8 **THIRD CAUSE OF ACTION**

9 **(Unjust Enrichment against CAMCO, and Gemstone)**

10 25. E&E repeats, realleges, and incorporates each and every paragraph contained above  
11 as though fully set forth herein at length.

12 26. E&E has conferred a benefit upon the above named Defendants for services provided  
13 to CAMCO pursuant to the Subcontract and Ratification, and for services provided to Gemstone as  
14 the owner of the Project, and Defendants are unjustly retaining the benefits of E&E's services.

15 27. The reasonable value of the work, labor, and materials that E&E completed, at the  
16 request of the Defendants is \$3,795,218.91, not including interest, fees, and costs. This amount is  
17 now due and owing to E&E by the Defendants CAMCO, and Gemstone, jointly and severally,  
18 together with the interest thereon.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of Good Faith and Fair Dealing against CAMCO)**

21 28. E&E repeats, realleges, and incorporates each and every paragraph contained above  
22 as though fully set forth herein.

23 29. Implied by law in every agreement is the covenant of good faith and fair dealing.

24 30. The Defendant CAMCO agreed and promised to fully pay E&E for its work, labor,  
25 and materials supplied to the Project.

26 31. The Defendant has failed and refused to pay E&E for its work, labor, and materials  
27 supplied to the Project.

28 32. The Defendant's failure and refusal is a breach of their covenant of good faith and



1 fair dealing.

2 33. As a direct and proximate result, E&E has suffered damages in excess of \$10,000.00,  
3 plus interest at the legal rate.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Monies Due and Owing against CAMCO)**

6 34. E&E repeats, realleges, and incorporates each and every paragraph contained above  
7 as though fully set forth herein.

8 35. CAMCO owes to E&E the sum of \$3,795,218.91, together with interest, attorneys'  
9 fees and costs accruing thereon, for work, labor, and materials supplied to the Project by E&E, and  
10 although demand has been made upon CAMCO for payment of said sum, CAMCO has failed,  
11 neglected and refused, and continues to fail, neglect and refuses to pay the same.

12 36. E&E is entitled to judgment against CAMCO, in the amount of \$3,795,218.91,  
13 together with interest thereon at the highest legal rate until paid in full and E&E's reasonable costs  
14 and attorney's fees incurred herein.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Bond Claim against Fidelity)**

17 37. E&E repeats, realleges, and incorporates each and every paragraph contained above  
18 as though fully set forth herein.

19 38. Fidelity provided bond number 8739721 in the amount of \$50,000.00 for the purpose  
20 of allowing CAMCO to be licensed by the Nevada State Contractors Board. One of the purposes  
21 of the bond is to pay those laborers and suppliers of material who are not paid by CAMCO. E&E  
22 is within the class of persons for whose benefit the bond was provided.

23 39. E&E is entitled to judgment against Fidelity in the amount of \$50,000.00 as a result  
24 of the work, materials and services provided by E&E under the agreement with CAMCO for the  
25 improvement of the Project.

26 WHEREFORE, E&E prays for the following:

27 1. That this Court enter a Judgment against Defendant CAMCO and Third Party  
28 Defendant Gemstone, jointly and severally, in an amount in excess of \$10,000.00, plus interest at

LAW OFFICES OF  
T. JAMES TRUMAN & ASSOCIATES  
A PROFESSIONAL CORPORATION  
3654 NORTH RANCHO DRIVE  
LAS VEGAS, NEVADA 89130  
www.trumanlegal.com

1 the legal rate from the date the amount became due until paid;

2 2. For judgment in favor of Plaintiff and against Third Party Defendant Fidelity in an  
3 amount in excess of \$10,000.00;

4 3. That this Court enter Judgment against Defendant CAMCO and Third Party  
5 Defendant Gemstone, jointly and severally, for reasonable attorneys fees and cost of the suit incurred  
6 herein; and

7 4. That the Court declare the rank and priority of the lien claims and secured claims and  
8 that the Lien recorded by E&E be ascertained and adjudged as a valid lien with priority over all the  
9 claims;

10 5. That the Lien be enforced according to law;

11 6. That the Court direct a foreclosure sale of the subject Property;

12 7. That the Property be sold and the proceeds be applied to the payment of sums found  
13 due to E&E;

14 8. That the Court enter such deficiency Judgment against Defendant CAMCO and Third  
15 Party Defendant Gemstone, jointly and severally, as may be proper on the premises; and

16 9. For such other and further relief as the Court may deem just and proper.

17 DATED this 27 day of March, 2009.

18 T. JAMES TRUMAN & ASSOCIATES

19 By: 

20 T. James Truman, Esq.  
21 Nevada State Bar No. 003620  
22 Stephen M. Dixon, Esq.  
23 Nevada State Bar No. 10025  
24 3654 N. Rancho Dr.  
25 Las Vegas, Nevada 89130  
26 Attorneys for Lien Claimant  
27 E&E Fire Protection, LLC  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of T. JAMES TRUMAN & ASSOCIATES and that on the 27<sup>th</sup> day of March, 2009, I placed a true and correct copy of the foregoing **E&E FIRE PROTECTION, LLC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM, COMPLAINT AND THIRD PARTY COMPLAINT** in the United States mails at Las Vegas, Nevada, with 1st class postage prepaid and addressed as follows:

Gwen Rutar Mullins, Esq.  
Wade B. Gochnour, Esq.  
Howard & Howard  
3800 Howard Hughes Pkwy., #1400  
Las Vegas, NV 89169  
Attorneys for Apco Construction

Martin A. Little, Esq.  
Jolley Urga Wirth Woodbury & Standish  
3800 Howard Hughes Pkwy., 16th Floor  
Las Vegas, NV 89169  
Attorneys for Steel Structures, Inc. and  
Nevada Prefab Engineers, Inc.

Gregory S. Gilbert, Esq.  
Sean D. Thueson, Esq.  
Holland & Hart  
3800 Howard Hughes Pkwy., 10<sup>th</sup> Floor  
Las Vegas, NV 89169  
Attorneys for Gemstone Development West

Justin L. Watkins, Esq.  
Watt, Tieder, Hoffar & Fitzgerald  
3993 Howard Hughes Pkwy., #400  
Las Vegas, NV 89169  
Attorneys for Cabinetec, Inc.

Nikola Skrinjaric, Esq.  
2500 N. Buffalo, Ste. 250  
Las Vegas, NV 89128  
Attorney for Nevada Construction Services

D. Shane Clifford, Esq.  
Robin E. Perkins, Esq.  
Dixon, Truman, Fisher & Clifford  
221 N. Buffalo Dr., #A  
Las Vegas, NV 89145  
Attorneys for Ahern Rental, Inc.

Marilyn G. Fine, Esq.  
Meier & Fine, LLC  
2300 W. Sahara Ave., #430  
Box 11  
Las Vegas, NV 89102  
Attorneys for Scott Financial Corporation

Steven L. Morris, Esq.  
Woodbury, Morris & Brown  
701 N. Green Valley Parkway, #110  
Henderson, NV 89074  
Attorney for Camco Pacific Construction Co.,  
Inc.

Donald H. Williams, Esq.  
Williams & Wiese Law Offices  
612 S. Tenth St.  
Las Vegas, Nevada 89101  
Attorneys for Harsco Corporation

Jennifer R. Lloyd-Robinson, Esq.  
Pezzillo Robinson  
6750 Via Austi Pkwy., #170  
Las Vegas, NV 89119  
Attorneys for Tri-City Drywall, Inc.

Jeffrey R. Albregts, Esq.  
Sanford, Driffs, Walch, Kearney, Holley &  
Thompson  
400 S. Fourth St., 3rd Floor  
Las Vegas, NV 89101  
Attorneys for Arch Aluminum and Glass Co.

Christopher R. McCullough, Esq.  
McCullough, Perez & Associates  
601 S. Rancho Dr., #A-10  
Las Vegas, NV 89106  
Attorneys for Cell Crete Fireproofing of NV,  
Inc.

  
An Employee of T. James Truman & Associates

# **EXHIBIT "1"**

**CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
AGREEMENT BETWEEN  
CONTRACTOR AND SUBCONTRACTOR**

|  |   |                       |
|--|---|-----------------------|
| This "Agreement" is hereby made as of: | August 26, 2008 (the "Effective Date")  |                       |
| Between the "Contractor"               | CAMCO PACIFIC CONSTRUCTION COMPANY  |                       |
|  | 2925 E. Patrick Lane, Suite G   |                       |
|  | Las Vegas, Nevada 89120   |                       |
|  | California License No. 676205   |                       |
|  | Nevada License No. 0037507  |                       |
|  | Utah License No. 6169863-5501   |                       |
|  | License Limit: Unlimited  |                       |
|  | Telephone: (702) 798-6611   |                       |
| And the "Subcontractor"                | E&E Fire Protection, LLC  |                       |
|  | 6380 South Valley View, STE# 110  |                       |
|  | Las Vegas, Nevada 89118   |                       |
|  | Nevada License No: 26348A   |                       |
|  | Federal Tax ID No. /FICA No.: 88-0232097  |                       |
|  | Designated Contract Representative: Michael Evans   |                       |
| For the following "Project"            | ManhattanWest   |                       |
| At the following "Job Site"            | Russell Road and the 215 Beltway  |                       |
|  | Clark County, Nevada 89148  |                       |
| Developed by the following "Owner"     | Gemstone Development West, Inc.   |                       |
| For the following scope:               | Complete Design-Build Fire Protection System  |                       |
| Cost Code:                             |   |                       |
|  | See <b>Addendum 1</b> for the expanded description of Subcontractor's scope of work ("Contract Work") |                       |
| With the following "Retention":        | 10%   |                       |
| For the following "Contract Price":    | The following amounts per Building:   |                       |
|  | <b>Building</b>   | <b>Amount</b>         |
|  | Building 2  | \$420,745.00          |
|  | Building 3  | \$420,745.00          |
|  | Building 7  | \$920,630.00          |
|  | Building 8  | \$934,367.00          |
|  | Building 9  | \$934,367.00          |
|  | BFP @ Pump House  | \$6,000.00            |
|  | Fire Pumps  | \$186,675.00          |
|  | <b>Total:</b>   | <b>\$3,823,529.00</b> |

## **I. THE CONTRACT WORK.**

**A. Project Site.** Contractor has executed a prime contract with Owner (the "Prime Contract") to perform all of the work required for the Project (the "Project Work") at the Job Site. The Project Work must be performed in accordance with the intent set forth in the Prime Contract and the addenda, reports, (including soils), drawings and plans and specifications made a part thereof and provided pursuant to **Addendum 2** hereto (the "Project Contract Documents").

**B. Plans and Specifications; Laws; Scope.** The work for the portion of the Project to be performed by Subcontractor shall be performed in strict accordance with: (1) this Agreement; (2) the Project Schedule (defined below); (3) the intent set forth in the Project Contract Documents applicable to the Contract Work and all modifications thereto as permitted herein; and (4) all applicable federal, state and local codes, laws, permits, orders, ordinances and any rules and regulations promulgated thereunder (collectively "Laws"). Subcontractor recognizes that the scope of the Contract Work set forth on **Addendum 1** cannot identify each and every component of the Contract Work but that the Contract Work shall include everything necessary to accomplish the results intended by the Project Contract Documents. The Contract Work shall include all labor, materials, tools, appliances, equipment, supplies, supervision, construction plant and machines, transportation, fuel, shop drawings and samples, as-built drawings, accessories, warranties/guarantees, training and all other facilities and incidentals necessary to produce the intended results, as and when required. The Contract Work shall also include such incidental work which may not be expressly indicated in the Project Contract Documents, but which is considered to be Subcontractor's obligations to provide under construction industry standards, customs, and practices. Subcontractor recognizes and accepts that it must accomplish everything necessary so as to provide good and workmanlike construction, in a complete and acceptable condition to Contractor and Owner. Subcontractor accepts the risk of any error or omission in its estimating or construction process as well as its means, methods, techniques, sequences and procedures. If there is any dispute between Contractor and Subcontractor over the Scope of the Contract Work, Subcontractor shall not stop the Contract Work but will prosecute the Contract Work diligently to completion. The Dispute will be mediated in accordance with Section XI(F).

**C. Submittals.** Subcontractor shall, to the extent required by the Contract Work, submit such shop drawings, product data, samples and similar submittals (collectively, the "Submittals") to Contractor that are required to accomplish the Contract Work with promptness and in such sequence so as to cause no delay in the Contract Work. It is generally encouraged that all "Submittals" be provided to Contractor within five days of the Effective Date. Contractor shall review all Submittals with reasonable promptness. Approval of Submittals which do not comply with the Project Contract Documents shall not release Subcontractor from its obligation to comply with the Project Contract Documents.

**D. List of Suppliers and Subcontractors.** Subcontractor shall, within five days of the execution of this Agreement, submit to Contractor a "Supplier Statement" in the form attached hereto as **Addendum 3** setting forth the names and addresses

of all persons from whom Subcontractor expects to request, or has requested services, materials, fixtures, or machinery and equipment for use or installation in connection with the Contract Work. No additions to or changes of such statement will be made without the prior written consent of Contractor.

**E. Protection of the Contract Work.** Subcontractor shall take all steps, necessary to reasonably protect the Contract Work from loss or damage by the elements. Subcontractor shall, promptly replace and restore any damaged portion thereof at its expense, where such reasonable caution was not taken. Subcontractor shall also take all steps necessary to protect adjacent surfaces and work performed by others from damage due to Subcontractor's performance of the Contract Work. In the case of minor repairs to newly furnished surfaces (not covered by property insurance in place) the cost of repairs shall be paid for by Subcontractor that caused such damage.

**F. Reduction in the Contract Work.** Upon written notice to Subcontractor, Contractor shall have the right to reduce the amount of the Contract Work to be completed by Subcontractor under this Agreement, with a corresponding reduction in Contract Price occurring. Contractor may require the replacement of any Subcontractor at anytime with or without cause.

**G. Confidentiality.** Subcontractor shall keep all information and data relating to or connected with the Contract Work, and all documents relating thereto, confidential in all respects.

**H. Design Documents.** All documents related to or prepared in connection with the Contract Work, including, without limitation, documents that are furnished or obtained by Subcontractor, including, without limitation, any drawings, specifications, or designs and their digital counterparts (the "Design Documents") are the sole property of Owner and may be used by Owner for any purpose. By this reference the Design Documents are hereby incorporated into the Project Contract Documents, notwithstanding their potential omission from **Addendum 1.** Owner's ownership of the Design Documents furnished or obtained by Subcontractor does not relieve Subcontractor of its legal and professional design responsibilities to Owner or Contractor relating to such Design Documents. Notwithstanding any provision of this Agreement, upon receipt of a written request from Owner or Contractor, Subcontractor shall immediately deliver all Design Documents to Owner.

**I. Specific Articles.** Whenever any manufactured article, implement or series of articles or implements is identified by trade name, it is intended to establish a standard of quality or merit and Subcontractor shall furnish such specific article or implement. The intent of this paragraph is to require quality materials and workmanship. Substitutes of equal merit may be used by Subcontractor, only with the prior written consent of Contractor and Owner. By requesting an alternate or substitution, Subcontractor represents such alternate or substitute to be of equal quality and in conformance with the Project Contract Documents.

**J. Job Site Excavation.** If the Contract Work requires earth excavation, it shall be done in a safe manner and in accordance with all state, local and federal safety regulations. All backfilling of excavated material shall be performed by replacing material in 6" layers and mechanically compacting before placing the

next layer. Compacting shall be by a suitable method as necessary to obtain a minimum density of 90% of maximum density by the "Modified Proctor" unless a higher density is required by other Project Contract Documents. If additional or less water in the material is required to obtain this density, it shall be added or removed as necessary. If, in the opinion of Contractor or Owner, the compaction does not meet this requirement, Contractor or Owner may have an independent soil testing laboratory perform tests to determine the degree of compaction. If the tests show the compaction to be less than required, Subcontractor shall reimburse Owner or Contractor for the costs of the re-tests and take action to compact or rebackfill the excavated areas until the requirements of this provision are satisfied.

**K. Project Schedule.** Attached hereto as **Addendum 4** is the ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008 setting forth the sequence and time requirements for all Project Work (the "Project Schedule"). Subcontractor hereby acknowledges (1) the Project Schedule and (2) that Subcontractor's performance of the Contract Work, as and when required, is material to Contractor's performance under the Prime Contract, accordingly, time is of the essence. Contractor may from time to time revise the Project Schedule as necessary, with Subcontractor's cooperation. If Subcontractor is behind on the schedule, Subcontractor shall, at its own expense, engage such extra labor and equipment, (or work such overtime), as may be required or requested by Contractor to timely complete the Contract Work in accordance with this Agreement and the Project Schedule. Contractor shall have control of the Job Site and shall have the right to decide the time and order in which various portions of the Project Work shall be performed. If Subcontractor fails to take any of the action described above, within 24 hours, after receiving notice from Contractor, Contractor may take action to attempt to put the Contract Work on schedule and deduct the entire costs thereof from amounts due, or to become due, Subcontractor.

**L. Delay.** If Subcontractor is delayed in the performance or completion of the Contract Work in accordance with Project Schedule by acts of God or any unforeseeable elements when unforeseeable or unpredictable, the time fixed for completion of the Contract Work shall be extended by the actual number of days that Subcontractor has thus been delayed. Subcontractor shall make claim therefor in writing to Contractor within 48 hours of the beginning of such delay. Subcontractor shall not be entitled to any additional compensation for any delays. If any act or omission of Subcontractor in the prosecution of the Contract Work causes delay to the Project Work, Subcontractor shall be liable for all costs, liabilities, and damages including consequential, liquidated, and sustained, or for which Contractor may be liable to Owner, or any other person because of Subcontractor's default.

**M. Meetings.** Subcontractor shall attend any meetings held by Contractor. Owner may meet independently with any Subcontractor at anytime, and each Subcontractor shall attend such meetings.



## **II. CONTRACT PRICE AND PAYMENT.**

**A. Contract Price.** For and in consideration of Subcontractor's agreement to perform all of the terms and conditions of this Agreement, and in consideration of the faithful and full performance by Subcontractor, Contractor shall pay, subject to increases or decreases as provided in this Agreement, the Contract Price. The Schedule of Values for the Contract Work, Unit Prices, if any, and Allowances, as applicable, are as set forth in **Addendum 5** attached hereto. Subcontractor acknowledges that the Contract Price includes an appropriate contingency and all applicable charges, fees, and sales, use, and other taxes. Contractor and Subcontractor expressly acknowledge that all payments due to Subcontractor under this Agreement shall be made by Contractor solely out of funds actually received by Contractor from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein, in the risk that Owner may for any reason, including, but not limited to, insolvency or an alleged dispute, fail to make one or more payments to Contractor for all or a portion of the Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition precedent to Contractor's obligation to pay Subcontractor; it being understood that Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives the corresponding payment from Owner. Upon receipt of such payment from Owner, Contractor will then promptly pay Subcontractor and also agrees that, in no event, shall Contractor be responsible for payment to Subcontractor if Subcontractor's failure to perform its obligations under this Agreement have been asserted as a reason for Owner's failure to make such payments to Contractors.

**B. Invoices.** All applications for payment ("Invoices") shall be on Contractor's standard subcontract Payment Request form, and shall be submitted no later than the 25th calendar day of each month, for the entire month. The Schedule of Values attached hereto as part of **Addendum 5** shall serve as the schedule of values for this Agreement. All Invoices shall be accompanied by a list of all suppliers; materialmen, and subcontractors whose materials or services have been utilized, during the pay period by Subcontractor to perform the Contract Work described in the Invoice. In addition, the Invoice will be accompanied by all required conditional and/or unconditional and/or final lien releases, as may be required by Contractor, Owner, or its lender to assure that all funds are being properly allocated by Subcontractor.

**C. Monthly Progress Payments.** So long as Subcontractor adheres to Contractor's periodic payment procedure, submits proper Invoices, and is not in conflict with the provisions of this Agreement, Contractor shall pay to Subcontractor, in monthly progress payments, 90% of labor and materials placed in position by Subcontractor during such preceding month. The remaining 10% shall be held as the Retainage. Contractor shall pay to Subcontractor in monthly progress payments with funds received from Owner. Progress Payments shall be made no later than the 10th day after Contractor's receipt from Owner of the corresponding payment. If Subcontractor fails to submit an Invoice for any Invoice period, Contractor may at its option, include in its monthly application an amount Contractor believes proper for the Contract Work for the missed

Invoice Period. Subcontractor agrees to accept such amount in lieu of the amount Subcontractor may claim due. If Owner fails to make any payment to Contractor when due, Subcontractor shall cooperate with Contractor in Contractor's efforts to collect all amounts due from Owner and shall forbear collection efforts against Contractor until Owner pays Contractor or until all reasonable efforts of collection have been exhausted. Subcontractor shall be entitled to all of its mechanic's lien rights.

**D. Final Payment.** Subcontractor shall not be entitled to payment of the balance of the Contract Price, including, without limitation, the Retainage, until (1) the Contract Work has been completed to the satisfaction of Contractor, (2) Subcontractor has submitted to Contractor an Invoice for the final payment accompanied by (i) a final complete list of all suppliers and subcontractors whose materials or services have been utilized by Subcontractor, (ii) all closeout documents including, warranties, guarantees, as-builts, drawings, operating and maintenance manuals and such other items required of Subcontractor have been provided and such have been accepted by Owner, (iii) executed unconditional lien releases and waivers from Subcontractor and all of its mechanics, subcontractors, and suppliers for the Contract Work covered by all preceding progress payments, and (iv) executed unconditional lien releases and waivers upon final payment from all mechanics, subcontractors, and suppliers who have previously received final payment, and conditional lien releases and waivers upon final payment from Subcontractor and each mechanic, subcontractor, and supplier for which an unconditional lien release and waiver upon 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 completely and in an acceptable manner and (6) all outstanding disputes related to the Project have been resolved, and any liens against the Project have been removed.

**E. No Waiver.** No payment made shall (1) be considered conclusive evidence of the performance by Subcontractor of the Contract Work or acceptance of the Contract Work by Contractor and (2) not be construed to be acceptance of any delayed or defective Contract Work, or improper or defective materials.

**F. Payments to Others.** Contractor shall have the right to make payment to Subcontractor by checks payable jointly to Subcontractor and its employees, subcontractors, suppliers, or other mechanics.

**G. Establishment of Fund.** All sums earned by Subcontractor, by the partial or complete performance of the Contract Work, shall constitute a fund for the purpose of; (1) full completion of the Contract Work; (2) payment of any backcharges or claims due Contractor from Subcontractor on the Project; (3) payment to the subcontractors, laborers, material and service suppliers of Subcontractor who have valid and enforceable mechanic's lien claims on valid and enforceable bond claims (if the Project is bonded by Contractor or Subcontractor). Such tentative earnings shall not be due or payable to Subcontractor, or anyone else claiming in Subcontractor's place and stead, including, without limitation, a trustee in bankruptcy, receiver or assignee of Subcontractor, until and unless the Contract Work is fully and satisfactorily completed and any amounts described above are fully paid and satisfied. Contractor may, at any time, demand written evidence of Subcontractor's financial capability to perform and that Subcontractor has made appropriate payments.

**H. Withholding of Payments.** Notwithstanding any applicable statutes, Contractor may withhold payments from Subcontractor for any of the following reasons: (1) Subcontractor's omission of any Contract Work required by this Agreement; (2) Subcontractor's failure to cure defective or damaged Contract Work; (3) Subcontractor's failure to submit all information required under this Agreement; (4) the filing or recording of mechanics' liens, materialmen's liens, stop notices or bonded claims related to the Contract Work or Subcontractor or reasonable evidence that such may occur; (4) Subcontractor's failure to make payments properly to subcontractors, suppliers, materialmen, laborers, or other persons entitled to file a lien; (5) Subcontractor's failure to complete the Contract Work, or any reasonable indication that the Contract Work will not be completed within the time of performance required in this Agreement; and (6) any other grounds for withholding payment permitted by State or Federal Law, or as otherwise permitted by this Agreement. Contractor may withhold 100% of the amount claimed in any lien, or notice of claim, by Subcontractor's suppliers or subcontractors or a reasonable amount to conclude Subcontractor's work or the requirements of this Agreement.

**I. Payment of Withheld Amount.** Whenever the grounds giving rise to the above withholding have been removed, Contractor shall pay Subcontractor the amount withheld, less any expenses incurred by Contractor or damages sustained by Contractor. Any payment made by Contractor directly to any Subcontractor's laborers, subcontractors, suppliers or materialmen or for their benefit shall be deemed payment to Subcontractor and shall be credited against the Contract Price.

### **III. JOB SITE CONDITIONS AND SUPERVISION.**

**A. Supervision of the Contract Work.** Subcontractor shall, enforce strict discipline and good order among its employees (and those of its subcontractors and suppliers), faithfully and rigidly observe and ensure that its agents, employees, suppliers and subcontractors so observe, all laws and prudent business practices and all rules established by Contractor. Subcontractor shall not employ or allow at the Job Site any unfit person or anyone not skilled in the work assigned to such person. Subcontractor shall employ a competent Project Superintendent. Such Superintendent shall be in attendance at the Job Site as required during the

progress of the Contract Work and shall attend relevant on site meetings and shall have regular quality control inspections. Subcontractor shall be solely responsible for examining, accepting and securing, at the time of delivery all materials or equipment furnished to Subcontractor, and shall thereafter handle, store and install such items with such skill and care as to insure compliance with its obligations hereunder. Any loss to materials or equipment due to Subcontractor's violation of this covenant, or otherwise, shall be the responsibility of Subcontractor. Any person adjudged by Contractor to be incompetent, disorderly or otherwise unsatisfactory shall be immediately removed from the Job Site and shall not again be employed at the Job Site. Subcontractor shall not permit its employees or any other persons associated with the Contract Work to consume alcoholic beverages or illegal substances at the Job Site. Subcontractor shall prohibit barbeques, parties, pets, children, guests, loud music and unnecessary noise, at or near the vicinity of the jobsite.

**B. No Defects.** Subcontractor's commencement of the Contract Work constitutes Subcontractor's acknowledgment that the work of other subcontractors, completed or commenced prior to commencement of the Contract Work, are free of defects that would in any way impair or otherwise adversely affect Subcontractor's performance of the Contract Work. If Subcontractor discovers a defect in the Project Contract Documents, the Contract Work, or in the work of others, Subcontractor shall immediately notify Contractor in writing of such defect prior to commencing or continuing any of the Contract Work that may be affected thereby.

**C. Signs.** Subcontractor shall not post any sign or advertisement at or in the vicinity of the Job Site. Subcontractor shall adhere, and shall cause its mechanics, subcontractors, and suppliers to so adhere to, and observe all signs posted at the Job Site.

**D. Integration of the Work.** Contractor shall take such steps as are necessary to integrate the Contract Work with the work of others at the Job Site. Subcontractor shall not alter the work of others. Subcontractor shall cooperate with Contractor and other subcontractors and shall participate in the preparation of coordinated drawings and work schedules in areas of congestion, to minimize interference to all.

**E. Hazardous Material.** Subcontractor shall not permit any Hazardous Material to be located, used, incorporated into the Contract Work or brought onto the Job Site in connection with the Contract Work. Subcontractor shall comply with all Laws (inclusive of Proposition 65) and prudent business practices concerning any Hazardous Material required and approved to be located, used, incorporated into the Contract Work or brought onto the Job Site or required and approved to be transported on, to, from or about the Job Site. If Subcontractor encounters any material, matter or substance reasonably believed to be Hazardous Material, or becomes aware of any circumstance or incident involving Hazardous Material at the Job Site, Subcontractor shall immediately stop the Contract Work in the area so affected and shall immediately report in writing such encounter or knowledge to Contractor. Subcontractor shall be liable for all on and off-site disposal or transport of Hazardous Material (and shall sign any manifest in connection with the transport or storage of such Hazardous Material) and for any discharge, release, injury to

any person, or injury or damage to any property resulting from use of Hazardous Material in the performance of the Contract Work and shall be responsible for obtaining all required permits and approvals necessary to remove such Hazardous Material or otherwise remedy any problem resulting from the use of the Hazardous Material. "Hazardous Material" shall mean (1) any "Hazardous Material" as defined by Federal, State, or Local Agency Law or Code, (2) any substance or matter that results in liability to any person or entity from discharge of or exposure to such substance or matter under any statutory or common law theory, (3) pesticides, asbestos, formaldehyde, polychlorinated biphenyls, solvents, petroleum and motor fuel hydrocarbon material, and (4) any other substance or matter that becomes subject to any Federal, State, or Local Agency order or requirement for removal, treatment or remedial action. Subcontractor shall indemnify, defend (at Subcontractor's sole cost and with legal counsel acceptable to Contractor), protect and hold Contractor and Owner and their respective officers, directors, agents, employees, representatives, shareholders, partners, affiliates, successors and assigns, free from and against any and all claims, demands, losses, damages, disbursements, liabilities, fines, actions, causes of action, suits, expenses costs, professional and consultants' expenses, when removing or remediating any Hazardous Materials located, used, incorporated or brought onto or about the Job Site or transported on, to, from or about the Job Site by Subcontractor. This indemnity shall be effective after completion of the Contract Work, as well as during the progress of the Contract Work and shall survive any termination of this Agreement.

**F. Cleanup, Storage, Reserved Gate and Safety.** Subcontractor shall maintain the Job Site and the vicinity thereof, in a clean, neat and safe condition, to Contractor's satisfaction and shall (1) store all materials, supplies, equipment and goods in appropriate containers or enclosures, (2) remove from the Job Site all excess material and debris daily and all equipment, unused material and supplies and temporary structures upon completion, (3) return each fence, barrier and obstruction that is temporarily relocated or displaced by Subcontractor to its original position and condition immediately to ensure adequate and continuous protection of construction personnel as well as the general public at all times. It is understood that Contractor may charge Subcontractor for trash dumpster usage, if Subcontractor uses Contractor's dumpster. If Subcontractor fails to so maintain the Job Site, Contractor may, perform all work necessary to cause the Job Site to be so maintained and charge all costs related thereto to Subcontractor plus a 20%, handling fee. Subcontractor shall take all reasonable safety precautions in the performance of the Contract Work, including complying with Contractor's Superintendent and/or safety officer, all OSHA safety laws, orders, codes, rules, ordinances and regulations. Subcontractor shall not load, nor permit any part of the structure to be loaded, with weight that will endanger its safety. Subcontractor shall immediately notify Contractor of any injury to any individual occurring at the Job Site. If the Job Site is picketed and Contractor establishes a reserve gate for Subcontractor's purpose, Subcontractor shall make use of such reserve gate, and continue performance of the Contract Work without interruption or delay. Subcontractor shall also be solely responsible for all traffic control necessary to perform the Contract Work in a manner acceptable to Contractor and in compliance with all Laws. Subcontractor shall require all of its employees to attend weekly Job Site safety meetings, either sponsored by Contractor or Subcontractor. In addition to the above, Contractor, may seize 1.5% of

Subcontractor's total contract amount as a penalty for not maintaining the job site, and the vicinity thereof, in a clean, neat and safe condition to Contractor's satisfaction.

**G. Layout.** Contractor shall establish principal axis lines, control points and datum point. Subcontractor shall lay out the Contract Work and shall be responsible for its accuracy, including the placement of all conduits, pipes, inserts, embeds, grounds, blockouts, and so on, as required to properly perform the Contract Work.

