

Exhibit "B"

Jennifer Olivares

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Tuesday, December 16, 2008 9:38 AM  
**To:** Jennifer Olivares  
**Cc:** 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
**Subject:** ManhattanWest Status  
**Importance:** High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to "no further draws being approved".

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

	
<b>Brad J. Scott, CRE</b> President <a href="mailto:brad@scottfinancialcorp.com">brad@scottfinancialcorp.com</a>	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

4/1/2009

Exhibit "B"

**Jennifer Olivares**

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Monday, December 15, 2008 3:00 PM  
**To:** Annie Dwyer; Jennifer Olivares  
**Cc:** 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com  
**Subject:** FW: ManhattanWest  
**Importance:** High  
**Attachments:** Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.

This amount includes the current Heineman Payment request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
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Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 000888

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FILED

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*E. J. Smith*  
CLERK OF THE COURT

**COMP**

Jennifer R. Lloyd-Robinson, Esq.  
Nevada State Bar No. 9617  
**PEZZILLO ROBINSON**  
6750 Via Austi Parkway, Suite 170  
Las Vegas, Nevada 89119  
Tel: (702) 233-4225  
*Attorneys for Plaintiff,*  
*Graybar Electric Company, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

GRAYBAR ELECTRIC COMPANY, INC., a  
New York corporation,

Plaintiff,

vs.

HELIX ELECTRIC, INC., a California  
corporation; TRAVELERS CASUALTY &  
SURETY COMPANY OF AMERICA, a surety;  
GEMSTONE DEVELOPMENT WEST, INC., a  
Nevada corporation; DOES 1 through 10,  
inclusive; and ROE CORPORATIONS 1-10,  
inclusive;

Defendants.

CASE NO.:  
DEPT.:

**COMPLAINT**

A-09-589677-C  
88587



**Exempt from Arbitration: Concerns Title to  
Real Property**

Plaintiff, GRAYBAR ELECTRIC COMPANY, INC. (hereinafter "Plaintiff" or "Graybar")  
by and through the undersigned counsel, in support of its Complaint against the Defendants stated  
and named herein, alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Graybar, is a New York corporation duly authorized to conduct business and  
conducting business within the State of Nevada.

**RECEIVED**

MAY 5 2009

CLERK OF THE COURT

1           2.     Plaintiff is informed and believes and based thereon alleges that Defendant HELIX  
2 ELECTRIC, INC. ("Helix") is a California corporation duly authorized to conduct business and  
3 conducting business as a licensed contractor, license number 0032177.

4           3.     Plaintiff is informed and believes and based thereon alleges that Defendant,  
5 TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA ("Travelers"), is a contractor's  
6 bond surety, authorized to conduct business in the State of Nevada, that issued a contractor's license  
7 bond to Defendant Helix in the amount of \$50,000.00, bond number 103709293, for benefit of various  
8 public members injured by Helix's actions as a contractor, including Plaintiff.

9           4.     Plaintiff is informed and believes and based thereon alleges that Defendant,  
10 GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone") is the owner of property described as  
11 Manhattan West and located at 9205 West Russell Road, Las Vegas, Nevada, and formerly identified  
12 as Assessor's Parcel Number 163-32-101-019, but now identified as 163-32-101-020, 163-32-101-  
13 022, 163-32-101-023, and 163-32-112-001 through 246 ( the "Project"), which is subject to the lien  
14 foreclosure claims alleged herein.

15           5.     Defendants sued herein under the fictitious names of DOES 1 through 10, inclusive, are  
16 presently unknown to Plaintiff but are believed to reside in the State of Nevada and are in some  
17 respect liable for the acts and omissions, whether intentional, negligent or otherwise, alleged herein.

18           6.     Defendants sued herein under the fictitious names of ROE CORPORATIONS 1  
19 through 10, inclusive, are presently unknown to Plaintiff but are believed to be corporations  
20 authorized to conduct business in the State of Nevada and are in some respect liable for the acts and  
21 omissions, whether intentional, negligent or otherwise, alleged herein.

22           7.     The obligations sued upon herein were performed in Clark County, Nevada.

23  
24                   **FIRST CAUSE OF ACTION**  
25                   **(Breach of Contract against Helix,**  
26                   **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

27           8.     Plaintiff repeats with the same force and effect paragraphs 1 through 7, as if set forth in  
28 full.

1           9.     Plaintiff and Defendant Helix entered into an agreement whereby Plaintiff agreed to  
2 supply materials to be incorporated into and for the improvement of the Project. The terms and  
3 conditions are contained in writings used to confirm the agreement between Plaintiff and Defendant  
4 ("the Contract").

5           10.    Plaintiff provided materials to Defendant. Defendant agreed to pay Plaintiff for the  
6 materials provided pursuant to the terms of the Contract.

7           11.    Defendant has breached the terms of the Contract by failing and refusing to pay for the  
8 materials provided by Plaintiff, and now owes a sum in excess of \$10,000.00.

9           12.    Plaintiff has performed all conditions and promises required on its part to be performed  
10 under the Contract, except as said performance has been waived, excused or prevented by Defendant's  
11 breach of the Contract.

12           13.    Based on Defendant's breach of the Contract as described above, Plaintiff has been  
13 damaged in an amount in excess of \$10,000.00, together with fees, costs, and interest thereon as  
14 provided in the Contract until paid in full and other such damage according to proof.

15  
16                                   **SECOND CAUSE OF ACTION**  
17           **(For a Claim against Contractor's License Bond against Helix, Travelers,**  
18                                   **DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)**

19           14.    Plaintiff repeats with the same force and effect paragraphs 1 through 13, as if set forth  
20 in full.

21           15.    Plaintiff is informed and believes and based thereon alleges that Defendant Helix, as  
22 principal, and Defendant Travelers, as surety, issued a contractor's license bond in accordance with the  
23 provisions of Chapter 624 of the Nevada Revised Statutes. Said bond is identified as bond number  
24 103709293, is in the amount of \$50,000.00, and is conditioned upon full compliance by Helix with all  
25 of the provisions of Chapter 624 of the Nevada Revised Statutes and inures to the benefit of all  
26 persons, including Plaintiff, damaged as a result of a violation of any requirements of said chapter by  
27 Helix.

28           16.    Plaintiff is informed and believes and based thereon alleges that the damages it has

1 suffered are a direct and proximate result of violations of one or more of the following sections of  
2 Chapter 624 of Nevada Revised Statutes by Helix:

3 (a) Section 624.3012(1) in that Helix diverted funds which were received for a  
4 specific purpose in the prosecution of the construction of the Project and thereby deprived Plaintiff of  
5 payment to which it was entitled;

6 (b) Section 624.3012(2) in that Helix willfully and deliberately failed to pay money  
7 due for materials rendered in connection with its operation as a contractor, when it had the capacity to  
8 pay, or when it had received sufficient funds therefore as payment, for the materials provided.

9 17. In light of Helix's willful and deliberate failure to pay Plaintiff for the materials  
10 Plaintiff provided to Helix, Helix violated Chapter 624 of the Nevada Revised Statutes and Plaintiff is  
11 entitled to recover against the license bond issued by Defendant Travelers.

12  
13 **THIRD CAUSE OF ACTION**  
14 **(Foreclosure of Lien against Gemstone, MOES 1-10, and**  
15 **ZOE CORPORATIONS 1-10, inclusive)**

16 18. Plaintiff repeats with the same force and effect paragraphs 1 through 17, as if set forth  
17 in full.

18 19. Within 31 days of first supplying materials to the Project, Plaintiff served via certified  
19 mail, return receipt requested, a certain Notice to Owner of Right to Lien upon Defendants or their  
20 successors in interest, as required by NRS 108.245, or was exempt from the obligation to serve said  
21 Notice. Within 90 days of actual completion of the Project, and within 40 days of the recordation of  
22 any valid Notice of Completion on the Property, Plaintiff caused to be recorded a mechanic's lien on  
23 the Project in the amount of \$251,362.93 for materials provided in compliance with the requirements  
24 of NRS 108.226 and served upon the record owner in compliance with the provisions of NRS 108.227.

25 20. Plaintiff's lien is a valid lien upon the Project.

26 21. There may be other lien claimants whose liens may be subordinate to Plaintiff's Notice  
27 and Claim of Lien.

28 22. Plaintiff was required to retain the undersigned firm of attorneys to prosecute this

1 action, and as a result has incurred and will continue to incur costs and attorneys fees in preparing,  
2 recording and foreclosing its lien, which Plaintiff is entitled to recover from said Defendants.

3  
4 **FOURTH CAUSE OF ACTION**  
5 **(Unjust Enrichment against Helix, Gemstone,**  
6 **DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)**

7 27. Plaintiff repeats with the same force and effect paragraphs 1 through 22, as if set forth  
8 in full.

9 28. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
10 of them, have been unjustly enriched by the wrongful act of retaining the benefit of the materials  
11 provided by Plaintiff to the Project and then failing to pay Plaintiff for said materials.

12 29. As such, said Defendants have been unjustly enriched to the detriment and damage of  
13 Plaintiff in an amount in excess of \$10,000.00.

14 30. Plaintiff has retained the services of an attorney to prosecute this action and is entitled  
15 to an award of attorney's fees and costs incurred.

16 WHEREFORE, Plaintiff prays for relief as follows:

17 1. For compensatory damages for an amount in excess of \$10,000.00, together with  
18 interest thereon at the contractual rate or as allowed by law until paid in full and other such damage  
19 according to proof;

20 2. For judgment declaring that Plaintiff has a claim in excess of \$10,000.00 against  
21 Helix's contractor's license bond, issued by Travelers, plus interest thereon at the contractual rate from  
22 the date the amounts became due until paid, and that Plaintiff's claim has priority over every other  
23 claim of interest on the bond;

24 3. For judgment declaring that Plaintiff has a valid lien on the Project for an amount in  
25 excess of \$10,000.00, plus interest from the date the amounts became due until paid in full, costs and  
26 fees, that Plaintiff's liens have priority over every other lien or claim of interest on the Project, and  
27 that the Project be sold and proceeds from the sale be applied to satisfy Plaintiff's liens, together with  
28

**Pezzillo Robinson**  
6750 Via Austi Parkway, Suite 170  
Las Vegas, Nevada 89119  
Tel. 702 233-4225

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the expenses of sale and the costs and disbursements in this action;

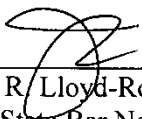
3. For reasonable attorneys fees and costs; and

4. For such other and further relief as this Court deems just and proper.

DATED: May 5, 2009

PEZZILLO ROBINSON

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

  
Jennifer R. Lloyd-Robinson, Esq.  
Nevada State Bar No. 9617  
6750 Via Austi Parkway, Suite 170  
Las Vegas, Nevada 89119  
*Attorneys for Plaintiff,*  
*Graybar Electric Company, Inc.*



ORIGINAL

1 COMP  
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4 REED J. WERNER, ESQ.  
5 Nevada Bar No. 9221  
6 HARMON & DAVIES, P.C.  
7 1428 S. Jones Blvd.  
8 Las Vegas, NV 89146  
9 Telephone: (702) 733-0036  
10 Facsimile: (702) 733-1774  
11 Attorneys for Plaintiff  
12 **OLSON PRECAST COMPANY**

FILED

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*E. J. [Signature]*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

OLSON PRECAST COMPANY, a Nevada  
Corporation,

Plaintiff,

v.

LONGFORD SOUTHERN HILLS II, LLC, a  
Nevada Limited Liability Company; PENNY  
CONSTRUCTION, LLC, a Nevada Limited  
Liability Company; AFFORDABLE  
CONCEPTS, INC., a Nevada Corporation;  
DOES 1-20 inclusive;

Defendants.

CASE NO.

DEPT. NO.

A-09-589662-C  
II

COMPLAINT FOR FORECLOSURE OF A  
MECHANICS' LIEN

(Exempt from Arbitration- Dispute regarding  
title to Real Property)

COMES NOW OLSON PRECAST COMPANY, by and through its attorneys of record,  
Harmon & Davies, P.C. and complains against LONGFORD SOUTHERN HILLS II, LLC, a Nevada  
Limited Liability Company, PENNY CONSTRUCTION, LLC, AFFORDABLE CONCEPTS, INC.  
And DOE DEFENDANTS as follows:

1. Plaintiff OLSON PRECAST COMPANY (hereinafter "OLSON") is a Nevada  
Corporation and at all relevant times was doing business as a licensed contractor in Clark County,  
Nevada.

2. Defendant LONGFORD SOUTHERN HILLS II, LLC (hereinafter "LONGFORD") is a  
Nevada Limited Liability Company and at all relevant times herein was doing business in Clark  
County, Nevada.

A-09-589662-C  
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1           3. Defendant PENNY CONSTRUCTION LLC (hereinafter "PENNY") is a Nevada  
2 Corporation and at all relevant times was doing business as a licensed general contractor in Clark  
3 County, Nevada.

4           4. Defendant AFFORDABLE CONCEPTS, INC., (hereinafter "ACI") is a Nevada  
5 Corporation and at all relevant times was doing business as a licensed general contractor in Clark  
6 County, Nevada.

7           5. Pursuant to Nevada Rules of Civil Procedure, Rule 10(a) and Nurenberger Hercules-  
8 Werke GMBH v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991), the true names and capacities,  
9 whether individual, corporate, associate or otherwise, of Defendants named herein as DOE Individuals  
10 I-X and ROE Corporations and Organizations I-X, are unknown at the present time; however, it is  
11 alleged and upon information and belief, that these Defendants were involved in the initiation,  
12 approval, support, or execution of the wrongful acts upon which this litigation is premised, or of  
13 similar actions directed against Plaintiff about which it is presently unaware. As the specific identity of  
14 these parties are revealed through the course of discovery, the Plaintiff will ask leave of the Court to  
15 amend the Complaint so that the DOE and/or ROE appellations will be replaced to identify these  
16 parties by their true names and capacities.

17           6. That all events and transactions relevant to this matter took place in Clark County,  
18 Nevada.

19           7. Plaintiff OLSON and Defendant PENNEY entered into a contract on or about October  
20 15, 2008.

21           8. That upon information and belief PENNEY was working under contract with Defendant  
22 ACI who was working under contract with LONGORD, the purported owner of the real property in  
23 question.

24           9. That Plaintiff OLSON has sent invoices and letters to Defendant PENNEY and Plaintiff  
25 has otherwise requested payment for the labor and materials provided for the benefit of Defendants  
26 PENNEY, ACI and LONGFORD, but Defendants have refused to make payment in full.

27           10. That numerous additions to the contract were requested of Plaintiff by Defendant  
28 PENNEY.

11. That all the required notices were sent to Defendants at their respective addresses to inform Defendants that a mechanics' lien would be recorded against the property.

12. That a valid mechanics' lien was recorded against the property on or about January 21, 2009.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

**(Against Defendant PENNEY)**

13. Plaintiff restates and re-alleges paragraphs 1 through 12 and incorporates the same as though fully set forth herein.

14. Plaintiff and Defendant PENNEY entered into a contract on or about October 15, 2008.

15. Plaintiff performed all work requested to Defendant PENNEY's satisfaction.

16. Defendant PENNEY has not paid for all the labor and material provided by Plaintiff.

17. Defendant PENNEY has refused and continues to refuse to perform under the contract by, among other things, refusing to pay Plaintiff Thirty Five Thousand Thirty Eight Dollars and Sixty Eight Cents (\$35,038.68) for materials supplied by Plaintiff.

18. That Defendant PENNEY's actions of failure to pay constitute a breach of contract.

19. As a direct result of Defendant PENNEY's breach of contract, Plaintiff has suffered and continues to suffer damages in an amount in excess of \$10,000.

20. As a result of Defendant's actions, Plaintiff has been forced to retain the services of an attorney to prosecute the instant action, and therefore, is entitled to reasonable attorney's fees and costs.

**SECOND CAUSE OF ACTION**

**(Breach of Covenant of Good Faith and Fair Dealing)**

**(Against Defendant PENNEY)**

21. Plaintiff restates and re-alleges paragraphs 1 through 20 and incorporates the same as though fully set forth.

22. Under Nevada law, implied in all contracts is the covenant of good faith and fair dealing.

23. The covenant of good faith and fair dealing requires Defendant PENNEY to perform

1 and/or refrain from engaging in conduct which would deprive Plaintiff OLSON of its rights under the  
2 contract.

3 24. Defendant PENNEY has breached the covenant of good faith and fair dealing by  
4 accepting Plaintiff's labor and materials under the contract while refusing to pay Plaintiff for the  
5 materials provided and the work performed.

6 25. As a direct and proximate result of Defendant PENNEY's willful failure to continue to  
7 honor the covenant of good faith and fair dealing contained in the contract, Plaintiff has suffered  
8 damages in excess of \$10,000.

9 26. As a result of Defendant PENNEY's wrongful actions, Plaintiff has been forced to  
10 retain the services of an attorney to prosecute the instant action, and therefore, is entitled to reasonable  
11 attorney's fees and costs.

12 **THIRD CAUSE OF ACTION**  
13 **(Mechanics' Lien Foreclosure)**  
14 **(Against All Defendants)**

15 27. Plaintiff restates and re-alleges paragraphs 1 through 26 and incorporates the same as  
16 though fully set forth herein.

17 28. Plaintiff recorded a valid mechanics' lien pursuant to NRS 108.221 et seq. against the  
18 real property where the work was performed, namely 6525 S Fort Apache Rd., Las Vegas, NV 89148.

19 29. Plaintiff has not been paid the amount owed despite repeated demands to Defendants for  
20 payment.

21 30. More than thirty days have passed since the mechanics' lien was recorded.

22 31. Plaintiff is entitled to be paid for labor provides as well as the materials supplied  
23 pursuant to the contract and the mechanics' lien laws.

24 32. That Defendant LONGFORD's real property located at 6525 S Fort Apache Rd, Las  
25 Vegas, NV 89148 should be sold at a foreclosure sale and the proceeds used to pay Plaintiff the amount  
26 owed.

27 33. Plaintiff is also entitled to attorney's fees, costs and interest for preparing the lien and  
28 for prosecuting this action in an amount to be determined at the time of trial.

**FOURTH CAUSE OF ACTION**

**(Unjust Enrichment)**

**(Against All Defendants)**

34. Plaintiff restates and re-alleges paragraphs 1 through 33 and incorporates the same as though fully set forth herein.

35. An action in equity for unjust enrichment lies whenever a person has and retains money or property of another which in equity and good conscience belongs to the other.

36. Defendants received the benefits of labor and building supplies provided by Plaintiff, but have not paid Plaintiff for those benefits and thereby Defendants have been enriched.

37. The outstanding unpaid balance is Thirty Five Thousand Four Thirty Eight Dollars and Sixty Eight Cents (\$35,038.68) which is justly due and owing from Defendants to Plaintiff.

38. Defendants will remain enriched to Plaintiff's detriment without the relief as requested herein.

39. As a direct result of Defendant's actions, Plaintiff has suffered and continues to suffer damages in the amount of Thirty Five Thousand Four Thirty Eight Dollars and Sixty Eight Cents (\$35,038.68).

40. As a result of Defendant's actions, Plaintiff has been forced to retain the services of an attorney to prosecute the instant action, and therefore, is entitled to reasonable attorney's fees and costs.

WHEREFORE, Plaintiff prays judgment be entered against Defendants as follows:

1. Compensatory damages in an amount in excess of \$10,000.00 to be proven at trial;
2. Order for foreclosure and judicial sale of the property to pay amount due and owing;
3. Costs and attorney's fees for lien preparation and filing;
4. Prejudgment interest;
5. Reasonable attorney's fees and costs to be proven at trial;

...

...

...

...

6. Other such relief as this court deems reasonable and proper.

DATED this 5<sup>th</sup> day of May, 2009

HARMON & DAVIES, P.C.



LORI N. BROWN, ESQ.

Nevada Bar No. 8858

REED J. WERNER, ESQ.