**H. Use of Job Site Equipment.** Subcontractor assumes all responsibility for, and shall hold Contractor and Owner harmless from, all claims, actions, demands, resulting from the use of Contractor's or Owner's equipment or facilities by Subcontractor.

**I. Scaffolding, Staging and Hoisting.** As part of the Contract Work, Subcontractor shall provide, and at all times continuously maintain, in safe operational condition, all necessary scaffolding, staging, bracing, hoisting, planks, ladders, rigging, barricades, protective devices and coverings, and all other associated equipment and accessories required for the continuous safe and satisfactory accomplishment of the Contract Work, including use by others than Subcontractor's employees. Subcontractor shall also be responsible for all transportation, unloading, erection and removal of same from the Job Site. Usage of any equipment of Contractor or Owner shall be permitted only with prior written approval from Contractor, and at the sole risk of Subcontractor. SUBCONTRACTOR HEREBY RELEASES CONTRACTOR AND OWNER FROM ANY AND ALL CLAIMS, WHETHER RELATING TO BODILY INJURY OR PROPERTY DAMAGE, RESULTING FROM THE USE OF ANY FACILITIES OR EQUIPMENT AT THE JOB SITE.

#### **IV. EXAMINATION BY SUBCONTRACTOR.**

**A. Review of all Relevant Matters.** Subcontractor has examined, investigated and familiarized itself with: (1) the Project Contract Documents; (2) the nature and location of the Job Site and all actual conditions thereof as well as those that could be expected during performance of the Contract Work; (3) the conformation of the ground and improvements of other subcontractors on which the Contract Work is to be performed; (4) the character, quality and quantity of the materials, equipment and facilities necessary to complete the Contract Work in a good and workmanlike manner and to the best of industry standards and pursuant to the Project Schedule; (5) the general and local conditions relating to the Contract Work; and (6) all other matters that may affect Subcontractor's performance of the Contract Work.

**B. No Reliance on Contractor.** Subcontractor enters into this Agreement relying solely on its own examination and investigation of the foregoing matters and not on any verbal representation or verbal information relating to the Job Site or the Contract Work (or the completion thereof) made by Contractor or Owner or any agent thereof. No estimate or bid of Subcontractor either before or after execution of this Agreement shall affect any of the terms or obligations contained herein. Subcontractor assumes the risk of Job Site conditions and releases Contractor and Owner from any claim for additional compensation resulting from any known or anticipatable Job Site conditions.

**C. Satisfaction with Plans.** If the Project Contract Documents require clarification of any inadequacy, discrepancy inconsistency or omission, or are in conflict with the Submittals, Subcontractor shall immediately request clarification in writing from Contractor. Subcontractor's failure to request clarification, - suspected or reasonably inferred inadequacy, inconsistency, omission or conflict shall not relieve Subcontractor of its obligation to perform in accordance with Contractor's interpretations of those portions of the Project Contract Documents. Subcontractor shall not be entitled to any additional compensation for performing the Contract Work pursuant to Contractor's interpretation of the Project Contract Documents. Subcontractor shall notify Contractor at least 72 hours in advance of making any deviation from the Project Contract Documents by submitting to Contractor the proposed deviation and the cause therefore. If the deviation will result in a change to the Contract Price, Subcontractor shall promptly furnish Contractor with a Change Order Estimate pursuant to Section VI. Under no circumstances may any approved deviation fail to comply with all Laws, and Subcontractor assumes all responsibility for compliance with all Laws, notwithstanding any permitted deviation or change to the Contract Work. Subcontractor shall not be entitled to an increase of the Contract Price or time extension, due to compliance with Laws, in place as of the Effective Date.

**D. Design Build.** Subcontractor shall be solely responsible for the design of the Contract Work and the issuance of any applicable permits for the Contract Work (the "Design"). The Design Documents shall include the Design. The Contract Price includes any costs, fees, and expenses associated with the Design and any permits related to the Design, including without limitation any costs, fees, or expenses required for any third-party service providers or engineers necessary for the Design or its approval. Notwithstanding any provision of this Agreement, Subcontractor shall (1) assume complete responsibility for the constructability of the Design; (2) shall not be entitled to any additional compensation from Owner or Contractor for any cost or fee increases resulting from any errors or omissions in the Design, including, without limitation, any coordination issues and any comments or requests for changes provided by any applicable government agency or regulatory body; (3) perform, at Subcontractor's sole cost and expense, all construction administration services in connection with the Contract Work; and (4) not be entitled to, and shall not submit any change order for, any increase in the Contract Price or any delay days in the Project Schedule unless Contractor delivers a Change Request to Subcontractor expressly instructing Subcontractor to increase the scope of the Design.

**E. INSURANCE.**

**A. Coverage.** Subcontractor shall maintain in effect at all times and at its own expense the following insurance coverages:

- 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:

i. **Comprehensive General Liability:** \$1,000,000 combined single limit bodily property damage per occurrence or,

ii. **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. OCIP.** The Project is covered by an OCIP. Subcontractors shall enroll into this OCIP. Subcontractors shall be responsible for a deductible/SIR equal to that of the subcontractor's non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium trade contractors and \$75,000 for high trade contractors.

**6. Deductibles and Retention.** Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.

**7. Form Requirements.** Liability Policy forms must include: (a) premises and operation with no X, C or U exclusions; (b) products and completed operations coverage (Subcontractor agree to maintain this coverage for a minimum of one year following completion of the Contract Work); (c) full blanket contractual coverage; and (d) broad form property damage including completed operations or its equivalent.

**B. General Requirements.** Before starting the Work, Subcontractor shall furnish Contractor certificates of insurance, endorsements, or copies of policies that demonstrate that Subcontractor has obtained the required coverage from carriers reasonably acceptable to Contractor. All policies must be written by insurance companies domiciled in the United States and qualified to do business in Nevada. Each policy of insurance shall (1) provide that the coverage may not be terminated or modified without 30 days prior written notice being received by all Additional Insureds, (2) name Contractor and Owner and any other required interest as additional insureds, (3) stipulate that the coverage afforded to the additional insureds is primary and any other coverage maintained by such additional insureds shall be excess and non-contributing and (4) must be an "occurrence" form ("Claims Made" and modified "Occurrence" forms shall not be acceptable).

**C. Waivers of Subrogation.** Contractor and Subcontractor waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Agreement or any Prime Contract, except such rights as they have to proceeds of such insurance held by Contractor or Owner as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification,



contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**D. Beneficiaries.** Subcontractor's insurance obligations set forth in this Section V shall be for the benefit of Contractor, Owner and their respective successors and assigns.

#### **V. CHANGES IN THE CONTRACT WORK.**

**A. Request for Change.** Contractor may, at any time and from time to time, without affecting the validity of this Agreement, order additions, deletions or other modifications to the Contract (the "Change Request"). Contractor's Designated Representative shall be the only person authorized to make Change Requests. Upon written acceptance of Subcontractor's Change Order Estimate (as defined below) by Owner and Contractor, Subcontractor shall execute Contractor's standard form Change Order which shall, incorporate all of the terms and conditions of this Agreement (the "Change Order"). All labor, materials or equipment utilized shall be consistent with the terms of the Agreement and the Change Request. Subcontractor shall maintain complete records of all duly authorized modifications made to the Contract Work. Upon completion of the Project Work, Subcontractor shall provide Contractor with a redlined set of Project Contract Documents, showing any modifications of the Contract Work. Contractor is relying on Subcontractor's specialized knowledge related to performance of the Contract Work. Subcontractor shall be liable to Contractor and Owner for all additional costs created by or arising out of any unauthorized changes to the Contract Work.

**B. Change Order Estimate.** Upon receipt of a Change Request, Subcontractor shall promptly furnish to Contractor a statement in the form of **Addendum 6** (the "Change Order Estimate") setting forth in detail, with a labor and material breakdown by trades and work classifications. Subcontractor's prices for Change Order modifications shall be consistent with the contract prices covered by this Agreement. Contractor shall have the option to engage another third-party to perform the work set forth in any Change Request. Subcontractor shall have no claim for additional compensation as a result of the Change Request unless the Change Order is accepted by Contractor in writing. Expedient handling of such Change Requests by Subcontractor is material to Contractor's entering into this Agreement with Subcontractor.

**C. Value Engineering.** In the event that Contractor delivers written notice to Subcontractor of a specific value engineering initiative (the "VE Initiative"), Subcontractor will provide to Contractor, within three days, a revised Contract Price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Contractor (the "Value Engineering Deduct"). Notwithstanding any provision of this Agreement, in the event that Subcontractor fails to comply with the previous sentence of this Section VI(C), Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly. Notwithstanding any provision of this Agreement, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Contractor, Contractor shall have the right to obtain an alternate price from a third-party.

and if Subcontractor fails to meet such price, Contractor shall have the right to unilaterally remove the work associated with the VE Initiative from the Contract Work and reduce the Contract Price accordingly.

**D. Owner's Approval of Change Estimate.** If the work for which Subcontractor claims extra compensation, is determined by Owner not to entitle Contractor to a Change Order, Contractor shall not be liable to Subcontractor for any extra compensation for such work, unless, Contractor agreed, in writing, to such extra compensation specifically excluding Owner's approval and payment.

## **VI. WARRANTY, TESTING AND CORRECTION.**

**A. Warranty of Materials and Workmanship.** Subcontractor expressly warrants that all labor, material, equipment, and fixtures furnished or installed by it (or by its subcontractors or materialmen) under the terms of this Agreement shall be of good quality and to the best of industry standards, free of any faults and defects whatsoever, and shall be completed in accordance with and shall meet or exceed the requirements of the Project Contract Documents and applicable Laws and standards. Subcontractor shall promptly provide sufficient evidence of such conformance, if requested. This warranty shall survive for so long as Contractor or Owner may be held liable for the matters warranted hereunder (in their respective roles as contractor, builder or seller) but in no event less than a period of two years from the date of completion and final acceptance of the Contract Work. The above express warranty of Subcontractor shall not limit or affect other warranties or guarantees expressly or impliedly made by Subcontractor or any of its subcontractors or materialmen and shall not limit or affect any remedies that are awarded by law with respect to express or implied warranties or negligent or willful acts or omissions of Subcontractor or any of its subcontractors or materialmen. The above warranties issued by Subcontractor shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Test and Inspection of the Contract Work.** Contractor shall not be responsible for reviewing or accepting, the safety or design of the Contract Work or any part thereof or a determination of conformance with Laws or other requirements of any public utility. However, Contractor shall be entitled (but not required) to test and inspect the Contract Work or cause the same to be accomplished without notice to Subcontractor. Subcontractor shall notify Contractor in writing of any prudent, reasonable, or required inspection or testing that must be performed, within a certain time period, so as not to require modification of the Contract Work or the work of others in connection with the inspection, testing and approval. Failure of Subcontractor to so notify Contractor shall result in Subcontractor assuming full responsibility for, and all costs of the uncovering of the Contract Work, or the work of others, in order to allow the required inspection, testing and approval. As part of the Project Work, Subcontractor shall be responsible for the execution of all inspections, tests and testing required by the specifications, and by all governmental authorities having jurisdiction.

**C. Correction and Removal of Defective Contract Work.** Subcontractor shall, at its own expense, provide all materials and labor to correct any defects in the Contract Work's materials or equipment (together with any damage to all finishes, fixtures, equipment and personal property damage as a result of such

defects) and to remedy any violation of Laws in a manner reasonably satisfactory to Contractor. Subcontractor shall begin all corrective and remedial work necessary to cure any defect in the Contract Work, materials or equipment and to remedy any violation of Laws within 48 hours after receipt of a notice from Contractor. However, any defect related to life saving systems, plumbing, heating, electrical and roofing shall be completed immediately after the notice to repair is delivered to Subcontractor. Subcontractor shall diligently pursue all corrective and remedial work to completion. Subcontractor shall provide a written report to Contractor's office immediately upon completion of the corrective or remedial work. If Contractor remedies any defect for Subcontractor, Subcontractor shall pay to Contractor the costs of all corrective work plus a 20% handling charge.

## **VII. INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY.**

### **A. Indemnification.**

1. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, Owner, and their respective subsidiaries, owners, affiliates, directors, shareholders, members, officers, managers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out or resulting from or in connection with (a) any breach of this Agreement by Subcontractor; (b) the negligence or willful misconduct of Subcontractor or any subcontractor or supplier of Subcontractor or any of their respective agents or employees; or (c) the Contract Work.
2. Provided that Subcontractor has paid all undisputed outstanding Invoices, in the event that Contractor is joined as a party in a lawsuit or arbitration filed by Subcontractor or any subcontractor or supplier of Subcontractor concerning sums allegedly due to such party, Subcontractor shall provide a bond or other security agreeable to Contractor to protect the interests of Contractor and Owner. The amount of bond or security provided by Subcontractor shall be equal to 150% of the amount allegedly due to Subcontractor or the applicable subcontractor or supplier of Subcontractor.
3. Subcontractor further agrees to indemnify, hold harmless and defend Contractor from and against any loss, including but not limited to fines, penalties and corrective measures that Contractor may sustain by reason of Subcontractor's failure to comply with all applicable federal, state and local laws, ordinances, rules, regulations and other acts of any governmental authority, in performance of the Contract Work.
4. The primary duty for the safety of Subcontractor's employees, materials, conditions and equipment shall lie with Subcontractor. Subcontractor will furnish an active and enacted Safety Program to Contractor's Superintendent prior to personnel or material entering the Project Site. Subcontractor further agrees to indemnify, hold harmless, protect and defend Contractor and Owner, its successors or assignees, its clients and the user of Subcontractor's goods and services against all suits and from all claims, demands, judgements, costs and attorneys fees for actual or alleged infringement of letters, patents, trademarks

and copyrights in connection with goods and services supplied hereunder provided that they are used as normally intended.

5. Any indemnification set forth in this Section VIII(A) shall be effective after completion of the Contract Work as well as during the progress of the Contract Work, and shall not be limited by the insurance requirements of Section V. Any indemnity provided for in this Section VIII(A) shall be for the benefit of Contractor, Owner and their respective successors and assigns.

**B. Release.** Subcontractor hereby expressly waives and releases Contractor and Owner from all claims, demands, expenses, debts, damages and liabilities, including, without limitation, lost wages, pain and suffering, permanent or temporary disability, medical and hospital expenses, attorneys' fees and costs of repair and replacement of Subcontractor's property, which in any way arise from or relate to (1) the physical condition, security, or maintenance of the Job Site and the vicinity thereof; (2) vandalism, theft or any other willful or negligent act by any person or entity at the Job Site or in the vicinity thereof, including, without limitation, the operation of a motor vehicle; or (3) the activities, omissions or behavior, whether or not negligent, of suppliers and other contractors and subcontractors, whose services have been or are being utilized by or on behalf of Contractor, as well as the activities, omissions or behavior of their agents and employees, whether or not actively or passively negligent. Nothing in this Section VIII(B) shall be construed to release the Indemnified Parties or any of them from their exclusive (i) willful or (ii) grossly negligent acts.

**C. Limitation of Liability.**

1. Subcontractor's right to recover damages or losses of any kind or nature resulting from any breach of this Agreement by Contractor shall be governed and limited by the provisions of this Section VIII(C). The terms of this Section VIII(C) shall create no separate right to recover damages.

2. Subcontractor shall keep on a daily and current basis, separate, accurate records of all man-hours, equipment, supplies, materials and tools that it claims it used and/or lost (and the value thereof) as a result of any breach of this Agreement by Contractor. With respect to each and every day that Subcontractor claims it has incurred any losses or increased costs or suffered any damages as a result of any breach of this Agreement by Contractor or otherwise incurred because of Contractor, Subcontractor shall deliver to Contractor on or before 1:00 p.m. (local time) of the following day, a written notice setting forth and describing in detail such, and the amount of the loss and/or damage claimed by Subcontractor for such day, attaching thereto a complete, true and accurate copy of the records required the previous sentence of this Section VIII(C)(2). Subcontractor shall give a daily notice and attach the material referred to by this Section VIII(C)(2).

3. If any arbitrator, court of competent jurisdiction or appellate court determines that Contractor is liable to Subcontractor as a result of any breach for any reason, the amount for which Contractor is liable shall not exceed the actual direct field costs incurred by Subcontractor, as per the actual daily direct field costs reflected in the daily records kept by Subcontractor and delivered to Subcontractor on a daily basis pursuant to Section VIII(C)(2). Contractor shall

not be liable to Subcontractor for any costs, expenses, losses or damages of any kind if Subcontractor did not comply with the provisions of this Section VIII(C).

4. If Subcontractor commences an action against Contractor seeking recovery of damages or losses for breach of this Agreement, or other reasons caused by Contractor, Subcontractor shall be precluded from proving its costs and damages by "total cost", quantum meruit, "equitable adjustment" or in any way other than specifically identifying and proving the direct field costs that resulted each day from each separate breach, or other cause.

5. Notwithstanding any provision of this Agreement, Contractor shall not be liable to Subcontractor for loss, interest, loss of profit, nor for any indirect, special or consequential damages. Provided that Subcontractor's lien rights are not impaired, Subcontractor shall look solely to the property of Owner for all amounts due Subcontractor hereunder if (a) Subcontractor is not paid undisputed amounts otherwise due Subcontractor pursuant to this Agreement and (b) Contractor has not received payment from Owner of the undisputed amounts due Subcontractor.

**VIII. AS-BUILTS, FINAL CLOSE OUT REQUIREMENTS.** All life safety systems, electrical, mechanical, plumbing, heating, air conditioning, fire sprinkler, drainage, and utility Subcontractors must, prior to receiving Final Payment, furnish Contractor with complete and accurate "as-built" records which shall be maintained at all times during construction showing exact location and dimensions of all control systems, shutoffs, emergency operators, main lines, branch lines, valves, drains, clean outs, etc. in accordance with the Project Contract Documents. All final close out documents (including, without limitation, all maintenance and operational manuals, start-up procedures, brochures, and as-built records as required herein or in any Project Contract Documents) must be provided to Contractor, in triplicate, before Final Payment, in a form reasonably acceptable to Contractor and Owner. Final close out documents must be provided by Subcontractor to Contractor before Contractor can release any monies, over 75% of the Contract Price.

**IX. LIENS AND STOP NOTICES.** Subcontractor shall pay when due, all claims asserted by and debts in favor of persons or entities who furnish labor, material, services, fixtures or equipment applied to or utilized in the performance of the Contract Work. Subcontractor shall prevent the recordation of any claim of lien upon Owner's property, the imposition of any stop notice or bonded stop notice on funds held by a lender that are intended to be paid to Contractor or to Owner pursuant to an agreement to finance completion in whole or in part of the Project, and the garnishment or attachment of funds held by Contractor or Owner, by promptly satisfying all claims and debts that are or may be asserted against Subcontractor or Subcontractor's subcontractors by such persons or entities. Any sums paid to Subcontractor under this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor, materials and equipment to Subcontractor for the Contract Work. If Subcontractor fails to effect any release or dismissal Contractor may take such action as it deems appropriate to effect such release or dismissal and all costs thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor and if not so paid, shall be deducted

from amounts due Subcontractor under this Agreement, or any other Agreement between the parties.

**X. DEFAULT OF SUBCONTRACTOR; REMEDY; TERMINATION; DISPUTE RESOLUTION.**

**A. Default.** The term "Default" shall mean any failure by Subcontractor, at any time, to: (1) supply sufficient skilled workers or proper materials; (2) properly and diligently prosecute the Contract Work as required by this Agreement; (3) make prompt payment to its workers, sub-subcontractors, suppliers or consultants, or becomes delinquent with respect to contributions or payments required to be made to any insurance company, workman's compensation fund, health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust; (4) provide adequate insurance as required by Section V, (5) to provide Contractor with adequate assurance of its ability and willingness to perform pursuant to this Agreement within 48 hours of receiving a written notice from Contractor requesting such assurance, or (5) is otherwise in breach of a material provision of this Agreement. Immediately upon the occurrence of any Default, Contractor shall have the right, without prejudice to any other rights or remedies at law or in equity, to immediately invoke any and all of the remedies set forth in Section XI(C).

**B. Liquidated Damages.** In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against Contractor by Owner, as provided in the Prime Contract, for any Project delays caused by Subcontractor. Such damages shall be paid for each day the Contract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by Contractor, and granted by Owner. Subcontractor's obligation to pay the above liquidated damages shall be for the benefit of Contractor, Owner, and their respective successors and assigns.

**C. Remedies.** If Subcontractor fails to remedy any Default within 48 hours after receipt of written notice from Contractor, Contractor shall be entitled to any one or more of the following remedies, none of which shall be deemed exclusive of any other:

1. Contractor may immediately terminate the Agreement for cause.
2. Contractor may immediately terminate the right of Subcontractor to prosecute the performance of the Contract Work in whole or in part without liability to Subcontractor for any Contract Work thereafter performed by Contractor or anyone else.
3. Upon receipt of written notice from Contractor, Subcontractor must immediately exit the Job Site leaving all materials and equipment in place and not return without the prior written permission of Contractor.
4. Upon receipt of written notice from Contractor, Subcontractor must immediately return all Design Documents to Contractor.
5. Subcontractor must (a) deliver all Subcontractor permits to Contractor and (b) execute and deliver all documents and take any additional actions necessary to transfer such permits to Contractor or its designee.

6. Contractor may pursue any other remedy provided elsewhere in this Agreement.

7. Contractor may withhold payment of any monies due until the Default of Subcontractor has been cured and a final accounting of Contractor's costs and appropriate deductions have been made as permitted under this Agreement, including without limitation, any liquidated damages attributable to or caused by Subcontractor's failure to prosecute the Contract work within the Project Schedule.

8. Contractor may set off the costs to complete the performance of the Contract Work and any other damages due Contractor against monies due under any other contract between Contractor (or any entity owned, controlled by, affiliated with or under common control with Contractor) and Subcontractor (or any entity owned, controlled by, affiliated with or under common control with Subcontractor), whether such contract shall be in effect prior or subsequent to this Agreement.

9. Contractor may pay any sums to any such persons, firms, itself or other entities to whom Subcontractor shall be obligated and to charge such sums paid to the account of Subcontractor without recourse by Subcontractor. If such sum is greater than the amount then due Subcontractor, the excess shall be a debt due from Subcontractor to Contractor and shall bear interest at the rate of 10% per annum from the date due until paid.

10. Contractor shall also be entitled to use any of Subcontractor's equipment and consume any materials on the Job Site (without further compensation to Subcontractor for such use) until it is completed. Subcontractor shall pay Contractor the cost of such completion or correction, plus a 20% handling charge. Subcontractor shall receive no additional payment until the Contract Work is completed.

11. Any Attorneys' fees and other damages incurred by Contractor as a result of a Default shall be considered a cost to complete the Contract Work and shall be paid by Subcontractor.

12. Contractor may pursue any and all such other remedies as may be provided at law or in equity.

**D. Termination for Insolvency.** In addition to the rights of Contractor set forth in Sections XI(B) and (C), Contractor may immediately invoke the remedies set forth in Section XI(C) without waiting 48 hours upon the occurrence of any of the following: (1) the filing of a petition for relief under the Bankruptcy Code or the institution of any other insolvency proceedings by, against, or on behalf of Subcontractor or Owner, (2) the appointment of a receiver for Subcontractor or Owner, (3) the death, dissolution or liquidation of Subcontractor, (4) the transfer to others of more than 25% of the assets or ownership interest of Subcontractor, and (5) any act of insolvency by Subcontractor or Owner.

**E. Termination by Contractor.** Upon 48 hours written notice to Subcontractor, Contractor shall be entitled to terminate this Agreement for any cause whatsoever, regardless of whether Subcontractor has begun performance of the

Contract Work. In such circumstance, Subcontractor shall be entitled to receive that portion of the Contract Price earned by Subcontractor for Contract Work performed to the satisfaction of Contractor, including shop drawings, submittals, and reasonable mobilization costs, less any payments made prior to the date of termination of this Agreement upon receipt by Contractor of payment from Owner. Subcontractor shall not be entitled to any additional compensation or damages as a result of termination of this Agreement pursuant to this Section XI(E). Subcontractor shall make all reasonable efforts to procure cancellation of all existing orders or contracts upon terms approved by Contractor.

**F. Dispute Resolution/Arbitration.**

**1. Claim.** 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 Contractor and Subcontractor 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.

**2. Mediation.**

(a) Any Claim shall 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.

**3. Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section XI(F)(2).



(b) Any 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 and the American Arbitration Association.

(c) A demand for arbitration shall be made 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.

(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

**4. Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Contractor and Subcontractor related to the Contract Work or this Agreement, Contractor shall diligently continue to perform the Contract Work to the full extent practicable pending resolution of the unresolved Claim, and Contractor shall continue to make payment required under this Agreement for all Contract Work that is not directly implicated in the Claim.

**XI. REPRESENTATIONS OF SUBCONTRACTOR.** To induce Contractor to enter into this Agreement, Subcontractor covenants, represents and warrants as follows:

**A. Authority.** Subcontractor is duly organized and in good standing under the laws of the State of Nevada, and has all necessary powers to carry on its business and has the right, power, legal capacity and authority to enter into this Agreement.

**B. Litigation.** Except as disclosed to Contractor, in writing, prior to the Effective Date, there is no bankruptcy, reorganization, suit, action, arbitration, or legal administrative or other proceeding, or non-insured workers' compensation claim or governmental investigation pending or threatened, against Subcontractor or to the knowledge of Subcontractor, against any affiliate, general partners or shareholders of Subcontractor.

**C. Financial Capability and Skill.** Subcontractor is and must continue to remain financially solvent and financially capable of discharging its obligations under this Agreement. Subcontractor and everyone acting on behalf of Subcontractor in connection with the performance of the Contract Work is skilled in performing the Contract Work and in the means, methods, techniques, sequences and procedures related to completing the Contract Work in the most expeditious and economical manner consistent with the interest of Contractor.

**D. Licenses/Permits.** Subcontractor has and shall maintain, or shall pay for and maintain, all necessary licenses, Subcontractor specific permits, and

Contract Work. In such circumstance, Subcontractor shall be entitled to receive that portion of the Contract Price earned by Subcontractor for Contract Work performed to the satisfaction of Contractor, including shop drawings, submittals, and reasonable mobilization costs, less any payments made prior to the date of termination of this Agreement upon receipt by Contractor of payment from Owner. Subcontractor shall not be entitled to any additional compensation or damages as a result of termination of this Agreement pursuant to this Section XI(E). Subcontractor shall make all reasonable efforts to procure cancellation of all existing orders or contracts upon terms approved by Contractor.

**F. Dispute Resolution/Arbitration.**

**1. Claim.** 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 Contractor and Subcontractor 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.

**2. Mediation.**

(a) Any Claim shall 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.

**3. Arbitration.**

(a) Any Claim shall be subject to arbitration, except those claims that are required by statute to be litigated (e.g., foreclosure of a mechanic's lien). Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section XI(F)(2).

governmental fees necessary to perform the Contract Work and all other obligations of Subcontractor under this Agreement.

## **XII. MISCELLANEOUS.**

**A. Nondiscrimination.** Subcontractor shall abide by and comply with all procedures, rules and regulations concerning nondiscrimination issued by any governmental agency or authority, insofar as they apply to Subcontractor's performance of this Agreement.

**B. 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: (1) by personal delivery, when delivered personally; (2) by overnight courier, upon written or electronic verification of receipt; (3) by electronic mail or facsimile, upon transmission; or (4) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth on the first page of this Agreement or such other address as either party may specify in writing.

**C. Construction; No Waiver.** Whenever used in this Agreement, the singular shall include the plural and the plural the singular. Delay in the enforcement of any remedy in the event of a breach of any term or condition hereof or in the exercise by either party of any right hereunder shall not be construed as a waiver. This Agreement and all of the addenda, attachments, schedules and exhibits hereto, which are hereby incorporated into this Agreement by this reference, constitute the entire Agreement between the parties.

**D. Injunctive Relief for Breach.** Subcontractor'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 Contractor for which there will be no adequate remedy at law. In the event of such breach, Contractor 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).

**E. Merger Clause.** This Agreement represents the entire and integrated agreement between Contractor and Subcontractor related to the subject matter hereof and supersedes all prior negotiations, representations, agreements, communications, bids, proposals, and estimates, whether written or oral.

**F. Amendment and Termination.** Subject to Section VI(C) and Sections XI(C) and (D), this Agreement may be amended or terminated only by written instrument executed by both Contractor and Subcontractor.

**G. Severability.** If any portion of this Agreement is declared by court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable portion had not been a part of this Agreement.

**H. Assignment.** Contractor and Owner may, at any time, assign the whole or any part of this Agreement. Subcontractor shall not assign or further subcontract

(with the exception of those subcontractors listed by Subcontractor pursuant to Section xxx) any portion of the Contract Work without the prior written consent of Contractor. Contractor's consent to an assignment shall not relieve or release Subcontractor from all obligations of the Agreement. Subcontractor acknowledges the reasonableness of this provision due to the personal service nature of this Agreement.

**I. Title to Improvements.** Title to all materials, fixtures, plans and installations shall be deemed vested in Contractor when such has been installed, affixed permanently to the realty, or otherwise delivered to and accepted by Contractor. Contractor shall not be liable for loss or damage to any material or fixtures as to which title is not then vested in Contractor at the time of such loss or damage as herein provided, whether such material or fixtures are on the Job Site, in transit, or under the control of Contractor.

**J. Continuation of Work.** During all disputes, actions, claims or other matters arising out or relating to this Agreement or the breach thereof, Subcontractor shall carry on its duties hereunder and maintain the schedule for performance for the Contract Work. Subcontractor shall be paid for performance of undisputed Contract Work, in accordance with the terms of this Agreement.

**K. Interpretation and Governing Law; Time.** This Agreement shall not be construed against the party who prepared it, but shall be construed as though prepared by both parties; the parties thereby waiving the effect of any statute or law providing for uncertainties in a contract to be construed against the party who prepared the agreement. This Agreement shall be construed and governed by the laws of the State of Nevada. Subject to Section XI(F), any litigation or other proceedings regarding this Agreement shall be brought in the applicable court in Clark County, Nevada. It is mutually accepted that time is of the essence in this Agreement.

**L. Litigation Fees.**

**1. Payment to Prevailing Party.** It is expressly understood that this Agreement shall include an Arbitration Provision as shown in Section XI(F). 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. For purposes of this Agreement, the "prevailing party" shall be the party who recovers a greater percentage of the disputed amount, as well as a party who dismisses an action for recovery hereunder in exchange for greater settlement of the sums allegedly due.

**2. Attorneys' Fees in Third Party Litigation.** If any party is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim as well as any claim brought by Owner) because of the other party's breach or alleged breach of

this Agreement, and such party is the prevailing party in such action or proceeding, such shall be entitled to it's attorneys' fees.

**M. Independent Contractor.** Subcontractor is an independent contractor and shall, at Subcontractor's sole expense, and without increase in the Contract Price, comply with all Laws and pay all manufacturers' sales, use and processing taxes and all federal, state and local taxes.

**N. Survival of Obligations.** Any indemnity, guaranty, representation or warranty given by Subcontractor to Contractor in this Agreement shall survive the expiration or termination of this Agreement.