Nevada Bar No. 9221

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Las Vegas, NV 89146

Telephone: (702) 733-0036

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Attorneys for Plaintiff

**OLSON PRECAST COMPANY**

  
CLERK OF THE COURT

**STAT**  
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100 W. Liberty Street, 10<sup>th</sup> Floor  
Reno, Nevada 89505  
Telephone: 775-788-2000

*Attorneys for Plaintiff Fast Glass, Inc.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE MASONRY GROUP NEVADA, INC.,  
a Nevada corporation,

Case No. A584730

Plaintiff,

Dept. No. XI

v.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; GEMSTONE  
DEVELOPMENT WEST, INC.; FIDELITY  
AND DEPOSIT COMPANY OF  
MARYLAND and DOES 1 through 500,  
inclusive,

**FAST GLASS, INC.'S STATEMENT  
OF FACTS CONSTITUTING LIEN**

Defendants.

FAST GLASS, INC., a Nevada corporation,

Lien Claimant,

vs.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; GEMSTONE  
DEVELOPMENT WEST, INC.; FIDELITY  
AND DEPOSIT COMPANY OF  
MARYLAND and DOES 1 through 500,  
inclusive,

Third-Party Defendants.

1 FAST GLASS, INC. ("Fast Glass") asserts:

2 1. Fast Glass is a Nevada corporation, duly registered with the Secretary of  
3 State of Nevada and duly licensed as a specialty contractor by the Nevada State  
4 Contractors Board.

5 2. Upon information and belief, GEMSTONE DEVELOPMENT WEST, INC.  
6 ("GEMSTONE") is a Nevada corporation and owns a fee interest in the real property  
7 subject to this litigation known as Manhattan West and located at West Russell Road  
8 and Rocky Hill Street, within Clark County.

9 3. Upon information and belief, CAMCO PACIFIC CONSTRUCTION  
10 COMPANY, INC. ("CAMCO") is a California corporation and is licensed as a contractor  
11 by the Nevada State Contractors Board.

12 4. Upon information and belief, FIDELITY AND DEPOSIT COMPANY OF  
13 MARYLAND ("FIDELITY") is a foreign corporation and the surety company which issued  
14 Contractor's License Bond Number 08739721, in the amount of \$50,000, with the  
15 Nevada State Contractor's Board on behalf, and for the benefit, of CAMCO.

16 5. On or about September 8, 2008, Fast Glass entered into a contract with  
17 CAMCO whereby Fast Glass agreed to provide labor, materials, and/or services related  
18 to the glazing of the building being constructed on the property of GEMSTONE. A copy  
19 of the contract, signed by a duly authorized representative of CAMCO, is attached hereto  
20 as Exhibit 1.

21 6. The property subject to the aforementioned contract is located at 9205 W.  
22 Russell Road, Las Vegas, NV, and identified as Clark County Assessor's Parcel No.  
23 (APN#): 163-32-101-019.

24 7. Fast Glass provided labor, materials, and/or equipment as required by the  
25 contract. However, both CAMCO and GEMSTONE have failed to pay Fast Glass for its  
26 efforts.

27 8. On December 18, 2008, Fast Glass recorded a mechanic's lien with the  
28 Clark County Recorder, Document #20081218-0001589, against the aforementioned



1 real property in the amount of \$199,000.00, as permitted by NRS 108.226(1)(a)(1). A  
2 copy of said mechanic's lien is attached hereto as Exhibit 2.

3 9. Fast Glass recently became informed that THE MASONRY GROUP  
4 NEVADA, INC. had initiated a foreclosure action on the subject property.

5 10. Fast Glass files its Statement of Facts Constituting Lien, as set forth by  
6 NRS 108.239(3), within a reasonable time after THE MASONRY GROUP NEVADA,  
7 INC. filed its action to ensure its lien rights are not adversely affected by failing to do so.

8 **FIRST CLAIM FOR RELIEF**

9 **(Foreclosure of Mechanic's Lien)**

10 11. Fast Glass incorporates the allegations contained in paragraphs 1 through  
11 10 as if set forth verbatim.

12 12. Fast Glass has satisfied all requirements of Chapter 108 of the Nevada  
13 Revised Statutes.

14 13. Fast Glass recorded a Notice of Lien on December 18, 2008, in the office  
15 of the County Recorder in Clark County, Nevada within the time frames described in  
16 NRS Chapter 108.

17 14. At the time the lien was recorded, the principal amount of \$199,000.00 was  
18 due, owing and unpaid.

19 15. As a result of Defendants' failure to pay Fast Glass, Fast Glass is entitled  
20 to foreclose its claim of lien in accordance with the provisions of Chapter 108 of the  
21 Nevada Revised Statutes in order to obtain payment of an amount in excess of  
22 \$199,000.00, plus interest at the legal rate allowed pursuant to the contract and all costs  
23 incurred in collecting the amounts due.

24 16. Fast Glass has been forced to retain counsel and to incur costs in the  
25 prosecution of this action and is entitled to an award of reasonable attorney's fees  
26 pursuant to NRS Chapter 108.

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1 with the Nevada State Contractor's Board on behalf, and for the benefit, of CAMCO, in  
2 the amount of \$50,000.

3 26. Pursuant to NRS 624.273(2), Fast Glass is entitled to bring this action on  
4 the bond for the amount of damages it has suffered due to LM Construction's failure  
5 and/or refusal to pay the above-mentioned amount claimed.

6 27. As a direct and proximate result of CAMCO's breach of the contract, Fast  
7 Glass is entitled to foreclose the bond held by FIDELITY in the full amount of  
8 \$50,000.00.

9 28. Fast Glass has been forced to retain counsel to pursue this action. Fast  
10 Glass has incurred, and will continue to incur, attorney's fees and costs in an amount  
11 that cannot be presently determined as a result of CAMCO's breach of contract.

12 WHEREFORE, Fast Glass requests judgment be entered against the Defendants  
13 as follows:

14 1. For an award of general and special damages in excess of \$10,000.00;

15 2. For an order of this Court declaring Fast Glass's Mechanic's Lien to be  
16 superior to the interest of Defendants, and any interest of other parties to this action in  
17 the subject real property, and allowing Fast Glass to foreclose its lien claim against said  
18 property in order to recover all sums due and owing to Fast Glass;

19 3. For reasonable attorneys' fees and costs of suit; and

20 4. For such other and proper relief as this Court deems just and necessary.

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1 I hereby affirm that this document does not contain the social security number of  
2 any person.

3 DATED THIS 13<sup>th</sup> day of May, 2009.

4 McDONALD CARANO WILSON LLP

5  
6 By: /s/ Ryan Bellows  
7 RYAN BELLOWS, NV BAR 9508  
8 100 W. Liberty Street, 10th Floor  
9 Reno, NV 89501  
10 (775) 788-2000 telephone  
11 (775) 788-2020 facsimile

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Attorneys for Plaintiff  
FAST GLASS, INC.

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**Certificate of Service**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that on May 13, 2009, I served FAST GLASS' **Statement of Facts Constituting Lien** by placing true and correct copies thereof enclosed in sealed envelopes with postage prepaid thereon, in the United States Mail at Reno, Nevada, addressed to:

Ronald S. Sofen, Esq.  
Becky A. Pintar, Esq.  
GIBBS, GIDEN, LOCHER, TURNER & SENET, LLP  
3993 Howard Hughes Parkway, Suite 530  
Las Vegas, Nevada 89169-5994

Gwen Mullins, Esq.  
Wade Gochmour, Esq.  
HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Parkway, Suite 1400  
Las Vegas, Nevada 89169

Steven L. Morris, Esq.  
WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074

Alexander Edelstein  
Resident Agent of Gemstone Development West, Inc.  
9121 W. Russell Road, Suite 117  
Las Vegas, Nevada 89148

/s/ Kathleen L. Morris  
\_\_\_\_\_  
Kathleen L. Morris

# **EXHIBIT 1**

# **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"

Fast Glass  
1650 Greg Street,  
Sparks Nevada 89431  
Nevada License No: 0015323  
Federal Tax ID No. /FICA No.: 88-0149107  
Designated Contract Representative: Mitch Ratto

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:

Doors, Frames, Hardware

Cost Code:

08500S

See Addendum 1 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:

Building	Amount
Building 2	\$88,000.00
Building 3	\$111,000.00
Building 7	\$[xx]
Building 8	\$[xx]
Building 9	\$[xx]
Total:	\$199,000.00

## **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.

## **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. Deductables 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.

## **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

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

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.

**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



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.

**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



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).

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~~**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.

**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 xx) 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 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.

**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**

FAST GLASS, a \_\_\_\_\_ (circle one)  
corporation sole proprietorship, partnership,  
limited liability company

Mitch Rath 1020-08  
By:  
Its: MGR

**Contractor**

Camco Pacific Construction Company, Inc.,  
a California corporation

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 Doors, Frames, Hardware, job per the Project Contract Documents and the Project Schedule.

Scope: Bldg 2: installation of 6 single doors and 11 pairs of doors. Door hardware per New World West. Glaze building complete and close up. Glass: Atlantica over SN68 Heat Strengthen and tempered where required by code.

Building 2 = \$88,000.00

Bldg 3: installation of New World West metal, doors, and glass to mirror building 2. Door hardware to mirror building 2. Glaze building complete and close up. Glass: Atlantica over SN68 Heat Strengthen and tempered where required by code.

Building 3 = \$111,000.00

Exclusions: Any Warranty of Existing FRAMES,  
All CAULKING of Building 2+3, Cleaning +  
Protection of Frames + Glass, Final Cleaning.

To identify FAST GLASS FRAMES FROM Existing FRAMES  
All FAST GLASS FRAMES will incorporate a Head Can  
And Sub-Sil. Not currently present on Existing FRAMES.

Warranty - 1yr on Labor + Aluminum, 5yr on  
GLASS.

## **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: <i>NewWorld West</i> Address: <i>Las Vegas</i>	<i>Aluminum Store front + Doors</i>	<i>35,000-</i>
2. Name: <i>DESERT GLASS</i> Address: <i>Las Vegas</i>	<i>- GLASS -</i>	<i>95,000-</i>
3. Name: Address:		
4. Name: Address:		

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

Fast Glass

*Meth Ratto 10-20-08*  
By: *MOR*  
Its:

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

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## **ADDENDUM 5**

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

1. Contract Price: \$199,000.00
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**

# EXHIBIT 2

# EXHIBIT 2



20081218-0001589

**Assessor's Parcel Number:**  
**163-32-101-019**

After recorded, mail to:  
Ryan J. Works, Esq.  
McDonald Carano Wilson LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, NV 89102

Fee: \$17.00  
N/C Fee: \$0.00

12/18/2008 10:40:21

T20080314258

Requestor:  
R WORKS

Debbie Conway SCA  
Clark County Recorder Pgs: 4

**NOTICE OF LIEN**

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property identified as Manhattan West.

1. The amount of the original contract is \$ 199,000.00.
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 \$ 199,000.00.
5. The name of the owner, if known, of the property is:

Gemstone Development West, Inc.  
9121 W. Russell Road, Suite 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 Construction Co., Inc.  
2925 E. Patrick Lane, Suite G  
Las Vegas, NV 89120

7. A brief statement of the terms of payment of the lien claimant's contract is:

Lien claimant was to be paid the \$ 199,000 original contract value, less fifteen thousand dollars retainage, in response to progress payment applications. Final payment (including retainage) was to be paid upon fulfillment of the lien claimant's obligations under the contract.

8. A description of the property to be charged with the lien is:

Property: 9205 W. Russell Road, Las Vegas, NV 89148

Assessor Description: See, Exhibit "A" attached hereto.

Assessor's Parcel no.: 163-32-101-019

Fast Glass

By:

Title:

  
MANAGER

STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

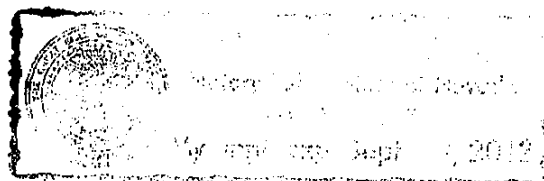
EUGENE BUTON, being first duly sworn on oath according to law, deposes and says:

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.



Subscribed and sworn to before me  
this 18 day of December, 2008.

  
Notary Public in and for  
said County and State



250478.1

**RECORDER'S NOTE:**  
NOTARY STAMP/SEAL IS VISIBLE,  
HOWEVER THE INK COLOR  
MAY NOT BE REPRODUCIBLE

## **Exhibit "A"**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

### **PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-003**

### **PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B.&M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-004**

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 32 South, Range 60 East, M.D.B.&M.

**ASSESSOR'S PARCEL NO.: 163-32-101-005**

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B.&M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in Final Order Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-014**

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B.&M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-010**

**NOTE: THE NEW PARCEL NO. FOR THE ALL OF THE ABOVE IS  
163-32-101-019**

ORIGINAL

56  
FILED

2009 MAY 14 P 12:13

*E. J. Smith*  
CLERK OF DISTRICT COURT

1 COMP  
JAMES E. SMYTH  
2 Nevada Bar No. 6506  
KUMMER KAEMPFFER BONNER RENSHAW & FERRARIO  
3 3800 Howard Hughes Parkway - Seventh Floor  
Las Vegas, Nevada 89169  
4 Tel: (702) 792-7000  
Fax: (702) 796-7181  
5 [jsmyth@kkbrf.com](mailto:jsmyth@kkbrf.com)

6 I. BIANCA LEDERER,  
BLUFF & ASSOCIATES, P.C.  
7 844 North 4<sup>th</sup> Avenue  
Phoenix, Arizona 85003-1314  
8 Tel: 602-452-2000  
Fax: 602-452-2011  
9 [roclawyers@hotmail.com](mailto:roclawyers@hotmail.com)  
Pro Hac Vice pending

10 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

13 HD SUPPLY CONSTRUCTION  
14 SUPPLY, L.P. d/b/a WHITE CAP  
CONSTRUCTION SUPPLY, Inc., a lawful  
15 business,

16 Plaintiff,

17 v.

18 GEMSTONE DEVELOPMENT WEST,  
INC., a Nevada corporation; GEMSTONE  
19 DEVELOPMENT, LLC; GEMSTONE  
DEVELOPMENT WEST, LLC;  
20 ALEXANDER EDELSTEIN and JANE  
DOE EDELSTEIN, a married couple;  
21 CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., a foreign corporation;  
SCOTT FINANCIAL CORPORATION, a  
foreign corporation; and DOES I-100,  
VARIOUS UNKNOWN ENTITIES and  
INDIVIDUALS,

Defendants.

Case No.  
Dept:

A-09-590319-C  
111

COMPLAINT

ARBITRATION EXEMPT  
ACTION CONCERNING  
TITLE TO REAL PROPERTY

RECEIVED

MAY 14 2009

CLERK OF THE COURT

KUMMER KAEMPFFER BONNER  
RENSHAW & FERRARIO  
Seventh Floor  
3800 Howard Hughes Parkway  
Las Vegas, Nevada 89169

750123\_1.DOC 01000.10

24  
Page 1 of 10

AA 000947

1                                    **COMPLAINT FOR FORECLOSURE OF MECHANIC'S LIEN**

2                    Plaintiff, HD Supply Construction Supply, L.P. dba White Cap Construction Supply, Inc.  
3                    ("White Cap") through its undersigned counsel, for its Complaint against Defendants Gemstone  
4                    Development West, Inc., Gemstone Development West, LLC, Gemstone Development, LLC  
5                    (hereinafter referred to collectively as "Gemstone"), Alexander Edelstein ("Edelstein"), Jane Doe  
6                    Edelstein, Camco Pacific Construction Company, Inc. ("Camco"), and Scott Financial  
7                    Corporation ("Scott Financial") alleges as follows:

8                                    **THE PARTIES**

9                    1.        Plaintiff is authorized to conduct business in the State of Nevada and engages in  
10                   the business of providing goods, materials, and/or supplies to contractors and construction  
11                   projects throughout the state.

12                   2.        Gemstone is comprised of two Nevada limited liability companies and one  
13                   Nevada corporation, all maintaining their principal places of business in the city of Las Vegas,  
14                   Clark County, Nevada.

15                   3.        Gemstone maintains an interest in the property that is the subject of Plaintiff's  
16                   Complaint, as set forth below.

17                   4.        Defendant Edelstein is the president, director, secretary, and treasurer of  
18                   Gemstone and a personal guarantor of the contract upon which this action is predicated.

19                   5.        Edelstein is an owner or reputed owner of the property known as Manhattan West  
20                   Condos located at 9205 West Russell Road #117, Las Vegas, NV 89148-1238 (hereinafter  
21                   referred to as the "Manhattan West Project").

22                   6.        Defendant Jane Doe Edelstein is the wife of Defendant Edelstein. All actions as  
23                   alleged herein taken on behalf of Defendant Alexander Edelstein were taken on behalf of and for  
24                   the benefit of the Edelstein marital community. Plaintiff shall name Jane Doe Edelstein by  
25                   means of a properly amended Complaint if and when her name becomes known.

26                   7.        Camco is a California corporation authorized to conduct business in the State of  
27                   Nevada.

1           8.     Camco owns or claims an interest in the real property underlying the Manhattan  
2 West Project.

3           9.     Defendant Scott Financial is a North Dakota corporation authorized to conduct  
4 business in the State of Nevada.

5           10.    Scott Financial owns or claims an interest in the real property underlying the  
6 Manhattan West Project.

7           11.    DOES 1-100 are various unknown individuals or entities, however organized, that  
8 may have some interest in the real property at issue in this Complaint as alleged herein, and  
9 whom Plaintiff shall name by means of a properly amended Complaint if and when the names of  
DOES 1-100 become known.

10          12.    The matters alleged in this Complaint occurred in Clark County, Nevada, and the  
11 property at issue in this litigation is also located in Clark County, Nevada. Therefore,  
12 jurisdiction and venue are proper before this Court.

13                               1  
**GENERAL ALLEGATIONS**

14          13.    On or about 26-Sep-2008, Plaintiff entered into a written credit agreement  
15 ("Credit Agreement") with Defendants Gemstone and Edelstein, which contained a continuing  
16 personal guarantee ("Continuing Personal Guarantee"). Pursuant thereto, Plaintiff agreed to  
17 provide certain construction goods and materials to the Manhattan West Project on credit. A true  
18 and correct copy of the signed Credit Agreement, as well as an enlarged blank copy of the  
19 material terms thereof, is attached hereto and incorporated by reference herein as "Exhibit A."

20          14.    On or about 26-Sep-2008, Defendant Edelstein signed and executed the  
21 Continuing Personal Guarantee portion of the Credit Agreement, which personally guaranteed  
22 payment to Plaintiff for supplies purchased under the terms of the Credit Agreement.

23          15.    Between approximately 09-Sep-2008 and 09-Dec-2008, Defendants placed  
24 numerous orders for construction materials to be delivered to the Manhattan West Project.

1           16. In reliance on the Credit Agreement and Continuing Personal Guarantee made  
2 part thereof, Plaintiff provided the construction supplies to the Manhattan West Project on credit  
3 and timely invoiced Defendants for these purchases.

4           17. Despite Plaintiff's repeated requests, Defendants failed to pay for such supplies  
5 within the payment terms and conditions set forth in the Credit Application, and continue to  
6 refuse to make payment to Plaintiff.

7           18. After deducting any payments, offsets or credits to which Defendants may be  
8 entitled, Defendants are presently indebted to Plaintiff in the principal amount of \$61,301.31.

9           19. Pursuant to the Credit Application, Plaintiff is entitled to interest from Defendants  
10 computed at the rate of 18% per annum from the dates Defendants' debts became due until paid  
11 in full. As of 01-Apr-2009, accumulated interest equals \$4,857.28 and continues per diem at the  
12 rate of \$30.23. See interest calculations attached as Exhibit "B."

13           20. On 15-Sep-2008, within the time period set forth in Nev. Rev. Stat. § 108.245,  
14 Plaintiff caused to be delivered by certified mail its Preliminary Notice of Material Supplied  
15 ("Preliminary Notice") to Defendants, the owners or reputed owners of the property on which  
16 the Manhattan West Project was being constructed.