**O. Third Party Beneficiaries.**

1. Subject to Section XIII(O)(2) and as expressly set forth elsewhere in this Agreement, this Agreement is between Contractor and Subcontractor. Except as expressly set forth herein, no other person or entity is intended to be, nor shall be, benefited by the terms hereof, whether as a third party beneficiary or otherwise.

2. Notwithstanding any provision of this Agreement, it is expressly agreed that Owner is a third-party beneficiary of this Subcontractor Agreement, including without limitation, any indemnity, warranty, insurance, or liquidated damage provisions obtained by Contractors

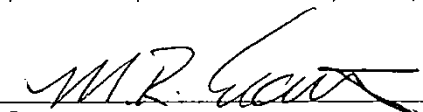
**P. Substance Abuse Testing.** Contractor shall have the right (but not the obligation) to require all personnel of Subcontractors, and its subcontractors, to be tested for substance abuse. Should any individual refuse to be so tested than that individual shall be considered an unfit person per Section III(A) and shall not work on the Project Site.

**Q. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Subcontractor**

E&E Fire Protection, LLC, a \_\_\_\_\_ (circle one) corporation, sole proprietorship, partnership, limited liability company

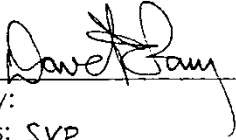


By:

Its:

**Contractor**

Camco Pacific Construction Company, Inc.,  
a California corporation

  
By: \_\_\_\_\_

Its: SVP

Contractor's License Number:0037507

Federal Tax ID or FICA No.:33-057-0317

## ADDENDUM 1

### FURTHER DESCRIPTION OF THE CONTRACT WORK

Subcontractor shall furnish and install all design, engineering, labor, material, supervision, equipment, tools, transportation, submittals, taxes, services, insurance, hoisting, scaffolding, specialty permits and incidentals as required for a complete design-build fire protection systems job per the requirements of the authorities having jurisdiction, all applicable codes, Project Contract Documents and the Project Schedule.

Scope of work includes, but is not limited to, the following:

Complete Design Build Fire Protection System as required by all applicable codes and ordinances

1. Division '1' - General Requirements as it relates to Division '15'
2. Section 07841 - Through-Penetration Firestop Systems as pertains to fire protection.
3. Section 08305 - Access doors & frames as pertains to fire protection.
4. Section 15000 - Basic mechanical requirements as pertains to Fire Protection Work
5. Section 15051 noise vibration control - Supports and anchors as pertains to Fire Protection Work
6. Fire Protection piping (Starting @ 1'-0" above finished)
7. Sprinkler Systems.
8. Includes Fire Pump
9. Includes Seismic Bracing & Engineering Drawings per Plans.
10. Includes provision of all data and materials required by the authorities having jurisdiction.
11. Includes fire caulking, as required for the fire protection scope of work.
12. Subcontractor shall provide qualified personnel to attend weekly coordination meetings for Mechanical, Electrical, Plumbing, and Fire Protection.
13. Subcontractor shall provide qualified personnel to attend weekly Fire, Life, Safety meetings.
14. Subcontractor field superintendent shall attend weekly superintendents meeting.
15. Subcontractor shall provide a final testing and inspection plan 7 days prior to start of final testing so the General Contractor can accommodate for any additional requirements or personnel that may be necessary.
15. Subcontractor shall test existing pipe with approved installation using compressed air to prevent water damage to the building.
16. Includes all required design drawings, calculations, permits and inspections.
17. Includes all core drilling required.
18. Subcontractor shall notify the general contractor's general superintendent 24 hours prior to core drilling to confirm there will be no conflicts with existing construction.
19. Upon completion of the project subcontractor shall provide the owner with an electronic copy of any and all approved drawings for the project.
20. Upon approval subcontractor shall provide the general contractor with one additional hard copy of the approved plans, above and beyond the standard submittal requirements for the owner's records.

## **ADDENDUM 2**

### **PROJECT CONTRACT DOCUMENTS**

Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction Drawings August 29, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to Subcontractor all of the shop drawings for the Project (collectively, the "Project Contract Documents"). Prior to the Effective Date, (a) Subcontractor received and reviewed the Project Contract Documents and (b) both parties hereby acknowledge that the version of such documents as of the Effective Date are hereby incorporated into this Agreement and shall serve as the relevant construction documents for purposes of this Agreement.



### ADDENDUM 3

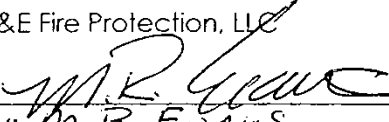
#### LIST OF SUPPLIERS AND SUBCONTRACTORS

The following is a list of all suppliers and subcontractors whose materials and services will be or have been utilized by Subcontractor in the performance of the Contract Work or as described in the Invoice, together with a description of the materials and services provided by such suppliers and subcontractors in connection with the Contract Work, and the price charged by such suppliers and subcontractors for such materials and services. If necessary, this list will be continued on an additional sheet. If this list is being submitted with an Invoice, attach a copy of each invoice submitted by the following suppliers and subcontractors representing all of the materials and services that Subcontractor has provided during the applicable Invoice period.

| Name and Address     | Material or Service Provided | Price Charged |
|----------------------|------------------------------|---------------|
| 1. Name:<br>Address: |                              |               |
| 2. Name:<br>Address: |                              |               |
| 3. Name:<br>Address: |                              |               |
| 4. Name:<br>Address: |                              |               |

Invoice Period: \_\_\_\_\_, 200\_\_ to \_\_\_\_\_, 200\_\_

E&E Fire Protection, LLC

  
By: M.R. EVANS  
Its: Owner/Manager

ADDENDUM 4  
PROJECT SCHEDULE

## ADDENDUM 5

### CONTRACT PRICE, SCHEDULE OF VALUES, UNIT PRICES, AND ALLOWANCES

1. Contract Price: **\$3,823,529.00**
2. Schedule of Values: Subcontractor to provide for billing purposes.
3. Unit Prices: Subcontractor to provide.
4. Allowances: Contractor and Subcontractor acknowledge that the costs of certain options of the Project Work are incapable of exact determination at the time of execution of this Agreement. Contractor and Subcontractor have agreed upon reasonable estimates of such costs based upon all available information for such portion of the Contract Work. These estimates are called "Allowances."

## **ADDENDUM 6**

### **FORM OF CHANGE ORDER ESTIMATE**

Subcontractor shall provide standard labor and material rates for use in the event that addition Time and Material work is required during the course of construction.

# **EXHIBIT "2"**

20090204-0000167

APN: 163-32-101-019

**NOTICE OF LIEN**

Fee: \$15.00  
N/C Fee: \$0.00

02/04/2009 08:01:30

T20090038077

Requestor:  
LEGAL WINGS

Debbie-Conway SCA  
Clark County Recorder Pgs: 2

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property:

1. The amount of the original contract is: \$3,823,529.00
2. The total amount of all changes and additions, if any, is: \$1,323,635.00
3. The total amount of all payments received to date is: \$1,092,121.34
4. The amount of the lien, after deducting all just credits and offsets, is: **\$3,795,218.91**
5. The name of the owner, if known, of the property is: Gemstone Development West Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: Camco Pacific Construction Company, Inc.
7. A brief statement of the terms of payment of the lien claimant's contract is: Net payable 30 days after each billing.
8. A description of the property to be charged with the lien is:

MANHATTAN WEST  
9205 W RUSSELL RD  
SPRING VALLEY  
PT NE4 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60

DATED this 2 day of February, 2009.

E&E FIRE PROTECTION, LLC

By: T. JAMES TRUMAN & ASSOCIATES

  
T. JAMES TRUMAN, ESQ.

Nevada Bar No. 003620  
3654 North Rancho Drive  
Las Vegas, NV 89130  
Attorneys for E&E Fire Protection, LLC

STATE OF NEVADA       )  
                                  )  
COUNTY OF CLARK       )

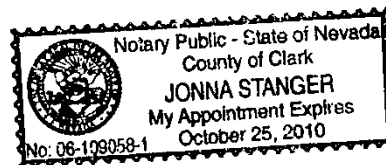
T. JAMES TRUMAN, being first duly sworn on oath according to law, deposes and says:

I am one of the attorneys for E&E FIRE PROTECTION, LLC. I have read the foregoing **Notice of Lien**, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

  
T. JAMES TRUMAN

SUBSCRIBED and SWORN to before me  
this 2nd day of February, 2009.

  
NOTARY PUBLIC in and for said  
County and State.



**RETURN TO:**

T. JAMES TRUMAN, ESQ.  
T. JAMES TRUMAN & ASSOCIATES  
3654 North Rancho Drive  
Las Vegas, NV 89130

ORIGINAL

31

1 **STAT**

2 T. James Truman, Esq.

3 Nevada Bar No. 003620

4 Stephen M. Dixon, Esq.

5 Nevada Bar No. 10025

6 T. JAMES TRUMAN & ASSOCIATES

7 3654 North Rancho Drive

8 Las Vegas, Nevada 89130

9 Telephone: (702) 256-0156

10 Attorneys for Lien Claimant Professional Doors and Millworks, LLC

FILED

MAR 27 4 15 PM '09

*Earl D. Smith*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 APCO CONSTRUCTION, a Nevada  
12 corporation,

Plaintiff,

Case No. A571228

Dept. No. X

13 vs.

PROFESSIONAL DOORS AND  
MILLWORKS, LLC'S STATEMENT OF  
FACTS CONSTITUTING LIEN CLAIM,  
COMPLAINT AND THIRD PARTY  
COMPLAINT

14 GEMSTONE DEVELOPMENT WEST,  
15 INC., a Nevada corporation; NEVADA  
16 CONSTRUCTION SERVICES, a Nevada  
17 corporation; SCOTT FINANCIAL  
18 CORPORATION, a North Dakota  
19 corporation; COMMON WEALTH LAND  
20 TITLE INSURANCE COMPANY; FIRST  
21 AMERICAN TITLE INSURANCE  
22 COMPANY; and DOES I through X,  
23 Defendants.

24 PROFESSIONAL DOORS AND  
25 MILLWORKS, LLC, a Nevada limited  
26 liability company,

Lien Claimant,

27 vs.

28 GEMSTONE DEVELOPMENT WEST,  
INC., a Nevada corporation; DOES I through  
X, inclusive; and ROE CORPORATIONS I  
through X, inclusive;

Defendants.

PROFESSIONAL DOORS AND  
MILLWORKS, LLC, a Nevada limited  
liability company,

Lien Claimant,

vs.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; a foreign corporation;  
FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND;

Third Party Defendants.

LAW OFFICES OF  
T. JAMES TRUMAN & ASSOCIATES  
A PROFESSIONAL CORPORATION  
3654 NORTH RANCHO DRIVE  
LAS VEGAS, NEVADA 89130  
www.trumanlegal.com

RECEIVED

MAR 27 2009

CLERK OF THE COURT





1 Lien Claimant, PROFESSIONAL DOORS AND MILLWORKS, LLC, a Nevada limited  
2 liability company("PDM"), by and through its attorneys, the law offices of T. James Truman &  
3 Associates, and for its Statement of Facts Constituting Lien Claim and Complaint and Third Party  
4 Complaint against the Defendants and Third Party Defendants GEMSTONE DEVELOPMENT  
5 WEST, INC., a Nevada corporation ("Gemstone"); CAMCO PACIFIC CONSTRUCTION  
6 COMPANY, INC.; a foreign corporation ("CAMCO"); FIDELITY AND DEPOSIT COMPANY  
7 OF MARYLAND ("Fidelity"); DOES I through X, inclusive, and ROE CORPORATIONS I through  
8 X, inclusive, alleges and states as follows:

9 **GENERAL ALLEGATIONS**

10 1. Plaintiff PDM is and was at all times relevant hereto, a Nevada corporation authorized  
11 to do business in the County of Clark, State of Nevada and licensed by the Nevada State Contractor's  
12 Board under license number 0052351.

13 2. PDM is informed and believes, and therefore alleges, Defendant Gemstone is a  
14 Nevada corporation, licensed to and doing business in the County of Clark, State of Nevada.  
15 Plaintiff is informed and believes, and therefore alleges that Gemstone is the owner of the Manhattan  
16 West Project located at 9205 W. Russell Road, Las Vegas, NV, Assessor's Parcel Numbers 163-32-  
17 112-001 through 163-32-112-246 (formerly known as APN 163-32-101-019)(the "Project").

18 3. PDM is informed and believes, and therefore alleges, Third Party Defendant CAMCO  
19 is a Foreign corporation which was active and authorized to and doing business in the State of  
20 Nevada, Clark County during the time of the allegations set forth below, was authorized to do  
21 business in the County of Clark, State of Nevada, and is licensed by the Nevada State Contractors  
22 Board under license number 0037507, but was cancelled on February 1, 2009.

23 4. PDM is informed and believes, and therefore alleges that Third Party Defendant  
24 Fidelity provided bond number 8739721 in the amount of \$50,000.00 on behalf of Defendant  
25 CAMCO, for the purpose of allowing CAMCO to be licensed by the Nevada State Contractors  
26 Board. One of the purposes of the bond is to pay those laborers and suppliers of material who are  
27 not paid by CAMCO. PDM is within the class of persons for whose benefit the bond was provided.

28 5. The true names and characters of DOES I through X, inclusive, and ROE

1 CORPORATIONS I through X, inclusive, whether individual, corporate, associate, or otherwise, are  
2 unknown to Plaintiff, who, therefore, sues said defendants designated as DOES I through X and  
3 ROE CORPORATIONS I through X, as responsible in some manner for the events and happenings  
4 referred to herein and Plaintiff will ask leave of this Court to amend this Complaint to insert the true  
5 names and characters of DOES I through X, and/or ROE CORPORATIONS I through X, when the  
6 same have been ascertained, and to join such defendants in this action.

7 6. PDM is informed and believes, and therefore alleges, APCO CONSTRUCTION  
8 ("APCO") was the General Contractor for the Project.

9 7. APCO Construction ("APCO") subcontracted with PDM to perform certain of the  
10 work required by the Sub-Contract Agreement ("Subcontract"). A true and correct copy of the  
11 Subcontract is attached hereto as **Exhibit "1."**

12 8. PDM and CAMCO subsequently entered into a "Ratification and Amendment of  
13 Subcontract Agreement" wherein CAMCO agreed to replace APCO as the Contractor under the  
14 Subcontract ("Ratification"). A true and correct copy of the Ratification is attached hereto as  
15 **Exhibit "2."**

16 9. PDM performed the work as required under the Subcontract and Ratification  
17 (hereinafter jointly referred to as "Agreements").

18 10. The original sum of the Subcontract is \$582,966.86. The total amount of all additional  
19 or changed work, materials and equipment is \$920,105.95. After payments received by CAMCO  
20 and or APCO to PDM in the amount of \$841,766.09, PDM is still owed the amount of \$582,966.86.

21 11. CAMCO has not paid PDM for the outstanding balance on the Agreements, leaving  
22 the amount of \$582,966.86 due and owing to PDM.

23 12. PDM performed the work as required under the Agreements.

24 13. Because it was not paid the balance due of \$582,966.86 for the aforementioned work,  
25 PDM recorded a Notice of Lien on January 23, 2009 in the office of the Clark County Recorder in  
26 Book No. 20090123 as Instrument No. 0004055 (the "Lien"). A copy of said lien is attached as  
27 **Exhibit "3."**

28 14. Defendant CAMCO has failed and refused and continues to fail and refuses to pay

1 the balance of \$582,966.86, together with interest accruing thereon, costs and attorney's fees incurred  
2 in these proceedings. Judgment should now be entered against all Defendants in the amount of  
3 \$582,966.86, jointly and severally, and in favor of Plaintiff, together with interest, costs, and  
4 attorneys fees incurred herein.

5 **FIRST CLAIM FOR RELIEF**

6 **(Lien Foreclosure)**

7 15. PDM repeats, realleges, and incorporates each and every paragraph contained above  
8 as though fully set forth herein.

9 16. PDM entered into agreements with CAMCO for PDM to provide various work, labor,  
10 and materials toward the construction and improvement of the Project and that CAMCO would fully  
11 pay PDM for its work, labor, and supplied materials pursuant to the Agreements.

12 17. PDM provided the agreed upon work, labor, and materials toward the construction  
13 and improvements of the Project. However, PDM has not been fully paid for its work, labor, and  
14 materials.

15 18. Because CAMCO failed to fully pay PDM for its work, labor, and materials, PDM  
16 recorded the Lien with the Clark County Recorder's Office.

17 19. PDM is entitled to recover in this action the costs and fees incurred in preparing,  
18 recording, and serving its Lien.

19 20. PDM's Lien is charged against the Property where the Agreements is located and has  
20 been properly perfected pursuant to NRS Chapter 108. PDM is therefore entitled to an Order from  
21 this Court directing that the subject Property be sold and foreclosed upon and that from the proceeds  
22 of the sale, PDM be paid the principal sum of \$582,966.86, together with interest accrued thereon,  
23 plus reimbursement of the cost of suit and attorneys fees that PDM has incurred and continues to  
24 incur in connection with this action.

25 21. It has been necessary for PDM to retain the services of an attorney and to incur  
26 attorneys' fees and costs to prosecute this action and, therefore, PDM is entitled to reimbursement  
27 for those attorneys' fees and costs incurred herein.

28 ///

**SECOND CAUSE OF ACTION**

**(Breach of Contract against CAMCO)**

22. PDM repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

23. The Defendant failed to and refused to pay PDM for its work, labor, and materials supplied to the Project.

24. The Defendant has breached the Agreements with PDM by failing to pay PDM for its work, labor, and materials supplied to the Project.

25. As a direct and proximate result of CAMCO's breach of the Agreements, there is now due and owing to PDM the sum of \$582,966.86, together with interest accruing thereon at the highest legal rate, costs and attorney's fees in these proceedings for which judgment should now be entered against the Defendant CAMCO, and in favor of PDM.

**THIRD CAUSE OF ACTION**

**(Unjust Enrichment against CAMCO, and Gemstone)**

26. PDM repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein at length.

27. PDM has conferred a benefit upon the above named Defendants for services provided to CAMCO pursuant to the Subcontract and Ratification, and for services provided to Gemstone as the owner of the Project, and Defendants are unjustly retaining the benefits of PDM's services.

28. The reasonable value of the work, labor, and materials that PDM completed, at the request of the Defendants is \$582,966.86, not including interest, fees, and costs. This amount is now due and owing to PDM by the Defendants CAMCO, and Gemstone, jointly and severally, together with the interest thereon.

**FOURTH CAUSE OF ACTION**

**(Breach of Good Faith and Fair Dealing against CAMCO)**

29. PDM repeats, realleges, and incorporates each and every paragraph contained above as though fully set forth herein.

30. Implied by law in every agreement is the covenant of good faith and fair dealing.

1           31.     The Defendant CAMCO agreed and promised to fully pay PDM for its work, labor,  
2 and materials supplied to the Project.

3           32.     The Defendant has failed and refused to pay PDM for its work, labor, and materials  
4 supplied to the Project.

5           33.     The Defendant's failure and refusal is a breach of their covenant of good faith and  
6 fair dealing.

7           34.     As a direct and proximate result, PDM has suffered damages in excess of \$10,000.00,  
8 plus interest at the legal rate.

9                                   **FIFTH CLAIM FOR RELIEF**

10                               **(Monies Due and Owing against CAMCO)**

11           35.     PDM repeats, realleges, and incorporates each and every paragraph contained above  
12 as though fully set forth herein.

13           36.     CAMCO owes to PDM the sum of \$582,966.86, together with interest, attorneys'  
14 fees and costs accruing thereon, for work, labor, and materials supplied to the Project by PDM, and  
15 although demand has been made upon CAMCO for payment of said sum, CAMCO has failed,  
16 neglected and refused, and continues to fail, neglect and refuses to pay the same.

17           37.     PDM is entitled to judgment against CAMCO, in the amount of \$582,966.86, together  
18 with interest thereon at the highest legal rate until paid in full and PDM's reasonable costs and  
19 attorney's fees incurred herein.

20                                   **SIXTH CLAIM FOR RELIEF**

21                               **(Bond Claim against Fidelity)**

22           38.     PDM repeats, realleges, and incorporates each and every paragraph contained above  
23 as though fully set forth herein.

24           39.     Fidelity provided bond number 8739721 in the amount of \$50,000.00 for the purpose  
25 of allowing CAMCO to be licensed by the Nevada State Contractors Board. One of the purposes  
26 of the bond is to pay those laborers and suppliers of material who are not paid by CAMCO. PDM  
27 is within the class of persons for whose benefit the bond was provided.

28           40.     PDM is entitled to judgment against Fidelity in the amount of \$50,000.00 as a result

1 of the work, materials and services provided by PDM under the agreement with CAMCO for the  
2 improvement of the Project.

3 WHEREFORE, PDM prays for the following:

4 1. That this Court enter a Judgment against Defendant CAMCO and Third Party  
5 Defendant Gemstone, jointly and severally, in an amount in excess of \$10,000.00, plus interest at  
6 the legal rate from the date the amount became due until paid;

7 2. For judgment in favor of Plaintiff and against Third Party Defendant Fidelity in an  
8 amount in excess of \$10,000.00;

9 3. That this Court enter Judgment against Defendant CAMCO and Third Party  
10 Defendant Gemstone, jointly and severally, for reasonable attorneys fees and cost of the suit incurred  
11 herein; and

12 4. That the Court declare the rank and priority of the lien claims and secured claims and  
13 that the Lien recorded by PDM be ascertained and adjudged as a valid lien with priority over all the  
14 claims;

15 5. That the Lien be enforced according to law;

16 6. That the Court direct a foreclosure sale of the subject Property;

17 7. That the Property be sold and the proceeds be applied to the payment of sums found  
18 due to PDM;

19 8. That the Court enter such deficiency Judgment against Defendant CAMCO and Third  
20 Party Defendant Gemstone, jointly and severally, as may be proper on the premises; and

21 9. For such other and further relief as the Court may deem just and proper.

22 DATED this 27 day of March, 2009.

23 T. JAMES TRUMAN & ASSOCIATES

24 By: 

25 T. James Truman, Esq.  
26 Nevada State Bar No. 003620  
27 Stephen M. Dixon, Esq.  
28 Nevada State Bar No. 10025  
3654 N. Rancho Dr.  
Las Vegas, Nevada 89130  
Attorneys for Lien Claimant  
Professional Doors and Millworks, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of T. JAMES TRUMAN & ASSOCIATES and that on the 27<sup>th</sup> day of March, 2009, I placed a true and correct copy of the foregoing **PROFESSIONAL DOORS AND MILLWORKS, LLC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM, COMPLAINT AND THIRD PARTY COMPLAINT** in the United States mails at Las Vegas, Nevada, with 1st class postage prepaid and addressed as follows:

Gwen Rutar Mullins, Esq.  
Wade B. Gochnour, Esq.  
Howard & Howard  
3800 Howard Hughes Pkwy., #1400  
Las Vegas, NV 89169  
Attorneys for Apco Construction

Martin A. Little, Esq.  
Jolley Urga Wirth Woodbury & Standish  
3800 Howard Hughes Pkwy., 16th Floor  
Las Vegas, NV 89169  
Attorneys for Steel Structures, Inc. and  
Nevada Prefab Engineers, Inc.

Gregory S. Gilbert, Esq.  
Sean D. Thueson, Esq.  
Holland & Hart  
3800 Howard Hughes Pkwy., 10<sup>th</sup> Floor  
Las Vegas, NV 89169  
Attorneys for Gemstone Development West

Justin L. Watkins, Esq.  
Watt, Tieder, Hoffar & Fitzgerald  
3993 Howard Hughes Pkwy., #400  
Las Vegas, NV 89169  
Attorneys for Cabinetec, Inc.

Nikola Skrinjaric, Esq.  
2500 N. Buffalo, Ste. 250  
Las Vegas, NV 89128  
Attorney for Nevada Construction Services

D. Shane Clifford, Esq.  
Robin E. Perkins, Esq.  
Dixon, Truman, Fisher & Clifford  
221 N. Buffalo Dr., #A  
Las Vegas, NV 89145  
Attorneys for Ahern Rental, Inc.

Marilyn G. Fine, Esq.  
Meier & Fine, LLC  
2300 W. Sahara Ave., #430  
Box 11  
Las Vegas, NV 89102  
Attorneys for Scott Financial Corporation

Steven L. Morris, Esq.  
Woodbury, Morris & Brown  
701 N. Green Valley Parkway, #110  
Henderson, NV 89074  
Attorney for Camco Pacific Construction Co.,  
Inc.

Donald H. Williams, Esq.  
Williams & Wiese Law Offices  
612 S. Tenth St.  
Las Vegas, Nevada 89101  
Attorneys for Harsco Corporation

Jennifer R. Lloyd-Robinson, Esq.  
Pezzillo Robinson  
6750 Via Austi Pkwy., #170  
Las Vegas, NV 89119  
Attorneys for Tri-City Drywall, Inc.

Jeffrey R. Albregts, Esq.  
Sanford, Driffs, Walch, Kearney, Holley &  
Thompson  
400 S. Fourth St., 3rd Floor  
Las Vegas, NV 89101  
Attorneys for Arch Aluminum and Glass Co.

Christopher R. McCullough, Esq.  
McCullough, Perez & Associates  
601 S. Rancho Dr., #A-10  
Las Vegas, NV 89106  
Attorneys for Cell Crete Fireproofing of NV,  
Inc.

  
An Employee of T. James Truman & Associates

# **EXHIBIT "1"**



## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-33 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 14th day of May, 2008, between:

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 Professional Doors and Millwork, LLC  
2951 Marion Drive #117  
Las Vegas, NV 89115 P 702-400-0491 F (702) 643-0856

(hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 52351

Limit: \$700,000.00

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.
- 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

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Subcontractor   P

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**

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**.

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 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

APCO Construction \_\_\_\_\_  
Subcontractor 

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 20<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 20<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

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Subcontractor Q

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.
- 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.
- 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 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.

APCO Construction \_\_\_\_\_  
Subcontractor   C

- (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.

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Subcontractor

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 15% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time 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.

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Subcontractor   P

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

APCO Construction \_\_\_\_\_  
Subcontractor 



- 9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, 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 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.

APCO Construction \_\_\_\_\_  
Subcontractor   P


- 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 Obligee, 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:

APCO Construction \_\_\_\_\_  
Subcontractor (P)

- 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 APCO Construction, 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."
  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, APCO Construction 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 APCO Construction, 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,

APCO Construction \_\_\_\_\_  
 Subcontractor 

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.

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

APCO Construction \_\_\_\_\_  
Subcontractor   C

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.

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 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

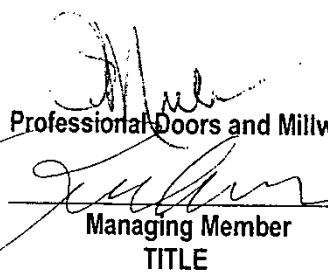
APCO Construction \_\_\_\_\_  
Subcontractor Q

- 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.

APCO Construction \_\_\_\_\_  
Subcontractor Q

- 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.

  
Professional Doors and Millwork, LLC.

Managing Member  
TITLE

APCO CONSTRUCTION

  
Project Manager  
TITLE

APCO Construction \_\_\_\_\_  
Subcontractor 

**EXHIBIT 'A'**  
**Subcontractor Scope of Work**  
APCO Contract No. 0168-033

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) 1 through 8 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.

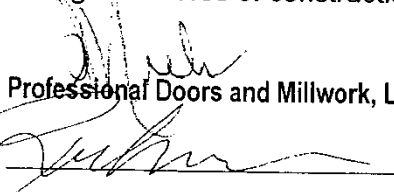
The Scope of Work shall specifically include but not be limited to the following list of bid items:

| ITEM # | DESCRIPTION | UNIT | QTY | PRICE | TOTAL |
|--------|-------------|------|-----|-------|-------|
|--------|-------------|------|-----|-------|-------|

**Furnish and Install all Doors, Frames and Hardware, Interior Trim, Shelving , Bath Hardware at Building 7:** Complete work per governing codes, furnish and install all necessary Design, Labor, Split Shifts, Field Measurements, Material, Equipment, Cartage, Freight, Hoisting, Supervision, Taxes and Necessary Insurance to fabricate and deliver, complete, all Doors, Frames and Hardware, Interior Casing & Base Trim, Closet Shelving w/Pole, Bath Hardware @ Public & Units per plans and Specifications by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering, (see attached Project Drawing List), in the amount of **Five Hundred Four Thousand Six Hundred Twenty Seven dollars and no/100, (\$504,627.00).**

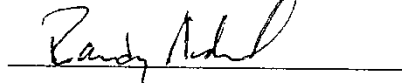
*NO Corridor millwork B.O. Not included, Bid per PM proposal attached.*

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

  
Professional Doors and Millwork, LLC.

Managing Member  
TITLE

APCO CONSTRUCTION



Project Manager  
TITLE

APCO Construction \_\_\_\_\_  
Subcontractor



## 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 \_\_\_\_\_ 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.
- (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 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.

APCO Construction \_\_\_\_\_  
Subcontractor

# Pdm Professional Doors & Millworks, LLC.

License Number: 0052351 - Fully Insured

2951 Marion Drive, Suite #117 - Las Vegas, NV 89115

Ph: 702-643-8268 FAX 702-643-0856

Estimate for : APCO - Manhattan West - Building 7

Page takeoff information - Phase I - Building Type III

| Cost Category | DATE             |               |               |        | DATE   |
|---------------|------------------|---------------|---------------|--------|--------|
|               | Doors and Frames | Door Hardware | Doors Casings | BASE   |        |
| Material Bid  | 195,035          | 152,670       | 349           | 13,031 | 3,131  |
| Labor Bid     | 33,446           | 51,974        | 275           | 29,605 | 1,128  |
| Total Bid     | 228,481          | 204,644       | 625           | 42,636 | 4,259  |
|               |                  |               |               |        | 23,982 |

Bath  
Hardware  
Total

Project Total Bid  
\$504,627

CORRIDOR MILLWORK - NO BID

# Pdm Professional Doors & Millwork, LLC.

License Number: 0052351

- Fully Insured

2951 Marion Drive, Suite #117 - Las Vegas, NV 89115

Ph: 702

FAX

643-8268

702-

Estimate for : APCO - Manhattan West - Building 7

Page takeoff information - Phase I - Building Type III

DATE

5/4/2008

| Project Door totals | Door Type                   | Width | Height | Thick  | Description  | HWR Group | Jamb mat and size                                | Molding                      |
|---------------------|-----------------------------|-------|--------|--------|--|-----------|--|------------------------------|
| 75                  | UNIT ENTRY - A              | 3'-0" | 8'-0"  | 1 3/4" | SCHB raw Wipeep 20 minute fire rated and labelled fire and smoke | 11        | 5 7/8" HM Jamb 20 minute labelled fire and smoke | none                         |
| 81                  | Louvered Utility Closet - J | 3'-0" | 8'-0"  | 1 3/8" | HC with Louver doors, PR 1" 8" swing doors                       | 15        | 4 3/4" MDF Jamb                                  | 2 1/2" #711 Casing - 2 sides |
| 88                  | Closet Bypass - E 5'0"      | 5'-0" | 8'-0"  | 1 3/8" | HC Raw flush, PR 2'-6" bypass doors                              | 16        | Bump Jamb 3- sides w/ 1 x 3 skirt at head track  | 2 1/2" #711 Casing - 2 sides |
| 59                  | Entry Closet - Bc           | 2'-0" | 8'-0"  | 1 3/8" | HC Raw flush   | 12        | 4 3/4" MDF Jamb                                  | 2 1/2" #711 Casing - 2 sides |
| 79                  | Bedroom/Bathr oom - Ba      | 3'-0" | 8'-0"  | 1 3/8" | HC Raw flush   | 13        | 6 3/4" MDF Jamb                                  | 2 1/2" #711 Casing - 2 sides |
| 80                  | Closet - Db PR swing doors  | 5'-0" | 8'-0"  | 1 3/8" | HC Raw flush, PR 2'-6" swing doors                               | 15        | 4 3/4" MDF Jamb                                  | 2 1/2" #711 Casing - 2 sides |
| 241                 | Bedroom/Bathr oom - Bb      | 3'-0" | 8'-0"  | 1 3/8" | HC Raw flush   | 13        | 4 3/4" MDF Jamb                                  | 2 1/2" #711 Casing - 2 sides |

|             |                             |       |       |        |  |   |    |   |                                       |
|-------------|-----------------------------|-------|-------|--------|--|---|----|---|---------------------------------------|
| 7           | Closet Bypass -<br>Ea 4'-0" | 4'-0" | 8'-0" | 1 3/8" |  | HC Raw flush, PR 2'-0"<br>bypass doors  | 16 | Bump<br>Jambs 3-<br>sides w/ 1<br>x 3 skirt at<br>head track<br>sides | 2 1/2"<br>#711<br>Casing - 2<br>sides |
| 117         | Bath - D PR<br>swing doors  | 3'-0" | 8'-0" | 1 3/8" |  | HC Raw flush, PR 1'-8"<br>swing doors   | 19 | 4 3/4"<br>MDF<br>Jamb   | 2 1/2"<br>#711<br>Casing - 2<br>sides |
| 14          | Mechanical - Ha<br>Louvered | 3'-0" | 8'-0" | 1 3/8" |  | HM flush with 24x24 bottom<br>vent  | 12 | 6 3/4" HM<br>Jamb   | none                                  |
| 128         | Bath - K PR<br>swing doors  | 3'-0" | 8'-0" | 1 3/8" |  | HC Raw flush, PR 1'-8"<br>swing doors   | 15 | 6 3/4"<br>MDF<br>Jamb   | 2 1/2"<br>#711<br>Casing - 2<br>sides |
| 80          | Type M                      | 3'-0" | 8'-0" | 1 3/4" |  | Flat Panel HM   | 37 | 6 7/8" HM<br>Jamb   | none                                  |
| 20          | Stairs HM                   | 3'-0" | 8'-0" | 2 3/4" |  | HM Mineral Core 250 degree<br>temp rise doors rated for 90<br>minutes fire and smoke -<br>labeled | 2  | 6 3/4" HM<br>Jamb   | none                                  |
| 44          | Type M - 20<br>Minute       | 3'-0" | 8'-0" | 1 3/4" |  | Flush Panel HM Labeled 20<br>Minute for Fire and Smoke  | 4  | 6 3/4" HM<br>Jamb   | none                                  |
| 3           | Type L - 90<br>Minute       | 6'-0" | 8'-0" | 1 3/4" |  | Pair 3'-0" Flush Panel HM<br>Labeled 90 Minute for Fire<br>and Smoke                              | 7  | 5 3/4" HM<br>Jamb   | none                                  |
| 3           | Type M - 45<br>Minute       | 3'-0" | 8'-0" | 1 3/4" |  | Flush Panel HM Labeled 45<br>Minute for Fire and Smoke  | 6  | 5 3/4" HM<br>Jamb   | none                                  |
| 11          | Type M - 90<br>Minute       | 3'-0" | 8'-0" | 1 3/4" |  | Flush Panel HM Labeled 90<br>Minute for Fire and Smoke  | 22 | 6 3/4" HM<br>Jamb   | none                                  |
| 30          | Type L - 20<br>Minutes      | 6'-0" | 8'-0" | 1 3/4" |  | Pair 3'-0" Flush Panel HM<br>Labeled 20 Minute for Fire<br>and Smoke                              | 10 | 6 3/4" HM<br>Jamb   | none                                  |
| 75          | Sliders to be<br>Cased      |       |       |        |  |   |    |   |                                       |
| Total count |                             |       |       |        |  |   |    |   |                                       |
| 1194        | Total doors                 |       |       |        |  |   |    |   |                                       |

|      |             |
|------|-------------|
| 1194 | Total doors |
|------|-------------|

| Total<br>Count for<br>Hardware<br>sets |  | Hardware<br>Set Number | Hardware See attached<br>List |
|--|--|------------------------|-------------------------------|
| 20                                     |  | 2                      | Per attached list             |
| 44                                     |  | 4                      | Per attached list             |
| 3                                      |  | 6                      | Per attached list             |
| 3                                      |  | 7                      | Per attached list             |

|     |  |  |    |                   |
|-----|--|--|----|-------------------|
| 30' |  |  | 10 | Per attached list |
| 75  |  |  | 11 | Per attached list |
| 73  |  |  | 12 | Per attached list |
| 320 |  |  | 13 | Per attached list |
| 267 |  |  | 15 | Per attached list |
| 76  |  |  | 16 | Per attached list |
| 117 |  |  | 19 | Per attached list |
| 11  |  |  | 22 | Per attached list |
| 80  |  |  | 37 | Per attached list |

### Door Casings

|            |       |          |           |
|------------|-------|----------|-----------|
| MDF 2 1/2  |       | Total LF |           |
| 711        | 1800  |          |           |
| MDF BASE   |       | Total LF |           |
| MDF 3 1/2" |       |          | 22 degree |
| 711        | 48374 |          |           |

### Interior Millwork

|           |      |          |  |
|-----------|------|----------|--|
| PB        |      | Total LF |  |
| 12" Shelf | 1475 |          |  |
| Not       |      |          |  |
| Stained   | 1475 |          |  |
| ORION     |      |          |  |

### Bath Hardware

|              |     |             |  |
|--------------|-----|-------------|--|
| SERIES 700   |     | Total count |  |
| Y. Ring      | 141 |             |  |
| Paper Holder | 141 |             |  |
| Towel Bar    | 141 |             |  |
| Standard     |     |             |  |
| Straight     |     |             |  |
| Shower Rod   | 141 |             |  |
| 1 of each -  |     |             |  |
| 24", 36" &   |     |             |  |
| 48" Grab     |     |             |  |
| Bars in HCA  | 10  |             |  |

### Public Areas

|                |    |  |  |
|----------------|----|--|--|
| 42" Grab       |    |  |  |
| Bar            | 6  |  |  |
| 36" Grab       |    |  |  |
| Bar            | 4  |  |  |
| Double Roll    |    |  |  |
| Disp           | 15 |  |  |
| Trash/Towel    |    |  |  |
| Dispenser      | 4  |  |  |
| Soap dispenser | 16 |  |  |

|             |  |  |  |    |  |
|-------------|--|--|--|----|--|
| Seat        |  |  |  |    |  |
| Dispenser   |  |  |  | 15 |  |
| Fold Down   |  |  |  |    |  |
| Shower      |  |  |  |    |  |
| Bench in HC |  |  |  | 16 |  |
| Toilet      |  |  |  |    |  |
| Partition   |  |  |  | 15 |  |
| Urinal      |  |  |  |    |  |
| Partition   |  |  |  | 3  |  |

Public Area

Furnish 10, 20  
1205.44 1193.40

# 1540

Toilet Partitions

SM

11

Furnish 2  
1205.44 1193.40

Toilet accessories

# **EXHIBIT "2"**



## Transmittal Cover Sheet

Detailed, Grouped by Each Transmittal Number

**Manhattan West****Project # 0810****Camco Pacific Construction Co., Inc.**

Building 2: 9275 W. Russell Road, Las Vegas 89148 Tel: Fax:

Building 3: 9205 W. Russell Road, Las Vegas 89148

Building 8: 9265 W. Russell Road Las Vegas 89148

Building 9: 9255 W. Russell Road Las Vegas 89148

Building 7: 9215 W. Russell Road, Las Vegas 89148

**Date:** 10/3/2008**Reference Number:** 0044**Transmitted To****Transmitted By**

Rich Niev  
Professional Doors & Millworks, LLC  
2951 Marion Dr.  
Suite 101  
Las Vegas, NV 89115  
Telephone: 702-839-9990

Yvonne Farren  
Camco Pacific Construction Co., Inc.  
2925 E. Patrick Lane  
Suite G  
Las Vegas, NV 89120

☐ **Acknowledgement Required****Package Transmitted For****Delivered Via****Tracking Number**

| Item # | Qty | Item      | Reference  | Description  | Notes   | Status |
|--------|-----|-----------|--|--|---|--------|
| 001    | 1   | Contracts | 810.Prims -<br>Professional<br>Doors &<br>Millworks, LLC | HM Frames & Doors for<br>Basement, Stairwells & Bldgs 8<br>& 9 | Contracts 810.Prims -<br>Professional Doors & Millworks,<br>LLC |        |

**Cc: Company Name****Contact Name****Copies****Notes****Remarks**

Enclosed please find your executed subcontractor agreement.

**Signature****Signed Date**

Prolog Manager

Printed on: 10/3/2008

Camco Pacific

Page 1

AA 000404



**RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT  
PROFESSIONAL DOORS AND MILLWORKS, LLC**

**This Ratification and Amendment of Subcontract Agreement ("Ratification") is  
made as of August 26, 2008 (the "Effective Date"), between PROFESSIONAL DOORS  
AND MILLWORKS, LLC  
("Subcontractor"), and Camco Pacific Construction Company, Inc. ("Camco").**

**RECITALS**

A. Subcontractor and Asphalt Products Corporation also known as APCO Construction ("APCO") entered into the written Subcontract Agreement attached hereto as **Exhibit A** (the "**Subcontract Agreement**") related to the ManhattanWest Condominiums project located at West Russell Road and Rocky Hill Street in Clark County, Nevada.

B. Subcontractor and Camco desire to acknowledge, ratify, and agree to the terms of the Subcontract Agreement, whereby Camco will replace APCO as the "Contractor" under the Subcontract Agreement but, subject to the terms of this Ratification, all other terms and conditions of the Subcontract Agreement will remain in full force and effect.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Subcontractor and Camco agree as follows:

**AGREEMENT**

1. **Amendments.** Attached hereto as **Exhibit B** are all of the amendments and modifications to the Subcontract Agreement that were executed by APCO and Subcontractor prior to the Effective Date (the "**Amendments**").

2. **Change Orders.** Attached hereto as **Exhibit C** are all of the change orders that have been submitted by Subcontractor to APCO prior to the Effective Date (the "**Submitted Change Orders**"). Set forth on **Exhibit D** hereto is a list of the Submitted Change Orders that have been approved by Camco as of the Effective Date (the "**Previously Approved Change Orders**").

3. **Removal of Future Buildings.** Notwithstanding any provision of this Ratification, Section 9.8 of the Subcontract Agreement is hereby amended and restated as follows:

**9.8 Consideration.** Notwithstanding any provision of this Subcontract Agreement, in the event of a partial termination of the Subcontract Agreement, at the time of such termination, if no work has been performed by Subcontractor on a given building or buildings that are subject to such termination, (a) the sole compensation to be paid by Contractor to Subcontractor with respect to such building or buildings shall be an aggregate of \$100 and (b) in no event shall Subcontractor be entitled to profit, markup, or compensation for any form of bulk discounts on services or work not performed.

4. **Subcontractor Scope of Work.** Notwithstanding any provision of this Ratification, the second paragraph of Exhibit A Subcontractor Scope of Work APCO Contract No. 168-21 is hereby amended and restated as follows:

The Scope of Work shall consist of the following:

HM Frames: 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 HM Doors and Frames for the Basement and Stairwells for Buildings 8 & 9 per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers and WRG Engineering pursuant to the Project Drawing List for the following amounts per building:

| <b>Building</b> | <b>Amount</b>      |
|-----------------|--------------------|
| Building 1      | \$N/A              |
| Building 2      | \$N/A              |
| Building 3      | \$N/A              |
| Building 4      | \$N/A              |
| Building 5      | \$N/A              |
| Building 6      | \$N/A              |
| Building 7      | \$N/A              |
| Building 8      | \$5,335.00         |
| Building 9      | \$5,335.00         |
| Building 10     | \$N/A              |
| Building 11     | \$N/A              |
| Building 12     | \$N/A              |
| <b>Total:</b>   | <b>\$10,670.00</b> |

Notwithstanding any provision of this Subcontract Agreement, Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction Drawings August 29, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to Subcontractor all of the shop drawings for the Project (collectively, the "Project

**Drawing List**). Prior to the effective date, (a) Subcontractor received and reviewed the drawings, documents, and submittals contained in such Project Drawing List and (b) both parties hereby acknowledge that the version of such documents as of the Effective Date are hereby incorporated into this Agreement and shall serve as the relevant design documents for purposes of this Agreement.

Notwithstanding any provision of this Subcontract Agreement, the Scope of Work for (a) Buildings 2, 3, 7, 8, and 9 must be completed pursuant to the updated ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008 and attached hereto as **Schedule 1** (the "**Camco Schedule**") and (b) Buildings 1, 4, 5, 6, 10, 11, and 12 must be completed pursuant to the schedule to be delivered to Subcontractor by Contractor at the time that work on such buildings is commenced. Furthermore, it is expressly understood that Subcontractor shall provide such additional manpower and/or work such additional shifts as are reasonably requested by Camco, without additional expense to Camco.

**5. Ratification.** Subcontractor and Camco agree that (a) the terms of the Subcontract Agreement (as amended by this Ratification and including all Amendments, Previously Approved Change Orders, and the Camco Schedule) will govern their relationship regarding the Project, (b) Camco will be the "Contractor" under the Subcontract Agreement, and (c) Subcontractor and Camco agree to perform and fulfill all of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled thereunder by Subcontractor and Camco, respectively. Additionally, Subcontractor and Camco will be entitled to receive all of the benefits of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled by Camco and Subcontractor, respectively. Notwithstanding any provision of this Ratification, this Ratification shall not be construed as an (i) approval or acceptance by Camco of the Submitted Change Orders that are not Previously Approved Change Orders or (b) acceptance by Subcontractor of Camco's decision, as of the Effective Date, not to approve the Submitted Change Orders that are not Previously Approved Change Orders.

**6. Value Engineering.** In the event that Camco delivers written notice to Subcontractor of a specific value engineering initiative (the "**VE Initiative**"), Subcontractor will provide to Camco, within three days, a revised price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Camco (the "**Value Engineering Deduct**"). Notwithstanding any provision of this Ratification or the Subcontract, in the event that Subcontractor fails to comply with the previous sentence of this Section 6, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work. Notwithstanding any provision of this Ratification or the Subcontract, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Camco, Camco shall have the right to obtain an alternate price from a third-party, and if Subcontractor fails to meet such price, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work.

**7. APCO Relationship.** Notwithstanding any provision of this Ratification, this Ratification shall not (a) be construed to alter the contractual relationship between APCO and Subcontractor prior to the Effective Date or (b) prejudice any rights or obligations of APCO and

Subcontractor, to each other, arising or applicable under the Subcontract Agreement prior to the Effective Date.

8. **Third-Party Beneficiary.** Notwithstanding any provision of this Ratification or the Subcontract Agreement, it is expressly agreed that Gemstone Development West, Inc. is an intended third-party beneficiary of the obligations of Subcontractor under the Subcontractor Agreement, including without limitation, any indemnity, warranty, insurance, or liquidated damage provisions.

9. **Successors and Assigns.** This Assignment is binding on and inures to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

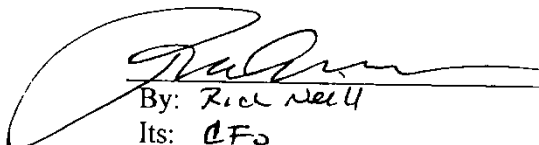
10. **Governing Law.** This Assignment will be construed, interpreted, and enforced in accordance with, and governed by, the laws of the State of Nevada, including Nevada's statutes of limitations, but without regard to Nevada's conflicts of laws provisions.

11. **Further Assurances.** The parties agree to execute all instruments and documents of further assurance and will do any and all such acts as may be reasonably required to carry out their obligations and to consummate the transactions contemplated herein.

IN WITNESS WHEREOF, the parties have executed this Ratification as of the Effective Date.

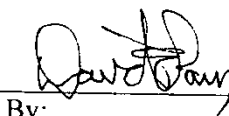
**Subcontractor**

*Professional Law & M. L. L. L.*, a *Nevada* corporation

  
By: *Rick Neill*  
Its: *LF*

**Camco**

Camco Pacific Construction Company, Inc., a  
California corporation

  
By: *David J. P. P.*  
Its: *SYP*

**SCHEDULE 1  
TO EXHIBIT A  
TO THE SUBCONTRACT AGREEMENT**

Camco Schedule

PROJECT OVERVIEW

|            |                            |         |
|------------|----------------------------|---------|
| PHASE 1    | PHASE 1 COMPLETE           | 26DEC08 |
| BUILDING 2 |                            |         |
| B2-2320    | Roofing Complete           | 03SEP08 |
| B2-2340    | Building Dry In            | 11SEP08 |
| B2-2330    | Building Energized         | 18SEP08 |
| B2-2300    | HVAC test and balance      | 25SEP08 |
| B2-2360    | Fire/Life/Safety           | 15OCT08 |
| B2-2370    | Building 2 Sub. Completion | 17OCT08 |
| B2-2380    | Building 2 Turnover        | 20OCT08 |
| BUILDING 3 |                            |         |
| B3-2200    | Building Dry In            | 08SEP08 |
| B3-2180    | Roofing Complete           | 15SEP08 |
| B3-2190    | Building Energized         | 24SEP08 |
| B3-2210    | HVAC test and balance      | 29SEP08 |
| B3-2240    | Fire/Life/Safety           | 13OCT08 |
| B3-2250    | Building 3 Sub. Completion | 20OCT08 |
| B3-2260    | Building 3 Turnover        | 20OCT08 |
| BUILDING 7 |                            |         |
| B7-6540    | Roofing Complete           | 14OCT08 |
| B7-6550    | Building Dry In            | 16OCT08 |
| B7-6560    | Building Energized         | 02DEC08 |
| B7-1180    | HVAC Test & Balance        | 04DEC08 |
| B7-6580    | Building Completion        | 18DEC08 |
| B7-6590    | Fire/Life/Safety           | 19DEC08 |
| B7-6600    | Building 7 Sub. Completion | 23DEC08 |
| B7-6610    | Building 7 Turnover        | 23DEC08 |
| BUILDING 8 |                            |         |
| B8-1670    | Roofing Complete           | 15SEP08 |
| B8-1700    | HVAC test and balance      | 29SEP08 |
|            |                            | 03OCT08 |

Early bar  
 Progress bar  
 Critical bar  
 Progress ~ Int

Critical point  
 Summary point  
 Start milestone point  
 Finish milestone point

GEMSTONE DEVELOPMENT  
 MANHATTAN WEST  
 CONSTRUCTION SCHEDULE

Data date 19AUG08  
 Finish date 26DEC08

© Prin  
 a Systems, Inc.

| ID                | Description                            | Early Start | Early Finish |
|-------------------|--|-------------|--------------|
| B8-1690           | Building Dry In                        |             | 03OCT08      |
| B8-1680           | Building Energized                     | 24OCT08     | 30OCT08      |
| B8-1720           | Building Completion                    | 04NOV08     | 05NOV08      |
| B8-1730           | Fire/Life/Safety                       | 05NOV08     | 12NOV08      |
| B8-1740           | Building 8 Sub. Completion             |             | 19NOV08      |
| B8-1750           | Building 8 Turnover                    | 20NOV08     | 26NOV08      |
| <b>BUILDING 9</b> |  |             |              |
| B9-1615           | Roofing Complete                       |             | 26SEP08      |
| B9-1611           | Building Energized                     | 15OCT08     | 22OCT08      |
| B9-1614           | Testing & Balancing                    | 22OCT08     | 29OCT08      |
| B9-1612           | Building Dry In                        |             | 28OCT08      |
| B9-1625           | Building Completion                    | 28OCT08     | 29OCT08      |
| B9-1616           | Fire/Life/Safety                       | 29OCT08     | 05NOV08      |
| B9-1617           | Building 9 Sub. Completion             |             | 18NOV08      |
| B9-1618           | Building 9 Turnover                    | 19NOV08     | 25NOV08      |
| <b>PERMITTING</b> |  |             |              |
| <b>POOLS</b>      |  |             |              |
| 270               | Ground Level Pool Design & Layout      | 14APR08 A   | 25AUG08      |
| 290               | Roof Level Spa Design & Layout         | 25AUG08     | 09SEP08      |
| 280               | Submit Ground Level Pool Design to     | 25AUG08     | 06OCT08      |
| 300               | Submit Roof Level Pool Design to       | 09SEP08     | 20OCT08      |
| 310               | Ground Level Pool Design to Clark      | 06OCT08     | 07OCT08      |
| 320               | Roof Level Pool Design to Clark City - | 20OCT08     | 20OCT08      |
| <b>BUILDING 2</b> |  |             |              |
| <b>STRUCTURE</b>  |  |             |              |
| B2-10             | Form upper ramp                        | 19AUG08     | 21AUG08      |
| B2-70             | Install roof joist members             | 19AUG08     | 22AUG08      |
| B2-20             | Install rebar                          | 21AUG08     | 25AUG08      |
| B2-80             | Built up roofing                       | 22AUG08     | 26AUG08      |
| B2-90             | Detail Trellis Steel                   | 22AUG08     | 29AUG08      |
| B2-30             | Place concrete ramp                    | 25AUG08     | 26AUG08      |
| <b>INTERIOR</b>   |  |             |              |
| B2-1525           | Install Elevator Rails                 | 26AUG08     | 05SEP08      |
| B2-1510           | Tie into Riser                         | 09SEP08     | 10SEP08      |
| B2-1526           | Build Elevator Cars                    | 09SEP08     | 09SEP08      |

AA 000412



| Activity ID          | Description                       | Early Start | Early Finish | 28 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 |
|----------------------|-----------------------------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| B2-1320              | Paint RRoom/BOH Rooms 3rd Floor   | 11SEP08     | 12SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1330              | Ceramic tile 3rd Floor            | 15SEP08     | 16SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1340              | Trim 3rd Floor                    | 16SEP08     | 17SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1350              | Final MEP 3rd Floor               | 18SEP08     | 19SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2240              | Pre-punch walk 3rd Floor          | 19SEP08     | 22SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2250              | Punch list 3rd Floor              | 22SEP08     | 22SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2270              | Final clean 3rd Floor             | 23SEP08     | 24SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| INTERIOR - 4TH FLOOR |                                   |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1400              | OH Fire Sprinkler Rough 4th Floor | 04SEP08     | 05SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1370              | OH Mechanical Rough 4th Floor     | 08SEP08     | 09SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1410              | In-wall MEP Rough 4th Floor       | 08SEP08     | 09SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1420              | MEP Inspections 4th Floor         | 08SEP08     | 09SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1430              | Drywall/Insul/Tape 4th Floor      | 09SEP08     | 11SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1440              | Paint RRoom/BOH Rooms 4th Floor   | 12SEP08     | 15SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1450              | Ceramic tile 4th Floor            | 15SEP08     | 16SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1460              | Trim 4th Floor                    | 15SEP08     | 16SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-1470              | Final MEP 4th Floor               | 17SEP08     | 18SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2260              | Pre-punch walk 4th Floor          | 18SEP08     | 19SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2280              | Punch list 4th Floor              | 19SEP08     | 19SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2290              | Final clean 4th Floor             | 24SEP08     | 25SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| EXTERIOR             |                                   |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2020              | Scaffold/ Lathing                 | 19AUG08     | 25AUG08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2030              | Lathing Inspection                | 25AUG08     | 25AUG08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2040              | Install base coat stucco          | 25AUG08     | 28AUG08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2050              | Base Coat Inspection              | 28AUG08     | 28AUG08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2060              | Install brown coat stucco         | 28AUG08     | 04SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2070              | Install roofing membrane          | 29AUG08     | 03SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2070              | Exterior Brick and Stone          | 03SEP08     | 12SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2450              | Set Roof Top Equipment            | 03SEP08     | 10SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2080              | Install final coat stucco         | 04SEP08     | 10SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2090              | Paint stucco                      | 12SEP08     | 17SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| EXTERIOR - 1ST FLOOR |                                   |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2100              | Stud and sheath 1st floor         | 19AUG08     | 21AUG08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B2-2110              | Install windows 1st floor         | 03SEP08     | 04SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| EXTERIOR - 2' LOOR   |                                   |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