17           21. Plaintiff timely delivered its Preliminary Notice to Camco, the original contractor  
18 or reputed contractor relating to the Project and whom also owns or claims an interest in the  
19 property underlying the Manhattan West Project.

20           22. On 21-Jan-2009, Plaintiff timely recorded its Notice of Lien with the county  
21 recorder in Clark County, where the Manhattan West Project is located, pursuant to Nev. Rev.  
22 State 108.226. Plaintiff's Lien, recorded as Instrument Number 20090121-0004210 and as  
23 amended by Instrument Number 20090512-0001679, in the principal sum of \$61,301.31, is  
24 valid. A true and correct copy of the Amended Lien is attached hereto as Exhibit "C" and  
incorporated by reference herein. A true and correct copy of the Preliminary Notice referred to  
in paragraph 20 above is included as part of the Lien in Exhibit "C."



1 **FIRST CLAIM FOR RELIEF**

2 **(MECHANIC'S LIEN FORECLOSURE - ALL DEFENDANTS)**

3 23. Plaintiff hereby incorporates by reference each of the allegations set forth in the  
4 preceding Paragraphs of this Complaint as though fully set forth hereinafter.

5 24. On 15-Sep-2008, within the time period set forth in Nev. Rev. Stat. § 108.245,  
6 Plaintiff caused to be delivered by certified mail its Preliminary Notice to the owners or reputed  
7 owners of the property on which the Manhattan West Project was being constructed, and Camco,  
8 the original contractor or reputed contractor.

9 25. On 21-Jan-2009, Plaintiff timely recorded its Lien with the county recorder in  
10 Clark County, where the Manhattan West Project is located, pursuant to Nev. Rev. State  
11 108.226. Plaintiff's Lien, recorded as Instrument Number 20090121-0004210 in the principal  
12 sum of \$61,301.31, illustrates the amount owed by Defendants for materials and services  
13 supplied by Plaintiff to the Manhattan West Project.

14 26. The Lien is valid because it contains 1) A statement of the claimant's demand  
15 after deducting all just credits and offsets; 2) The name of the owner or reputed owner if known;  
16 3) The name of the person by whom the claimant was employed or to whom the claimant  
17 furnished material; 4) A statement of the terms, time given, and conditions of the claimant's  
18 contract; and 5) A description of the property to be charged with the lien sufficient for  
19 identification.

20 27. At various dates for which the dates of transaction are available and evidenced by  
21 recorded documents available at the Clark County Recorder's office, various other entities, Does  
22 1-100, assert a claim or an interest in the real property upon which the Manhattan West Project is  
23 constructed and which is the subject of this lawsuit.

24 28. Plaintiff alleges that its Lien against the real property upon which the Manhattan  
West Project is constructed, is valid and has attached against the interest of Defendants as  
owners or reputed owners thereof, and against the interests of any other parties claiming a  
separate interest in the real property upon which the Manhattan West Project is constructed.

29. The time period to foreclose Plaintiff's Lien did not expire prior to filing of the initial Complaint.

30. By virtue of Plaintiff's foreclosure of its Lien, Plaintiff is further entitled to costs pursuant to Nev. Rev. Stat. § 18.110 and an award of its attorneys' fees pursuant to Nev. Rev. Stat. § 108.237.

## SECOND CLAIM FOR RELIEF

**(BREACH OF CONTRACT - (GEMSTONE AND EDELSTEIN))**

31. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding Paragraphs of this Complaint as though fully set forth hereinafter.

32. Plaintiff tendered an offer to Defendants for the supply of valuable consideration to provide construction supplies on credit pursuant to the Credit Agreement.

33. Through representation, Defendants accepted this offer and received the merchandise.

34. Plaintiff tendered valuable consideration by providing the merchandise, and in doing so suffered a detriment.

35. The Credit Agreement constitutes a valid and binding Contract between Plaintiff and Defendants.

36. All conditions precedent for Defendants' performance were met by Plaintiff.

37. Despite repeated demands for payment, Defendants have failed and refused to perform under the terms of the Contract.

38. By failing to pay Plaintiff for the merchandise, Defendants have breached the Contract with Plaintiff.

39. As a result of such breach, Plaintiff has been damaged in the principal amount of \$61,301.31 plus interest at a rate of 18% per annum, as well as attorneys' fees and costs as set forth herein and below.

1 **THIRD CLAIM FOR RELIEF**

2 **(BREACH OF PERSONAL GUARANTEE - EDELSTEIN)**

3 40. Plaintiff hereby incorporates by reference each of the allegations set forth in the  
4 preceding Paragraphs of this Complaint as though fully set forth hereinafter.

5 41. Defendant executed an absolute and unconditional Personal Guarantee on behalf  
6 of Gemstone with respect to any supplies and/or goods that Gemstone purchased from Plaintiff  
on credit.

7 42. Plaintiff performed any and all conditions precedent for Defendant's performance  
8 under the Continuing Personal Guarantee.

9 43. Despite repeated demands for payment, Defendant has failed and refused to  
10 perform under the Contract in accordance with the Continuing Personal Guarantee.

11 44. As a result of Defendant's failure to perform under the Contract and Continuing  
12 Personal Guarantee, Plaintiff has suffered damages in the principal amount of \$61,301.31 plus  
13 interest at a rate of 18% per annum, attorneys' fees and costs as set forth herein and below.

14 **FOURTH CLAIM FOR RELIEF**

15 **(QUANTUM MERUIT - GEMSTONE AND EDELSTEIN)**

16 45. Plaintiff hereby incorporates by reference each of the allegations set forth in the  
17 preceding Paragraphs of this Complaint as though fully set forth hereinafter.

18 46. Plaintiff requested that Defendants pay for its supplies as agreed to under the  
terms of the Credit Agreement and Continuing Personal Guarantee.

19 47. Plaintiff provided the materials requested by Defendants in reliance on the  
20 promises of Defendants to pay the reasonable value thereof, as indicated by Plaintiff's invoices.

21 48. Defendants failed and refused to pay Plaintiff for the reasonable value of  
22 materials that Plaintiff provided in accordance with the terms of the Credit Agreement and  
Continuing Personal Guarantee.

23 49. In the event that the Credit Agreement between Plaintiff and Defendants is  
24 deemed to be non-binding, unenforceable, or subject to any other contractual defense, Plaintiff

1 alleges that there was a contract-in-fact with Defendants, who have been unjustly enriched by  
2 their acceptance and use of Plaintiff's supplies due to Defendants' refusal and failure to pay  
3 Plaintiff for the reasonable value of said supplies used and incorporated into the Manhattan West  
4 Project.

5 50. The reasonable and agreed upon value of the work that remains due and owing to  
6 Plaintiff from Defendants is the principal amount of \$61,301.31, plus applicable interest as set  
7 forth herein.

8 **FIFTH CLAIM FOR RELIEF**

9 (ACCOUNT STATED - GEMSTONE AND EDELSTEIN)

10 51. Plaintiff hereby incorporates by reference each of the allegations set forth in the  
11 preceding Paragraphs of this Complaint as though fully set forth hereinafter.

12 52. Plaintiff and Defendants agree that the principal balance due and owing on the  
13 aforementioned accounts is \$61,301.31. In the alternative, Plaintiff alleges that Defendants  
14 regularly received invoices and/or billing statements requesting payment be provided in its  
15 regular course of business and setting forth the balance on the account of Defendants, together  
16 with a description of the products that Plaintiff provided to Defendants and that Defendants did  
17 not object in writing to any of those invoices and/or progress billing statements prepared and  
18 submitted by Plaintiff. Having thus acquiesced to the invoices, Defendants have acknowledged  
19 the validity and amount of this debt as a matter of law.

20 53. Defendants have failed and refused to pay Plaintiff the agreed-upon amounts as  
21 reflected by the stated account balance despite the demand from Plaintiff to do so and thus owe  
22 an account stated of \$61,301.31 to Plaintiff, plus applicable interest as set forth herein.

23 **SIXTH CLAIM FOR RELIEF**

24 (UNJUST ENRICHMENT - ALL DEFENDANTS)

54. Plaintiff hereby incorporates by reference each of the allegations set forth in the  
preceding Paragraphs of this Complaint as though fully set forth hereinafter.

1           55. Plaintiff tendered an offer to Defendants for the supply of valuable consideration  
2 to provide construction supplies on credit.

3           56. Defendants accepted this offer and received the construction supplies.

4           57. Plaintiff tendered valuable consideration to Defendants by providing construction  
5 supplies, goods and materials to the Manhattan West Project set forth herein and in doing so  
6 incurred detriment.

7           58. Plaintiff has performed any and all conditions precedent for Defendants'  
8 performance of payment.

9           59. Despite repeated demands for payment, Defendants have failed and refused to  
10 perform or pay Plaintiff.

11           60. As a result of Defendants' acceptance of the valuable consideration tendered by  
12 Plaintiff, and Defendants' failure and refusal to perform or pay, Defendants have been unjustly  
13 enriched and Plaintiff has been impoverished.

14           61. As a result of such unjust enrichment, Plaintiff has been damaged as herein set  
15 forth in a principal amount of \$61,301.31, plus applicable interest as set forth herein.

16           WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

17           1. That judgment be entered against Defendants, and each of them, jointly and  
18 severally, in such principal amount to be proven at trial, but in no event less than \$61,301.31,  
19 together with accrued pre-judgment interest at the rate of 18% per annum from the date such  
20 sums became due until paid in full. As of 10-Mar-2009, accumulated interest equals \$4,192.20  
21 and continues per diem in the amount of \$30.23;

22           2. For Plaintiff Manhattan West's Lien to be adjudged a valid mechanic's lien, and  
23 that it has attached to the real property upon which the Manhattan West Project was constructed  
24 in the sum of \$61,301.31, together with accrued pre-judgment interest at the rate of 18% per  
annum from the such sums became due until paid in full. As of 01-Apr-2009, accumulated  
interest equals \$4,857.28, and continues per diem in the amount of \$30.23;

          3. For this Honorable Court to order Plaintiff Manhattan West's Lien be foreclosed  
against the title or interest of the Defendants, in accordance with the laws of the State of Nevada,

1 and that the proceeds of the sale, after deducting the costs and expenses thereof, be paid to  
2 Plaintiff in satisfaction of the judgment as requested herein, and if the proceeds of said sale are  
3 insufficient to satisfy the judgment, then to recover the balance remaining unpaid out of any  
4 other property or real property that may be subject to execution;

5 4. That judgment be entered against Defendants, and each of them, jointly and  
6 severally, for reasonable attorneys' fees and costs incurred in the collection of the outstanding  
7 balances; and

8 5. For such other and further relief as this Honorable Court deems just and proper.

9 DATED this 13th day of May 2009.

10 KUMMER KAEMPFER BONNER RENSCHAW &  
11 FERRARIO

12  
13 BY: 

14 JAMES E. SMYTH II  
15 Nevada Bar No. 6506  
16 Seventh Floor  
17 3800 Howard Hughes Parkway  
18 Las Vegas, Nevada 89169

19 I. BIANCA LEDERER,  
20 BLUFF & ASSOCIATES, P.C.  
21 844 North 4<sup>th</sup> Avenue  
22 Phoenix, Arizona 85003-1314  
23 Tel: 602-452-2000  
24 Fax: 602-452-2011  
[roclawyers@hotmail.com](mailto:roclawyers@hotmail.com)  
Pro Hac Vice pending

*Attorneys for Plaintiff*

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# EXHIBIT A

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Southern California PH:949-794-5370 FAX:949-794-2716  
Northern California & Pacific Northwest PH:925-951-8970 FAX:925-951-8971  
Roodes, South West & Texas PH:402-573-8824 FAX:402-573-2373  
Midwest & Upper Midwest PH:402-592-6922 FAX:402-592-4863  
Southeast PH:404-873-2555 FAX:404-873-6836

Branch/Salesman

### CREDIT APPLICATION

For the purpose of obtaining merchandise from you on credit, the following statement is made intending that you should rely on same as correct. Fill out completely and if fixed please forward original.

Firm Name \_\_\_\_\_ Phone No. ( ) \_\_\_\_\_  
Office Address \_\_\_\_\_ Fax No. ( ) \_\_\_\_\_  
City \_\_\_\_\_ Zip Code \_\_\_\_\_  
Mailing Address \_\_\_\_\_ Type of Business \_\_\_\_\_  
City \_\_\_\_\_ Zip Code \_\_\_\_\_  
Name of Parent Company if subsidiary \_\_\_\_\_ Contractor's License No. \_\_\_\_\_  
License in what name \_\_\_\_\_ Standard Industrial Code # \_\_\_\_\_ e-mail \_\_\_\_\_  
☐ Operating as a Corporation ☐ Partnership ☐ Limited Partnership ☐ Individual  
Owner or Officer \_\_\_\_\_ Title \_\_\_\_\_ Home Phone No. \_\_\_\_\_  
Residence Address \_\_\_\_\_ Social Security No. \_\_\_\_\_ Driver's License No. \_\_\_\_\_  
Owner or Officer \_\_\_\_\_ Title \_\_\_\_\_ Home Phone No. \_\_\_\_\_  
Residence Address \_\_\_\_\_ Social Security No. \_\_\_\_\_ Driver's License No. \_\_\_\_\_  
Owner or Officer \_\_\_\_\_ Title \_\_\_\_\_ Home Phone No. \_\_\_\_\_  
Residence Address \_\_\_\_\_ Social Security No. \_\_\_\_\_ Driver's License No. \_\_\_\_\_  
Bank \_\_\_\_\_ Branch \_\_\_\_\_ Phone No. ( ) \_\_\_\_\_  
Address \_\_\_\_\_ Checking Account No. \_\_\_\_\_  
In business since \_\_\_\_\_ Prior business \_\_\_\_\_  
In present location since \_\_\_\_\_ Is this location: ☐ owned ☐ leased from whom? \_\_\_\_\_  
Ever had a business failure? ☐ Yes ☐ No Federal Permit No. \_\_\_\_\_ (PLEASE ATTACH COPY OF PERMIT)  
Branch most frequented \_\_\_\_\_ Monthly Statement Requested: ☐ Yes ☐ No

References: Please list your current major suppliers (at least three). Give only names of those you buy from on open account.  
Please do not list subcontractors or revolving credit accounts. For maximum credit, please include your most recent financial statement.

Name	Address	Phone Number	Account Number
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____

The undersigned certifies that the above information is true and correct and agrees to pay for all goods purchased in compliance with the terms of the Seller. Unless otherwise agreed to in writing, said terms are that all goods are to be paid in full 30 calendar days after the invoice date. Should default be made in payment when due, the balance plus 1.5% per month (18% APR) on all unpaid sums together with actual attorney's fee and all costs as the Seller may reasonably incur in the enforcement of the obligation. Seller and Buyer agree that this contract is entered into at Costa Mesa, California, and that all monies due and payable to any of the White Cap companies or divisions as performance of buyers obligations pursuant to this agreement are due and payable at White Cap Construction Supply, Inc. Costa Mesa, California. Buyer expressly consents to venue in any Orange County, California court at Seller's option. Buyer further warrants and agrees that any obligations incurred under this agreement are obligations owed and due to the White Cap Companies, individually and severally, and recognizes the White Cap Companies as White Cap Construction Supply, Inc. and any related White Cap company or division identified as such, whether operating under the White Cap name or any other name under which White Cap operates its owned stores now, or in the future. All of the undersigned authorize the White Cap Companies to investigate credit background through credit agencies and references listed herein and for all references to release any and all information. The undersigned releases the White Cap Companies from all liabilities resulting from any information released or obtained.

\_\_\_\_\_  
FULL NAME OF COMPANY  
Date \_\_\_\_\_  
\_\_\_\_\_  
SIGNATURE  
PRINT NAME AND TITLE

### CONTINUING PERSONAL GUARANTEE

(IF A CORPORATION IS APPLYING FOR CREDIT, THIS GUARANTEE MUST BE SIGNED BY A CORPORATE OFFICER(S).)

For and in consideration of selling any goods or materials to the above applicant on the account or otherwise by any of the White Cap Companies, I hereby absolutely and unconditionally guarantee the credit account, debt or obligation of the above named corporation. This is a continuing guarantee and shall continue so long as credit is extended or the account, debt or obligation is open. I expressly waive notice of default, diligence, resort to security, any obligation to proceed first against debtor or any other guarantor, and in order of debtor or other guarantors. I further agree to pay all attorney's fees, and costs and other expenses incurred in enforcement of the underlying obligation and this guarantee and agree that in the event of litigation, suit may be brought in any Orange County court at your option. I acknowledge that this guarantee is binding upon me personally regardless of any corporate or other title I may affix or write next to my name and/or signature.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

The signature on this Credit Application, if transmitted by facsimile machine, will be acceptable and binding as if it were in the original.

\_\_\_\_\_  
GUARANTOR SIGNATURE / ALSO PRINT

\_\_\_\_\_  
GUARANTOR SIGNATURE / ALSO PRINT

---

# EXHIBIT B

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White Cap v. Gemstone				Sheet Date	01-Apr-09
				Interest Rate	18%
Invoice Date	Invoice Amount	Payment Due Date (30 days after Invoice Date)	Days Late	Interest	
9-Sep-2008	\$1,311.91	9-Oct-08	174	\$112.57	
10-Sep-2008	\$489.59	10-Oct-08	173	\$41.77	
10-Sep-2008	\$456.12	10-Oct-08	173	\$38.91	
10-Sep-2008	\$382.78	10-Oct-08	173	\$32.66	
10-Sep-2008	\$32.59	10-Oct-08	173	\$2.78	
11-Sep-2008	\$154.09	11-Oct-08	172	\$13.07	
11-Sep-2008	\$8,335.14	11-Oct-08	172	\$707.00	
11-Sep-2008	\$4,714.92	11-Oct-08	172	\$399.93	
11-Sep-2008	\$4,983.45	11-Oct-08	172	\$422.71	
11-Sep-2008	\$7,326.46	11-Oct-08	172	\$621.44	
11-Sep-2008	\$630.87	11-Oct-08	172	\$53.51	
11-Sep-2008	\$169.55	11-Oct-08	172	\$14.38	
11-Sep-2008	\$199.56	11-Oct-08	172	\$16.93	
12-Sep-2008	\$2,118.85	12-Oct-08	171	\$178.68	
12-Sep-2008	\$293.38	12-Oct-08	171	\$24.74	
16-Sep-2008	\$1,422.28	16-Oct-08	167	\$117.13	
19-Sep-2008	\$109.16	19-Oct-08	164	\$8.83	
22-Sep-2008	\$2,109.59	22-Oct-08	161	\$167.50	
23-Sep-2008	\$3,773.60	23-Oct-08	160	\$297.75	
24-Sep-2008	\$1,644.56	24-Oct-08	159	\$128.95	
24-Sep-2008	\$183.18	24-Oct-08	159	\$14.36	
24-Sep-2008	\$2,371.39	24-Oct-08	159	\$185.94	
25-Sep-2008	\$2,341.48	25-Oct-08	158	\$182.44	
1-Oct-2008	\$655.85	31-Oct-08	152	\$49.16	
2-Oct-2008	\$3,232.40	1-Nov-08	151	\$240.70	
6-Oct-2008	\$230.52	5-Nov-08	147	\$16.71	
6-Oct-2008	\$1,540.66	5-Nov-08	147	\$111.69	
8-Oct-2008	\$63.54	7-Nov-08	145	\$4.54	
10-Oct-2008	\$2,672.12	9-Nov-08	143	\$188.44	
15-Oct-2008	\$678.77	14-Nov-08	138	\$46.19	
16-Oct-2008	\$821.60	15-Nov-08	137	\$55.51	
17-Oct-2008	\$101.50	16-Nov-08	136	\$6.81	
21-Oct-2008	\$198.50	20-Nov-08	132	\$12.92	
21-Oct-2008	\$459.54	20-Nov-08	132	\$29.91	
22-Oct-2008	\$784.49	21-Nov-08	131	\$50.68	
24-Oct-2008	\$102.75	23-Nov-08	129	\$6.54	
24-Oct-2008	\$479.19	23-Nov-08	129	\$30.48	
24-Oct-2008	\$301.70	23-Nov-08	129	\$19.19	
24-Oct-2008	\$1,187.81	23-Nov-08	129	\$75.56	
27-Oct-2008	\$327.76	26-Nov-08	126	\$20.37	
27-Oct-2008	\$624.95	26-Nov-08	126	\$38.83	
29-Oct-2008	\$84.59	28-Nov-08	124	\$5.17	
6-Nov-2008	\$585.46	6-Dec-08	116	\$33.49	
11-Nov-2008	\$278.00	11-Dec-08	111	\$15.22	
17-Nov-2008	\$128.23	17-Dec-08	105	\$6.64	
8-Dec-2008	\$84.59	7-Jan-09	84	\$3.50	
9-Dec-2008	\$122.29	8-Jan-09	83	\$5.01	
Total:				\$61,301.31	\$4,857.28
					\$66,158.59
				Per Diem Interest:	\$ 30.23

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# EXHIBIT C

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**Receipt/Conformed Copy**

Requestor:  
KUMMER KAEMPFER BONNER ET AL  
05/12/2009 10:26:08 T20090165905  
Book/Instr: 20090512-0001679  
Lien Page Count: 2  
Fees: \$15.00 N/C Fee: \$25.00

Debbie Conway  
Clark County Recorder

APN# 163-32-112-000  
11-digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>

Amended Notice of Lien

**Type of Document**

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

**Recording Requested By:**

Kummer Kaempfer Bonner Renshaw & Ferrario

**Return Documents To:**

**Name** Kummer Kaempfer Bonner Renshaw & Ferrario

**Address** 3800 Howard Hughes Parkway, 7th Floor

**City/State/Zip** Las Vegas, NV 89169

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 ~ 06/06/2007  
Coversheet.pdf

After Recording Mail to:

HD Supply/White Cap Const. Supply  
2975 Red Hill Avenue #100  
Costa Mesa, CA 92626

APN: 163-32-112-000

**AMENDED NOTICE OF LIEN**  
**Instrument No. 20090121-0004210**  
**Recorded 1/21/2009**

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

1. The amount of the original contract is: N/A.
2. The total amount of all changes and additions, if any, is N/A.
3. The total amount of all payments received to date is: N/A.
4. The amount of the lien, after deducting all just credits and offsets is \$61,301.31.
5. The owner or reputed owner of the above-described property is: Gemstone Development West, Inc., c/o Alexander Edelstein, 9121 W. Russell Road, #117, Las Vegas, NV., 89148-1238
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 West, Inc., 9121 W. Russell Road, #117, Las Vegas, NV. 89148-1238.
7. The terms, time given and conditions of the contract are: Net 30 days. Payment for said labor and materials are now due.
8. A description of the property to be charged with the lien is: Manhattan West Condos, 9205 W. Russell Road, Las Vegas, NV 89148, APN: 163-32-112-000.
9. That the Claimant herein is entitled to reasonable attorney's fees, statutory interest on the amount of this lien claim and costs incurred in perfecting this lien claim.

Dated this 7th day of May 2009.

HD Supply/White Cap Construction Supply

By: Luis Hernandez

Mgr, Collections

(Title)

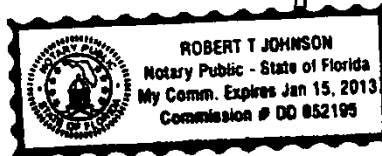
Address: 501 W. Church St, Orlando, FL 32805

Florida  
State of California }  
County of Orange } ss

LUIS HERNANDEZ, being first duly sworn, deposes and says that he is the Mgr, Collections Litigation for HD Supply/White Cap Construction Supply, that he has read the foregoing Notice of Lien and knows the contents thereof and the contents thereof are true of his own knowledge, except for any matter therein stated upon information and belief and as for any such matters, he believes them to be true.

SUBSCRIBED and SWORN to before me  
On this 7 day of May, 2009.

NOTARY PUBLIC in and for  
Said County and State



09050051



# PRELIMINARY NOTICE OF MATERIAL SUPPLIED

• 80 CA / P.O. BOX 1770, COSTA MESA, CALIFORNIA 92626 / (714) 245-7570  
 • ND CA / 297 S. VASCO ROAD, LIVERMORE, CA 94551 / (925) 981-9970

Job Site Description or Address

White Cap  
Account Number  
0119315001Estimated Total Price Labor  
Materials Equipment or Materials  
\$90,000.00

Date of Notice

9/15/08

Notice Number

134699

- MANHATTEN WEST
- 9205-9255 W RUSSELL RD
- LAS VEGAS NV 09140

IN COMPLIANCE WITH NEVADA REVISED STATUTES 108.221 TO 108.243 INCLUSIVE, YOU ARE HEREBY NOTIFIED THAT HD SUPPLY CONSTRUCTION SUPPLY, LTD DBA HD SUPPLY WHITE CAP CONSTRUCTION SUPPLY, 1000 E. WILLIAMS ST., SUITE 204, CARSON CITY, NV 89701, HAS FURNISHED OR WILL FURNISH TO THE ABOVE JOB SITE MATERIAL AND/OR EQUIPMENT OF THE FOLLOWING GENERAL DESCRIPTION: CONSTRUCTION HARDWARE, BRUSH, TRAILING HARDWARE, SURFSURFACE, DRAINAGE PRODUCTS, CONSTRUCTION MATERIALS AND EQUIPMENT RENTALS. SUCH MATERIAL AND/OR EQUIPMENT WAS CONTRACTED BY AND CHARGED TO THE CUSTOMER IDENTIFIED HEREIN.

## NOTICE TO PROPERTY OWNER

IF BILLS ARE NOT PAID IN FULL FOR THE LABOR, SERVICES, EQUIPMENT, OR MATERIALS FURNISHED OR TO BE FURNISHED, A MECHANIC'S LIEN LEADING TO THE LOSS, THROUGH COURT FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR PROPERTY BEING SO IMPROVED MAY BE PLACED AGAINST THE PROPERTY EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY (1) REQUIRING YOUR CONTRACTOR TO FURNISH A SIGNED RELEASE BY THE PERSON OR FIRM GIVING YOU THIS NOTICE BEFORE MAKING PAYMENT TO YOUR CONTRACTOR OR (2) ANY OTHER METHOD OR DEVICE WHICH IS APPROPRIATE UNDER THE CIRCUMSTANCES.

THIS IS NOT A LIEN. THIS IS NOT A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR.

CONSTRUCTION LENDER or  
Reputed Construction Lender

- SCOTT FINANCIAL CORP
- 15010 SUNDOWN DR
- BISMARCK ND 58503

THIS NOTICE OF COURSE, IS NOT INTENDED TO REFLECT IN ANY WAY ON THE INTEGRITY OR CREDIT STANDING OF OUR CUSTOMER, BUT IS GIVEN IN COMPLIANCE WITH THE ABOVE PROVISIONS OF THE NEVADA REVISED STATUTES 108.221 TO 108.243 INCLUSIVE.

WE HAVE APPRECIATED THE OPPORTUNITY OF FURNISHING MATERIAL FOR THIS JOB AND HOPE THAT IT IS PROGRESSING TO YOUR SATISFACTION.

DATED: 9/15/08

Jon Michael Adnour  
DPO

OWNER or Reputed Owner or PUBLIC AGENCY

- ALEXANDER EDELSTEIN
- 9121 W RUSSELL RD #117
- LAS VEGAS NV 89148

WHITE CAP Construction Identification

- GEMSTONE DEVELOPMENT
- WEST INC
- 9121 W RUSSELL RD #117
- LAS VEGAS NV 89148

ORIGINAL CONTRACTOR or Reputed Contractor

- CAMCO PACIFIC CONSTRUCTION
- 2925 E PLATRICK LANE
- LAS VEGAS NV 89148

OTHER Interested Parties

- 
- 
- 

REQUEST FOR WRITTEN ADVISEMENT OF NOTICE OF COMPLETION  
 AS PER NEVADA SENATE BILL 152, UPON RECORDING A NOTICE OF COMPLETION PURSUANT TO SECTION 1. NRS 108.228, THE OWNER SHALL IMMEDIATELY DELIVER A COPY OF THE NOTICE BY CERTIFIED MAIL TO ANY PERSON WHO, BEFORE THE NOTICE WAS RECORDED, SUBMITTED A REQUEST TO RECEIVE SUCH NOTIFICATION. HD SUPPLY CONSTRUCTION SUPPLY, LTD DBA HD SUPPLY WHITE CAP CONSTRUCTION SUPPLY, DOES REQUEST SUCH NOTICE.

## FILE COPY

T-062 P.001/002 F-214

FROM: HD Supply White Cap

JAN-14-08 07:14

<b>Certified Mail Receipt</b> Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees	Postage	\$ 4.70
	Certified Fee	\$ 2.70
	Return Receipt Fee (Endorsement Required)	\$ 0.00
	Restricted Delivery Fee (Endorsement Required)	\$ 0.00
	Total Postage & Fees	\$ 7.40

Sent To:  
 0119315001  
 ALEXANDER EDELSTEIN  
 9121 W. MUSSELL RD #117  
 LAS VEGAS NV 89148

PS Form 3800, January 2005 US Postal Service **Certified Mail Receipt** 2

7160 3000 4400 2576 9125 7452 9496 1006 0917

LIVERMORE CA 94550-9999  
 SEP 15 2008  
 USPS

<b>Certified Mail Receipt</b> Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees	Postage	\$ 4.70
	Certified Fee	\$ 2.70
	Return Receipt Fee (Endorsement Required)	\$ 0.00
	Restricted Delivery Fee (Endorsement Required)	\$ 0.00
	Total Postage & Fees	\$ 7.40

Sent To:  
 0119315001  
 CAMCO PACIFIC CONSTRUCTION  
 2975 E PATRICK LANE  
 LAS VEGAS NV 89148

PS Form 3800, January 2005 US Postal Service **Certified Mail Receipt** 2

7160 3000 4400 2576 9125 7452 9496 1006 0917

LIVERMORE CA 94550-9999  
 SEP 15 2008  
 USPS



925.961.9770

# Disconnected

**2031**

[illegible]

**Gemstone Development, LLC**  
Builder & Master Developer of The Manhattan Condominiums

Corporate Offices: 9121 W. Russell Road, Suite 117  
Las Vegas, NV 89148  
Phone: (702) 614-3193  
Fax: (702) 614-0669  
[www.GemstoneDev.com](http://www.GemstoneDev.com)

The Gemstone Group Companies

Gemstone LVS, LLC  
Gemstone Apache, LLC  
Gemstone Development, LLC

Gemstone Development West, Inc.  
Gemstone Developer Services, LLC  
Gemstone Development West, LLC

Company Information

Established 2000  
Incorporated in the State of Nevada  
Time at Present Location 2007  
Previous Address:  
7700 S. Las Vegas Blvd, Suite 5  
Las Vegas, NV 89123  
Nature of Business: Construction Development  
Annual Revenues: \$100,000,000+

Contact Information

Alexander Edelstein  
President & CEO

Billing Contact:  
Lynn DeMann, Bookkeeper  
Amber Jorgensen, Accounting

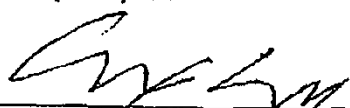
Bank Reference

Wells Fargo Account No. 5627688053 Phone: (800) 225-5935

Trade References

Beltway One Development 3965 S Durango Dr, Las Vegas, NV (707) 247-1920  
WRG Design 3011 W Horizon Ridge Pkwy, Henderson, NV (702) 990-9300  
OZ Architecture 9121 W. Russell Rd, Ste 114 Las Vegas, NV (702) 405-1797

The information provided herein above is provided solely for the purpose of obtaining credit. I certify that the information is true and correct. Additional information may be available upon request.

  
Alexander Edelstein, President & CEO  
Gemstone Group Companies

## STATEMENT

Page 1 of 2



Credit Office  
2975 Redhill, Ste 100  
Costa Mesa, CA 92626  
949-794-5370

CLOSING DATE  
2/24/2009

TOTAL DUE  
61,301.31

119315000

GEMSTONE DEVELOPMENT

WEST INC

9121 W RUSSELL RD #117  
LAS VEGAS, NV 89148



MEMBER OF THE SIA

Current	1-30 Days	31-60 Days	61-90 Days	90+ Days	Total
0.00	0.00	206.88	2,028.99	59,065.44	61,301.31

INVOICE DATE	INVOICE NO.	INVOICE AMT.	BALANCE DUE
9/9/2008	11028174	1,311.91	1,311.91
9/10/2008	1052058-01	489.59	489.59
9/10/2008	11028394	456.12	456.12
9/10/2008	11028400	382.78	382.78
9/10/2008	38023114	32.59	32.59
9/11/2008	1052322-02	154.09	154.09
9/11/2008	11028405	8,335.14	8,335.14
9/11/2008	11028500	4,714.92	4,714.92
9/11/2008	11028505	4,983.45	4,983.45
9/11/2008	11028510	7,326.46	7,326.46
9/11/2008	17102598-03	630.87	630.87
9/11/2008	22033057-02	169.55	169.55
9/11/2008	64018679	199.56	199.56
9/12/2008	11028642	2,118.85	2,118.85
9/12/2008	11028644-01	293.38	293.38
9/16/2008	11028889	1,422.28	1,422.28
9/19/2008	11029347-02	109.16	109.16
9/22/2008	11029446	2,109.59	2,109.59
9/23/2008	11029570	3,773.60	3,773.60
9/24/2008	11029696	1,644.56	1,644.56
9/24/2008	11029697	183.18	183.18
9/24/2008	11029783	2,371.39	2,371.39
9/25/2008	11029846	2,341.48	2,341.48
10/1/2008	11030386	655.85	655.85
10/2/2008	11030611	3,232.40	3,232.40
10/6/2008	11030807	230.52	230.52
10/6/2008	11030825	1,540.66	1,540.66
10/8/2008	11031124	63.54	63.54
10/10/2008	11031322	2,672.12	2,672.12
10/15/2008	11031747	678.77	678.77
10/16/2008	11031904	821.60	821.60
10/17/2008	11032037	101.50	101.50
10/21/2008	11032365	198.50	198.50
10/21/2008	11032366	459.54	459.54
10/22/2008	11032563	784.49	784.49
10/24/2008	11032817	102.75	102.75
10/24/2008	11032818	479.19	479.19
10/24/2008	11032880	301.70	301.70
10/24/2008	11032882	1,187.81	1,187.81

COMMENTS: Join @ whitecapdirect.com for invoices and statements online

Invoice: C=Credit Memo R=Rental D=Debit Memo U=Unapplied Payment On Account

## REMITTANCE ADVICE

MAKE CHECKS PAYABLE TO:



DEPT 70998  
LOS ANGELES, CA 90084-0998

CUSTOMER 119315000

NAME: GEMSTONE DEVELOPMENT

☐ Please check box if your address is incorrect or has changed. Indicate changes on reverse side.

CLOSING DATE: 2/24/2009

BALANCE DUE: 61,301.31

INVOICE NO.	INVOICE DATE	INVOICE AMT.	BALANCE DUE
11028174	I	1,311.91	1,311.91
1052058-01	I	489.59	489.59
11028394	I	456.12	456.12
11028400	I	382.78	382.78
38023114	I	32.59	32.59
1052322-02	I	154.09	154.09
11028405	I	8,335.14	8,335.14
11028500	I	4,714.92	4,714.92
11028505	I	4,983.45	4,983.45
11028510	I	7,326.46	7,326.46
17102598-03	I	630.87	630.87
22033057-02	I	169.55	169.55
64018679	I	199.56	199.56
11028642	I	2,118.85	2,118.85
11028644-01	I	293.38	293.38
11028889	I	1,422.28	1,422.28
11029347-02	I	109.16	109.16
11029446	I	2,109.59	2,109.59
11029570	I	3,773.60	3,773.60
11029696	I	1,644.56	1,644.56
11029697	I	183.18	183.18
11029783	I	2,371.39	2,371.39
11029846	I	2,341.48	2,341.48
11030386	I	655.85	655.85
11030611	I	3,232.40	3,232.40
11030807	I	230.52	230.52
11030825	I	1,540.66	1,540.66
11031124	I	63.54	63.54
11031322	I	2,672.12	2,672.12
11031747	I	678.77	678.77
11031904	I	821.60	821.60
11032037	I	101.50	101.50
11032365	I	198.50	198.50
11032366	I	459.54	459.54
11032563	I	784.49	784.49
11032817	I	102.75	102.75
11032818	I	479.19	479.19
11032880	I	301.70	301.70
11032882	I	1,187.81	1,187.81

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

## STATEMENT

Page 2 of 2



Credit Office  
2975 Redhill, Ste 100  
Costa Mesa, CA 92626  
949-794-5370

119315000

GEMSTONE DEVELOPMENT

WEST INC

9121 W RUSSELL RD #117  
LAS VEGAS, NV 89148

CLOSING DATE  
2/24/2009

TOTAL DUE  
61,301.31

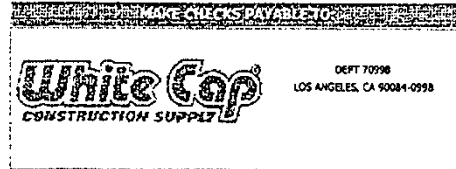


EXCLUSIVE OF THE 12.5%

Current	1-30 Days	31-60 Days	61-90 Days	90+ Days	Total
0.00	0.00	206.88	2,028.99	59,065.44	61,301.31

DATE	INVOICE NO	INVOICE TYPE	AMOUNT DUE
10/27/2008	11032991	I	327.76
10/27/2008	11033019	I	624.95
10/29/2008	11033302	I	84.59
11/6/2008	11034058	I	585.46
11/11/2008	11034403	I	278.00
11/17/2008	11034770	I	128.23
12/8/2008	11036387	I	84.59
12/9/2008	11036581	I	122.29

## REMITTANCE ADVICE



CUSTOMER 119315000

#:  
NAME: GEMSTONE DEVELOPMENT

☐ Please check box if your address is incorrect or has changed. Indicate change(s) on reverse side.

CLOSING DATE: 2/24/2009

BALANCE DUE: 61,301.31

INVOICE NO	INVOICE TYPE	AMOUNT DUE
11032991	I	327.76
11033019	I	624.95
11033302	I	84.59
11034058	I	585.46
11034403	I	278.00
11034770	I	128.23
11036387	I	84.59
11036581	I	122.29

USPS4505: Join @ whitecapdirect.com for invoices and statements online

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

In: Invoice C: Credit Memo R: Rental D: Debit Memo U: Unapplied Payment On Account

AA 000970

ORIGINAL

FILED

MAY 15 4 23 PM '09

*Ed. H. H.*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 [slmorris@wmb-law.net](mailto:slmorris@wmb-law.net)

9 Attorneys for  
10 Camco Pacific Construction Company, Inc. and  
11 Fidelity and Deposit Company of Maryland

DISTRICT COURT

CLARK COUNTY, NEVADA

08A571228  
114542



12 APCO CONSTRUCTION, a Nevada  
13 corporation

14 Plaintiff,

15 vs.

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

25 Defendants.

26 INSULPRO PROJECTS, INC., a Nevada  
27 corporation,

28 Lien Claimant,

vs.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., a California corporation;  
FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND; and DOES XXI through  
XXV; and ROES CORPORATIONS XI  
through XV, inclusive,

Third Party Defendants.

Case No: A571228  
Dept. No: X

ANSWER TO INSULPRO PROJECTS,  
INC.'S THIRD PARTY COMPLAINT  
AND CAMCO PACIFIC  
CONSTRUCTION'S COUNTERCLAIM

RECEIVED

MAY 15 2009

CLERK OF THE COURT

**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 CAMCO PACIFIC CONSTRUCTION  
2 COMPANY, INC., a California corporation

3 Counterclaimant,

4 vs.