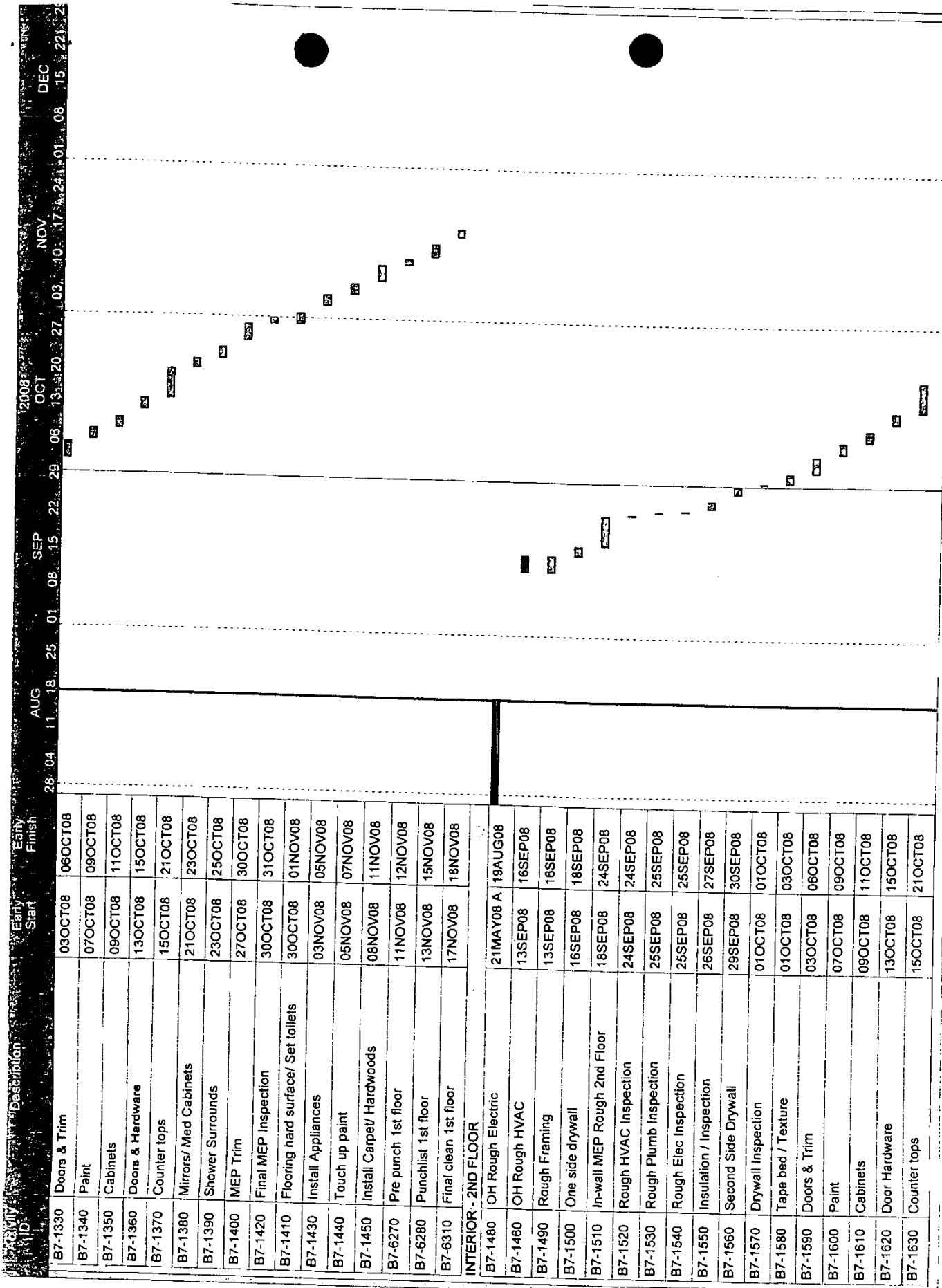






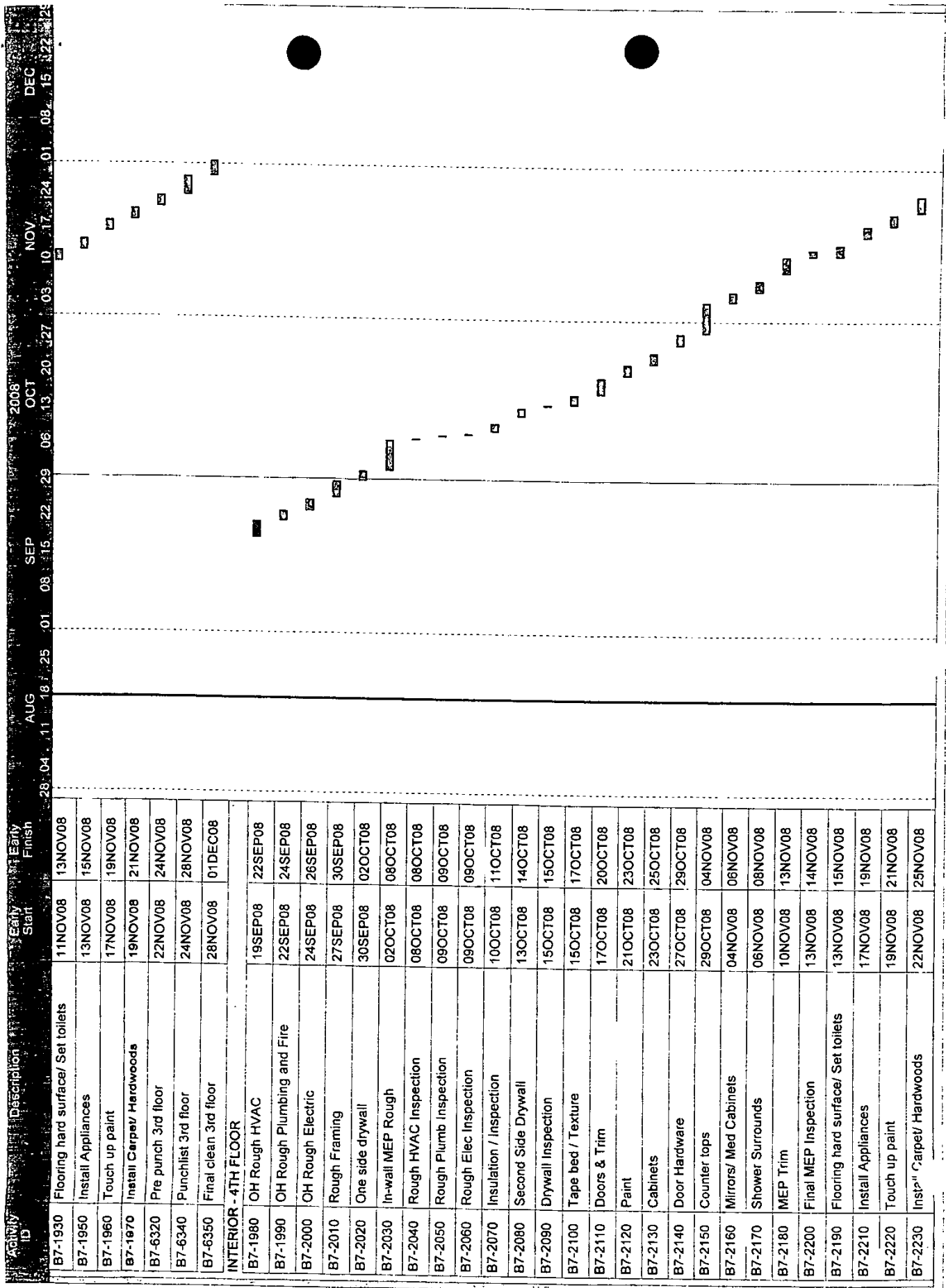


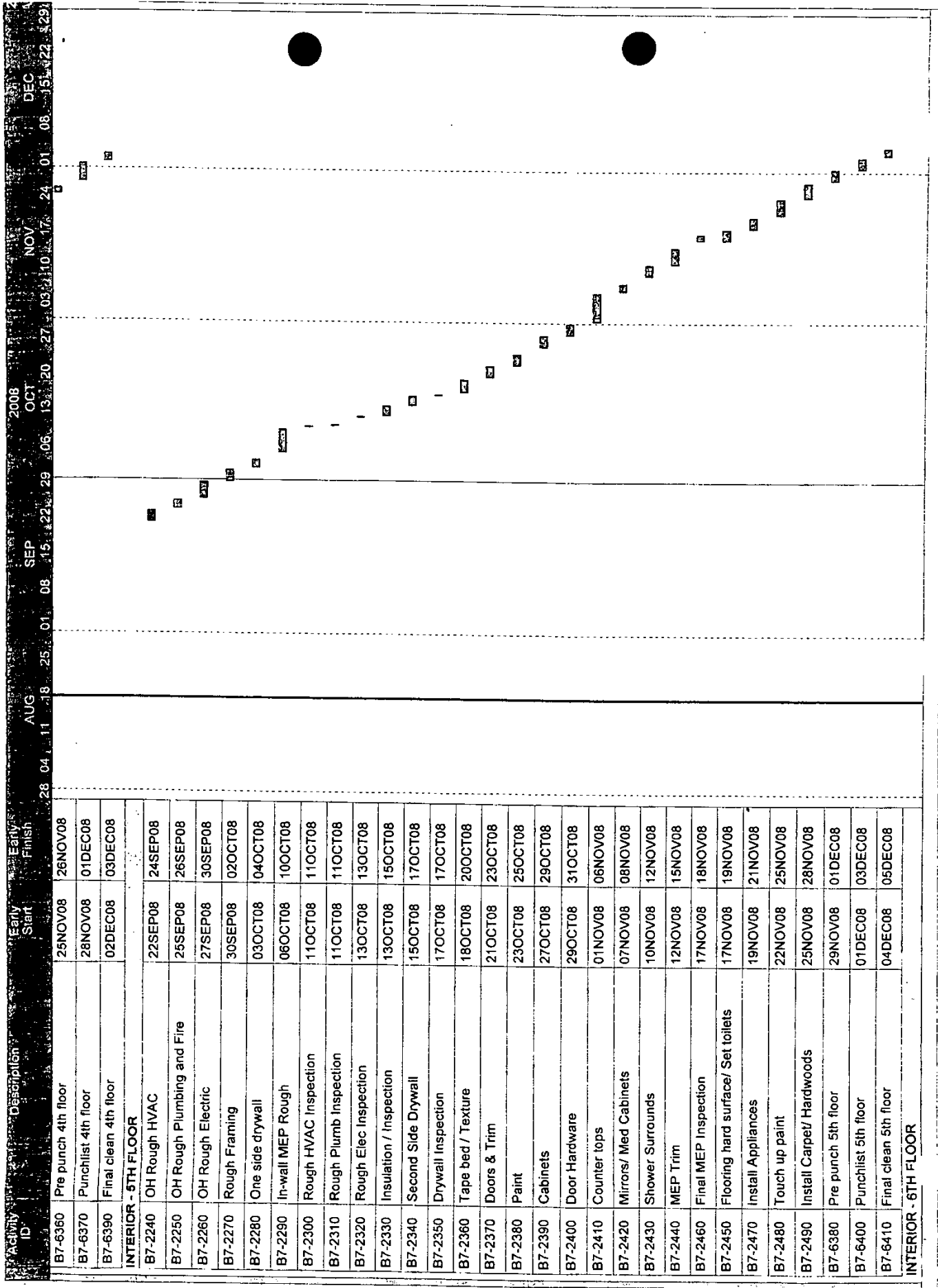
| Activity ID | Description | Early Start | Early Finish | 28 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24</ |
|-------------|-------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--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|-------------|-------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--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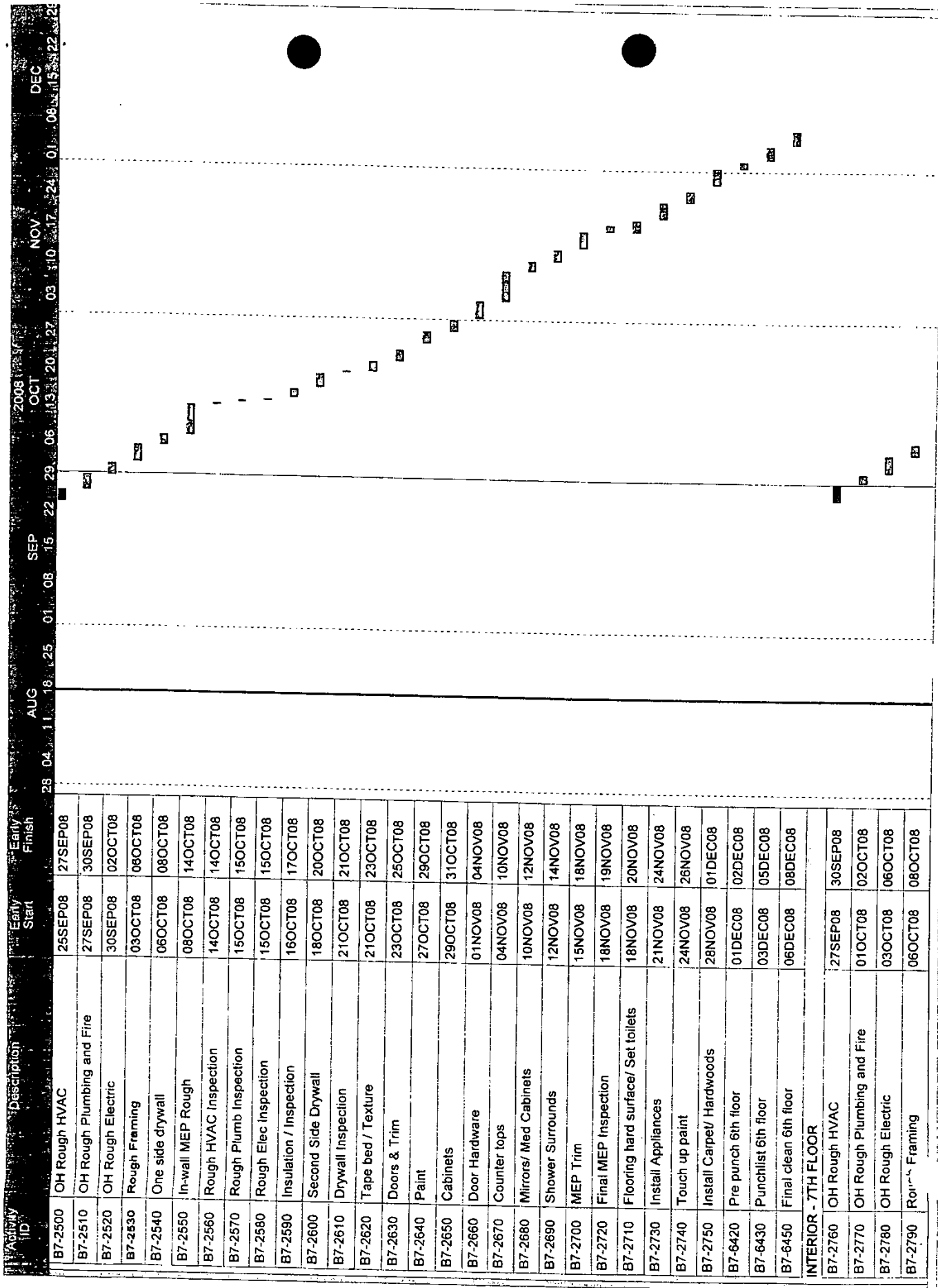


| Activity ID          |  | Description                        | Early Start | Early Finish | 28 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 31 | 08 | 15 | 22 | 29 |
|----------------------|--|------------------------------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| B7-1640              |  | Mirrors/ Med Cabinets              | 21OCT08     | 23OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1650              |  | Shower Surrounds                   | 23OCT08     | 25OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1660              |  | MEP Trim                           | 27OCT08     | 30OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1680              |  | Final MEP Inspection               | 30OCT08     | 31OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1670              |  | Flooring hard surface/ Set toilets | 30OCT08     | 01NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1690              |  | Install Appliances                 | 03NOV08     | 05NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1700              |  | Touch up paint                     | 05NOV08     | 07NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1710              |  | Install Carpet/ Hardwoods          | 08NOV08     | 11NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-6290              |  | Pre punch 2nd floor                | 11NOV08     | 12NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-6300              |  | Punchlist 2nd floor                | 13NOV08     | 15NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-6330              |  | Final clean 2nd floor              | 17NOV08     | 18NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| INTERIOR - 3RD FLOOR |  |                                    |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1720              |  | OH Rough HVAC                      | 16SEP08     | 18SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1730              |  | OH Rough Plumbing and Fire         | 19SEP08     | 20SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1740              |  | OH Rough Electric                  | 22SEP08     | 24SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1750              |  | Rough Framing                      | 24SEP08     | 26SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1760              |  | One side drywall                   | 27SEP08     | 29SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1770              |  | In-wall MEP Rough                  | 30SEP08     | 04OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1780              |  | Rough HVAC Inspection              | 06OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1790              |  | Rough Plumb Inspection             | 06OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1800              |  | Rough Elec Inspection              | 07OCT08     | 07OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1810              |  | Insulation / Inspection            | 07OCT08     | 09OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1820              |  | Second Side Drywall                | 09OCT08     | 11OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1830              |  | Drywall Inspection                 | 11OCT08     | 11OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1840              |  | Tape bed / Texture                 | 13OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1850              |  | Doors & Trim                       | 15OCT08     | 17OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1860              |  | Paint                              | 17OCT08     | 20OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1870              |  | Cabinets                           | 21OCT08     | 23OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1880              |  | Door Hardware                      | 23OCT08     | 25OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1890              |  | Counter tops                       | 27OCT08     | 31OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1900              |  | Mirrors/ Med Cabinets              | 01NOV08     | 03NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1910              |  | Shower Surrounds                   | 04NOV08     | 06NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1920              |  | MEP Trim                           | 06NOV08     | 10NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |
| B7-1940              |  | Final MEP Inspection               | 11NOV08     | 12NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |



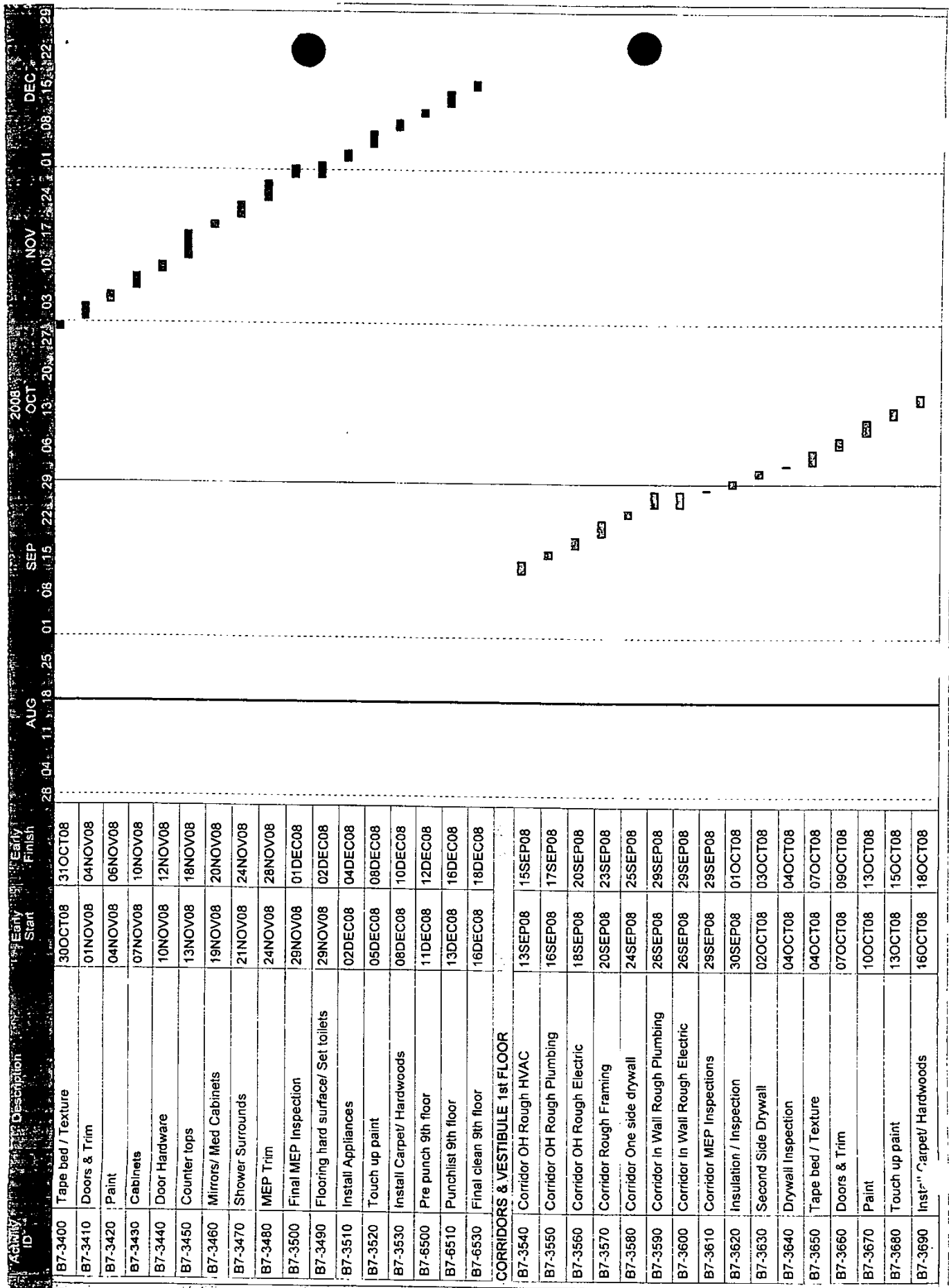












| Activity ID                     | Description                     | Early Start | Early Finish | 28 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 |  |
|---------------------------------|---------------------------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--|
| CORRIDORS & VESTIBULE 2nd FLOOR |                                 |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3700                         | Corridor OH Rough HVAC          | 16SEP08     | 17SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3710                         | Corridor OH Rough Plumbing      | 18SEP08     | 19SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3720                         | Corridor OH Rough Electric      | 20SEP08     | 22SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3730                         | Corridor Rough Framing          | 23SEP08     | 25SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3740                         | Corridor One side drywall       | 25SEP08     | 27SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3750                         | Corridor In Wall Rough Plumbing | 27SEP08     | 30SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3760                         | Corridor In Wall Rough Electric | 27SEP08     | 30SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3770                         | Corridor MEP Inspections        | 01OCT08     | 01OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3780                         | Insulation / Inspection         | 01OCT08     | 03OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3790                         | Second Side Drywall             | 03OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3800                         | Drywall Inspection              | 06OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3810                         | Tape bed / Texture              | 07OCT08     | 08OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3820                         | Doors & Trim                    | 09OCT08     | 11OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3830                         | Paint                           | 11OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3840                         | Touch up paint                  | 15OCT08     | 17OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3850                         | Install Carpet/ Hardwoods       | 17OCT08     | 20OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| CORRIDORS & VESTIBULE 3rd FLOOR |                                 |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3860                         | Corridor OH Rough HVAC          | 18SEP08     | 19SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3870                         | Corridor OH Rough Plumbing      | 20SEP08     | 22SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3880                         | Corridor OH Rough Electric      | 23SEP08     | 24SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3890                         | Corridor Rough Framing          | 27SEP08     | 30SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3900                         | Corridor One side drywall       | 30SEP08     | 02OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3910                         | Corridor In Wall Rough Plumbing | 02OCT08     | 04OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3920                         | Corridor In Wall Rough Electric | 02OCT08     | 04OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3930                         | Corridor MEP Inspections        | 06OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3940                         | Insulation / Inspection         | 06OCT08     | 08OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3950                         | Second Side Drywall             | 08OCT08     | 10OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3960                         | Drywall Inspection              | 10OCT08     | 10OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3970                         | Tape bed / Texture              | 11OCT08     | 13OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3980                         | Doors & Trim                    | 14OCT08     | 16OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-3990                         | Paint                           | 16OCT08     | 18OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4000                         | Touch up paint                  | 20OCT08     | 22OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4010                         | Install Carpet/ Hardwoods       | 22OCT08     | 24OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |





| Activity ID                     | Description                     | Early Start | Early Finish | 28 | 04 | 11 | 18 | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 |  |
|---------------------------------|---------------------------------|-------------|--------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--|
| CORRIDORS & VESTIBULE 6th FLOOR |                                 |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4340                         | Corridor OH Rough HVAC          | 27SEP08     | 29SEP08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4350                         | Corridor OH Rough Plumbing      | 30SEP08     | 01OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4360                         | Corridor OH Rough Electric      | 02OCT08     | 03OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4370                         | Corridor Rough Framing          | 06OCT08     | 08OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4380                         | Corridor One side drywall       | 09OCT08     | 10OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4390                         | Corridor In Wall Rough Plumbing | 11OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4400                         | Corridor In Wall Rough Electric | 11OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4410                         | Corridor MEP Inspections        | 14OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4420                         | Insulation / Inspection         | 15OCT08     | 16OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4430                         | Second Side Drywall             | 17OCT08     | 18OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4440                         | Drywall Inspection              | 20OCT08     | 20OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4450                         | Tape bed / Texture              | 20OCT08     | 22OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4460                         | Doors & Trim                    | 22OCT08     | 24OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4470                         | Paint                           | 25OCT08     | 28OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4480                         | Touch up paint                  | 28OCT08     | 30OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4490                         | Install Carpet/ Hardwoods       | 31OCT08     | 03NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| CORRIDORS & VESTIBULE 7th FLOOR |                                 |             |              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4500                         | Corridor OH Rough HVAC          | 30SEP08     | 01OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4510                         | Corridor OH Rough Plumbing      | 02OCT08     | 03OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4520                         | Corridor OH Rough Electric      | 04OCT08     | 06OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4530                         | Corridor Rough Framing          | 09OCT08     | 11OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4540                         | Corridor One side drywall       | 11OCT08     | 14OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4550                         | Corridor In Wall Rough Plumbing | 14OCT08     | 16OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4560                         | Corridor In Wall Rough Electric | 14OCT08     | 16OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4570                         | Corridor MEP Inspections        | 17OCT08     | 17OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4580                         | Insulation / Inspection         | 17OCT08     | 20OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4590                         | Second Side Drywall             | 20OCT08     | 22OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4600                         | Drywall Inspection              | 22OCT08     | 22OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4610                         | Tape bed / Texture              | 23OCT08     | 24OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4620                         | Doors & Trim                    | 25OCT08     | 28OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4630                         | Paint                           | 28OCT08     | 30OCT08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4640                         | Touch up paint                  | 31OCT08     | 03NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |
| B7-4650                         | Install Carpet/ Hardwoods       | 03NOV08     | 05NOV08      |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |  |

| Activity ID                     | Description                     | Early Start | Early Finish | 28 | 04 | 11 | AUG | 18 | 25 | 01 | 08 | 15 | SEP | 22 | 29 | 06 | 13 | OCT | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | DEC |  |
|---------------------------------|---------------------------------|-------------|--------------|----|----|----|-----|----|----|----|----|----|-----|----|----|----|----|-----|----|----|----|----|----|----|----|----|----|-----|--|
| CORRIDORS & VESTIBULE 8th FLOOR |                                 |             |              |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4660                         | Corridor OH Rough HVAC          | 02OCT08     | 03OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4670                         | Corridor OH Rough Plumbing      | 04OCT08     | 06OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4680                         | Corridor OH Rough Electric      | 07OCT08     | 08OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4690                         | Corridor Rough Framing          | 11OCT08     | 14OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4700                         | Corridor One side drywall       | 15OCT08     | 16OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4710                         | Corridor In Wall Rough Plumbing | 17OCT08     | 20OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4720                         | Corridor In Wall Rough Electric | 17OCT08     | 20OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4730                         | Corridor MEP Inspections        | 20OCT08     | 20OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4740                         | Insulation / Inspection         | 21OCT08     | 22OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4750                         | Second Side Drywall             | 23OCT08     | 24OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4760                         | Drywall Inspection              | 25OCT08     | 25OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4770                         | Tape bed / Texture              | 25OCT08     | 28OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4780                         | Doors & Trim                    | 28OCT08     | 30OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4790                         | Paint                           | 31OCT08     | 03NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4800                         | Touch up paint                  | 03NOV08     | 05NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4810                         | Install Carpet/ Hardwoods       | 06NOV08     | 08NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| CORRIDORS & VESTIBULE 9th FLOOR |                                 |             |              |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4820                         | Corridor OH Rough HVAC          | 04OCT08     | 06OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4830                         | Corridor OH Rough Plumbing      | 07OCT08     | 08OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4840                         | Corridor OH Rough Electric      | 09OCT08     | 10OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4850                         | Corridor Rough Framing          | 15OCT08     | 17OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4860                         | Corridor One side drywall       | 17OCT08     | 20OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4870                         | Corridor In Wall Rough Plumbing | 20OCT08     | 22OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4880                         | Corridor In Wall Rough Electric | 20OCT08     | 22OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4890                         | Corridor MEP Inspections        | 23OCT08     | 23OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4900                         | Insulation / Inspection         | 23OCT08     | 25OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4910                         | Second Side Drywall             | 25OCT08     | 28OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4920                         | Drywall Inspection              | 28OCT08     | 28OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4930                         | Tape bed / Texture              | 29OCT08     | 30OCT08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4940                         | Doors & Trim                    | 31OCT08     | 03NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4950                         | Paint                           | 03NOV08     | 05NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4960                         | Touch up paint                  | 06NOV08     | 08NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |
| B7-4970                         | Install Carpet/ Hardwoods       | 08NOV08     | 11NOV08      |    |    |    |     |    |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |  |

| Activity ID              | Description                      | Early Start | Early Finish | 28 | 04 | 11 | 18 | AUG | 25 | 01 | 08 | 15 | SEP | 22 | 29 | 06 | 13 | OCT | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | DEC | 22 | 29 |  |
|--------------------------|----------------------------------|-------------|--------------|----|----|----|----|-----|----|----|----|----|-----|----|----|----|----|-----|----|----|----|----|----|----|----|----|----|-----|----|----|--|
| ELEVATOR LOBBY 1st FLOOR |                                  |             |              |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-4980                  | Framing                          | 20SEP08     | 22SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-4990                  | Mechanical Rough Ceiling         | 22SEP08     | 23SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5000                  | Electrical Rough Ceiling         | 22SEP08     | 23SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5010                  | Fire Sprinkler Rough Ceiling     | 22SEP08     | 23SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5020                  | Ceilings                         | 24SEP08     | 25SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5030                  | Inspections                      | 25SEP08     | 26SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5040                  | Drywall                          | 27SEP08     | 29SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5050                  | Millwork - Base                  | 29SEP08     | 01OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5060                  | Final Paint                      | 02OCT08     | 02OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5065                  | Paint - Stairwells               | 03OCT08     | 03OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5070                  | Wallcovering                     | 03OCT08     | 03OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5075                  | MEP Finish - Stairwells          | 04OCT08     | 04OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5080                  | Carpet                           | 04OCT08     | 04OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5090                  | Punch / Final Clean              | 06OCT08     | 06OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5085                  | Fire Sprinkler Trim - Stairwells | 06OCT08     | 06OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5095                  | Punch / Final Clean - Stairwells | 07OCT08     | 07OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| ELEVATOR LOBBY 2nd FLOOR |                                  |             |              |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5100                  | Framing                          | 23SEP08     | 23SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5110                  | Mechanical Rough Ceiling         | 24SEP08     | 25SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5120                  | Electrical Rough Ceiling         | 24SEP08     | 25SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5130                  | Fire Sprinkler Rough Ceiling     | 24SEP08     | 25SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5140                  | Ceilings                         | 25SEP08     | 26SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5150                  | Inspections                      | 27SEP08     | 29SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5160                  | Drywall                          | 29SEP08     | 30SEP08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5170                  | Millwork - Base                  | 01OCT08     | 03OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5180                  | Final Paint                      | 03OCT08     | 04OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5185                  | Paint - Stairwells               | 04OCT08     | 06OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5190                  | Wallcovering                     | 04OCT08     | 06OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5195                  | MEP Finish - Stairwells          | 06OCT08     | 07OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5200                  | Carpet                           | 06OCT08     | 07OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5210                  | Punch / Final Clean              | 07OCT08     | 07OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5205                  | Fire Sprinkler Trim - Stairwells | 07OCT08     | 08OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |
| B7-5215                  | Punch / Final Clean - Stairwells | 08OCT08     | 08OCT08      |    |    |    |    |     |    |    |    |    |     |    |    |    |    |     |    |    |    |    |    |    |    |    |    |     |    |    |  |



ELEVATOR LOBBY 5th FLOOR

|         |                                  |         |         |
|---------|----------------------------------|---------|---------|
| B7-5460 | Framing                          | 03OCT08 | 03OCT08 |
| B7-5470 | Mechanical Rough Ceiling         | 04OCT08 | 05OCT08 |
| B7-5480 | Electrical Rough Ceiling         | 04OCT08 | 06OCT08 |
| B7-5490 | Fire Sprinkler Rough Ceiling     | 04OCT08 | 06OCT08 |
| B7-5500 | Ceilings                         | 06OCT08 | 07OCT08 |
| B7-5510 | Inspections                      | 08OCT08 | 09OCT08 |
| B7-5520 | Drywall                          | 09OCT08 | 10OCT08 |
| B7-5530 | Millwork - Base                  | 11OCT08 | 14OCT08 |
| B7-5540 | Final Paint                      | 14OCT08 | 15OCT08 |
| B7-5545 | Paint - Stairwells               | 15OCT08 | 16OCT08 |
| B7-5550 | Wallcovering                     | 15OCT08 | 16OCT08 |
| B7-5555 | MEP Finish - Stairwells          | 16OCT08 | 17OCT08 |
| B7-5560 | Carpet                           | 16OCT08 | 17OCT08 |
| B7-5570 | Punch / Final Clean              | 17OCT08 | 17OCT08 |
| B7-5565 | Fire Sprinkler Trim - Stairwells | 17OCT08 | 18OCT08 |
| B7-5575 | Punch / Final Clean - Stairwells | 18OCT08 | 18OCT08 |