5 INSULPRO PROJECTS, INC., a Nevada  
6 corporation, DOES I through X, inclusive,

7 Counterdefendant,

8 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
9 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
10 (hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as  
11 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
12 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of INSULPRO  
13 PROJECTS, INC., a Nevada corporation (hereinafter "Plaintiff"), on file herein, and admit,  
14 deny and allege as follows:

15 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
16 the truth of the allegations contained in Paragraphs 10 and 11 of Plaintiff's Complaint, and  
17 therefore deny each and every allegation contained therein.

18 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 8, 32  
19 and 35 of Plaintiff's Complaint.

20 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 6, 9,  
21 12, 13, 14, 15, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28, 29, 30, 33, 34, 36, 37 and 38 of Plaintiff's  
22 Complaint.

23 4. As to Paragraphs 7, 16, 20, 23 and 31 of Plaintiff's Complaint, Camco and  
24 Fidelity repeat and reallege the answers to paragraphs 1 through 38 as though fully set forth  
25 herein.

26 5. As to Paragraph 5 Camco and Fidelity admit that Camco entered into a general  
27 contract agreement with Gemstone Development West on or about August 15, 2008.  
28

1           6.     To the extent that any allegations set forth in Plaintiff's Complaint have not been  
2 answered, these answering Defendants deny each and every allegation or inference thereof not  
3 expressly set forth hereinabove.

4           7.     It has become necessary for these answering Defendants to retain the services of  
5 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,  
6 these answering Defendants have been damaged by the Plaintiff, and these answering  
7 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

8                               **AFFIRMATIVE DEFENSES**

9           1.     The Complaint on file herein fails to state a claim against Camco and Fidelity  
10 upon which relief can be granted.

11           2.     That any or all negligence or fault on the part of the Plaintiff would be active and  
12 primary, and any negligence or fault of Camco, if any, would be secondary and passive.

13           3.     Any and all damages sustained by Plaintiff are the result of its own negligence  
14 and breach of contract.

15           4.     Camco is not negligent with respect to the transactions which are the subject of  
16 the Complaint, and is and was not in breach of contract.

17           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
18 had full and complete knowledge and information in regard to the conditions and circumstances  
19 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
20 assume the risk attendant to any condition there or then present.

21           6.     The liability, if any, of Camco must be reduced by the percentage of fault of  
22 others, including the Plaintiff.

23           7.     The claims, and each of them, are barred by the failure of the Plaintiff to plead  
24 those claims with particularity.

25           8.     The claims of Plaintiff have been waived as a result of the acts and the conduct  
26 of the Plaintiff.

27           9.     The claim for breach of contract is barred as a result of the failure to satisfy  
28

1 conditions precedent.

2 10. Plaintiff has failed to mitigate its damages.

3 11. Defendant Fidelity is informed and believes that it is entitled to assert all of the  
4 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
5 raised, or that could have been raised, by Fidelity's principal.

6 12. Fidelity alleges that its liability, if any exists, which is expressly denied, is  
7 limited to the penal sum of the applicable Contractor's License Bond.

8 13. Any license or surety bond executed by Fidelity was limited to the classification  
9 of contracting activities as set forth in its Nevada State Contractor's License Bond.

10 14. The liability of Fidelity if any, is limited to its obligations as set forth in its surety  
11 bond agreement.

12 15. The liability of Fidelity if any, is limited to the statutory liability as set forth in  
13 NRS 624.273.

14 16. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
15 partnerships, corporations, associations, or other organizations that are not its named principal.

16 17. The damages sustained by Plaintiff, if any, were caused by the acts of third  
17 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
18 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
19 its principal are not liable in any manner to the Plaintiff.

20 18. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
21 partnerships, corporations, associations, or other organizations that are not its named principal.

22 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
23 because no judgment or court decree has been entered against its principal.

24 20. It has been necessary for Camco and Fidelity to retain the services of the law  
25 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
26 action, and Camco is entitled to payment of all costs, fees and expenses associated with and/or  
27 arising out of the defense of this action.

28



1           21. Pursuant To NRCP 8, all possible affirmative defenses may not have been  
2 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and  
3 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to  
4 amend their Answer to allege additional affirmative defenses if subsequent investigation  
5 warrants.

7           1.       That Plaintiff take nothing by way of its Complaint;  
8           2.       For an award of reasonable attorneys' fees and costs for having to defend this  
9    action; and  
10          3.       For such other and further relief as the Court deems just and proper.

12 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter  
13 “Camco”) by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,  
14 Morris & Brown complains as follows:

16           1.       Camco was and is at all times relevant to this action, a California corporation,  
17       doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State  
18       Contractor's Board.

19           2.       Counterdefendant INSULPRO PROJECTS, INC., a Nevada corporation  
20       (hereinafter referred to as “Insulpro”) is and was at all times relevant to this action, a  
21       corporation conducting business in Clark County, Nevada.

3. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant. Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore, Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to amend this Counterclaim to show the true names and capacities of each such DOE Defendants at such time as the same have been ascertained.

AA 000975

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

4. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by reference and further allege:

5. Camco is informed and believes and thereupon alleges that Insulpro entered into a Subcontract Agreement ("Subcontract Agreement") with APCO Construction related to the Manhattan West Condominiums project, located in Clark County, Nevada (the "Project").

6. On or about August 26, 2008, Camco and Insulpro entered into a Ratification and Amendment of Subcontract Agreement ("Ratification Agreement") wherein Camco and Insulpro acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

7. Section 3.4 of the Subcontract Agreement states: "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."

8. All payments made to subcontractors and suppliers on the Project were made directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and incorporated herein by this reference).

9. Camco never received payment on behalf of the subcontractors, including Insulpro, and was therefore, not responsible nor liable for payment to the subcontractors, including Insulpro.

10. Insulpro agreed and expressly acknowledged that it assumed the risk of non-payment by the Owner.

11. Insulpro breached its contract with Camco by demanding payment from Camco and by bringing claims against Camco and its License Bond Surety relative to payment for the work allegedly performed by Insulpro on the Project.

12. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and

1 conditions of the Ratification Agreement.

2 13. Camco has been required to engage the services of the law firm of  
3 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
4 reasonable attorneys fees and costs therefor.

5 **SECOND CAUSE OF ACTION**

6 **(Breach of Covenant of Good Faith and Fair Dealing)**

7 14. Camco repeats and realleges each and every allegation contained in the  
8 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by  
9 reference and further allege:

10 15. The law imposes upon Insulpro, by virtue of the contract, a covenant to act in  
11 good faith and deal fairly with Counterclaimant;

12 16. Despite this covenant, Insulpro's intentional failure to abide by the terms of the  
13 parties written contract, Insulpro breached its covenant to act in good faith and deal fairly;

14 17. As a result of its breach of the covenant of good faith and fair dealing, Insulpro  
15 has injured Camco in an amount in excess of \$10,000.00.

16 18. Camco has been required to engage the services of the law firm of  
17 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
18 reasonable attorneys fees and costs therefor.

19 WHEREFORE, Counterclaimant Camco prays as follows:

20 1. This Court enter judgment against Counterdefendants, and each of them, in an  
21 amount in excess of \$10,000.00, plus interest at the contract rate;

22 2. For an award of reasonable attorneys' fees and costs for having to prosecute this  
23 action; and

24 ///

25 ///

26 ///

27 ///

28 ///

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 3. For such other and further relief as the Court deems just and proper.

2 DATED this 15<sup>th</sup> day of May, 2009.

3 WOODBURY, MORRIS & BROWN

4 

5 STEVEN L. MORRIS, ESQ.

6 Nevada Bar No. 7454

7 701 N. Green Valley Pkwy., Suite 110

8 Henderson, NV 89074-6178

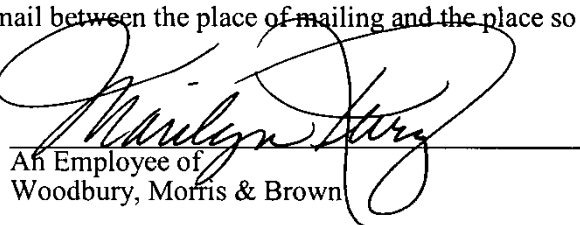
9 Attorneys for Camco and Fidelity

10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the 15<sup>th</sup> day of May, 2009, I served a copy of the ANSWER  
12 TO INSULPRO PROJECTS, INC.'S THIRD PARTY COMPLAINT AND CAMCO  
13 PACIFIC CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and  
14 correct copy of the same in a sealed envelope upon which first-class postage was fully prepaid,  
15 and addressed to the following:

16 ERIC DOBBERSTEIN, Esq.  
17 DOBBERSTEIN & ASSOCIATES  
18 1399 Galleria Drive, Suite 201  
Henderson, Nevada 89014  
Fax: 382-1661

19 and that there is regular communication by mail between the place of mailing and the place so  
20 addressed.

21   
22 An Employee of  
23 Woodbury, Morris & Brown

# Exhibit A



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

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Office: 701.255.2215 • Fax: 701.223.7299

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would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

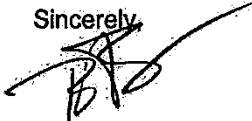
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation



Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NCS~~ (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', written over a horizontal line.

Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit "A"



December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

~~Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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AA 000985

Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Tuesday, December 16, 2008 9:38 AM  
**To:** Jennifer Olivares  
**Cc:** 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
**Subject:** ManhattanWest Status  
**Importance:** High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to ~~no further draws being approved~~.

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

	
<b>Brad J. Scott, CRE</b> President <a href="mailto:brad@scottfinancialcorp.com">brad@scottfinancialcorp.com</a>	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

4/1/2009

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]  
Sent: Monday, December 15, 2008 3:00 PM  
To: Anne Dwyer; Jennifer Olivares  
Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com  
Subject: FW: ManhattanWest  
Importance: High  
Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced but undispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.


This amount includes the current Heineman Payment request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
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A licensed and bonded corporate finance company.

Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 000988

  
CLERK OF THE COURT

1 **STMT**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, Nevada 89074-6571  
9 Telephone: (702) 990-7272  
10 Fax: (702) 990-7273  
11 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
12 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
13 Attorneys for Terra South Corporation  
14 d/b/a Mad Dog Heavy Equipment

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

10 OLSEN PRECAST COMPANY., a Nevada  
11 corporation,

11 Plaintiff,

12 vs.

13 LONGFORD SOUTHERN HILLS II, LLC, a  
14 Nevada Limited Liability Company; PENNY  
15 CONSTRUCTION, LLC, a Nevada Limited  
16 Liability Company; AFFORDABLE  
17 CONCEPTS, INC., a Nevada Corporation;  
18 DOES 1-20 inclusive;

17 Defendants.

18 TERRA SOUTH CORPORATION d/b/a MAD  
19 DOG HEAVY EQUIPMENT, a Nevada  
20 corporation,

20 Plaintiff in Intervention,

21 vs.

22 LONGFORD AT SOUTHERN HILLS II, LLC,  
23 a Nevada Limited Liability Company;  
24 AFFORDABLE CONCEPTS, INC., a Nevada  
25 Corporation; WESTERN SURETY  
26 COMPANY; DOES I through X; ROE  
27 CORPORATIONS I through X; BOE  
28 BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

26 Defendants.

CASE NO.: A-09-589662-C  
DEPT. NO.: II

**TERRA SOUTH CORPORATION  
d/b/a MAD DOG HEAVY  
EQUIPMENT STATEMENT OF  
FACTS CONSTITUING NOTICE OF  
LIEN AND THIRD-PARTY  
COMPLAINT**

**EXEMPTION FROM ARBITRATION:  
Title to Real Estate**

26 TERRA SOUTH CORPORATION d/b/a MAD DOG HEAVY EQUIPMENT ("Mad  
27 Dog"), by and through its attorneys of record, Richard L. Peel, Esq., and Michael T. Gebhart,  
28

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

Esq., of the law firm of PEEL BRIMLEY LLP, as for its Statement of Facts Constituting Notice of Lien and Third-Party Complaint in Intervention ("Statement of Facts") against the above-named defendants complains, avers and alleges as follows:

**THE PARTIES**

1. Mad Dog is and was at all times relevant to this action a Nevada corporation which license is in good standing.

2. Mad Dog is informed and believes and therefore alleges that Defendant LONGFORD AT SOUTHERN HILLS II, LLC, a Nevada limited-liability company, ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

Longford Shoppes (Project)  
6525 South Fort Apache Road  
Spring Valley  
Assessor Description: Longford at Southern Hills  
Plat Book 137 Page 73  
Lot 2  
SEC 06 TWP 22 RNG 60

and more particularly described as Clark County Assessor Parcel Number 176-06-516-001 including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owner caused or allowed to be constructed certain improvements (the "Property").

3. The whole of the Property is reasonably necessary for the convenient use and occupation of the improvements.

4. Mad Dog is informed and believes and therefore alleges that Defendant AFFORDABLE CONCEPTS, INC. ("Affordable") is and was at all times relevant to this action,



1 duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada  
2 State Contractor's license and acting as a contractor to the Owner.

3 5. Mad Dog is informed and believes and therefore alleges that Defendant  
4 WESTERN SURETY COMPANY ("Western") is and was a bonding company licensed and  
5 qualified to do business as a surety in Nevada.  
6

7 6. Mad Dog does not know the true names of the individuals, corporations,  
8 partnerships, bonding companies, lenders, tenants, and entities sued and identified in fictitious  
9 names as I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I  
10 through X; LOE LENDERS I through X. Mad Dog alleges that such Defendants claim an interest  
11 in or to the Property and/or are responsible for damages suffered by Mad Dog as more fully  
12 discussed under the claims for relief set forth below. Mad Dog will request leave of this  
13 Honorable Court to amend this Complaint to show the true names and capacities of each such  
14 fictitious Defendant when Mad Dog discovers such information.  
15

16 **FIRST CAUSE OF ACTION**  
17 **(Breach of Contract against Affordable)**

18 7. Mad Dog repeats and realleges each and every allegation contained in the  
19 preceding paragraphs of this Statement of Facts, incorporates them by reference, and further  
20 alleges as follows:

21 8. Mad Dog on or about February 2009, entered into an agreement with Affordable  
22 ("Agreement") to provide certain grading and paving work, materials and equipment (the  
23 "Work") for the Property located in Clark County, Nevada.  
24

25 9. Mad Dog furnished the Work for the benefit of and at the specific instance and  
26 request of Affordable and/or Owner.

27 10. Pursuant to the Agreement, Mad Dog was to be paid an amount in excess of Ten  
28 Thousand Dollars (\$10,000.00) (hereinafter "Outstanding Balance") for the Work.

1           11. Mad Dog furnished the Work and has otherwise performed its duties and  
2 obligations as required by the Agreement.

3           12. Affordable has breached the Agreement by, among other things:

- 4                   a. Failing and/or refusing to pay the monies owed to Mad Dog for the Work;  
5  
6                   b. Failing to adjust the Agreement price to account for extra and/or changed  
7 work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or  
8 their representatives;  
9                   c. Failing to promptly recognize and grant time extensions to reflect additional  
10 time allowable under the Agreement and permit related adjustments in scheduled performance;  
11                   d. Failing and/or refusing to comply with the Agreement and Nevada law; and  
12                   e. Negligently or intentionally preventing, obstructing, hindering or interfering  
13 with Mad Dog's performance of the Work.  
14

15           13. Mad Dog is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for  
16 the Work.

17           14. Mad Dog has been required to engage the services of an attorney to collect the  
18 Outstanding Balance, and Mad Dog is entitled to recover its reasonable costs, attorney's fees and  
19 interest therefore.  
20

### 21                                   **SECOND CAUSE OF ACTION**

#### 22                   **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Affordable)**

23           15. Mad Dog repeats and realleges each and every allegation contained in the  
24 preceding paragraphs of this Statement of Facts, incorporates them by reference, and further  
25 alleges as follows:

26           16. There is a covenant of good faith and fair dealing implied in every agreement,  
27 including the Agreement between Affordable and Mad Dog.  
28

1           17.     Affordable breached its duty to act in good faith by performing the Agreement in a  
2 manner that was unfaithful to the purpose of the Agreement, thereby denying Mad Dog's justified  
3 expectations.

4           18.     Due to the actions of Affordable, Mad Dog suffered damages in an amount to be  
5 determined at trial for which Mad Dog is entitled to judgment plus interest.  
6

7           19.     Mad Dog has been required to engage the services of an attorney to collect the  
8 Outstanding Balance, and Mad Dog is entitled to recover its reasonable costs, attorney's fees and  
9 interest therefore.

10                                   **THIRD CAUSE OF ACTION**  
11           **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

12           20.     Mad Dog repeats and realleges each and every allegation contained in the  
13 preceding paragraphs of this Statement of Facts, incorporates them by reference, and further  
14 alleges as follows:

15           21.     As to Affordable, this cause of action is being pled in the alternative.

16           22.     The Defendants accepted, used and enjoyed the benefit of Mad Dog's Work.

17           23.     The Defendants knew or should have known that Mad Dog expected to be paid for  
18 the Work.  
19

20           24.     Mad Dog has demanded payment of the Outstanding Balance.

21           25.     To date, the Defendants have failed, neglected, and/or refused to pay the  
22 Outstanding Balance.

23           26.     The Defendants have been unjustly enriched, to the detriment of Mad Dog.

24           27.     Mad Dog has been required to engage the services of an attorney to collect the  
25 Outstanding Balance, and Mad Dog is entitled to recover its reasonable costs, attorney's fees and  
26 interest therefore.  
27

28     ///

**FOURTH CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien)**

28. Mad Dog repeats and realleges each and every allegation contained in the preceding paragraphs of this Statement of Facts, incorporates them by reference, and further alleges as follows:

29. The provision of the Work was at the special instance and request of the Defendants for the Property.

30. As provided at NRS 108.245, the Defendants had actual knowledge of Mad Dog's delivery of the Work to the Property.

31. Mad Dog demanded payment of an amount in excess of Ten Thousand and no/100 Dollars (\$10,000.00), which amount remains past due and owing.

32. On or about March 6, 2009, Mad Dog timely recorded a Notice of Lien in Book 20090306 of the Official Records of Clark County, Nevada, as Instrument No. 0001316 ("Lien").

33. The Lien was in writing and was recorded against the Property for the outstanding balance due to Mad Dog in the amount of One Hundred Sixty-One Thousand Eight Hundred Sixty-Six and 93/100 Dollars (\$161,866.93).

34. The Lien was served upon the Owner and/or its authorized agents, as required by law.

35. Mad Dog is entitled to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

**SIXTH CAUSE OF ACTION**  
**(Claim Against Bond – Western Surety)**

36. Mad Dog repeats and realleges each and every allegation contained in the preceding paragraphs of this Statement of Facts, incorporates them by reference, and further alleges as follows:

1           37.     Prior to the events giving rise to this Complaint, Western issued Surety Bond No.  
2     58636355 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).

38. Affordable is named as principal and Western is named as surety on the Bond.

39. The Bond was provided pursuant to the requirements of NRS 624.270, which  
Bond was in force during all times relevant to this action.

7           40.       Mad Dog furnished the Work as stated herein and has not been paid for the same.  
8       Mad Dog therefore claims payment on said Bond.

9 41. Western is obligated to pay Mad Dog the sums due.

10                    42.     Demand for the payment of the sums due to Mad Dog has been made, but  
11     Affordable and Western have failed, neglected and refused to pay the same to Mad Dog.

43. Affordable and Western owe Mad Dog the penal sum of the Bond.

44. Mad Dog was required to engage the services of an attorney to collect the Outstanding Balance due and owing to Mad Dog and Mad Dog is entitled to recover its reasonable attorney's fees and costs therefore.

**SEVENTH CAUSE OF ACTION**  
**(Violation of NRS 624)**

19           45.     Mad Dog repeats and realleges each and every allegation contained in the  
20 preceding paragraphs of this Statement of Facts, incorporates them by reference, and further  
21 alleges as follows:

22           46.     NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as  
23     Affordable), to, among other things, timely pay their subcontractors (such as Mad Dog), as  
24     provided in the in the Statute.

26            47.        In violation of the Statute, Affordable has failed and/or refused to timely pay Mad  
27        Dog monies due and owing.

28                    48.      Affordable's violation of the Statute constitutes negligence per se.

1           49. By reason of the foregoing, Mad Dog is entitled to a judgment against Affordable  
2 in the amount of the Outstanding Balance

3           50. Mad Dog has been required to engage the services of an attorney to collect the  
4 Outstanding Balance and Mad Dog is entitled to recover its reasonable costs, attorney's fees and  
5 interests therefore.  
6

7           **WHEREFORE**, Mad Dog prays that this Honorable Court:

8           1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
9 the Outstanding Balance amount;

10           2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
11 Mad Dog's reasonable costs and attorney's fees incurred in the collection of the Outstanding  
12 Balance, as well as an award of interest thereon;

13           3. Enter a judgment declaring that Mad Dog has a valid and enforceable mechanic's  
14 lien against the Property, with priority over all Defendants, in the amount of the Outstanding  
15 Balance;  
16

17           4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable  
18 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the  
19 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State  
20 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Mad Dog  
21 herein; and  
22

23       ///

24       ///

25       ///

26       ///

27       ///

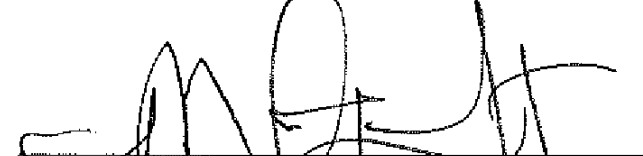
28

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

1           5.       For such other and further relief as this Honorable Court deems just and proper.

2           Dated this 19<sup>th</sup> day of May 2009.

3  
4                           **PEEL BRIMLEY LLP**

5                           

6                           RICHARD L. PEEL, ESQ.

7                           Nevada Bar No. 4359

8                           MICHAEL T. GEBHART, ESQ.

9                           Nevada Bar No. 7718

10                          3333 E. Serene Avenue, Suite 200

11                          Henderson, Nevada 89074-6571

12                          Telephone: (702) 990-7272

13                          Fax: (702) 990-7273

14                          rpeel@peelbrimley.com

15                          mgebhart@peelbrimley.com

16                          Attorneys for Terra South Corporation

17                          dba Mad Dog Heavy Equipment

ORIGINAL

8

104

1 STMT  
2 D. SHANE CLIFFORD, ESQ.  
3 Nevada Bar No. 6602  
4 ROBIN E. PERKINS, ESQ.  
5 Nevada Bar No. 9891  
6 **DIXON TRUMAN FISHER & CLIFFORD, P.C.**  
7 221 North Buffalo Drive, Suite A  
8 Las Vegas, NV 89145  
9 (702) 821-1821

10 *Attorneys for Ahern*

FILED

2009 MAY 20 P 4:12

*E. J. Fisher*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY NEVADA

9 OLSON PRECAST COMPANY, a Nevada  
10 corporation,

11 Plaintiff,

12 vs.

13 LONGFORD SOUTHERN HILLS II, LLC, a Nevada  
14 limited liability company; PENNEY  
15 CONSTRUCTION, LLC, a Nevada limited liability  
16 company; AFFORDABLE CONCEPTS, INC., a  
17 Nevada corporation; and DOES 1-20, inclusive,

18 Defendants.

19 AHERN RENTALS, INC., a Nevada corporation;

20 Plaintiff,

21 vs.

22 LONGFORD SOUTHERN HILLS II, LLC, a Nevada  
23 limited liability company; PENNEY  
24 CONSTRUCTION, LLC, a Nevada limited liability  
25 company; WILLIAM PENNEY d/b/a PENNEY  
26 CONSTRUCTION, an individual; WILLIAM  
27 PENNEY, an individual; OLD REPUBLIC SURETY,  
28 a foreign corporation; DOES I-X, inclusive; ROES  
29 XI-XX, inclusive;

30 **RECEIVED**

31 MAY 20 2009

32 Defendants.

CASE NO.: A589662  
DEPT. NO.: II

**AHERN RENTAL INC.'S  
STATEMENT OF FACTS  
CONSTITUTING LIEN  
AND COMPLAINT-IN-  
INTERVENTION**

**Arbitration Exemption: Involves  
Title to Property; Seeking  
Declaratory Relief**

A-09-589662-C  
126577



CLERK OF THE COURT

10

LAW OFFICES  
**DIXON TRUMAN FISHER & CLIFFORD**  
A PROFESSIONAL CORPORATION  
221 North Buffalo Drive, Suite A  
Las Vegas, Nevada 89145  
(702) 821-1821



**AHERN RENTAL INC.'S STATEMENT OF FACTS CONSTITUTING LIEN  
AND COMPLAINT-IN-INTERVENTION**

Lien Claimant/Plaintiff, AHERN RENTALS, INC. (hereinafter "Ahern"), by and through counsel undersigned of the law firm of Dixon Truman Fisher & Clifford, P.C., hereby submits its Statement of Facts Constituting Lien and Complaint-in-Intervention (hereinafter "Complaint") in response to Plaintiff, OLSON PRECAST COMPANY'S Complaint and Notice to Lien Claimants as follows:

**IDENTIFICATION OF PARTIES**

1. Lien Claimant/Plaintiff, Ahern, is and was at all times relevant hereto a Nevada corporation licensed and doing business in the state of Nevada.

2. Upon information and belief, Defendant LONGFORD SOUTHERN HILLS II, LLC (hereinafter "Longford") is, and was at all times relevant hereto, a Nevada limited liability company, licensed and doing business in Nevada; and is the owner of the real property located at 6525 S. Fort Apache Rd., Las Vegas, NV, and more particularly described as Longford at Southern Hills, Plat Book 137 Page 73, Lot 2; APN 176-06-516-001 (hereinafter the "Property").

3. Upon information and belief, Defendant PENNEY CONSTRUCTION, LLC (hereinafter "Penney") is, and was at all times relevant hereto a Nevada limited liability company licensed and doing business in Nevada.

4. Upon information and belief, Defendant WILLIAM PENNEY d/b/a PENNEY CONSTRUCTION, LLC (hereinafter "Penney DBA") is and was at all times relevant hereto a resident of Clark County and/or doing business in Clark County, Nevada.

5. Upon information and belief, Defendant WILLIAM PENNEY (hereinafter

1 "William") is and was at all times relevant hereto a resident of Clark County and/or doing  
2 business in Clark County, Nevada.

3 6. Upon information and belief, OLD REPUBLIC SURETY (hereinafter "Old  
4 Republic") is, and was at all times relevant hereto, a surety licensed to conduct surety business  
5 in Nevada.

6 7. The true named and capacities, whether individual, corporate, associate, or  
7 otherwise of those Defendants named herein as DOES I through X, and ROE  
8 CORPORATIONS I through X are Defendants presently unknown to Ahern, who therefore  
9 sues said Defendants by such fictitious names and Ahern will ask leave to amend this  
10 Complaint to show their true names and capacities when the same have been ascertained.  
11 Ahern believes that said Defendants are individuals or entities within the jurisdiction of this  
12 Court, who may be holders of promissory notes secured by deeds of trust recorded against the  
13 Property, may hold or claim an ownership or leasehold interest in the Property, may be  
14 responsible for monies due and owing to Ahern, may be interfering with payments due to  
15 Ahern, or are otherwise negligent or responsible in some manner for the events herein referred  
16 to, and caused damages proximately caused thereby to Ahern as alleged herein.  
17

18 **FIRST CAUSE OF ACTION**  
19 **(Breach of Contract-Penney and Penney DBA)**

20 8. The allegations contained in the preceding paragraphs of this Complaint are  
21 incorporated herein by this reference.

22 9. On or about August 28, 1997, Defendant Penney and/or Penney DBA entered  
23 into a written agreement/credit application (hereinafter "Agreement") with Ahern by the terms  
24 of which Ahern agreed to provide equipment and/or miscellaneous materials to Penney and/or  
25 Penney DBA for use in its business in and around Clark County, Nevada. Thereafter, Penney  
26

27

**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 11:21 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 4, Bates Nos. 751-1000)**

**MARQUIS AURBACH COFFING**

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rjeffries@spencerfane.com  
mbacon@spencerfane.com

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **APPELLANT'S APPENDIX TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE, VOLUME 4,** 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

**INDEX TO APPENDIX TO RESPONSE TO ORDER TO SHOW CAUSE**

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
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Ahern Rentals, Inc.'s Complaint (filed 10/30/08)	A574792	1	17–30
Platte River Insurance Company's Answer and Crossclaim (filed 11/19/08)	A574792	1	31–45
APCO Construction's First Amended Complaint (filed 12/08/08)	A571228	1	46–63
Cabinetec's Statement and Complaint (filed 02/06/09)	A571228	1	64–73
Uintah's Complaint (filed 02/23/09)	A583289	1	74–80
Tri-City Drywall, Inc.'s Statement and Complaint (filed 02/24/09)	A571228	1	81–88
Noorda Sheet Metal Company's Statement and Complaint (filed 03/02/09)	A571228	1	89–165
Camco Pacific Construction Company's Answer and Counterclaim (filed 03/06/09)	A580889	1	166–172
The Masonry Group Nevada's Complaint (filed 03/10/09)	A584730	1	173–189
PCI Group, LLC (filed 03/11/09)	A584960	1	190–196
APCO Construction's Answer to Steel Structures, Inc, and Nevada Prefab Engineers, Inc.'s Amended Statement and Crossclaim (filed 03/12/09)	A571228	1	197–216

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Cell-Crete Fireproofing of Nevada, Inc.'s Statement and Complaint (filed 03/12/09)	A571228	1	217–233
Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Second Amended Statement and Complaint (filed 03/20/09)	A571228	1	234–243
Insulpro Projects, Inc.'s Statement (filed 03/24/09)	A571228	1, 2	244–264
APCO Construction's Statement and Complaint (filed 03/26/09)	A584730	2	265–278
Dave Peterson Framing, Inc.'s Statement, Complaint, and Third-Party Complaint (filed 03/27/09)	A571228	2	279–327
E&E Fire Protection, LLC's Statement, Complaint, and Third-Party Complaint (filed 03/27/09)	A571228	2	328–371
Professional Doors and Millworks, LLC's Statement, Complaint, and Third-Party Complaint (filed 03/27/09)	A571228	2	372–483
Hydropressure Cleaning, Inc.'s Statement and Complaint (filed 04/03/09)	A571228	2	484–498
Ready Mix, Inc.'s Statement and First Amended Complaint (filed 04/03/09)	A577623	2, 3	499–510
EZA P.C. dba Oz Architecture of Nevada, Inc.'s Statement (filed 04/06/09)	A571228	3	511–514
Accuracy Glass & Mirror Company, Inc.'s Complaint (filed 04/07/12)	A587168	3	515–550
John Deere Landscapes, Inc.'s Statement, Complaint, and Third-Party Complaint (filed 04/08/09)	A583289	3	551–558

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Helix Electric of Nevada, LLC's Statement and Third-Party Complaint (filed 04/14/09)	A587168	3	559–595
Republic Crane Service, LLC (filed 04/17/09)	A583289	3	596–607
Bruin Painting's Statement and Third-Party Complaint (filed 04/24/19)	A587168	3	608–641
HD Supply Waterworks, LP's Statement and Third-Party Complaint (filed 04/24/09)	A587168	3	642–680
The Pressure Grout Company's Statement and Complaint (filed 04/24/09)	A571228	3	681–689
Heinaman Contract Glazing (filed 04/27/09)	A587168	3	690–724
WRG Design, Inc.'s Statement and Third-Party Complaint (filed 04/28/09)	A587168	3, 4	725–761
APCO Construction's Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement and Complaint and Crossclaim (filed 04/29/09)	A571228	4	762–784
Executive Plastering, Inc.'s Statement (filed 04/29/09)	A583289	4	785–792
Zitting Brothers Construction, Inc.'s Complaint (filed 04/30/09)	A589195	4	793–799
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Noorda Sheet Metal Company's Third-Party Complaint and Camco Pacific Construction's Counterclaim (filed 05/05/09)	A571228	4	800–817

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Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Professional Doors and Millworks, LLC's Third-Party Complaint and Camco Pacific Construction's Counterclaim (filed 05/05/09)	A571228	4	818-835
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to E&E Fire Protection, LLC's Third-Party Complaint and Camco Pacific Construction's Counterclaim (filed 05/05/09)	A571228	4	836-853
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to The Masonry Group Nevada, Inc.'s Complaint and Camco Pacific Construction's Counterclaim (filed 05/05/09)	A584730	4	854-871
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Cabinetec, Inc.'s Complaint and Camco Pacific Construction's Counterclaim (filed 05/05/09)	A571228	4	872-888
Graybar Electric Company, Inc.'s Complaint (filed 05/05/09)	A589677	4	889-894
Olson Precast Company's Complaint (filed 05/05/09)	A589662	4	895-900
Fast Glass, Inc.'s Statement (filed 05/13/09)	A584730	4	901-946



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HD Supply Construction Supply, LP dba White Cap Construction Supply, Inc.'s Complaint (filed 05/14/09)	A590319	4	947-970
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Insulpro Projects, Inc.'s Complaint and Camco Pacific Construction's Counterclaim (filed 05/15/09)	A571228	4	971-988
Terra South Corporation dba Mad Dog Heavy Equipment's Statement and Third-Party Complaint (filed 05/19/09)	A589662	4	989-997
Ahern Rental, Inc.'s Statement and Complaint (filed 05/20/09)	A589662	4, 5	998-1007
Southwest Air Conditioning, Inc.'s Statement (filed 05/20/09)	A589662	5	1008-1013
Ferguson Fire & Fabrication, Inc.'s Statement and Complaint (filed 05/27/09)	A583289	5	1014-1022
Republic Crane Service, LLC's Amended Statement (filed 05/27/09)	A583289	5	1023-1033
Pape Material Handling dba Pape Rents (filed 05/29/09)	A571228	5	1034-1046
Selectbuild Nevada, Inc.'s Statement (filed 05/29/09)	A583289	5	1047-1059
Buchele, Inc.'s Statement (filed 06/01/09)	A583289	5	1060-1071
Renaissance Pools & Spas, Inc.'s Statement (filed 06/01/09)	A583289	5	1072-1083
Executive Plastering, Inc.'s First Amended Complaint	A580889	5	1084-1094

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Supply Network dba Viking Supplynet's Statement and Complaint (filed 06/12/09)	A577623	5	1095-1100
Las Vegas Pipeline, LLC's Statement and Complaint (filed 06/15/09)	A571228	5	1101-1107
Creative Home Theatre, LLC's Statement (filed 06/16/09)	A583289	5	1108-1115
Inquipco's Statement and Complaint (filed 06/23/09)	A571228	5	1116-1123
Accuracy Glass & Mirror's First Amended Complaint (filed 06/24/09)	A571228	5	1124-1138
Bruin Painting's Amended Statement and Third-Party Complaint (filed 06/24/09)	A571228	5	1139-1150
HD Supply Waterworks' Amended Statement and Third-Party Complaint (filed 06/24/09)	A571228	5	1151-1167
Heinaman Contract Glazing's Amended Statement and Third-Party Complaint (filed 06/24/09)	A571228	5	1168-1179
Helix Electric of Nevada, LLC dba Helix Electric's Amended Statement and Third-Party Complaint (filed 06/24/09)	A571228	5	1180-1194
WRG Design, Inc.'s Amended Statement and Third-Party Complaint (filed 06/24/09)	A571228	5	1195-1210
Ahern Rentals, Inc.'s First Amended Statement and Complaint (filed 06/23/09)	A571228	5	1211-1232
The Masonry Group Nevada, Inc.'s Statement and Complaint (filed 07/07/09)	A571228	5	1233-1250

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Northstar Concrete, Inc.'s Statement and Complaint (filed 07/09/09)	A571228	6	1251–1265
Camco Pacific Construction Company, Inc.'s Statement and Complaint (filed 07/10/09)	A571228	6	1266–1287
Granite Construction Company's Statement and Complaint (filed 07/22/09)	A571228	6	1288–1295
HA Fabricators, Inc.'s Complaint (filed 08/10/09)	A596924	6	1296–1304
Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Statement and Complaint and Counterclaim (filed 08/18/09)	A571228	6	1305–1393
Custom Select Billing, Inc. Statement and Complaint (filed 08/28/09)	A571228	6	1394–1420
Camco Pacific Construction Company, Inc.'s Answer to Las Vegas Pipeline, LLC's Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/09/09)	A587168	6	1421–1437
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Dave Peterson Framing, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/10/09)	A571228	6	1438–1461

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Northstar Concrete, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/10/09)	A587168	6	1462–1482
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Tri-City Drywall, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/10/09)	A587168	6, 7	1483–1503
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09)	A587168	7	1504–1522
Camco Pacific Construction Company, Inc.'s Answer to Bruin Painting Corporation's Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09)	A587168	7	1523–1541
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Heinaman Contract Glazing's Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09)	A587168	7	1542–1561

<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to WRG Design, Inc.'s Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09)	A587168	7	1562-1581
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Nevada Prefab Engineers, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/25/09)	A587168	7	1582-1599
Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Steel Structures, Inc.'s Second Amended Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/25/09)	A571228	7	1600-1619
Camco Pacific Construction Company, Inc. Answer to Executive Plastering, Inc.'s First Amended Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/30/09)	A580889	7	1620-1627
APCO Construction's Answer to HA Fabricators, Inc.'s Answer, Counterclaim, and Third-Party Complaint (filed 10/19/09)	A596924	7	1628-1650
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<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>CASE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES NOS.</u></b>
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Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland Answer to Cactus Rose's Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 04/13/10)	A571228	7, 8	1697-1713
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Stipulation and Order for Dismissal of Steel Structures, Inc.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, Inc. (filed 11/13/2009)	A571228	8	1797-1798

Stipulation and Order for Dismissal with Prejudice of Claims Asserted by Select Build Nevada, Inc. Against APCO Construction (filed 7/1/2010)	A571228	8	1799-1801
2018 Stipulation and Order to Dismiss Third Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice (filed 2/5/2018)	A571228	8	1802-1803
Notice of Entry of Order (filed 5/25/2017)	A571228	8	1804-1811
Findings of Fact, Conclusions of Law, and Order Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction (filed 12/29/2017)	A571228	8	1812-1822
Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO (filed 4/25/2018)	A571228	8	1823-1893
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Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law Re Camco (filed 4/26/2018)	A571228	8	1901-1912
Findings of Fact and Conclusions of Law as to the Claims of Fast Glass, Inc. (filed 4/26/2018)	A571228	8	1913-1925
Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing (filed 4/26/2018)	A571228	8	1926-1938

Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc. (filed 4/26/2018)	A571228	8	1939-1948
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Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc. (filed 4/26/2018)	A571228	8, 9	1961-1972
United Subcontractors, Inc. DBA Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment (filed 5/31/2018)	A571228	9	1973-1997
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Stipulation and Order of Dismissal of All Claims Relating to Cardo WRG., Inc. (filed 9/20/2017)	A571228	9	2000-2002
Joint Order Granting, In Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West (filed 6/21/2010)	A571228	9	2003-2004
Notice of Entry of Stipulation and Order for Dismissal of Steel Structures, Inc.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, Inc. (filed 11/16/2009)	A571228	9	2005-2008
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<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-139 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 313 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-140 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 314 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-141 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 315 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-142 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 316 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-143 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 317 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-144 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 318 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-145 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 319 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-146 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 320 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-147 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 401 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-148 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 402 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

\*Lien Claimant has provided the best estimate of the amount owed to Lien Claimant with respect to materials or equipment furnished by Lien Claimant for the improvement of the property. Lien Claimant reserves the right to amend or modify the amount owed at Lien Claimant's discretion.