ELEVATOR LOBBY 6th FLOOR

|         |                                  |         |         |
|---------|----------------------------------|---------|---------|
| B7-5580 | Framing                          | 06OCT08 | 07OCT08 |
| B7-5590 | Mechanical Rough Ceiling         | 07OCT08 | 08OCT08 |
| B7-5600 | Electrical Rough Ceiling         | 07OCT08 | 08OCT08 |
| B7-5610 | Fire Sprinkler Rough Ceiling     | 07OCT08 | 08OCT08 |
| B7-5620 | Ceilings                         | 09OCT08 | 10OCT08 |
| B7-5630 | Inspections                      | 10OCT08 | 11OCT08 |
| B7-5640 | Drywall                          | 13OCT08 | 14OCT08 |
| B7-5650 | Millwork - Base                  | 14OCT08 | 16OCT08 |
| B7-5660 | Final Paint                      | 17OCT08 | 17OCT08 |
| B7-5665 | Paint - Stairwells               | 18OCT08 | 18OCT08 |
| B7-5670 | Wallcovering                     | 18OCT08 | 18OCT08 |
| B7-5675 | MEP Finish - Stairwells          | 20OCT08 | 20OCT08 |
| B7-5680 | Carpet                           | 20OCT08 | 20OCT08 |
| B7-5690 | Punch / Final Clean              | 21OCT08 | 21OCT08 |
| B7-5685 | Fire Sprinkler Trim - Stairwells | 21OCT08 | 21OCT08 |
| B7-5695 | Punch / Final Clean - Stairwells | 22OCT08 | 22OCT08 |

| Activity ID              | Description                      | Early Start | Early Finish | AUG | SEP | OCT | NOV | DEC |
|--------------------------|----------------------------------|-------------|--------------|-----|-----|-----|-----|-----|
| ELEVATOR LOBBY 7th FLOOR |                                  |             |              |     |     |     |     |     |
| B7-5700                  | Framing                          | 09OCT08     | 09OCT08      |     |     |     |     |     |
| B7-5710                  | Mechanical Rough Ceiling         | 10OCT08     | 11OCT08      |     |     |     |     |     |
| B7-5720                  | Electrical Rough Ceiling         | 10OCT08     | 11OCT08      |     |     |     |     |     |
| B7-5730                  | Fire Sprinkler Rough Ceiling     | 10OCT08     | 11OCT08      |     |     |     |     |     |
| B7-5740                  | Ceilings                         | 11OCT08     | 13OCT08      |     |     |     |     |     |
| B7-5750                  | Inspections                      | 14OCT08     | 15OCT08      |     |     |     |     |     |
| B7-5760                  | Drywall                          | 15OCT08     | 16OCT08      |     |     |     |     |     |
| B7-5770                  | Millwork - Base                  | 17OCT08     | 20OCT08      |     |     |     |     |     |
| B7-5780                  | Final Paint                      | 20OCT08     | 21OCT08      |     |     |     |     |     |
| B7-5785                  | Paint - Stairwells               | 21OCT08     | 22OCT08      |     |     |     |     |     |
| B7-5790                  | Wallcovering                     | 21OCT08     | 22OCT08      |     |     |     |     |     |
| B7-5795                  | MEP Finish - Stairwells          | 22OCT08     | 23OCT08      |     |     |     |     |     |
| B7-5800                  | Carpet                           | 22OCT08     | 23OCT08      |     |     |     |     |     |
| B7-5810                  | Punch / Final Clean              | 23OCT08     | 23OCT08      |     |     |     |     |     |
| B7-5805                  | Fire Sprinkler Trim - Stairwells | 23OCT08     | 24OCT08      |     |     |     |     |     |
| B7-5815                  | Punch / Final Clean - Stairwells | 24OCT08     | 24OCT08      |     |     |     |     |     |
| ELEVATOR LOBBY 8th FLOOR |                                  |             |              |     |     |     |     |     |
| B7-5830                  | Framing                          | 11OCT08     | 13OCT08      |     |     |     |     |     |
| B7-5840                  | Mechanical Rough Ceiling         | 13OCT08     | 14OCT08      |     |     |     |     |     |
| B7-5850                  | Electrical Rough Ceiling         | 13OCT08     | 14OCT08      |     |     |     |     |     |
| B7-5860                  | Fire Sprinkler Rough Ceiling     | 13OCT08     | 14OCT08      |     |     |     |     |     |
| B7-5870                  | Ceilings                         | 15OCT08     | 16OCT08      |     |     |     |     |     |
| B7-5880                  | Inspections                      | 16OCT08     | 17OCT08      |     |     |     |     |     |
| B7-5890                  | Drywall                          | 18OCT08     | 20OCT08      |     |     |     |     |     |
| B7-5900                  | Millwork - Base                  | 20OCT08     | 22OCT08      |     |     |     |     |     |
| B7-5910                  | Final Paint                      | 23OCT08     | 23OCT08      |     |     |     |     |     |
| B7-5915                  | Paint - Stairwells               | 24OCT08     | 24OCT08      |     |     |     |     |     |
| B7-5920                  | Wallcovering                     | 24OCT08     | 24OCT08      |     |     |     |     |     |
| B7-5925                  | MEP Finish - Stairwells          | 25OCT08     | 25OCT08      |     |     |     |     |     |
| B7-5930                  | Carpet                           | 25OCT08     | 25OCT08      |     |     |     |     |     |
| B7-5940                  | Punch / Final Clean              | 27OCT08     | 27OCT08      |     |     |     |     |     |
| B7-5935                  | Fire Sprinkler Trim - Stairwells | 27OCT08     | 27OCT08      |     |     |     |     |     |
| B7-5945                  | Punch / Final Clean - Stairwells | 28OCT08     | 28OCT08      |     |     |     |     |     |

| Activity ID              | Description                          | Early Start | Early Finish | AUG | SEP | OCT | NOV | DEC |
|--------------------------|--------------------------------------|-------------|--------------|-----|-----|-----|-----|-----|
| ELEVATOR LOBBY 9th FLOOR |                                      |             |              |     |     |     |     |     |
| B7-5950                  | Framing                              | 15OCT08     | 15OCT08      |     |     |     |     |     |
| B7-5960                  | Mechanical Rough Ceiling             | 16OCT08     | 17OCT08      |     |     |     |     |     |
| B7-5970                  | Electrical Rough Ceiling             | 16OCT08     | 17OCT08      |     |     |     |     |     |
| B7-5980                  | Fire Sprinkler Rough Ceiling         | 16OCT08     | 17OCT08      |     |     |     |     |     |
| B7-5990                  | Ceilings                             | 17OCT08     | 18OCT08      |     |     |     |     |     |
| B7-6000                  | Inspections                          | 20OCT08     | 21OCT08      |     |     |     |     |     |
| B7-6010                  | Drywall                              | 21OCT08     | 22OCT08      |     |     |     |     |     |
| B7-6020                  | Millwork - Base                      | 23OCT08     | 25OCT08      |     |     |     |     |     |
| B7-6030                  | Final Paint                          | 25OCT08     | 27OCT08      |     |     |     |     |     |
| B7-6035                  | Paint - Stairwells                   | 27OCT08     | 28OCT08      |     |     |     |     |     |
| B7-6040                  | Wallcovering                         | 27OCT08     | 28OCT08      |     |     |     |     |     |
| B7-6045                  | MEP Finish - Stairwells              | 28OCT08     | 29OCT08      |     |     |     |     |     |
| B7-6050                  | Carpet                               | 28OCT08     | 29OCT08      |     |     |     |     |     |
| B7-6060                  | Punch / Final Clean                  | 29OCT08     | 29OCT08      |     |     |     |     |     |
| B7-6065                  | Fire Sprinkler Trim - Stairwells     | 29OCT08     | 30OCT08      |     |     |     |     |     |
| B7-6065                  | Punch / Final Clean - Stairwells     | 30OCT08     | 30OCT08      |     |     |     |     |     |
| EXTERIOR                 |                                      |             |              |     |     |     |     |     |
| B7-6070                  | Install roofing membrane             | 11OCT08     | 14OCT08      |     |     |     |     |     |
| B7-6570                  | Install Roof Top Equipment           | 13OCT08     | 18OCT08      |     |     |     |     |     |
| EXTERIOR - 1ST FLOOR     |                                      |             |              |     |     |     |     |     |
| B7-6090                  | Aluminum frame curtainwall 1st floor | 06SEP08     | 09SEP08      |     |     |     |     |     |
| B7-6100                  | Install 1st floor curtainwall        | 08SEP08     | 11SEP08      |     |     |     |     |     |
| EXTERIOR - 2ND FLOOR     |                                      |             |              |     |     |     |     |     |
| B7-6110                  | Aluminum frame curtainwall 2nd floor | 09SEP08     | 11SEP08      |     |     |     |     |     |
| B7-6150                  | Install 2nd floor curtainwall        | 18SEP08     | 22SEP08      |     |     |     |     |     |
| EXTERIOR - 3RD FLOOR     |                                      |             |              |     |     |     |     |     |
| B7-6120                  | Aluminum frame curtainwall 3rd floor | 11SEP08     | 13SEP08      |     |     |     |     |     |
| B7-6180                  | Install 3rd floor curtainwall        | 22SEP08     | 24SEP08      |     |     |     |     |     |
| EXTERIOR - 4TH FLOOR     |                                      |             |              |     |     |     |     |     |
| B7-6130                  | Aluminum frame curtainwall 4th floor | 13SEP08     | 16SEP08      |     |     |     |     |     |
| B7-6200                  | Install 4th floor curtainwall        | 24SEP08     | 27SEP08      |     |     |     |     |     |
| EXTERIOR - 5TH FLOOR     |                                      |             |              |     |     |     |     |     |
| B7-6140                  | Aluminum frame curtainwall 5th floor | 16SEP08     | 18SEP08      |     |     |     |     |     |
| B7-6220                  | Install 5th floor curtainwall        | 27SEP08     | 30SEP08      |     |     |     |     |     |
| EXTERIOR - 6TH FLOOR     |                                      |             |              |     |     |     |     |     |

| Activity ID               | Description                           | Early Start | Early Finish | 28 AUG | 01 SEP | 08 SEP | 15 SEP | 22 SEP | 29 SEP | 06 OCT | 13 OCT | 20 OCT | 27 OCT | 03 NOV | 10 NOV | 17 NOV | 24 NOV | 01 DEC | 08 DEC | 15 DEC | 22 DEC |
|---------------------------|---------------------------------------|-------------|--------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| B7-6160                   | Aluminum frame curtainwall 6th floor  | 18SEP08     | 20SEP08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6230                   | Install 6th floor curtainwall         | 30SEP08     | 03OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| EXTERIOR - 7TH FLOOR      |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6170                   | Aluminum frame curtainwall 7th floor  | 20SEP08     | 23SEP08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6240                   | Install 7th floor curtainwall         | 03OCT08     | 06OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| EXTERIOR - 8TH FLOOR      |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6190                   | Aluminum frame curtainwall 8th floor  | 23SEP08     | 25SEP08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6250                   | Install 8th floor curtainwall         | 06OCT08     | 09OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| EXTERIOR - 9TH FLOOR      |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6210                   | Aluminum frame curtainwall 9th floor  | 25SEP08     | 27SEP08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6260                   | Install 9th floor/parapet curtainwall | 09OCT08     | 11OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| TESTING & CLOSE-OUT       |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6545                   | HVAC Commissioning                    | 20OCT08     | 23OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6535                   | Smoke and Comfort Test                | 20OCT08     | 27OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6565                   | Stair Pressurization Test             | 24OCT08     | 29OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6555                   | Fire Alarm Pre-Test                   | 02DEC08     | 08DEC08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6575                   | Fire Alarm Final Test                 | 09DEC08     | 16DEC08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B7-6585                   | All Systems Test                      | 17DEC08     | 23DEC08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| POOLS & SPAS              |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| POOLS                     |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-10                     | Set Pools                             | 07OCT08     | 10OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-150                    | Set Pool Equipment                    | 10OCT08     | 16OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-30                     | Tie In Pools                          | 16OCT08     | 23OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-50                     | Health Dept Inspections - Pools       |             | 23OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| SPAS                      |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-20                     | Install Structural Supports           | 30SEP08     | 03OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-180                    | Set Spas                              | 20OCT08     | 22OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-190                    | Install Spa Equipment and Tie into    | 22OCT08     | 29OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-200                    | Health Dept. Inspections - Spas       |             | 29OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| WATER FEATURE - 2nd FLOOR |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| PL-170                    | 2nd Floor Waterfall Feature           | 07OCT08     | 15OCT08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| BUILDING 8                |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| STRUCTURE                 |                                       |             |              |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B8-40                     | Detailed Punch and Shear Dwgs Appr    | 24MAR08 A   | 21AUG08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B8-970                    | Podium Column Fix                     | 08MAY08 A   | 28AUG08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |
| B8-10                     | Install Stairs                        | 19AUG08     | 03SEP08      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |



| Activity ID                 |  | Description                            | Early Start | Early Finish | 2008 | SEP | AUG | 2008 | OCT | NOV | DEC |
|-----------------------------|--|--|-------------|--------------|------|-----|-----|------|-----|-----|-----|
|                             |  |  | 28          | 04           | 11   | 18  | 25  | 01   | 08  | 15  | 22  |
|                             |  |  | 28          | 04           | 11   | 18  | 25  | 01   | 08  | 15  | 22  |
| <b>INTERIOR</b>             |  |  |             |              |      |     |     |      |     |     |     |
| B8-20                       |  | Tie into riser                         | 19AUG08     |              |      |     |     |      |     |     |     |
| B8-45                       |  | Install Elevator Rails                 | 19AUG08     |              |      |     |     |      |     |     |     |
| B8-55                       |  | Build Elevator Cars                    | 09SEP08     |              |      |     |     |      |     |     |     |
| B8-30                       |  | Sprinkler leak test                    | 16SEP08     |              |      |     |     |      |     |     |     |
| B8-65                       |  | Elevator Pre-Test                      | 18SEP08     |              |      |     |     |      |     |     |     |
| B8-75                       |  | Elevator Test with State of Nevada for | 22SEP08     |              |      |     |     |      |     |     |     |
| B8-85                       |  | Elevator Final Test                    | 23SEP08     |              |      |     |     |      |     |     |     |
| B8-50                       |  | Test and balance                       | 25SEP08     |              |      |     |     |      |     |     |     |
| <b>INTERIOR - 1ST FLOOR</b> |  |  |             |              |      |     |     |      |     |     |     |
| B8-70                       |  | Rough HVAC Pre-Rock                    | 15APR08 A   |              |      |     |     |      |     |     |     |
| B8-60                       |  | Rough HVAC 1st Floor                   | 15APR08 A   |              |      |     |     |      |     |     |     |
| B8-90                       |  | Mold Inspection                        | 18APR08 A   |              |      |     |     |      |     |     |     |
| B8-80                       |  | Draft Firestop 1st Floor               | 18APR08 A   |              |      |     |     |      |     |     |     |
| B8-110                      |  | Rough HVAC 1st Floor to Fire Lid       | 11SEP08 *   |              |      |     |     |      |     |     |     |
| B8-120                      |  | HVAC Inspection                        | 12SEP08     |              |      |     |     |      |     |     |     |
| B8-130                      |  | Framing Inspection                     | 12SEP08     |              |      |     |     |      |     |     |     |
| B8-140                      |  | Insulate 1st floor                     | 15SEP08     |              |      |     |     |      |     |     |     |
| B8-150                      |  | Insulation Inspection                  | 16SEP08     |              |      |     |     |      |     |     |     |
| B8-160                      |  | Drywall                                | 17SEP08     |              |      |     |     |      |     |     |     |
| B8-170                      |  | Fire Lid 1st floor                     | 17SEP08     |              |      |     |     |      |     |     |     |
| B8-180                      |  | Drywall Inspection                     | 22SEP08     |              |      |     |     |      |     |     |     |
| B8-190                      |  | Fire Lid Inspection                    | 22SEP08     |              |      |     |     |      |     |     |     |
| B8-200                      |  | Frame Soffits, Cans, Drywall           | 23SEP08     |              |      |     |     |      |     |     |     |
| B8-210                      |  | Tape / Texture                         | 26SEP08     |              |      |     |     |      |     |     |     |
| B8-220                      |  | Light Weight Concrete 1st Floor        | 29SEP08     |              |      |     |     |      |     |     |     |
| B8-230                      |  | Install Trim & Doors 1st floor         | 02OCT08     |              |      |     |     |      |     |     |     |
| B8-260                      |  | MEP & Fire Sprinkler Trim 1st floor    | 06OCT08     |              |      |     |     |      |     |     |     |
| B8-240                      |  | Paint 1st floor                        | 06OCT08     |              |      |     |     |      |     |     |     |
| B8-270                      |  | Install tile 1st floor                 | 07OCT08     |              |      |     |     |      |     |     |     |
| B8-250                      |  | Install cabinets/countertops 1st floor | 09OCT08     |              |      |     |     |      |     |     |     |
| B8-290                      |  | Install carpet 1st floor               | 09OCT08     |              |      |     |     |      |     |     |     |
| B8-280                      |  | Hardware Trim                          | 14OCT08     |              |      |     |     |      |     |     |     |
| B8-300                      |  | Final MEP Inspection                   | 16OCT08     |              |      |     |     |      |     |     |     |

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| Activity ID          | Description                            | Early Start |         | Early Finish |    | 2008 |    |    |    |    |    |    |
|----------------------|--|-------------|---------|--------------|----|------|----|----|----|----|----|----|
|                      |  | 28          | 04      | 11           | 18 | AUG  | 25 | 01 | 08 | 15 | 22 | 29 |
| B8-830               | Fire Lid 3rd floor                     | 22SEP08     | 25SEP08 |              |    |      |    |    |    |    |    |    |
| B8-840               | Drywall Inspection                     | 25SEP08     | 25SEP08 |              |    |      |    |    |    |    |    |    |
| B8-850               | Fire Lid Inspection                    | 26SEP08     | 26SEP08 |              |    |      |    |    |    |    |    |    |
| B8-860               | Frame Soffits, Cans, Drywall           | 26SEP08     | 01OCT08 |              |    |      |    |    |    |    |    |    |
| B8-870               | Tape / Texture                         | 02OCT08     | 06OCT08 |              |    |      |    |    |    |    |    |    |
| B8-880               | Light Weight Concrete 3rd Floor        | 03OCT08     | 07OCT08 |              |    |      |    |    |    |    |    |    |
| B8-890               | Install Trim & Doors 3rd floor         | 07OCT08     | 13OCT08 |              |    |      |    |    |    |    |    |    |
| B8-900               | Paint 3rd floor                        | 10OCT08     | 15OCT08 |              |    |      |    |    |    |    |    |    |
| B8-910               | Install cabinets/countertops 3rd floor | 14OCT08     | 17OCT08 |              |    |      |    |    |    |    |    |    |
| B8-920               | MEP & Fire Sprinkler Trim 3rd floor    | 15OCT08     | 21OCT08 |              |    |      |    |    |    |    |    |    |
| B8-930               | Install tile 3rd floor                 | 16OCT08     | 21OCT08 |              |    |      |    |    |    |    |    |    |
| B8-940               | Hardware Trim                          | 17OCT08     | 20OCT08 |              |    |      |    |    |    |    |    |    |
| B8-950               | Install carpet 3rd floor               | 20OCT08     | 22OCT08 |              |    |      |    |    |    |    |    |    |
| B8-960               | Final MEP Inspection                   | 22OCT08     | 23OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1580              | Pre punch 3rd floor                    | 24OCT08     | 24OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1620              | Punchlist 3rd floor                    | 27OCT08     | 28OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1640              | Final clean 3rd floor                  | 28OCT08     | 29OCT08 |              |    |      |    |    |    |    |    |    |
| INTERIOR - 4TH FLOOR |  |             |         |              |    |      |    |    |    |    |    |    |
| B8-1130              | Rough HVAC 4th Floor to Fire Lid       | 16SEP08     | 16SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1140              | HVAC Inspection                        | 17SEP08     | 17SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1150              | Framing Inspection                     | 17SEP08     | 17SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1160              | Insulate 4th floor                     | 18SEP08     | 22SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1170              | Insulation Inspection                  | 22SEP08     | 22SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1180              | Drywall                                | 23SEP08     | 26SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1190              | Fire Lid 4th floor                     | 23SEP08     | 26SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1200              | Drywall Inspection                     | 26SEP08     | 26SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1210              | Fire Lid Inspection                    | 26SEP08     | 26SEP08 |              |    |      |    |    |    |    |    |    |
| B8-1220              | Frame Soffits, Cans, Drywall           | 29SEP08     | 02OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1230              | Tape / Texture                         | 01OCT08     | 03OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1240              | Light Weight Concrete 4th Floor        | 02OCT08     | 06OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1250              | Install Trim & Doors 4th floor         | 07OCT08     | 13OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1260              | Paint 4th floor                        | 09OCT08     | 13OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1270              | Install cabinets/countertops 4th floor | 13OCT08     | 16OCT08 |              |    |      |    |    |    |    |    |    |
| B8-1280              | MEP & Fire Sprinkler Trim 4th floor    | 13OCT08     | 17OCT08 |              |    |      |    |    |    |    |    |    |

AA 000440

| Activity ID          | Description                            | Early Start | Early Finish | 2008 | SEP | OCT | NOV | DEC |
|----------------------|--|-------------|--------------|------|-----|-----|-----|-----|
| B9-10                | Tie into riser                         | 28AUG08     | 28AUG08      |      |     |     |     |     |
| B9-20                | Sprinkler leak test                    | 28AUG08     | 29AUG08      |      |     |     |     |     |
| B9-55                | Build Elevator Cars                    | 12SEP08     | 23SEP08      |      |     |     |     |     |
| B9-65                | Elevator Pre-Test                      | 23SEP08     | 24SEP08      |      |     |     |     |     |
| B9-75                | Elevator Test with State of Nevada for | 24SEP08     | 26SEP08      |      |     |     |     |     |
| B9-85                | Elevator Final Test                    | 26SEP08     | 29SEP08      |      |     |     |     |     |
| B9-50                | Test and balance                       | 29SEP08     | 01OCT08      |      |     |     |     |     |
| INTERIOR - 1ST FLOOR |  |             |              |      |     |     |     |     |
| B9-160               | Rough HVAC 1st Floor to Fire Lid       | 03SEP08     | 04SEP08      |      |     |     |     |     |
| B9-170               | HVAC Inspection                        | 04SEP08     | 04SEP08      |      |     |     |     |     |
| B9-180               | Framing Inspection                     | 04SEP08     | 05SEP08      |      |     |     |     |     |
| B9-190               | Insulate 1st floor                     | 05SEP08     | 08SEP08      |      |     |     |     |     |
| B9-200               | Insulation Inspection                  | 08SEP08     | 09SEP08      |      |     |     |     |     |
| B9-210               | Drywall                                | 09SEP08     | 12SEP08      |      |     |     |     |     |
| B9-220               | Fire Lid 1st floor                     | 09SEP08     | 12SEP08      |      |     |     |     |     |
| B9-230               | Drywall Inspection                     | 12SEP08     | 15SEP08      |      |     |     |     |     |
| B9-240               | Fire Lid Inspection                    | 12SEP08     | 15SEP08      |      |     |     |     |     |
| B9-250               | Frame Soffits, Cans, Drywall           | 15SEP08     | 18SEP08      |      |     |     |     |     |
| B9-260               | Tape / Texture                         | 18SEP08     | 23SEP08      |      |     |     |     |     |
| B9-270               | Light Weight Concrete 1st Floor        | 19SEP08     | 24SEP08      |      |     |     |     |     |
| B9-280               | Install Trim & Doors 1st floor         | 24SEP08     | 01OCT08      |      |     |     |     |     |
| B9-290               | Paint 1st floor                        | 26SEP08     | 02OCT08      |      |     |     |     |     |
| B9-300               | Install cabinets/countertops 1st floor | 01OCT08     | 06OCT08      |      |     |     |     |     |
| B9-310               | MEP & Fire Sprinkler Trim 1st floor    | 02OCT08     | 09OCT08      |      |     |     |     |     |
| B9-320               | Install tile 1st floor                 | 03OCT08     | 09OCT08      |      |     |     |     |     |
| B9-340               | Hardware Trim                          | 06OCT08     | 08OCT08      |      |     |     |     |     |
| B9-330               | Install carpet 1st floor               | 06OCT08     | 09OCT08      |      |     |     |     |     |
| B9-350               | Final MEP Inspection                   | 09OCT08     | 10OCT08      |      |     |     |     |     |
| B9-1500              | Pre punch 1st floor                    | 10OCT08     | 15OCT08      |      |     |     |     |     |
| B9-1510              | Punchlist 1st floor                    | 15OCT08     | 17OCT08      |      |     |     |     |     |
| B9-1540              | Final clean 1st floor                  | 17OCT08     | 22OCT08      |      |     |     |     |     |
| INTERIOR - 2ND FLOOR |  |             |              |      |     |     |     |     |
| B9-460               | Pre-Rock / Insulation 2nd Floor        | 04SEP08     | 08SEP08      |      |     |     |     |     |
| B9-470               | Rough HVAC 2nd Floor to Fire Lid       | 08SEP08     | 09SEP08      |      |     |     |     |     |





| Activity ID | Description         | Early Start | Early Finish | 28 | 04 | 11 | 18 | AUG | 25 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | OCT | 20 | 27 | 03 | 10 | 17 | 24 | 01 | 08 | 15 | 22 | 29 | 06 | 13 | NOV | 20 | 27 | 04 | 11 | 18 | DEC |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |    |
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| B9-1570     | Pre punch 4th floor | 13OCT08     | 15OCT08      |    |    |    |    |     |    |    |    |    |    |    |    |    |     |    |    |    |    |    |    |    |    |    |    |    |    |    |     |    |    |    |    |    |     |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | </ |



**EXHIBIT A  
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Subcontract Agreement

## SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-21 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 Professional Doors and Millworks, LLC  
2951 Marion Drive  
Suite 117  
Las Vegas, NV 89119 P 702-643-8268 F 702-643-0856

(hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 52351

Limit: \$ 700,000.00

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.
- 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

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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

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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.
- 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.
- 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 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.

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- (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.

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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.

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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

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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

- 9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, 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.

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- 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 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

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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:

a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,

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- 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."
  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,

APCO Construction  
Subcontractor

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.

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

APCO Construction  
Subcontractor 

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.

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 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 at 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

APCO Construction  
Subcontractor 

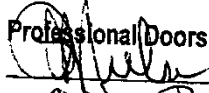
Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.

- 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 contribution 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.

APCO Construction  
Subcontractor 

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.

  
Professional Doors and Millwork, LLC  
TITLE


  
APCO CONSTRUCTION  
Project Manager  
TITLE

**EXHIBIT 'A'**  
**Subcontractor Scope of Work**  
APCO Contract No. 0168

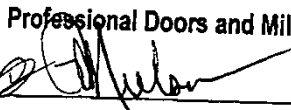

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) \_\_\_\_ through \_\_\_\_ Subcontractor 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:

| ITEM # | DESCRIPTION | UNIT | QTY | PRICE | TOTAL |
|--------|-------------|------|-----|-------|-------|
|--------|-------------|------|-----|-------|-------|

**HM Frames:** 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 HM Doors and Frames for the Basement and Stairwells for buildings 8 & 9 per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering. See attached Project Drawing List, in the amount of Ten Thousand Six Hundred and Seventy Dollars and no/100, (\$10,670.00) for the project. 

INV # 23911 \$ 9603 3/25/08

  
Professional Doors and Millwork, LLC  
OWNER   
TITLE

  
APCO CONSTRUCTION  
Project Manager  
TITLE

APCO Construction  
Subcontractor 

### 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 \_\_\_\_\_ 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.
- (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.

APCO Construction  
Subcontractor 



### NOTICE TO ALL SUBCONTRACTORS

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes ☒ or No ☐

Social Security No.: \_\_\_\_\_

Federal Tax ID No.: 88-0491882

By [Signature]  
Signature

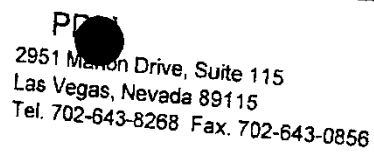
2/10/06  
Date

Contractor  
Title

APCO Construction  
Subcontractor [Signature]

**EXHIBIT B  
TO THE RATIFICATION**

Amendments



Quoted by: Chris Bonanno  
Telephone: 702-643-8268  
FAX: 702-632-0675  
Email: [Chris@USResourcescorp.com](mailto:Chris@USResourcescorp.com)

Job Name: Manhattan West Bldg  
8 & 9 Basement &  
Stair Frames Labor &  
Material

**EXHIBIT C  
TO THE RATIFICATION**

Submitted Change Orders

**EXHIBIT D  
TO THE RATIFICATION**

Previously Approved Change Orders

**APCO Construction**

3432 N. 5th Street

North Las Vegas, NV 89032

Phone: 734-0198

Fax: 734-0396

**CHANGE ORDER**

No. 00001

**TITLE:** CO#001 Delete Public Toilet Access**DATE:** 5/20/2008**PROJECT:** Manhattan West - Condominiums**JOB:** 0168**TO:** Attn: Ron Nielson  
Professional Doors & Millwork, LLC.  
2951 Marion Drive #117  
Las Vegas, NEVADA 89115  
Phone: 702 400-0491 Fax: 702 643-0856**CONTRACT NO:** 34**RE:****To:****From:****Number:****DESCRIPTION OF CHANGE**

Delete Public Area Toilet Accessories and Partitions at Building #7

| Item# | Description   | Stock# | Quantity | Units | Unit Price    | Tax Rate | Tax Amount | Net Amount    |
|-------|---|--------|----------|-------|---------------|----------|------------|---------------|
| 00001 | Delete Public Area Toilet Partitions at Building #7 |        | 1.000    |       | (\$11,214.05) | 0.00%    | \$0.00     | (\$11,214.05) |
| 00002 | Delete Public Toilet Accessories at Building #7     |        | 1.000    |       | (\$7,661.00)  | 0.00%    | \$0.00     | (\$7,661.00)  |

**Unit Cost:** (\$18,875.05)**Unit Tax:** \$0.00**Total:** (\$18,875.05)

|   |               |
|---|---------------|
| The Original Contract Sum was   | \$504,627.00  |
| Net Change by Previously Authorized Requests and Changes                | \$0.00        |
| The Contract Sum Prior to This Change Order was                         | \$504,627.00  |
| The Contract Sum Will be Decreased                                      | (\$18,875.05) |
| The New Contract Sum Including This Change Order                        | \$485,751.95  |
| The Contract Time Will Not Be Changed                                   |               |
| The Date of Substantial Completion as of this Change Order Therefore is |               |

**ACCEPTED:**

Professional Doors &amp; Millwork, LL APCO Construction

By: \_\_\_\_\_ By: Randy Nickerl By: \_\_\_\_\_  
Ron Nielson Randy Nickerl  
Date: 5/20/2008 Date: 5/20/2008 Date: \_\_\_\_\_

Expedition 8

AA 000466

**APCO Construction**

3432 N. 5th Street

North Las Vegas, NV 89032

Phone: 734-0198

Fax: 734-0396

**CHANGE ORDER**

No. 00002

**TITLE:** CO#002 F & I Doors @ Bldg 8&9**DATE:** 5/20/2008**PROJECT:** Manhattan West - Condominiums**JOB:** 0168**TO:** Attn: Ron Nielson  
Professional Doors & Millwork, LLC.  
2951 Marion Drive #117  
Las Vegas, NEVADA 89115  
Phone: 702 400-0491 Fax: 702 643-0856**CONTRACT NO:** 34**RE:****To:****From:****Number:****DESCRIPTION OF CHANGE**

Furnish and install all doors, frames and hardware at building #8, #9.

| Item  | Description  | Stock# | Quantity | Units | Unit Price   | Tax Rate | Tax Amount | Net Amount   |
|-------|--|--------|----------|-------|--------------|----------|------------|--------------|
| 00001 | Furnish and install all doors, frames and hardware at building #8, #9. |        | 1.000    |       | \$852,123.00 | 0.00%    | \$0.00     | \$852,123.00 |

**Unit Cost:** \$852,123.00**Unit Tax:** \$0.00**Total:** \$852,123.00

|   |                |
|---|----------------|
| The Original Contract Sum was   | \$504,627.00   |
| Net Change by Previously Authorized Requests and Changes                | (\$22,573.35)  |
| The Contract Sum Prior to This Change Order was                         | \$482,053.65   |
| The Contract Sum Will be Increased                                      | \$852,123.00   |
| The New Contract Sum Including This Change Order                        | \$1,334,176.65 |
| The Contract Time Will Not Be Changed                                   |                |
| The Date of Substantial Completion as of this Change Order Therefore is |                |

**ACCEPTED:****Professional Doors & Millwork, LI APCO Construction**

|                        |                          |             |
|------------------------|--------------------------|-------------|
| By: _____              | By: <u>Randy Nickerl</u> | By: _____   |
| Ron Nielson            | Randy Nickerl            |             |
| Date: <u>5/20/2008</u> | Date: <u>5/20/2008</u>   | Date: _____ |

Expedition ③

AA 000467

# Pdm Professional Doors & Millworks, LLC.

License Number: 0052351

- Fully Insured

2951 Marion Drive, Suite #117 - Las Vegas, NV 89115

Ph: 702-643-8268 FAX 702-643-0866

Estimate for : APCO - Manhattan West - Buildings 8 & 9

Page takeoff Information - Phase I - Building Type I

Doors and Frames

NOTE: ALL HM

Doors in STAIRS

are 250 degree

temperature rise

doors per code.

| Cost Category          | Door Hardware | Slider Door to be Cased | BASE MDF 3 1/2" - 711 | PB Shelving and Rod | 1x6 wall cap and wall handrails | Bath Hardware Total |
|------------------------|---------------|-------------------------|-----------------------|---------------------|---------------------------------|---------------------|
| Material Bid           | \$341,313.32  | \$298,820.33            | \$670.29              | \$18,079.20         | \$11,122.82                     | \$3,232.50          |
| Labor Bid              | \$50,344.66   | \$73,447.85             | \$528.77              | \$38,507.43         | \$4,008.60                      | \$2,937.60          |
| Total Bid per category | \$391,657.97  | \$372,267.88            | \$1,198.06            | \$56,586.63         | \$15,131.42                     | \$6,170.10          |
|                        |               |                         |                       |                     |                                 | \$9,110.33          |

Project Total Bid

\$852,123

CORRIDOR MILLWORK - NO BID



# Pdm Professional Doors & Millworks, LLC.

License Number: 0052351 - Fully Insured

2951 Marion Drive, Suite #117 - Las Vegas, NV 89115

Ph: 702-843-8288  
FAX: 702-

Estimate for : APCO - Manhattan West - Buildings 8 & 9  
Page takeoff information - Phase I - Building Type I

| Project Door<br>totals | Door Type                      | Width | Height | Thick  | Description  | HWR Group | Jamb mat<br>and size  | Molding                   | Thres<br>Info | Submittal<br>SET<br>NUMBER<br>Information |
|------------------------|--------------------------------|-------|--------|--------|--|-----------|---|---------------------------|---------------|---|
| 162                    | UNIT ENTRY - A                 | 3'-0" | 8'-0"  | 1 3/4" | SCHB raw W/peep 20 minute<br>fire rated and labelled fire<br>and smoke | 11        | 5 7/8" HM<br>Jamb 20<br>minute<br>labelled<br>fire and<br>smoke     | none                      | HCA           | S1  |
| 104                    | Louvered Utility<br>Closet - J | 3'-0" | 8'-0"  | 1 3/8" | HCHB Doors with Vent, PR 1'-<br>6" swing doors                         | 15        | 4 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S2  |
| 44                     | Closet Bypass -<br>E B1        | 5'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush, PR 2'-8"<br>bypass doors                               | 16        | Bump<br>Jamb 3-<br>sides w/ 1<br>x 3 skit at<br>head track<br>sides | 2 1/2" #711<br>Casing - 2 | none          | S3  |
| 16                     | Pocket<br>Bathroom - C         | 3'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush, pocket door  | 14        | 6 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S4  |
| 80                     | Entry Closet -<br>Bc           | 2'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush   | 12        | 4 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S5  |
| 304                    | Bedroom/Bathro<br>om - Ba      | 3'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush   | 13        | 6 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S6  |
| 0                      | Closet - Db PR<br>swing doors  | 5'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush, PR 2'-8"<br>swing doors                                | 15        | 4 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S8  |
| 230                    | Bedroom/Bathro<br>om - Bb      | 3'-0" | 8'-0"  | 1 3/8" | HCHB Raw flush   | 13        | 4 3/4"<br>MDF Jamb<br>sides   | 2 1/2" #711<br>Casing - 2 | none          | S6  |

|     |                                 |       |       |        |  |   |    |  |                                    |      |     |
|-----|---------------------------------|-------|-------|--------|--|---|----|--|------------------------------------|------|-----|
| 62  | Closet Bypass -<br>Ea 4'0"      | 4'-0" | 8'-0" | 1 3/8" |  | HCHB Raw flush, PR 2'-0"  | 16 | Bump<br>Jambes w/ 1<br>x 3 skit at<br>head track<br>6 3/4" HM        | 2 1/2" #711<br>Casing - 2<br>sides | none | S3  |
| 22  | Mechanical - H<br>Louvered      | 2'-5" | 8'-0" | 1 3/8" |  | Masonite Metal flush with<br>24x24 bottom vent  | 12 | Jamb   | none                               | none | S7  |
| 388 | Bath - D PR<br>swing doors      | 3'-0" | 8'-0" | 1 3/8" |  | HCHB Raw flush, PR 1'-8"<br>swing doors   | 19 | 4 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S6  |
| 8   | Louvered Utility<br>Closet - Ja | 4'-0" | 8'-0" | 1 3/8" |  | HCHB Raw with Vent doors,<br>PR 2'-0" swing doors   | 15 | 4 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S2  |
| 32  | Louvered Utility<br>Closet - Jb | 5'-0" | 8'-0" | 1 3/8" |  | HCHB with vent doors, PR 2'-<br>8" swing doors  | 15 | 4 3/4"<br>MDF Jamb   | 3 1/2" #711<br>Casing - 2<br>sides | none | S9  |
| 32  | Entry Closet -<br>Bca           | 2'-6" | 8'-0" | 1 3/8" |  | HCHB Raw flush  | 12 | 4 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S9  |
| 18  | Entry Closet -<br>Bcb           | 1'-6" | 8'-0" | 1 3/8" |  | HCHB Raw flush  | 12 | 4 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S9  |
| 0   | Mechanical - Ha<br>Louvered     | 3'-0" | 8'-0" | 1 3/8" |  | Masonite Metal flush with<br>24x24 bottom vent  | 12 | 8 3/4" HM<br>Jamb  | none                               | none | S7  |
| 18  | Bath - Da PR<br>swing doors     | 4'-0" | 8'-0" | 1 3/8" |  | HCHB Raw flush, PR 2'-0"<br>swing doors   | 19 | 4 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S6  |
| 72  | Bath - K PR<br>swing doors      | 3'-0" | 8'-0" | 1 3/8" |  | HCHB Raw flush, PR 1'-8"<br>swing doors   | 15 | 8 3/4"<br>MDF Jamb   | 2 1/2" #711<br>Casing - 2<br>sides | none | S6  |
| 64  | Type M                          | 3'-0" | 8'-0" | 1 3/4" |  | Masonite metal flush panel  | 37 | 7 3/8" HM<br>Jamb  | none                               | none | S10 |
| 120 | Type L                          | 8'-0" | 8'-0" | 1 3/4" |  | Masonite Metal flush, Pair 3'-<br>0"  | 36 | 7 3/8" HM<br>Jamb  | none                               | none | S11 |
| 6   | Stairs HM                       | 3'-0" | 8'-0" | 1 3/4" |  | HM Mineral Core 260 degree<br>temp rise doors rated for 90<br>minutes fire and smoke -<br>labeled | 1  | 5 3/4" HM<br>Jamb<br>labelled 90<br>minutes<br>fire and<br>smoke     | none                               | HCA  | S12 |
| 20  | Stairs HM                       | 3'-0" | 8'-0" | 2 3/4" |  | HM Mineral Core 260 degree<br>temp rise doors rated for 90<br>minutes fire and smoke -<br>labeled | 2  | 6 3/4" HM<br>Jamb<br>labelled 90<br>minutes for<br>fire and<br>smoke | none                               | HCA  | S12 |

|    |                                       |       |       |        |  |             |   |  |      |     |
|----|---------------------------------------|-------|-------|--------|--|-------------|---|--|------|-----|
| 32 | Type M - 20<br>Minute                 | 3'-0" | 8'-0" | 1 3/4" | Flush Panel HM Labeled 20<br>Minute for Fire and Smoke               | 4           | 6 3/4" HM<br>Jamb<br>labeled 20<br>minutes for<br>fire and<br>smoke | none   | none | S13 |
| 2  | Type L - Doors<br>Only - 60 Minute    | 6'-0" | 8'-0" | 1 3/4" | Pair 3'-0" Flush Panel HM<br>Labeled 60 Minute for Fire<br>and Smoke | 7           | 5 3/4" HM<br>Jamb<br>labeled 90<br>minutes<br>fire and<br>smoke     | none   | none | S14 |
| 2  | Type L - Doors<br>Only - 20 Minute    | 6'-0" | 8'-0" | 1 3/4" | Pair 3'-0" Flush Panel HM<br>Labeled 60 Minute for Fire<br>and Smoke | 3A          | 6 3/4" HM<br>Jamb<br>labeled 20<br>minutes for<br>fire and<br>smoke | none   | none | S14 |
| 12 | Type M - 20<br>Minute - Doors<br>Only | 3'-0" | 8'-0" | 1 3/4" | HM flush door, Labeled 45<br>Minute for Fire and Smoke               | 1B, 4, 5, 6 | 6 3/4" HM<br>Jamb<br>labeled 20<br>minutes<br>fire and<br>smoke     | none   | none | S12 |
| 32 | Type M - 20<br>Minute 2'-6"           | 2'-6" | 8'-0" | 1 3/4" | HM flush door, Labeled 20<br>Minute for Fire and Smoke               | 28          | 6 3/4" HM<br>Jamb<br>labeled 20<br>minutes for<br>fire and<br>smoke | none   | none | S15 |
| 8  | Type M - 60<br>Minute                 | 3'-0" | 8'-0" | 1 3/4" | HM flush door, Labeled 80<br>Minute for Fire and Smoke               | 22          | 6 3/4" HM<br>Jamb<br>labeled 60<br>minutes for<br>fire and<br>smoke | none   | none | S16 |
| 32 | Type O                                | 6'-0" | 8'-0" | 1 3/4" | Pair 3'-0" Metal French Door<br>w/Single Lite                        | 35          | 6 3/4" KERF<br>Jamb   | Stucco<br>Mold one<br>Side, 2 1/2"<br>#711<br>Casing<br>One Side | HCA  | S17 |
| 1  | Type O @ S                            | 7'-0" | 8'-0" | 1 3/4" | Pair 3'-6" Metal French Door<br>w/Single Lite                        | 35          | 6 3/4" KERF<br>Jamb   | Stucco<br>Mold one<br>Side, 2 1/2"<br>#711<br>Casing<br>One Side | HCA  | S17 |

|  |  |       |       |        |  |    |   |      |      |                           |
|--|--|-------|-------|--------|--|----|---|------|------|---------------------------|
| 2  | Type L - 20 Minute Sliders to be Cased | 6'-0" | 8'-0" | 1 3/4" | Pair 3'-0" Flush Panel HM Labeled 60 Minute for Fire and Smoke | 10 | 6 3/4" HM Jamb labelled 20 minutes for fire and smoke | none | none | S18                       |
| 144  |  |       |       |        |  |    |   |      |      | S19                       |
| Total count 1911   |  |       |       |        |  |    |   |      |      |                           |
| <b>ALL INTERIOR DOORS ARE Orion and Entry Door Is TAH. ALL Common area doors are TAH</b> |  |       |       |        |  |    |   |      |      | See Attached HWR Grouping |
| <b>Count for Hardware sets</b>   |  |       |       |        |  |    |   |      |      |                           |
| 6  | 1                                      |       |       |        |  |    |   |      |      |                           |
| 2  | 1B                                     |       |       |        |  |    |   |      |      |                           |
| 20   | 2                                      |       |       |        |  |    |   |      |      |                           |
| 2  | 3A                                     |       |       |        |  |    |   |      |      |                           |
| 34   | 4                                      |       |       |        |  |    |   |      |      |                           |
| 4  | 5                                      |       |       |        |  |    |   |      |      |                           |
| 4  | 6                                      |       |       |        |  |    |   |      |      |                           |
| 2  | 7                                      |       |       |        |  |    |   |      |      |                           |
| 2  | 10                                     |       |       |        |  |    |   |      |      |                           |
| 162  | 11                                     |       |       |        |  |    |   |      |      |                           |
| 160  | 12                                     |       |       |        |  |    |   |      |      |                           |
| 634  | 13                                     |       |       |        |  |    |   |      |      |                           |
| 18   | 14                                     |       |       |        |  |    |   |      |      |                           |
| 214  | 16                                     |       |       |        |  |    |   |      |      |                           |
| 106  | 16                                     |       |       |        |  |    |   |      |      |                           |
| 406  | 19                                     |       |       |        |  |    |   |      |      |                           |
| 8  | 22                                     |       |       |        |  |    |   |      |      |                           |
| 32   | 28                                     |       |       |        |  |    |   |      |      |                           |
| 33   | 36                                     |       |       |        |  |    |   |      |      |                           |
| 120  | 36                                     |       |       |        |  |    |   |      |      |                           |
| 64   | 37                                     |       |       |        |  |    |   |      |      |                           |

|                          |         |  |  |  |  |  |  |  |  |     |
|--------------------------|---------|--|--|--|--|--|--|--|--|-----|
| <b>Door Casings</b>      |         |  |  |  |  |  |  |  |  |     |
| Total LF                 |         |  |  |  |  |  |  |  |  |     |
| MDF 2 1/2                |         |  |  |  |  |  |  |  |  | S19 |
| 711                      | Sliders |  |  |  |  |  |  |  |  |     |
| Total LF                 |         |  |  |  |  |  |  |  |  |     |
| MDF BASE                 |         |  |  |  |  |  |  |  |  |     |
| MDF 3 1/2                |         |  |  |  |  |  |  |  |  | S20 |
| 711                      |         |  |  |  |  |  |  |  |  |     |
| Total LF                 |         |  |  |  |  |  |  |  |  |     |
| 83894                    |         |  |  |  |  |  |  |  |  |     |
| 22 degree                |         |  |  |  |  |  |  |  |  |     |
| <b>Interior Millwork</b> |         |  |  |  |  |  |  |  |  |     |
| Total LF                 |         |  |  |  |  |  |  |  |  |     |
| PB                       |         |  |  |  |  |  |  |  |  |     |
| 12" Shelf                |         |  |  |  |  |  |  |  |  | S21 |
| 1"x6" wall cap           |         |  |  |  |  |  |  |  |  | MDF |
| 6240                     |         |  |  |  |  |  |  |  |  |     |
| 1200                     |         |  |  |  |  |  |  |  |  |     |

**APCO Construction**

3432 N. 5th Street

North Las Vegas, NV 89032

Phone: 734-0198

Fax: 734-0396

**CHANGE ORDER**

No. 00003

**TITLE:** CO#003 Furnish DOors @ Bldg 2 & 3**DATE:** 6/10/2008**PROJECT:** Manhattan West - Condominiums**JOB:** 0168**TO:** Attn: Ron Nielson  
Professional Doors & Millwork, LLC.  
2951 Marion Drive #117  
Las Vegas, NEVADA 89115  
Phone: 702 400-0491 Fax: 702 643-0856**CONTRACT NO:** 34**RE:****To:****From:****Number:****DESCRIPTION OF CHANGE**

Furnish and install doors, frames and hardware for builds 2 &amp; 3 as shown on attached PDM breakdown.

| Item  | Description   | Stock | Quantity | Units | Unit Price  | Tax Rate | Tax Amount | Net Amount  |
|-------|---|-------|----------|-------|-------------|----------|------------|-------------|
| 00001 | Furnish and install doors, frames and hardware for builds 2 & 3 as shown on attached PDM breakdown. |       | 1.000    |       | \$86,858.00 | 0.00%    | \$0.00     | \$86,858.00 |

**Unit Cost:** \$86,858.00**Unit Tax:** \$0.00**Total:** \$86,858.00

|   |                |
|---|----------------|
| The Original Contract Sum was   | \$504,627.00   |
| Net Change by Previously Authorized Requests and Changes                | \$833,247.95   |
| The Contract Sum Prior to This Change Order was                         | \$1,337,874.95 |
| The Contract Sum Will be Increased                                      | \$86,858.00    |
| The New Contract Sum Including This Change Order                        | \$1,424,732.95 |
| The Contract Time Will Not Be Changed                                   |                |
| The Date of Substantial Completion as of this Change Order Therefore is |                |

**ACCEPTED:**

Professional Doors &amp; Millwork, LI APCO Construction

By: \_\_\_\_\_ By: Randy Nicklerl By: \_\_\_\_\_

Ron Nielson

Randy Nicklerl

Date: 6/11/2008 Date: 6/10/2008 Date: \_\_\_\_\_

Expedition ⑥

AA 000473

# **EXHIBIT "3"**

**Receipt/Conformed Copy**

Requestor:  
CMA BUSINESS CREDIT SERVICES  
01/23/2009 15:15:31 T20090025148  
Book/Instr: 20090123-0004055  
Lien Page Count: 9  
Fees: \$22.00 N/C Fee: \$0.00

Debbie Conway  
Clark County Recorder

**NOTICE REQUESTED BY  
AND RETURN TO:**

PROFESSIONAL DOORS & MILLWORKS  
CMA BUSINESS CREDIT SERVICES  
3110 W CHEYENNE #100  
NORTH LAS VEGAS, NV 89032

APN: 163-32-112-0001, SEE EXHIBIT 'A'

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of property:

1. The amount of the original contract is: \$ 582,966.86.
2. The total amount of all additional, or changed work, materials and equipment, if any, is: \$ 920,105.95.
3. The total amount of all payments received to date is: \$ 841,766.09
4. The amount of the lien, after deducting all just credits and offsets, is \$582,966.86.
5. The name of the reputed owner, if known, of the property is: GEMSTONE DEVELOPMENT WEST, INC , 9121 W RUSSELL ROAD, UNIT 117, Las Vegas, NV 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: CAMCO PACIFIC CONSTR CO, 2925 E PATRICK LN STE G, Las Vegas, NV 89120
7. A brief statement of the terms of payment of the lien claimant's contract is: NET 30 DAYS
8. A description of the property and/or the improvements to be charged with the lien is: THE WEST MANHATTAN CONDOMINIUMS , WEST RUSSELL ROAD & ROCKY HILL, Las Vegas, NV 89148, County Assessor Description: MANHATTAN WEST-PHASE 1, PLAT BOOK 141 PAGE 28, SEC 32 TWP 21 RNG 60 County of Clark  
County Assessors Parcel Number: 163-32-112-001, SEE EXHIBIT 'A'

**VERIFICATION**

I declare that I am authorized to file this MECHANICS LIEN (PRIVATE WORK) on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated January 22, 2009 for PROFESSIONAL DOORS & MILLWORKS, 2951 MARION DR #115, Las Vegas, NV 89115

By: Elise Gutierrez Phone: (702) 259-2622 Fax: (702) 259-9908

ELISE GUTIERREZ, REPRESENTATIVE FOR PROFESSIONAL DOORS & MILLWORKS

## EXHIBIT "A"

OWNER: GEMSTONE DEVELOPMENT WEST INC  
JOB DESCRIPTION: MANHATTAN WEST CONDOMINIUMS  
LEGAL DESCRIPTION: MANHATTAN WEST - PHASE 1  
PLAT BOOK 141 PAGE 28

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 001 | 2      | 101    | \$2,369.78 |
| 163-32-112- 002 | 2      | 102    | \$2,369.78 |
| 163-32-112- 003 | 2      | 201    | \$2,369.78 |
| 163-32-112- 004 | 2      | 301    | \$2,369.78 |
| 163-32-112- 005 | 2      | 401    | \$2,369.78 |
| 163-32-112- 006 | 3      | 101    | \$2,369.78 |
| 163-32-112- 007 | 3      | 102    | \$2,369.78 |
| 163-32-112- 008 | 3      | 201    | \$2,369.78 |
| 163-32-112- 009 | 3      | 301    | \$2,369.78 |
| 163-32-112- 010 | 3      | 401    | \$2,369.78 |
| 163-32-112- 011 | 7      | 101    | \$2,369.78 |
| 163-32-112- 012 | 7      | 102    | \$2,369.78 |
| 163-32-112- 013 | 7      | 103    | \$2,369.78 |
| 163-32-112- 014 | 7      | 201    | \$2,369.78 |
| 163-32-112- 015 | 7      | 202    | \$2,369.78 |
| 163-32-112- 016 | 7      | 203    | \$2,369.78 |
| 163-32-112- 017 | 7      | 204    | \$2,369.78 |
| 163-32-112- 018 | 7      | 205    | \$2,369.78 |
| 163-32-112- 019 | 7      | 206    | \$2,369.78 |
| 163-32-112- 020 | 7      | 207    | \$2,369.78 |
| 163-32-112- 021 | 7      | 208    | \$2,369.78 |
| 163-32-112- 022 | 7      | 209    | \$2,369.78 |
| 163-32-112- 023 | 7      | 210    | \$2,369.78 |
| 163-32-112- 024 | 7      | 301    | \$2,369.78 |
| 163-32-112- 025 | 7      | 302    | \$2,369.78 |
| 163-32-112- 026 | 7      | 303    | \$2,369.78 |
| 163-32-112- 027 | 7      | 304    | \$2,369.78 |
| 163-32-112- 028 | 7      | 305    | \$2,369.78 |
| 163-32-112- 029 | 7      | 306    | \$2,369.78 |
| 163-32-112- 030 | 7      | 307    | \$2,369.78 |
| 163-32-112- 031 | 7      | 308    | \$2,369.78 |



| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 032 | 7      | 309    | \$2,369.78 |
| 163-32-112- 033 | 7      | 310    | \$2,369.78 |
| 163-32-112- 034 | 7      | 401    | \$2,369.78 |
| 163-32-112- 035 | 7      | 402    | \$2,369.78 |
| 163-32-112- 036 | 7      | 403    | \$2,369.78 |
| 163-32-112- 037 | 7      | 404    | \$2,369.78 |
| 163-32-112- 038 | 7      | 405    | \$2,369.78 |
| 163-32-112- 039 | 7      | 406    | \$2,369.78 |
| 163-32-112- 040 | 7      | 407    | \$2,369.78 |
| 163-32-112- 041 | 7      | 408    | \$2,369.78 |
| 163-32-112- 042 | 7      | 409    | \$2,369.78 |
| 163-32-112- 043 | 7      | 410    | \$2,369.78 |
| 163-32-112- 044 | 7      | 501    | \$2,369.78 |
| 163-32-112- 045 | 7      | 502    | \$2,369.78 |
| 163-32-112- 046 | 7      | 503    | \$2,369.78 |
| 163-32-112- 047 | 7      | 504    | \$2,369.78 |
| 163-32-112- 048 | 7      | 50     | \$2,369.78 |
| 163-32-112- 049 | 7      | 506    | \$2,369.78 |
| 163-32-112- 050 | 7      | 507    | \$2,369.78 |
| 163-32-112- 051 | 7      | 508    | \$2,369.78 |
| 163-32-112- 052 | 7      | 509    | \$2,369.78 |
| 163-32-112- 053 | 7      | 510    | \$2,369.78 |
| 163-32-112- 054 | 7      | 601    | \$2,369.78 |
| 163-32-112- 055 | 7      | 602    | \$2,369.78 |
| 163-32-112- 056 | 7      | 604    | \$2,369.78 |
| 163-32-112- 057 | 7      | 604    | \$2,369.78 |
| 163-32-112- 058 | 7      | 605    | \$2,369.78 |
| 163-32-112- 059 | 7      | 606    | \$2,369.78 |
| 163-32-112- 060 | 7      | 607    | \$2,369.78 |
| 163-32-112- 061 | 7      | 608    | \$2,369.78 |
| 163-32-112- 062 | 7      | 609    | \$2,369.78 |
| 163-32-112- 063 | 7      | 610    | \$2,369.78 |
| 163-32-112- 064 | 7      | 701    | \$2,369.78 |
| 163-32-112- 065 | 7      | 702    | \$2,369.78 |
| 163-32-112- 066 | 7      | 703    | \$2,369.78 |
| 163-32-112- 067 | 7      | 704    | \$2,369.78 |
| 163-32-112- 068 | 7      | 705    | \$2,369.78 |
| 163-32-112- 069 | 7      | 706    | \$2,369.78 |
| 163-32-112- 070 | 7      | 707    | \$2,369.78 |

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 071 | 7      | 708    | \$2,369.78 |
| 163-32-112- 072 | 7      | 709    | \$2,369.78 |
| 163-32-112- 073 | 7      | 710    | \$2,369.78 |
| 163-32-112- 074 | 7      | 801    | \$2,369.78 |
| 163-32-112- 075 | 7      | 802    | \$2,369.78 |
| 163-32-112- 076 | 7      | 803    | \$2,369.78 |
| 163-32-112- 077 | 7      | 804    | \$2,369.78 |
| 163-32-112- 078 | 7      | 805    | \$2,369.78 |
| 163-32-112- 079 | 7      | 806    | \$2,369.78 |
| 163-32-112- 080 | 7      | 807    | \$2,369.78 |
| 163-32-112- 081 | 7      | 808    | \$2,369.78 |
| 163-32-112- 082 | 7      | 809    | \$2,369.78 |
| 163-32-112- 083 | 7      | 810    | \$2,369.78 |
| 163-32-112- 084 | 7      | 902    | \$2,369.78 |
| 163-32-112- 085 | 7      | 903    | \$2,369.78 |
| 163-32-112- 086 | 7      | 904    | \$2,369.78 |
| 163-32-112- 087 | 8      | 101    | \$2,369.78 |
| 163-32-112- 088 | 8      | 102    | \$2,369.78 |
| 163-32-112- 089 | 8      | 103    | \$2,369.78 |
| 163-32-112- 090 | 8      | 104    | \$2,369.78 |
| 163-32-112- 091 | 8      | 105    | \$2,369.78 |
| 163-32-112- 092 | 8      | 106    | \$2,369.78 |
| 163-32-112- 093 | 8      | 107    | \$2,369.78 |
| 163-32-112- 094 | 8      | 108    | \$2,369.78 |
| 163-32-112- 095 | 8      | 109    | \$2,369.78 |
| 163-32-112- 096 | 8      | 110    | \$2,369.78 |
| 163-32-112- 097 | 8      | 111    | \$2,369.78 |
| 163-32-112- 098 | 8      | 112    | \$2,369.78 |
| 163-32-112- 099 | 8      | 113    | \$2,369.78 |
| 163-32-112- 100 | 8      | 114    | \$2,369.78 |
| 163-32-112- 101 | 8      | 115    | \$2,369.78 |
| 163-32-112- 102 | 8      | 116    | \$2,369.78 |
| 163-32-112- 103 | 8      | 117    | \$2,369.78 |
| 163-32-112- 104 | 8      | 118    | \$2,369.78 |
| 163-32-112- 105 | 8      | 119    | \$2,369.78 |
| 163-32-112- 106 | 8      | 120    | \$2,369.78 |
| 163-32-112- 107 | 8      | 201    | \$2,369.78 |
| 163-32-112- 108 | 8      | 202    | \$2,369.78 |
| 163-32-112- 109 | 8      | 203    | \$2,369.78 |

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 110 | 8      | 204    | \$2,369.78 |
| 163-32-112- 111 | 8      | 205    | \$2,369.78 |
| 163-32-112- 112 | 8      | 206    | \$2,369.78 |
| 163-32-112- 113 | 8      | 207    | \$2,369.78 |
| 163-32-112- 114 | 8      | 208    | \$2,369.78 |
| 163-32-112- 115 | 8      | 209    | \$2,369.78 |
| 163-32-112- 116 | 8      | 210    | \$2,369.78 |
| 163-32-112- 117 | 8      | 211    | \$2,369.78 |
| 163-32-112- 118 | 8      | 212    | \$2,369.78 |
| 163-32-112- 119 | 8      | 213    | \$2,369.78 |
| 163-32-112- 120 | 8      | 214    | \$2,369.78 |
| 163-32-112- 121 | 8      | 215    | \$2,369.78 |
| 163-32-112- 122 | 8      | 216    | \$2,369.78 |
| 163-32-112- 123 | 8      | 217    | \$2,369.78 |
| 163-32-112- 124 | 8      | 218    | \$2,369.78 |
| 163-32-112- 125 | 8      | 219    | \$2,369.78 |
| 163-32-112- 126 | 8      | 220    | \$2,369.78 |
| 163-32-112- 127 | 8      | 301    | \$2,369.78 |
| 163-32-112- 128 | 8      | 302    | \$2,369.78 |
| 163-32-112- 129 | 8      | 303    | \$2,369.78 |
| 163-32-112- 130 | 8      | 304    | \$2,369.78 |
| 163-32-112- 131 | 8      | 305    | \$2,369.78 |
| 163-32-112- 132 | 8      | 306    | \$2,369.78 |
| 163-32-112- 133 | 8      | 307    | \$2,369.78 |
| 163-32-112- 134 | 8      | 308    | \$2,369.78 |
| 163-32-112- 135 | 8      | 309    | \$2,369.78 |
| 163-32-112- 136 | 8      | 310    | \$2,369.78 |
| 163-32-112- 137 | 8      | 311    | \$2,369.78 |
| 163-32-112- 138 | 8      | 312    | \$2,369.78 |
| 163-32-112- 139 | 8      | 313    | \$2,369.78 |
| 163-32-112- 140 | 8      | 314    | \$2,369.78 |
| 163-32-112- 141 | 8      | 315    | \$2,369.78 |
| 163-32-112- 142 | 8      | 316    | \$2,369.78 |
| 163-32-112- 143 | 8      | 317    | \$2,369.78 |
| 163-32-112- 144 | 8      | 318    | \$2,369.78 |
| 163-32-112- 145 | 8      | 319    | \$2,369.78 |
| 163-32-112- 146 | 8      | 320    | \$2,369.78 |
| 163-32-112- 147 | 8      | 401    | \$2,369.78 |
| 163-32-112- 148 | 8      | 402    | \$2,369.78 |

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 149 | 8      | 403    | \$2,369.78 |
| 163-32-112- 150 | 8      | 404    | \$2,369.78 |
| 163-32-112- 151 | 8      | 405    | \$2,369.78 |
| 163-32-112- 152 | 8      | 406    | \$2,369.78 |
| 163-32-112- 153 | 8      | 407    | \$2,369.78 |
| 163-32-112- 154 | 8      | 408    | \$2,369.78 |
| 163-32-112- 155 | 8      | 409    | \$2,369.78 |
| 163-32-112- 156 | 8      | 410    | \$2,369.78 |
| 163-32-112- 157 | 8      | 411    | \$2,369.78 |
| 163-32-112- 158 | 8      | 412    | \$2,369.78 |
| 163-32-112- 159 | 8      | 413    | \$2,369.78 |
| 163-32-112- 160 | 8      | 414    | \$2,369.78 |
| 163-32-112- 161 | 8      | 415    | \$2,369.78 |
| 163-32-112- 162 | 8      | 416    | \$2,369.78 |
| 163-32-112- 163 | 8      | 417    | \$2,369.78 |
| 163-32-112- 164 | 8      | 418    | \$2,369.78 |
| 163-32-112- 165 | 8      | 419    | \$2,369.78 |
| 163-32-112- 166 | 8      | 420    | \$2,369.78 |
| 163-32-112- 167 | 9      | 101    | \$2,369.78 |
| 163-32-112- 168 | 9      | 102    | \$2,369.78 |
| 163-32-112- 169 | 9      | 103    | \$2,369.78 |
| 163-32-112- 170 | 9      | 104    | \$2,369.78 |
| 163-32-112- 171 | 9      | 105    | \$2,369.78 |
| 163-32-112- 172 | 9      | 106    | \$2,369.78 |
| 163-32-112- 173 | 9      | 107    | \$2,369.78 |
| 163-32-112- 174 | 9      | 108    | \$2,369.78 |
| 163-32-112- 175 | 9      | 109    | \$2,369.78 |
| 163-32-112- 176 | 9      | 110    | \$2,369.78 |
| 163-32-112- 177 | 9      | 111    | \$2,369.78 |
| 163-32-112- 178 | 9      | 112    | \$2,369.78 |
| 163-32-112- 179 | 9      | 113    | \$2,369.78 |
| 163-32-112- 180 | 9      | 114    | \$2,369.78 |
| 163-32-112- 181 | 9      | 115    | \$2,369.78 |
| 163-32-112- 182 | 9      | 116    | \$2,369.78 |
| 163-32-112- 183 | 9      | 117    | \$2,369.78 |
| 163-32-112- 184 | 9      | 118    | \$2,369.78 |
| 163-32-112- 185 | 9      | 119    | \$2,369.78 |
| 163-32-112- 186 | 9      | 120    | \$2,369.78 |
| 163-32-112- 187 | 9      | 201    | \$2,369.78 |

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 188 | 9      | 202    | \$2,369.78 |
| 163-32-112- 189 | 9      | 203    | \$2,369.78 |
| 163-32-112- 190 | 9      | 204    | \$2,369.78 |
| 163-32-112- 191 | 9      | 205    | \$2,369.78 |
| 163-32-112- 192 | 9      | 206    | \$2,369.78 |
| 163-32-112- 193 | 9      | 207    | \$2,369.78 |
| 163-32-112- 194 | 9      | 208    | \$2,369.78 |
| 163-32-112- 195 | 9      | 209    | \$2,369.78 |
| 163-32-112- 196 | 9      | 210    | \$2,369.78 |
| 163-32-112- 197 | 9      | 211    | \$2,369.78 |
| 163-32-112- 198 | 9      | 212    | \$2,369.78 |
| 163-32-112- 199 | 9      | 213    | \$2,369.78 |
| 163-32-112- 200 | 9      | 214    | \$2,369.78 |
| 163-32-112- 201 | 9      | 215    | \$2,369.78 |
| 163-32-112- 202 | 9      | 216    | \$2,369.78 |
| 163-32-112- 203 | 9      | 217    | \$2,369.78 |
| 163-32-112- 204 | 9      | 218    | \$2,369.78 |
| 163-32-112- 205 | 9      | 219    | \$2,369.78 |
| 163-32-112- 206 | 9      | 220    | \$2,369.78 |
| 163-32-112- 207 | 9      | 301    | \$2,369.78 |
| 163-32-112- 208 | 9      | 302    | \$2,369.78 |
| 163-32-112- 209 | 9      | 303    | \$2,369.78 |
| 163-32-112- 210 | 9      | 304    | \$2,369.78 |
| 163-32-112- 211 | 9      | 305    | \$2,369.78 |
| 163-32-112- 212 | 9      | 306    | \$2,369.78 |
| 163-32-112- 213 | 9      | 307    | \$2,369.78 |
| 163-32-112- 214 | 9      | 308    | \$2,369.78 |
| 163-32-112- 215 | 9      | 309    | \$2,369.78 |
| 163-32-112- 216 | 9      | 310    | \$2,369.78 |
| 163-32-112- 217 | 9      | 311    | \$2,369.78 |
| 163-32-112- 218 | 9      | 312    | \$2,369.78 |
| 163-32-112- 219 | 9      | 313    | \$2,369.78 |
| 163-32-112- 220 | 9      | 314    | \$2,369.78 |
| 163-32-112- 221 | 9      | 315    | \$2,369.78 |
| 163-32-112- 222 | 9      | 316    | \$2,369.78 |
| 163-32-112- 223 | 9      | 317    | \$2,369.78 |
| 163-32-112- 224 | 9      | 318    | \$2,369.78 |
| 163-32-112- 225 | 9      | 319    | \$2,369.78 |
| 163-32-112- 226 | 9      | 320    | \$2,369.78 |

| APN             | BLDG # | UNIT # | AMOUNT     |
|-----------------|--------|--------|------------|
| 163-32-112- 227 | 9      | 401    | \$2,369.78 |
| 163-32-112- 228 | 9      | 402    | \$2,369.78 |
| 163-32-112- 229 | 9      | 403    | \$2,369.78 |
| 163-32-112- 230 | 9      | 404    | \$2,369.78 |
| 163-32-112- 231 | 9      | 405    | \$2,369.78 |
| 163-32-112- 232 | 9      | 406    | \$2,369.78 |
| 163-32-112- 233 | 9      | 407    | \$2,369.78 |
| 163-32-112- 234 | 9      | 408    | \$2,369.78 |
| 163-32-112- 235 | 9      | 409    | \$2,369.78 |
| 163-32-112- 236 | 9      | 410    | \$2,369.78 |
| 163-32-112- 237 | 9      | 411    | \$2,369.78 |
| 163-32-112- 238 | 9      | 412    | \$2,369.78 |
| 163-32-112- 239 | 9      | 413    | \$2,369.78 |
| 163-32-112- 240 | 9      | 414    | \$2,369.78 |
| 163-32-112- 241 | 9      | 415    | \$2,369.78 |
| 163-32-112- 242 | 9      | 416    | \$2,369.78 |
| 163-32-112- 243 | 9      | 417    | \$2,369.78 |
| 163-32-112- 244 | 9      | 418    | \$2,369.78 |
| 163-32-112- 245 | 9      | 419    | \$2,369.78 |
| 163-32-212- 246 | 9      | 420    | \$2,369.76 |

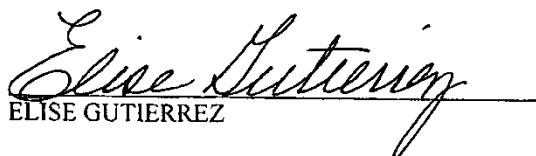
\$582,966.86

ACKNOWLEDGEMENT BY NOTARY PUBLIC

STATE OF NEVADA } SS.  
COUNTY OF CLARK } SS.