<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-149 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 403 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-150 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 404 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-151 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 405 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-152 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 406 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-153 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 407 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-154 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 408 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-155 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 409 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-156 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 410 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-157 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 411 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-158 Spring Valley	Manhattan West-Phase I Plat Book 141 Page 28 Unit 412 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-159 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 413 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-160 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 414 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-161 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 415 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-162 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 416 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-163 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 417 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-164 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 418 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-165 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 419 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-166 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 420 Block 8 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-167 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 101 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-168 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 102 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-112-169 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 103 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-170 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 104 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-171 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 105 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-172 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 106 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-173 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 107 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-174 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 108 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-175 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 109 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-176 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 110 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-177 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 111 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-178 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 112 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-179 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 113 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-180 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 114 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-181 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 115 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-182 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 116 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-183 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 117 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-184 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 118 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-185 Spring Valley	Manhattan West-Phase 1 Plat Book 41 Page 28 Unit 119 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-186 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 120 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-187 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 201 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-188 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 202 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-189 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 203 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-190 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 204 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-191 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 205 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-192 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 206 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-193 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 207 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-194 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 208 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-195 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 209 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-196 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 210 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-197 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 211 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-198 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 212 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

\*Lien Claimant has provided the best estimate of the amount owed to Lien Claimant with respect to materials or equipment furnished by Lien Claimant for the improvement of the property. Lien Claimant reserves the right to amend or modify the amount owed at Lien Claimant's discretion.

<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-199 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 213 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-200 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 214 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-201 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 215 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-202 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 216 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-203 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 217 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-204 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 218 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-205 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 219 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-206 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 220 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-207 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 301 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-208 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 302 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-112-209 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 303 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-210 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 304 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-211 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 305 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-212 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 306 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-213 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 307 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-214 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 308 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-215 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 309 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-216 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 310 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-217 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 311 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-218 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 312 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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<b>Parcel Number/ Location Address/ Township</b>	<b>Property Description</b>	<b>Owner Name &amp; Address</b>
163-32-112-219 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 313 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-220 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 314 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-221 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 315 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-222 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 316 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-223 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 317 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-224 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 318 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-225 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 319 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-226 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 320 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-227 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 401 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-228 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 402 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-112-229 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 403 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-230 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 404 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-231 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 405 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-232 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 406 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-233 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 407 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-234 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 408 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-235 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 409 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-236 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 410 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-237 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 411 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-238 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 412 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-112-239 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 413 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-240 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 414 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-241 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 415 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-242 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 416 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-243 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 417 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-244 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 418 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-245 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 419 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-112-246 Spring Valley	Manhattan West-Phase 1 Plat Book 141 Page 28 Unit 420 Block 9 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-020 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-022 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238
163-32-101-023 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West Inc 9121 W Russell Rd #117 Las Vegas, NV 89148-1238

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● ORIGINAL ●



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APR 29 4 25 PM '09

*[Signature]*  
CLERK OF THE COURT

1 **ANS**  
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3 Nevada Bar No. 3146  
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14 *Attorneys for APCO Construction*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada  
13 corporation,

14 Plaintiff,

15 vs.

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

25 Defendants.

26 AND ALL RELATED CASES AND  
27 MATTERS.

CASE NO.: A571228  
DEPT. NO.: X

**APCO CONSTRUCTION'S ANSWER TO  
CELL-CRETE FIREPROOFING OF  
NEVADA, INC.'S STATEMENT OF  
FACTS CONSTITUTING LIEN AND  
COMPLAINT IN INTERVENTION and  
CROSS-CLAIM**

08A571228  
77770



26 APCO CONSTRUCTION ("APCO"), by and through its attorneys, Gwen Rutar  
27 Mullins, Esq. and Wade B. Gochnour of the law firm of Howard and Howard Attorneys PLLC,  
28 hereby files this Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement of Facts

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

**CLERK OF THE COURT**

APR 29 2009

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1 Constituting Lien and Complaint in Intervention (hereinafter "Complaint in Intervention") and  
2 hereby responds and alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Paragraphs 1, 2, 3, 4 and 6 of the Complaint in Intervention, APCO,  
5 upon information and belief, admits the allegations contained therein.

6 2. Answering Paragraphs 5, 7, 8, and 9 the Complaint in Intervention, APCO does  
7 not have sufficient knowledge or information upon which to base a belief as to the truth of the  
8 allegations contained therein, and upon said grounds, denies each and every allegation  
9 contained therein.

10 3. Answering Paragraphs 10, 11 and 12 of the Complaint in Intervention, APCO  
11 denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect  
12 to any allegations that have been asserted against the remaining Defendants, APCO does not  
13 have sufficient knowledge or information upon which to base a belief as to the truth of the  
14 allegations contained therein, and upon said grounds, denies each and every allegation  
15 contained therein.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract Against Camco Pacific)**

18 4. Answering Paragraph 13 of the Complaint in Intervention, APCO repeats and  
19 realleges each and every allegation contained in paragraphs 1 through 3 of this Answer to the  
20 Complaint in Intervention as though fully set forth herein.

21 5. Answering Paragraphs 14, 15, and 16 of the Complaint in Intervention, APCO  
22 does not have sufficient knowledge or information upon which to base a belief as to the truth of  
23 the allegations contained therein, and upon said grounds, denies each and every allegation  
24 contained therein.

25 6. Answering Paragraphs 17, 18 and 19 of the Complaint in Intervention, APCO  
26 denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect  
27 to any allegations that have been asserted against the remaining Defendants, APCO does not  
28 have sufficient knowledge or information upon which to base a belief as to the truth of the

1 allegations contained therein, and upon said grounds, denies each and every allegation  
2 contained therein.

3 **SECOND CAUSE OF ACTION**

4 **(Unjust Enrichment)**

5 7. Answering Paragraph 20 of the Complaint in Intervention, APCO repeats and  
6 realleges each and every allegation contained in paragraphs 1 through 6 of this Answer to the  
7 Complaint in Intervention as though fully set forth herein.

8 8. Answering Paragraphs 21, 22, 23, 24 and 25 of the Complaint in Intervention,  
9 APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With  
10 respect to any allegations that have been asserted against the remaining Defendants, APCO  
11 does not have sufficient knowledge or information upon which to base a belief as to the truth of  
12 the allegations contained therein, and upon said grounds, denies each and every allegation  
13 contained therein.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of NRS 624 Against All Defendants in Intervention)**

16 9. Answering Paragraph 26 of the Complaint in Intervention, APCO repeats and  
17 realleges each and every allegation contained in paragraphs 1 through 8 of this Answer to the  
18 Complaint in Intervention as though fully set forth herein.

19 10. Answering Paragraphs 27, 28 and 29 of the Complaint in Intervention, APCO  
20 denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect  
21 to any allegations that have been asserted against the remaining Defendants, APCO does not  
22 have sufficient knowledge or information upon which to base a belief as to the truth of the  
23 allegations contained therein, and upon said grounds, denies each and every allegation  
24 contained therein.

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**FOURTH CAUSE OF ACTION**

**(Monies Due and Owing Against All Defendants in Intervention)**

11. Answering Paragraph 30 of the Complaint in Intervention, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 10 of this Answer to the Complaint in Intervention as though fully set forth herein.

12. Answering Paragraphs 31, 32, 33, 34 and 35 of the Complaint in Intervention, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FIFTH CAUSE OF ACTION**

**(Quantum Meruit Against All Defendants in Intervention)**

13. Answering Paragraph 36 of the Complaint in Intervention, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 12 of this Answer to the Complaint in Intervention as though fully set forth herein.

14. Answering Paragraph 37 of the Complaint in Intervention, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

15. Answering Paragraphs 38, 39, 40, and 41 of the Complaint in Intervention, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

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**SIXTH CAUSE OF ACTION**

**(Lien Foreclosure Action GEMSTONE)**

16. Answering Paragraph 42 of the Complaint in Intervention, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 15 of this Answer to the Complaint in Intervention as though fully set forth herein.

17. Answering Paragraphs 43 and 44 of the Complaint in Intervention, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein

18. Answering Paragraphs 45, 46, 47, 48 and 49 of the Complaint in Intervention, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**SEVENTH CAUSE OF ACTION**

**(Breach of Duty-Violation of NRS 624)**

19. Answering Paragraph 50 of the Complaint in Intervention, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 18 of this Answer to the Complaint in Intervention as though fully set forth herein.

20. Answering Paragraphs 51, 52, 54, 55 and 56 of the Complaint in Intervention, APCO, upon information and belief, admits the allegations set forth therein.

21. Answering Paragraphs 53 of the Complaint in Intervention, APCO admits that NCS was the construction control company engaged by Gemstone and/or Scott Financial Corporation and was engaged in the control and disbursement of funds, payable or paid to laborers, materialmen, material suppliers, contractors, subcontractors, architects, engineers or others, for purposes of the ManhattanWest Multi-Mix Development Project. As to the remaining allegations contained therein, APCO does not have sufficient knowledge or



1 information upon which to base a belief as to the truth of the allegations contained therein, and  
2 upon said grounds, denies each and every allegation contained therein.

3 22. Answering Paragraphs 57, 58, 59, 60 and 61 of the Complaint in Intervention,  
4 APCO does not have sufficient knowledge or information upon which to base a belief as to the  
5 truth of the allegations contained therein, and upon said grounds, denies each and every  
6 allegation contained therein.

7 **EIGHTH CAUSE OF ACTION**

8 **(Priority Over Deeds of Trust)**

9 23. Answering Paragraph 62 of the Complaint in Intervention, APCO repeats and  
10 realleges each and every allegation contained in paragraphs 1 through 22 of this Answer to the  
11 Complaint in Intervention as though fully set forth herein.

12 24. Answering Paragraphs 63, 64, 65, 66, 67, 68 and 69 of the Complaint in  
13 Intervention, APCO, upon information and belief, admits the allegations contained therein.

14 25. Answering Paragraph 70 of the Complaint in Intervention, APCO denies all the  
15 allegations as they pertain to, or as they are alleged against, APCO and specifically asserts that  
16 APCO's lien is superior to the claims of Cell-Crete, Gemstone, SFC, Land Title and First  
17 American. With respect to any allegations that have been asserted against the remaining  
18 Defendants, APCO does not have sufficient knowledge or information upon which to base a  
19 belief as to the truth of the allegations contained therein, and upon said grounds, denies each  
20 and every allegation contained therein

21 26. Answering Paragraph 71 of the Complaint in Intervention, APCO denies each  
22 and every allegation contained therein.

23 **NINTH CAUSE OF ACTION**

24 **(Claim on Bond)**

25 27. Answering Paragraph 72 of the Complaint in Intervention, APCO repeats and  
26 realleges each and every allegation contained in paragraphs 1 through 26 of this Answer to the  
27 Complaint in Intervention as though fully set forth herein.

1           28.     Answering Paragraphs 73, 74, 75, 76, and 77 of the Complaint in Intervention,  
2     APCO does not have sufficient knowledge or information upon which to base a belief as to the  
3     truth of the allegations contained therein, and upon said grounds, denies each and every  
4     allegation contained therein.

5                                 **FIRST AFFIRMATIVE DEFENSE**

6           Cell-Crete Fireproofing has failed to state a claim against APCO upon which relief can  
7     be granted.

8                                 **SECOND AFFIRMATIVE DEFENSE**

9           The claims of the Cell-Crete Fireproofing have been waived as a result of their  
10    respective acts and conduct.

11                                **THIRD AFFIRMATIVE DEFENSE**

12           No monies are due Cell-Crete Fireproofing at this time as APCO has not received  
13    payment for Cell-Crete Fireproofing's work from Gemstone, the developer of the Manhattan  
14    West Project.

15                                **FOURTH AFFIRMATIVE DEFENSE**

16           Any and all damages sustained by Cell-Crete Fireproofing are the result of negligence,  
17    breach of contract and/or breach of warranty, express and/or implied, of a third-party over  
18    whom APCO has no control, and for whose acts APCO is not responsible or liable to Cell-  
19    Crete Fireproofing.

20                                **FIFTH AFFIRMATIVE DEFENSE**

21           At the time and place under the circumstances alleged by the Cell-Crete Fireproofing,  
22    Cell-Crete Fireproofing had full and complete knowledge and information with regard to the  
23    conditions and circumstances then and there existing, and through Cell-Crete Fireproofing's  
24    own knowledge, conduct, acts and omissions, assumed the risk attendant to any condition there  
25    or then present.

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**SIXTH AFFIRMATIVE DEFENSE**

Whatever damages, if any, were sustained by Cell-Crete Fireproofing, were caused in whole or in part or were contributed to by reason of Cell-Crete Fireproofing's own actions.

**SEVENTH AFFIRMATIVE DEFENSE**

The liability, if any, of APCO must be reduced by the percentage of fault of others, including Cell-Crete Fireproofing.

**EIGHTH AFFIRMATIVE DEFENSE**

The damages alleged by Cell-Crete Fireproofing were caused by and arose out of the risk which Cell-Crete Fireproofing had knowledge and which Cell-Crete Fireproofing assumed.

**NINTH AFFIRMATIVE DEFENSE**

The alleged damages complained of by Cell-Crete Fireproofing were caused in whole or in part by a new, independent and intervening cause over which APCO had no control. Said independent, intervening cause was the result of any alleged damages resulting to Cell-Crete Fireproofing.

**TENTH AFFIRMATIVE DEFENSE**

APCO's obligations to Cell-Crete Fireproofing have been satisfied or excused.

**ELEVENTH AFFIRMATIVE DEFENSE**

Cell-Crete Fireproofing failed to perform their work in workmanlike manner thus causing damages in excess to the sums Cell-Crete Fireproofing claim are due under the subcontract with APCO.

**TWELFTH AFFIRMATIVE DEFENSE**

The claim for breach of contract is barred as a result of Cell-Crete Fireproofing's failure to satisfy conditions precedent.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The claims, and each of them, are premature.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Cell-Crete Fireproofing should indemnify APCO for any and all losses, damages or expenses APCO sustains as a result of any claims by Gemstone for damages that Gemstone

1 allegedly sustained due to Cell-Crete Fireproofing's improper workmanship on the Manhattan  
2 West Project, including, but not limited to, any damage amount and the attorney's fees and  
3 costs incurred by APCO relative thereto.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 APCO is entitled to an offset or a setoff of any damages that APCO sustains as a result  
6 of Cell-Crete Fireproofing's failure to complete the work in a workmanlike manner and/or  
7 breach of contract.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 Any obligations or responsibilities of APCO under the subcontract with Cell-Crete  
10 Fireproofing, if any, have been replaced, terminated, voided, cancelled or otherwise released by  
11 the ratification entered into between Cell-Crete Fireproofing, Gemstone and CAMCO and  
12 APCO no longer bears any liability thereunder.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 APCO has been forced to retain the services of an attorney to defend this action  
15 and therefore is entitled to reasonable attorneys' fees and costs.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 The claims against APCO are barred as a result of Cell-Crete Fireproofing's failure to  
18 comply with the requirements of NRCP Rule 24 including, but not limited to, Cell-Crete  
19 Fireproofing having failed to timely apply to the Court to intervene in this action as required.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 Cell-Crete Fireproofing has failed to comply with the requirements of NRS 624.

22 **TWENTIETH AFFIRMATIVE DEFENSE**

23 Cell-Crete Fireproofing has failed to promptly assert its respective claims against  
24 APCO and APCO reserves the right to request the Court to strike any improper pleadings filed  
25 against APCO.

26 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

27 Cell-Crete Fireproofing may have failed to comply with all requirements of NRS 108 to  
28 perfect its lien.

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Las Vegas, NV 89169  
(702) 257-1483

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

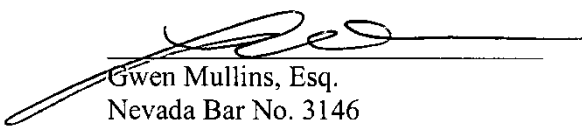
Pursuant to NRCP Rule 8 and 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to the Complaint in Intervention, and therefore, APCO reserves the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, APCO prays for judgment as follows:

1. That Cell-Crete Fireproofing take nothing by way of its Complaint in Intervention on file herein and that the same be dismissed with prejudice against APCO;
2. For an award of attorneys' fees and costs incurred herein by APCO; and
3. For such other and further relief as this Court may deem just and proper.

**DATED** this 29 day of April, 2009.

**HOWARD & HOWARD ATTORNEYS PLLC**

  
Gwen Mullins, Esq.  
Nevada Bar No. 3146  
Wade B. Gochnour, Esq.  
Nevada Bar No. 6314  
3800 Howard Hughes Parkway  
Suite 1400  
Las Vegas, NV 89169  
*Attorneys for APCO Construction*

**CROSS-CLAIM**

Plaintiff/Defendant 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 assert the following Cross-Claim against Cross-Defendant 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 Cross-Claim 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 ManhattanWest 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 the  
11 Project. As a result, APCO also made several requests for an extension of time to complete the  
12 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.

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

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

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

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

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

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

15                   (d) Within 30 days after the date that a written request for a  
16 change order is submitted by the prime contractor to the  
owner, the owner fails to:

17                           (1) Issue the change order; or

18                           (2) If the request for a change order is unreasonable  
or does not contain sufficient information to make a  
19 determination, give written notice to the prime contractor  
of the reasons why the change order is unreasonable or  
20 explain that additional information and time are necessary  
to make a determination . . .

21  
22           27. NRS 624.610(3) provides:

23                   3. If an owner fails to issue a change order or give  
24 written notice to the prime contractor pursuant to the  
provisions of paragraph (d) of subsection 1:

25                           (a) The agreement price must be increased by the  
amount sought in the request for a change order;

26                           (b) The time for performance must be extended by  
27 the amount sought in the request for a change order;

28                           (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 ///

27 ///

28 ///

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

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

7 45. Gemstone further notified APCO of Gemstone's intent to withhold any further  
8 payment to APCO.

9 **FIRST CAUSE OF ACTION**  
10 **(Breach of Contract)**

11 46. APCO repeats and realleges each and every allegation contained in paragraphs 1  
12 through 45 of its Cross Claim as though fully set forth herein

13 47. There was a valid and enforceable contract between APCO and Gemstone.

14 48. APCO complied with the material terms of the Agreement.

15 49. Gemstone materially breached the Agreement by, among other things:

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

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

26 51. APCO is entitled to pre-judgment and post-judgment interest on all amounts  
27 found due and owing.

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

3 **SECOND CAUSE OF ACTION**  
4 **(Breach of Covenant of Good Faith and Fair Dealing)**

5 53. APCO repeats and realleges each and every allegation contained in Paragraphs 1  
6 through 52 of its Cross-Claim as though fully set forth herein.

7 54. Gemstone has breached the covenant of good faith and fair dealing implied in all  
8 contracts.

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

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

13 **THIRD CAUSE OF ACTION**  
14 **(Indemnification)**

15 57. APCO repeats and realleges each and every allegation contained in Paragraphs 1  
16 through 56 of its Cross-Claim as though fully set forth herein.

17 58. The construction work performed by Cell-Crete Fireproofing of Nevada, Inc.  
18 ("Cell-Crete Fireproofing") was performed on the Project being developed by Gemstone.

19 59. APCO has received claims and demands for other subcontractors and/or  
20 suppliers who performed work or supplied materials to the Project, for which APCO has not  
21 received payment from Gemstone.

22 60. Pursuant to the agreement between APCO and Gemstone, Gemstone agreed to  
23 pay for all labor and materials performed or furnished by APCO's subcontractors and/or  
24 suppliers on the Project, including that performed by Cell-Crete Fireproofing.

25 61. Gemstone obtained any benefit that would have been conferred by the  
26 construction work performed by Cell-Crete Fireproofing and any other subcontractor and/or  
27 supplier of APCO on the Project.

28 ///

1           62.     Gemstone should equitably, or otherwise, indemnify APCO for any and all  
2 losses, damages or expenses APCO sustains as a result of the Complaint in Intervention filed in  
3 the above action by Cell-Crete Fireproofing and/or any other subcontractor and/or supplier of  
4 APCO and for any monies that APCO is forced to otherwise pay as a result of the action filed  
5 by Cell-Crete Fireproofing or any other subcontractor and/or supplier of APCO on the Project,  
6 including, but not limited, any judgment award and the attorney's fees and costs incurred by  
7 APCO in defending the action filed by Cell-Crete Fireproofing and/or any other subcontractor  
8 and/or supplier of APCO on the Project.