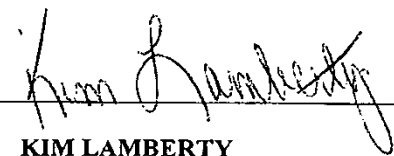
ELISE GUTIERREZ, being duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

  
ELISE GUTIERREZ

On January 22, 2009 before me, the undersigned, a Notary Public in and for said state, personally appeared ELISE GUTIERREZ [X] Personally known to me.

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the attached instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or their entity upon behalf for which the person(s) acted, executed the instrument.

Signature   
KIM LAMBERTY

CAPACITY CLAIMED BY SIGNER: INDIVIDUAL



Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized documents.

Title or Type of Document: MECHANICS LIEN

Date of Document: January 22, 2009

Number of Pages: 9

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1 STAT

2 HOWARD & HOWARD

3 Gwen Rutar Mullins, Esq.

4 Nevada Bar No. 3146

5 Wade B. Gochnour, Esq.

6 Nevada Bar No. 6314

7 3800 Howard Hughes Parkway

8 Suite 1400

9 Las Vegas, NV 89169

10 Telephone (702) 257-1483

11 Facsimile (702) 567-1568

12 E-Mail: [grm@h2law.com](mailto:grm@h2law.com)

13 [wbg@h2law.com](mailto:wbg@h2law.com)

14 Attorneys for Hydropressure Cleaning, Inc.

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 APCO CONSTRUCTION, a Nevada  
18 corporation,

19 Plaintiff,

20 vs.

21 GEMSTONE DEVELOPMENT WEST, INC.,  
22 a Nevada corporation; NEVADA  
23 CONSTRUCTION SERVICES, a Nevada  
24 corporation; SCOTT FINANCIAL  
25 CORPORATION, a North Dakota  
26 corporation; COMMONWEALTH LAND  
27 TITLE INSURANCE COMPANY; FIRST  
28 AMERICAN TITLE INSURANCE  
COMPANY; and DOES I through X,

Defendants.

CASE NO.: A571228

DEPT. NO.: XII

STATEMENT OF FACTS  
CONSTITUTING LIEN AND  
COMPLAINT IN INTERVENTION

Arbitration Exemption:  
Involves Title to Property; seeking  
Declaratory Relief

HOWARD & HOWARD  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

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CE27



1 HYDROPRESSURE CLEANING, INC., a  
2 California corporation,

3 Lien Claimant/Plaintiff-in-  
4 Intervention,

5 vs.

6 GEMSTONE DEVELOPMENT WEST, INC.,  
7 a Nevada corporation; NEVADA  
8 CONSTRUCTION SERVICES, a Nevada  
9 corporation; SCOTT FINANCIAL  
10 CORPORATION, a North Dakota  
11 corporation; and DOES I through X,

12 Defendants.

13 **STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN**  
14 **INTERVENTION**

15 Date: N/A

16 Time: N/A

17 Lien claimant/Plaintiff-in-Intervention Hydropressure Cleaning, Inc. (hereinafter  
18 "Hydropressure"), by and through their attorneys, Howard & Howard, hereby brings its  
19 Statement of Facts Constituting Lien and Complaint in Intervention ("Complaint") and  
20 complains and alleges as follows:

21 **GENERAL ALLEGATIONS**

22 1. Hydropressure is a California corporation which has expertise in waterblasting  
23 that may be required on a project and further provides its customers reliable, and effective  
24 state-of-the-art water jetting equipment, parts, and accessories.

25 2. Hydropressure is considered to be a West Coast expert in waterblasting and has  
26 worked with major contractors on projects, including, but not limited to, the Hoover Dam  
27 project, Hyperion Wastewater Plant Project, Summit Reservoir Project in The Bay Area and the  
28 Interstate Highway projects for the California DOT, Hawaii DOT, and Nevada DOT.

1           3.       Gemstone Development West, Inc. ("Gemstone") is a Nevada corporation and is  
2 the owner of the Manhattan West mixed use development Project commonly referred to as  
3 9205 W. Russell Road, Clark County, Nevada, described in the contract with APCO and  
4 Gemstone as being located on APN 163-32-101-019, and further described as PT NE4 NW4  
5 SEC 32 21 60, SEC 32 TWP 21 RNG 60 and more fully described in that certain Grant Bargain  
6 Sale Deed recorded on February 7, 2008 in Book 20080207 as Instrument No. 01481 of the  
7 Official Records of Clark County Recorder (the "Property" and/or the "Project").

8           4.       Defendant Nevada Construction Services ("NCS") is a Nevada corporation duly  
9 organized under the laws of this state, doing business as a construction control company.

10          5.       Upon information and belief, Defendant Scott Financial Corporation ("SFC"), a  
11 North Dakota corporation duly qualified to do business in the State of Nevada, provided  
12 monies to be used in the payment of the bills incurred in the construction, repair, alteration or  
13 improvement of the Property and is a holder of various deeds of trust on the Property.

14          6.       That the true names and capacities, whether individual, corporate, associate or  
15 otherwise of those Defendants named herein as Does I through X, are Defendants presently  
16 unknown to Hydropressure, who therefore sues said Defendants by such fictitious names and  
17 Hydropressure will seek leave to amend this Complaint to show their true names and capacities  
18 when the same has been ascertained. Hydropressure believes that the Doe Defendants are  
19 individuals or entities within the jurisdiction of this Court, who may be holders of promissory  
20 notes secured by deeds of trust recorded against the subject property, an ownership or leasehold  
21 interest of the property, may be responsible for monies due and owing to Hydropressure, may  
22 be interfering with payments due to Hydropressure, or are otherwise negligent or responsible in  
23 some manner for events referred to in this Complaint, and caused damages approximately  
24 thereby to Hydropressure as alleged herein.

25          7.       On or about October 25, 2008, Gemstone and Hydropressure entered into a Rent  
26 Sales SVC Contract whereby Hydropressure agreed to furnish two pumps and a trailer vacuum  
27 for the grout removal on the column capitals on the Project.

28       ///

**HOWARD & HOWARD**  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

1           8.       The terms of the agreement provided that Hydropressure was to receive payment  
2 for the rental of the rental equipment and the operators within 30 days of submittal of the  
3 invoice.

4           9.       Hydropressure submitted invoices to Gemstone and payment on such invoices  
5 became due within 30 days.

6           10.      Gemstone failed to pay the invoices that Hydropressure submitted and a  
7 principal sum of \$400,000.00 remains due Hydropressure.

8           11.      Hydropressure recorded a Notice of Lien on Project on December 2, 2008, in the  
9 office of the Clark County Recorder, in Book 20081202, as Instrument No. 04781 ("Lien").

10          12.      A true, correct and authentic copy of the Lien is attached as Exhibit 1 and  
11 incorporated into this Complaint by reference.

12          13.      The Lien was duly served as required under Nevada law.

13                               **FIRST CAUSE OF ACTION**  
14                               **(Breach of Contract against Gemstone Only)**

15  
16          14.      Hydropressure repeats and realleges each and every allegation contained in  
17 paragraphs 1 through 13 of this Complaint as though fully set forth herein.

18          15.      There was a valid and enforceable contract between Hydropressure and  
19 Gemstone.

20          16.      Hydropressure complied with the material terms of the agreement.

21          17.      Hydropressure performed all of the terms and conditions required of  
22 Hydropressure under the agreement or is otherwise excused from performance by Gemstone's  
23 breach of contract, or by other acts or omissions of Gemstone.

24          18.      Gemstone breached the agreement, by, among other things, failing to timely and  
25 faithfully pay Hydropressure for the rental of the equipment furnished by Hydropressure on the  
26 Project.

27          19.      Gemstone's breach of the agreement is material.

28       ///

1           20. To date, Gemstone has failed, neglected, and refused to pay and continues to  
2 refuse to pay the principal sums that remains due to Hydropressure to the detriment of  
3 Hydropressure on the Project.

4           21. As a direct and proximate result of Gemstone's material breach, Hydropressure  
5 has been damaged in an amount that exceeds \$10,000.

6           22. Hydropressure is entitled to pre-judgment and post-judgment interest on all  
7 amounts found due and owing.

8           23. Hydropressure has been forced to retain the services of an attorney in this  
9 matter, and Hydropressure is entitled to an award of attorney's fees and costs incurred.

10                                   **SECOND CAUSE OF ACTION**

11                   **(Breach of the Duty of Good Faith and Fair Dealing against Gemstone Only)**

12  
13           24. Hydropressure repeats and realleges each and every allegation contained in  
14 paragraphs 1 through 23 of this Complaint as though fully set forth herein.

15           25. There is an implied duty of good faith and fair dealing implied in all contracts  
16 in the state of Nevada.

17           26. Gemstone has breached the duty of good faith and fair dealing by performing in  
18 a manner that was unfaithful to the purpose of the contract

19           27. As a result of Gemstone's breach of the duty of good faith and fair dealing,  
20 Hydropressure has been damaged in an amount in excess of \$10,000.

21           28. Hydropressure is entitled to pre-judgment and post-judgment interest on all  
22 amounts found due and owing.

23           29. Gemstone's actions were intentional and malicious and evidence a wanton and  
24 reckless disregard of Hydropressure's rights and Hydropressure is therefore entitled to punitive  
25 damages in excess of \$10,000.

26           30. Hydropressure has been forced to retain the services of an attorney in this  
27 matter, and Hydropressure is entitled to an award of attorney's fees and costs incurred.

28           ///

**THIRD CAUSE OF ACTION**

**(Violation of NRS 624 Prompt Payment Act against Gemstone Only)**

31. Hydropressure repeats and realleges each and every allegation contained in paragraphs 1 through 30 as though fully set forth herein.

32. Gemstone violated NRS 624.609 by improperly withholding payments due to Hydropressure.

33. Hydropressure is entitled to pre-judgment and post-judgment interest on all amounts found due and owing.

34. Hydropressure has been forced to retain the services of an attorney in this matter, and Hydropressure is entitled to an award of attorney's fees and costs incurred.

**FOURTH CAUSE OF ACTION**

**(Unjust Enrichment against All Defendants)**

35. Hydropressure repeats and realleges each and every allegation contained in paragraphs 1 through 34 as though fully set forth herein.

36. Hydropressure furnished work on the Project for the benefit of the Defendants, the owners, reputed owners or those parties that may have an interest in the Property at the specific instance and request of Defendant Gemstone.

37. Defendants, owners, reputed owners and those parties that may have an interest in the Property accepted, used and enjoyed the benefit of the work that Hydropressure provided on the Project.

38. Defendants, owners, reputed owners and those parties that may have an interest in the Property knew or should have known that Hydropressure expected to be paid for the work that Hydropressure furnished on the Project.

39. Hydropressure has demanded that Gemstone pay the sums outstanding for the Work furnished by Hydropressure on the Project in the total sum of \$400,000.00.

///

1           40.     To date, Gemstone, owners, reputed owners and those parties that may have an  
2 interest in the Property, and each of them, have failed, neglected and refused to pay said sums  
3 to the detriment of Hydropressure.

4           41.     Defendants, owners, reputed owners and those parties that may have an interest  
5 in the Property have been unjustly enriched to the detriment of Hydropressure.

6           42.     It has been necessary for Hydropressure to engage the services of an attorney,  
7 and Hydropressure is entitled to reasonable attorneys' fees and costs as damages.

8                               **FIFTH CAUSE OF ACTION**

9                               **(Monies Due and Owing Against Gemstone Only)**

10  
11           43.     Hydropressure repeats and realleges each and every allegation contained in  
12 paragraphs 1 through 42 as though fully set forth herein.

13           44.     Hydropressure has performed all terms and conditions of the agreement  
14 executed between the parties and has not been paid for all sums justly due and owing.

15           45.     The monies due and owing to Hydropressure by Gemstone are in excess of  
16 \$10,000.00 according to proof at trial.

17           46.     It has been necessary for Hydropressure to engage the services of an attorney  
18 and Hydropressure is entitled to reasonable attorneys' fees and costs as damages.

19                               **SIXTH CAUSE OF ACTION**

20                               **(Lien Foreclosure)**

21  
22           47.     Hydropressure repeats and realleges each and every allegation contained in  
23 paragraphs 1 through 46 as though fully set forth herein.

24           48.     The whole of the property of the Project is reasonably necessary for the  
25 convenient use and occupation of all of the improvements made by Hydropressure.

26           49.     The terms, time given and conditions of the contract are: Hydropressure  
27 furnished rental equipment on the Project, pursuant to an agreement with Gemstone. The terms

28     ///

1 of the contract provided that Hydropressure was to receive payment within 30 days of  
2 submittal of invoices.

3 50. Gemstone failed to pay Hydropressure for the labor and materials furnished on  
4 the Project and as such Hydropressure recorded its Lien.

5 51. Lien was duly recorded in the official records of Clark County.

6 52. The Lien was served upon the owners of record of the Property or their  
7 authorized agents as required by Nevada law.

8 53. Hydropressure has complied with all requirements of the Nevada Revised  
9 Statutes to perfect the Lien on the Property.

10 54. There may be other claimants whose liens may be subordinate to Hydropressure  
11 Lien.

12 55. Hydropressure is entitled to foreclose on its Lien against the Property pursuant  
13 to the Nevada law and against the interests held by Defendants and any of them.

14 56. It has become necessary for Hydropressure to retain the services of an attorney  
15 to commence this lien action and Hydropressure is, therefore entitled to reasonable attorneys'  
16 fees for the preparation, verification, service and recording of the lien and costs of suit.

17 **TENTH CAUSE OF ACTION**  
18 **(Breach of Duty- Violation of NRS 627)**

19  
20 57. Hydropressure repeats and realleges each and every allegation contained in  
21 paragraphs 1 through 56 as though fully set forth herein.

22 58. Upon information and belief, Defendant Nevada Construction Services ("NCS")  
23 is a Nevada corporation duly organized under the laws of this state, doing business as a  
24 construction control company.

25 59. Upon information and belief, at all times relevant hereto, NCS was and is the  
26 construction control company on the Project.

27 60. NCS is and at all times mentioned herein was, engaged in the control or  
28 disbursement of funds payable or paid to laborers, materialmen, material suppliers, contractors,

1 subcontractors, architects, engineers, or others, for the purpose of satisfying bills incurred in the  
2 construction, repair, alteration or improvement of the Property, including Hydropressure's  
3 invoices for the rental equipment furnished by Hydropressure for the work of improvement of  
4 the Property.

5 61. Upon information and belief, Defendant Scott Financial Corporation ("SFC"), a  
6 North Dakota corporation duly qualified to do business in the State of Nevada, provided  
7 monies to be used in the payment of the bills incurred in the construction, repair, alteration or  
8 improvement of the Property.

9 62. By providing the monies to be used in the payment of bills incurred in the  
10 construction, repair, alteration or improvement of the Property, SFC acted as lender as defined  
11 in NRS Chapter 627.

12 63. Upon information and belief, NCS and SFC have construction loan funds for the  
13 benefit of Hydropressure and other contractors for the work performed on the Project.

14 64. At all times relevant hereto, Hydropressure relied upon the construction control  
15 of NCS and SFC and based upon that reliance, furnished labor and materials for the  
16 improvement of the Property.

17 65. By refusing to pay the valid claims of Hydropressure, NCS and SFC violated the  
18 provisions of NRS Chapter 627 and Hydropressure has been damaged in excess of \$10,000.00.

19 66. It has been necessary for Hydropressure to engage the services of an attorney,  
20 and pursuant to NRS 627.200(2), Hydropressure is entitled to reasonable attorneys' fees and  
21 costs as damages.

## 22 ELEVENTH CAUSE OF ACTION

### 23 (Priority over Deeds of Trust)

24  
25 67. Hydropressure repeats and realleges each and every allegation contained in  
26 paragraphs 1 through 66 as though fully set forth herein.

27 68. Upon information and belief, Gemstone Apache, LLC was the Trustor on the  
28 Deeds of Trust recorded on July 5, 2006 in Book 20060705 as Instrument Nos. 04264, 04265



1 and 04266, in the office of the County Recorder for Clark County, Nevada, as amended  
2 ("Mezzanine Deed of Trust").

3 69. Upon information and belief, First American Title Insurance Company ("First  
4 American") is the trustee of the Deeds of Trust recorded on July 5, 2006 in Book 20060705 as  
5 Instrument Nos. 04264, 04265 and 04266, in the office of the County Recorder for Clark  
6 County, Nevada, as amended, on February 7, 2008 as Instruments Nos. 01484 and 01485 and  
7 the Second Amendment to Third Deed of Trust and Security Agreement with Assignment of  
8 Rents and Fixture Filing Line of Credit, recorded on September 9, 2008 against the Property, in  
9 Book 20080909 as Instrument No. 03943 of the Official Records of Clark County Nevada.

10 70. Upon information and belief, Gemstone acquired the Property from Gemstone  
11 Apache, LLC on or around February 7, 2007 and assumed the Mezzanine Deeds of Trust,  
12 which have been amended to secure payment of the restructured mezzanine note.

13 71. Upon information and belief, Gemstone is the Trustor on the Senior Debt Deed  
14 of Trust, recorded on February 7, 2008 against the Property, in Book No. 20080207 as  
15 Instruments No. 01482 ("Construction Deed of Trust") as well as the Mezzanine Deed of Trust,  
16 as amended on February 7, 2008 by Instruments Nos. 01484 and 01485 and the Second  
17 Amendment to Third Deed of Trust and Security Agreement with Assignment of Rents and  
18 Fixture Filing Line of Credit, recorded on September 9, 2008 against the Property, in Book  
19 20080909 as Instrument No. 03943 of the Official Records of Clark County Nevada.

20 72. Upon information and belief, Defendant Commonwealth Land Title Insurance  
21 Company ("Land Title") is the trustee of the Construction Deed of Trust recorded on the  
22 Property on February 7, 2008 the Property, in Book No. 20080207 as Instrument No. 01482.

23 73. Upon information and belief, SFC is the beneficiary on the Mezzanine Deed of  
24 Trust, as amended, and the Construction Deed of Trust.

25 74. Upon information and belief, SFC subordinated the Mezzanine Deeds of Trust  
26 to the Construction Deed of Trust per the Mezzanine Deeds of Trust Subordination Agreement  
27 which SFC signed and recorded on February 7, 2008 in Book No. 20080207 as Instrument No.  
28 001486 of the Official Records of Clark County Nevada.

1           75.    Upon information and belief, the work of improvement to the Property  
2 commenced prior to the recording of the Construction Deed of Trust, which is the senior deed  
3 of trust on the Property.

4           76.    Hydropressure's claim is superior to the claims against the Property of  
5 Defendants Gemstone, SFC, Land Title and First American.

6           77.    It has been necessary for Hydropressure to engage the services of an attorney  
7 and Hydropressure is entitled to reasonable attorneys' fees and costs as damages.

8           **WHEREFORE**, Hydropressure prays for the following relief:

9           1.    That Hydropressure be awarded general and consequential damages in excess of  
10 \$10,000;

11           2.    That Hydropressure be awarded punitive or exemplary damages in excess of  
12 \$10,000;

13           3.    That Hydropressure be awarded pre-judgment on all amounts found due and  
14 owing;

15           4.    For a reasonable sum as and for the costs of preparation, verification, service  
16 and recording of the Lien;

17           5.    For an award of reasonable attorneys fees;

18           6.    For costs of suit;

19           7.    That the Court declare the rank and priority of all lien claims and secured  
20 claims, including those of SFC, Land Title and First American and that Hydropressure's Lien  
21 be ascertained and adjudged as a valid lien having priority over the deeds of trust, including  
22 those of SFC, Land Title and First American;

23           8.    That Hydropressure's Lien be enforced according to Nevada law;

24           9.    That the Court direct a foreclosure sale of the Property;

25           10.   That the Property be sold and the proceeds be applied to the payments of the  
26 sums found due to Hydropressure;

27           11.   That the Court enter such deficiency judgment against Defendants as the Court  
28 deems proper in the premises;

**HOWARD & HOWARD**  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

12. That Hydropressure be awarded post-judgment interest on all amounts; and

13. For such other and further relief as the Court deems just and proper.

**DATED** this 3<sup>rd</sup> day of April, 2009.

**HOWARD & HOWARD**

  
Gwen Mullins, Esq.

Nevada Bar No. 3146

Wade B. Gochnour, Esq.

Nevada Bar No. 6314

3800 Howard Hughes Parkway

The Wells Fargo Tower, Ste. 1400

Las Vegas, Nevada 89169-5914

*Attorneys for Hydropressure Cleaning, Inc.*

# EXHIBIT “1”

**Receipt/Conformed Copy**

Requestor:

34

12/02/2008 15:10:46 T20080296601

Book/Instr: 20081202-0004781

Lien Page Count: 2

Fees: \$15.00 N/C Fee: \$0.00

**NOTICE REQUESTED BY  
AND RETURN TO:**

**HYDROPRESSION CLEANING, INC.  
CMA BUSINESS CREDIT SERVICES  
3110 W CHEYENNE #100  
LAS VEGAS, NV 89032**

**APN: 163-32-101-019**

**Debbie Conway  
Clark County Recorder**

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of property:

1. The amount of the original contract is: **\$ 765, 000.00**
2. The total amount of all additional, or changed work, materials and equipment, if any, is: **\$ 0.00.**
3. The total amount of all payments received to date is: **\$ 0.00**
4. The amount of the lien, after deducting all just credits and offsets, is **\$400,000.00.**
5. The name of the reputed owner, if known, of the property is: **GEMSTONE DEVELOPMENT WEST, INC , 9121 W RUSSELL ROAD, UNIT 117, Las Vegas, NV 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: **GEMSTONE DEVELOPMENT, 9121 W RUSSELL RD #117, Las Vegas, NV 89148**
7. A brief statement of the terms of payment of the lien claimant's contract is: - **NET 15 DAYS**
8. A description of the property and/or the improvements to be charged with the lien is: **MANHATTAN WEST, 9205-9255 W. RUSSELL RD., Las Vegas, NV 89148, County Assessor Description: - PT NE4 NW4 SEC 32 21 60 County of Clark County Assessors Parcel Number: 163-32-101-019**

**VERIFICATION**

I declare that I am authorized to file this MECHANICS LIEN (PRIVATE WORK) on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated **November 26, 2008** for **HYDROPRESSION CLEANING, INC., 413 DAWSON DRIVE, Camarillo, CA 93012**

By: 

Phone: (702) 259-2622 Fax: (702) 259-9908

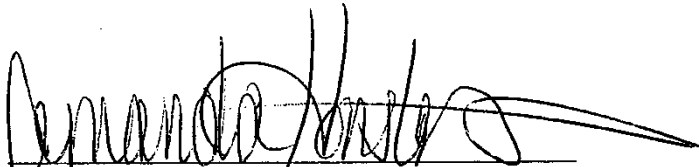
**AMANDA HOUSTON, REPRESENTATIVE FOR HYDROPRESSION CLEANING, INC.**

ACKNOWLEDGEMENT BY NOTARY PUBLIC

STATE OF NEVADA } SS.  
COUNTY OF CLARK } SS.

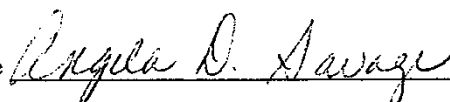
AMANDA HOUSTON, being duly sworn on oath according to law, deposes and says:

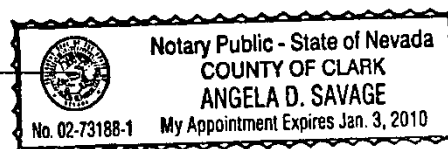
I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

  
AMANDA HOUSTON

On November 26, 2008 before me, the undersigned, a Notary Public in and for said state, personally appeared AMANDA HOUSTON [X] Personally known to me.

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the attached instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or their entity upon behalf for which the person(s) acted, executed the instrument.

Signature   
ANGELA SAVAGE



CAPACITY CLAIMED BY SIGNER: INDIVIDUAL

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized documents.

Title or Type of Document: MECHANICS LIEN

Date of Document: November 26, 2008

Number of Pages: 02

ORIGINAL

15

1 ACOM  
2 BRIAN K. BERMAN, ESQ.  
3 Nevada Bar #000056  
4 721 Gass Avenue  
5 Las Vegas, Nevada 89101  
6 (702) 382-0702  
7 Attorney for Plaintiff  
8 Ready Mix, Inc.

FILED

APR 3 2 30 PM '09

*E. J. [Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \*

10 READY MIX, INC., a Nevada ) CASE NO.: A577623  
11 corporation, ) DEPT NO.: XII  
12 )  
13 Plaintiff, ) DATE OF HEARING: N/A  
14 vs. ) TIME OF HEARING: N/A  
15 )  
16 CONCRETE VISIONS, INC. a Nevada ) ARBITRATION EXEMPTION  
17 corporation; GEMSTONE DEVELOPMENT ) CLAIMED:  
18 WEST, INC., a Nevada corporation, ) ACTION CONCERNING TITLE  
19 ALEXANDER EDELSTEIN; SELINA MARIE ) TO REAL ESTATE  
20 CISNEROS; JUAN S. PULIDO; )  
21 PLATTE RIVER INSURANCE COMPANY, )  
22 a foreign corporation; APCO )  
23 CONSTRUCTION, INC., a )  
24 Nevada Corporation )  
25 and DOES I through X, inclusively, )  
26 Defendants. )

21 STATEMENT OF FACTS CONSTITUTING LIEN AND FIRST AMENDED COMPLAINT  
22 FOR FORECLOSURE OF MECHANICS LIEN

23 COMES NOW the Plaintiff, READY MIX, INC., a Nevada  
24 corporation, by and through its attorney, Brian K. Berman, Esq.,  
25 and for its Statement of Facts Constituting Lien and Complaint for  
26 Foreclosure of Mechanics Lien against Defendants, avers and alleges  
27 as follows:  
28

CLERK OF THE COURT

APR 03 2009

RECEIVED

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**PARTIES**

1. Plaintiff READY MIX, INC. (hereinafter "RMI") is a Nevada corporation duly qualified to conduct business in the County of Clark, State of Nevada and is a supplier of materials to the local construction trades.

2. Defendant CONCRETE VISIONS, INC. (hereinafter "CONCRETE VISIONS") is a Nevada Corporation duly qualified to conduct business in the County of Clark, State of Nevada.

3. Defendant GEMSTONE DEVELOPMENT WEST, INC. (hereinafter "GEMSTONE") is a Nevada corporation duly qualified to conduct business in the County of Clark, State of Nevada, and is or was the record owner of a portion of the real property located in Clark County, Nevada, APN #163-32-101-019 upon which Plaintiff claims a mechanics lien herein.

4. Plaintiff is informed and believes and thereupon alleges that Defendant, ALEXANDER EDELSTEIN, is or was at all relevant times a resident of Clark County, State of Nevada.

5. Plaintiff is informed and believes and thereupon alleges that Defendant, SELINA MARIE CISNEROS is or was at all relevant times a resident of Clark County, State of Nevada.

6. Plaintiff is informed and believes and thereupon alleges that Defendant, JAUN S. PULIDO is or was at all relevant times a resident of Clark County, State of Nevada.

7. Plaintiff is informed and believes and thereupon alleges that Defendant, PLATTER RIVER INSURANCE COMPANY (hereinafter "PLATTE") is licensed to conduct business as a surety in the State