9           63.     APCO has been forced to retain counsel to bring this Cross-Claim and APCO  
10 requests the Court to award attorney's fees and costs resulting therefrom.

11                               **FOURTH CAUSE OF ACTION**

12                                       **(Unjust Enrichment)**

13           64.     APCO repeats and realleges each and every allegation contained in Paragraphs 1  
14 through 63 of its Cross-Claim as though fully set forth herein.

15           65.     If a judgment is obtained by Cell-Crete Fireproofing and/or any other  
16 subcontractor and/or supplier of APCO on the Project against APCO and APCO is forced to  
17 pay any sums thereof to Cell-Crete Fireproofing, and/or any other subcontractor of APCO on  
18 the Project, Gemstone will receive a benefit.

19           66.     Unless Gemstone is required to reimburse APCO for these sums, Gemstone will  
20 be unjustly enriched to the detriment of APCO.

21           67.     APCO has been forced to retain counsel to bring this Cross-Claim and APCO  
22 requests the Court to award attorney's fees and costs resulting therefrom.

23                               **FIFTH CAUSE OF ACTION**

24                                       **(Fraud)**

25           68.     APCO repeats and realleges each and every allegation contained in paragraphs 1  
26 through 67 of its Cross-Claim as though fully set forth herein.

27           69.     Gemstone approached APCO to be the general contractor on the Project.  
28

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

3           71.    Prior to the execution of the agreement, Gemstone made certain representations  
4 that were material and induced APCO to execute the agreement.

5           72.    More specifically, Gemstone represented to APCO that there was sufficient  
6 funding to pay for all the work to be performed by APCO and its subcontractors to complete  
7 the Project on the Property.

8           73.    Gemstone further represented that they had the ability to pay for all the work  
9 performed by APCO and its subcontractors on the Project and that funding for the Project was  
10 in place.

11           74.    Gemstone knew, or should have known, that the conditions for financing were  
12 not properly met and the representations made by Gemstone to APCO were false and Gemstone  
13 knew them to be false when they were made.

14           75.    In reliance upon those representations, APCO entered into a contract for  
15 construction with Gemstone.

16           76.    APCO would not have entered into the agreement had APCO known that those  
17 representations were false and untrue.

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

20           78.    Gemstone's misrepresentations warrant the imposition of exemplary and/or  
21 punitive damages in excess of \$10,000.00.

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

24    ///

25    ///

26    ///

27    ///

28    ///

SIXTH CAUSE OF ACTION

(Negligent Misrepresentation Plead in the Alternative)

80. APCO repeats and realleges each and every allegation contained in paragraphs 1 through 79 of its Cross-Claim as though fully set forth herein.

81. Gemstone were negligent in their representations as set forth in paragraphs 72 through 73 above.

82. As a result of Gemstone's negligent representations, APCO executed the agreement.

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

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

WHEREFORE, APCO prays for judgment against Gemstone as follows:

1. For an award of damages in the sum in excess of \$10,000.00;
2. For an award of attorneys' fees and costs incurred herein by APCO;
3. That APCO be awarded special damages in excess of \$10,000;
4. That APCO be awarded punitive or exemplary damages in excess of \$10,000;

///

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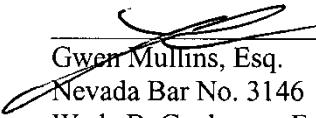
///

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- 1 5. That APCO be awarded pre-judgment on all amounts found due and owing; and
- 2 6. For such other and further relief as this Court may deem just and proper.

3 DATED this 29<sup>th</sup> day of April, 2009.

4 **HOWARD & HOWARD ATTORNEYS PLLC**

5  
6   
7 Gwen Mullins, Esq.  
8 Nevada Bar No. 3146  
9 Wade B. Gochnour, Esq.  
10 Nevada Bar No. 6314  
11 3800 Howard Hughes Parkway  
12 Suite 1400  
13 Las Vegas, NV 89169  
14 *Attorneys for APCO Construction*  
15  
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28



**CERTIFICATE OF MAILING**

On the 29<sup>th</sup> day of April, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO CELL-CRETE FIREPROOFING OF NEVADA, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION and CROSS-CLAIM, by U.S. Mail, postage prepaid, upon the following:

Gregory S. Gilbert, Esq.  
Sean D. Thueson, Esq.  
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**Williams & Wiese**  
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*Attorneys for Harsco Corporation*

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Justin L. Watkins, Esq.  
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Marilyn Fine, Esq.  
**Meier & Fine**  
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*Attorneys for Scott Financial Corporation*

Jeffrey R. Albregts, Esq.  
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*Attorneys for Arch Aluminum And Glass Co. Esq.*

Martin A. Little, Esq.  
Christopher D. Craft, Esq.  
**Jolley, Urga, Wirth, Woodbury & Standish**  
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Las Vegas, Nevada 89119  
*Attorneys for Tri-City Drywall, Inc.*

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1 D. Shane Clifford, Esq.  
2 Robin E. Perkins, Esq.  
3 **DIXON TRUMAN FISHER &**  
4 **CLIFFORD, P.C.**  
5 221 North Buffalo Drive, Suite A  
6 Las Vegas, Nevada 89145  
7 *Attorneys for Ahern Rentals, Inc.*

8 Jennifer R. Lloyd-Robinson, Esq.  
9 **PEZZILLO ROBINSON**  
10 6750 Via Austi Parkway, Suite 170  
11 Las Vegas, Nevada 89119  
12 *Attorneys for Tri-City Drywall, Inc.*

Christopher R. McCullough, Esq.  
**McCULLOUGH, PEREZ &**  
**ASSOCIATES, LTD.**  
601 South Rancho Drive, #A-10  
Las Vegas, Nevada 89106  
*Attorneys for Cell-Crete Fireproofing of*  
*Nevada, Inc.*

*Kellie Piet*

An employee of Howard and Howard Attorneys PLLC

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FILED

2009 APR 29 P 4:13

*E. J. [Signature]*  
CLERK OF THE COURT

1 **STMT**  
2 **MATTHEW Q. CALLISTER, ESQ.**  
Nevada Bar No. 001396  
3 **MATTHEW P. PAWLOWSKI, ESQ.**  
Nevada Bar No. 009889  
4 **CALLISTER & REYNOLDS**  
5 823 Las Vegas Blvd. South, 5th Floor  
Las Vegas, Nevada 89101  
6 E-mail: mpp@callisterreynolds.com  
7 Phone: (702) 385-3343  
8 *Attorneys for Plaintiff*

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

11 **UINTAH INVESTMENTS, LLC, a Nevada** )  
12 **Limited Liability Company, d/b/a SIERRA** )  
13 **REINFORCING,** )

Case No. A-583289

Plaintiff,

Dept. No. 23

14 vs. )

15 **APCO CONSTRUCTION, a Nevada** )  
16 **Corporation; GEMSTONE** )  
17 **DEVELOPMENT WEST, INC., a Nevada** )  
18 **corporation; and DOES I through X,** )

**STATEMENT OF FACTS**  
**CONSTITUTING LIEN CLAIM BY**  
**EXECUTIVE PLASTERING, INC.**

18 Defendants )

19 \_\_\_\_\_ )  
20 **EXECUTIVE PLASTERING, INC., a** )  
21 **Nevada Corporation,** )

09A583289  
77796



22 Lien Claimant/Intervenor, )

23 vs. )

24 **APCO CONSTRUCTION, a Nevada** )  
25 **Corporation; GEMSTONE** )  
26 **DEVELOPMENT WEST, INC., a Nevada** )  
27 **Corporation; and DOES I through X,** )

Respondents. )

RECEIVED  
APR 29 2009  
CLERK OF THE COURT

1                                   **STATEMENT OF FACTS CONSTITUTING LIEN CLAIM**  
2                                   **BY EXECUTIVE PLASTERING, INC.**

3                   COMES NOW, Lien Claimant/Intervenor Executive Plastering, Inc., and for its  
4 Statement of Facts Constituting Lien alleges and claims, the following:

- 5           1.       Lien Claimant Executive Plastering, Inc. (hereinafter, "Executive") is now and at all  
6                   relevant times hereto was a Nevada Corporation, duly licensed to conduct business in the  
7                   State of Nevada, County of Clark.  
8  
9           2.       Respondent APCO Construction (hereinafter, "APCO") is now and at all relevant times  
10                   hereto was a Nevada Corporation, duly licensed to conduct business in the State of  
11                   Nevada, County of Clark.  
12  
13          3.       Respondent Gemstone Development West, Inc. (hereinafter, "Gemstone") is now and at  
14                   all relevant times hereto was a Nevada Corporation, duly licensed to conduct business in  
15                   the State of Nevada, County of Clark.  
16  
17          4.       Respondent Gemstone is the owner of real property, located at 9205 West Russell Road,  
18                   Las Vegas, Nevada, more particularly described as Clark County APN No. 163-32-101-  
19                   019 (hereinafter, "the Property"). The full legal description of this property is attached  
20                   hereto as **Exhibit A**, and incorporated fully herein by reference.  
21

22                                   **FIRST CLAIM FOR RELIEF**  
23                                   ***(Foreclosure of Lien Claim Against APCO)***

- 24          5.       On or about April 17, 2007, Executive and APCO entered into a written Subcontract  
25                   Agreement related to the Manhattan West Condominiums project, located in Clark  
26                   County, Nevada.  
27  
28

- 1 6. Pursuant to this agreement, Plaintiff was to supply of all labor, materials, tools,  
2 equipment, supervision, management, permits, and taxes necessary to install and  
3 complete all stucco work for all of the buildings that were a part of the Manhattan West  
4 Condominium project.  
5  
6 7. The contract called for compensation to Plaintiff for said services in the amount of  
7 \$1,453,900.00.  
8  
9 8. Although Executive performed all of the services required of it by the Subcontract  
10 Agreement, the amount of \$541,750.24 is still due and owing on the contract, as and for  
11 services performed by Executive that have not been paid for.  
12  
13 9. Executive has performed all of the statutory requirements set forth in NRS Chapter 108  
14 for perfecting a Mechanic's Lien on the Property, including but not limited to the  
15 recording of a mechanic's lien with the Recorder of Clark County, Nevada on January 13,  
16 2009 as Instrument No. 4186 in Book 20090113.  
17  
18 10. Executive is entitled to foreclose on its Mechanic's Lien and to all other remedies  
19 permitted to it by Chapter 108 of the NRS.  
20  
21 11. Executive is entitled to recover its costs of recording and perfecting its mechanic's lien,  
22 together with its attorney's fees and costs of suit, as well as interest on the unpaid  
23 balance.

24 **SECOND CLAIM FOR RELIEF**  
25 ***(Foreclosure of Lien Claim Against Gemstone)***

- 26 12. Executive repeats and realleges each and every allegation set forth in all preceding  
27 paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and  
28

1 further alleges, as follows:

2 13. Respondent Gemstone is the owner of real property, located at 9205 West Russell Road,  
3 Las Vegas, Nevada, more particularly described as Clark County APN Nos. 163-32-101-  
4 019. The full legal description of the Property is attached hereto as **Exhibit A**, and  
5 incorporated fully herein by reference.  
6

7 14. Although Executive performed all of the services required of it by the Subcontract  
8 Agreement, the amount of \$541,750.24 is still due and owing on the contract, as and for  
9 services performed by Executive that have not been paid for.  
10

11 15. As Gemstone has directly benefitted by the improvements made to the subject property by  
12 Executive, Executive is entitled to foreclose upon its mechanic's lien, recorded against  
13 Gemstone's property.  
14

15 16. Executive has performed all of the statutory requirements set forth in NRS Chapter 108  
16 for perfecting a Mechanic's Lien on the Property, including but not limited to the  
17 recording of a mechanic's lien with the Recorder of Clark County, Nevada on January 13,  
18 2009 as Instrument No. 4186 in Book 20090113.  
19

20 17. Executive is entitled to foreclose on its Mechanic's Lien and to all other remedies  
21 permitted to it by Chapter 108 of the NRS.  
22

23 18. Executive is entitled to recover its costs of recording and perfecting its mechanic's lien,  
24 together with its attorney's fees and costs of suit, as well as interest on the unpaid  
25 balance.  
26

27 ///

28 ///

**THIRD CLAIM FOR RELIEF**  
***(Unjust Enrichment Against APCO and Gemstone)***

19. Executive repeats and realleges each and every allegation set forth in all preceding paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and further alleges, as follows:
20. Executive provided its labor, services and materials for the benefit of both APCO and Gemstone at their specific request and instruction.
21. APCO and Gemstone accepted, used, enjoyed and continue to enjoy the benefit of the labor, services and materials provided by Executive.
22. APCO and Gemstone knew or should have known that Executive expected to be paid for its labor, services and material.
23. As a result of non-payment therefor, APCO and Gemstone have been unjustly enriched, to the detriment of Executive.
24. Executive is entitled to recover its attorney's fees and costs of suit, as well as interest on the unpaid balance owed to Executive as complained of herein.

**FOURTH CLAIM FOR RELIEF**  
***(Breach of Contract Against APCO)***

25. Executive repeats and realleges each and every allegation set forth in all preceding paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and further alleges, as follows:
26. Executive contracted with APCO to provide labor, services and material for the benefit of APCO at its request.


- 1 27. Executive performed all of the services required of it, but the sum of \$541,750.24  
2 remains unpaid and is now owing to Executive.  
3  
4 28. As a result of this non-payment, APCO is in breach of its contract with Executive, and  
5 Executive has been injured in the above-amount.  
6 29. Executive is entitled to recover its attorney's fees and costs of suit, as well as interest on  
7 the unpaid balance owed to Executive as complained of herein.  
8

9 **WHEREFORE**, Executive prays for judgment, as follows:

- 10 1. For actual damages in the amount of \$541,750.24;  
11 2. For all interest, attorney's fees and costs incurred in litigating this action;  
12 3. That the above sums, in total, be adjudicated as a lien upon the Property and that this  
13 Honorable Court enter an Order allowing the sale of the Property, in compliance with the  
14 laws of the State of Nevada, and that the proceeds of such sale be applied to the payment  
15 of the sums due and owing to Executive; and  
16  
17 4. For any other further relief that this Honorable Court deems necessary and just under the  
18 circumstances of this case.  
19

20 DATED: This 29 day of April, 2009.

21 **CALLISTER & REYNOLDS**

22  
23 By:   
24 **MATTHEW P. PAWLOWSKI, ESQ.**  
25 Nevada Bar No. 009889  
26 823 Las Vegas Blvd. South, 5th Floor  
27 Las Vegas, Nevada 89101  
28 Phone: (702) 385-3343  
*Attorney for Lien Claimant*



### **Exhibit "A"**

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

**PARCEL 1:**

The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-003**

**PARCEL 2:**

The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-004**

**PARCEL 3:**

The Southerly 396 feet of the East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

**ASSESSOR'S PARCEL NO.: 163-32-101-005**

**PARCEL 4:**

The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-014**

**PARCEL 5:**

The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

**ASSESSOR'S PARCEL NO.: 163-32-101-010**

**NOTE: THE NEW PARCEL NO. FOR THE ALL OF THE ABOVE IS  
163-32-101-019**

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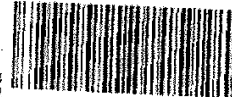
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*Ed Smith*  
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3 Nevada Bar No. 006281  
4 REUBEN H. CAWLEY  
5 Nevada Bar No. 009384  
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12 E-Mail: [cawley@lbbslaw.com](mailto:cawley@lbbslaw.com)  
13 Attorneys for Plaintiff  
14 Zitting Brothers Construction, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

A-09-589195-C  
79348



12 ZITTING BROTHERS CONSTRUCTION, INC.,  
13 a Utah corporation,

14 Plaintiff,

15 v.

16 GEMSTONE DEVELOPMENT WEST, INC., a  
17 Nevada Corporation; APCO CONSTRUCTION, a  
18 Nevada corporation; and DOES I through X; ROE  
19 CORPORATIONS I through X; BOE BONDING  
20 COMPANIES I through X and LOE LENDERS I  
21 through X, inclusive,

22 Defendants.

Case No. *A-09-589195-C*  
Dept. No. *V*

ZITTING BROTHERS  
CONSTRUCTION, INC.'S COMPLAINT  
RE: FORECLOSURE

*(Exemption from Arbitration - Concerns  
Title to Real Estate)*

21 Plaintiff Zitting Brothers Construction (hereinafter "Zitting Brothers"), by and through its  
22 attorneys Lewis Brisbois Bisgaard & Smith LLP, as for its Complaint against the above-named  
23 Defendants complains, avers and alleges as follows:

24 **THE PARTIES**

25 1. Zitting Brothers is and was at all times relevant to this action a Utah corporation, duly  
26 authorized and qualified to do business in Clark County, Nevada.

27 2. Zitting Brothers is informed and believes and therefore alleges that Defendant Gemstone  
28 Development West, Inc. ("Gemstone"), and Doe/Roe Defendants are and were at all times relevant to

LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP  
ATTORNEYS AT LAW

4813-0009-7539.1

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AA 000793

1 this action, the owners, reputed owners, or the persons, individuals and/or entities who claim an  
2 ownership interest in that certain real property commonly referred to as Manhattan West mixed use  
3 development project and generally located at 9205 W. Russell Road, Clark County, Nevada, and more  
4 particularly described as set forth in the Legal Description of the Notice of Lien attached hereto as  
5 **Exhibit 1**; and further more particularly described as Clark County Assessor Parcel Number 163-32-  
6 101-019, and including all easements, rights-of-way, common areas and appurtenances thereto, and  
7 surrounding space which may be required for the convenient use and occupation thereof, upon which  
8 Owner caused or allowed to be constructed certain improvements (the "Property").

9 3. The whole of the Property are reasonably necessary for the convenient use and  
10 occupation of the improvements.

11 4. Zitting Brothers is informed and believes and therefore alleges that Defendant APCO  
12 Construction ("APCO") and Doe/Roe Defendants, are and were at all times relevant to this action,  
13 doing business as licensed contractors authorized to conduct business in Clark County, Nevada.

14 5. Zitting Brothers does not know the true names of the individuals, corporations,  
15 partnerships and entities sued and identified in fictitious names as Does I through X, Roe Corporations  
16 I though X, Boe Bonding Companies I through X, and Loe Lenders I through X, Zitting Brothers alleges  
17 that such Defendants claim an interest in or to the Project and/or are responsible for damages suffered  
18 by Zitting Brothers as more full discussed under the claims for relief set forth below. Zitting Brothers  
19 will request leave of this Honorable Court to amend this Complaint to show the true names and  
20 capacities of each such fictitious Defendant when Zitting Brothers discovers such information.

21 **FIRST CAUSE OF ACTION**  
22 **(Breach of Contract - Against All Defendants)**

23 6. Zitting Brothers repeats and realleges each and every allegation contained in the  
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

25 7. Zitting Brothers entered into an Agreement with APCO Construction and/or Gemstone  
26 (the "Agreement") to provide certain construction services and other related work, materials, and  
27 equipment for a project located in Clark County, Nevada (the "Work").  
28 . . .

1 8. Zitting Brothers furnished the Work for the benefit of and at the specific instance and  
2 request of APCO.

3 9. Pursuant to the Agreement, Zitting Brothers was to be paid an amount in excess of Ten  
4 Thousand Dollars (\$10,000) (hereinafter "Outstanding Balance") for the Work.

5 10. Zitting Brothers furnished the Work and has otherwise performed its duties and  
6 obligations as required by the Agreement.

7 11. APCO and/or Gemstone as well as Doe/Roe Defendants, have breached the Agreement  
8 by, among other things:

- 9 a. failing and/or refusing to pay the monies owed to Zitting Brothers for the Work.  
10 b. failing to adjust the Agreement price to account for extra work and/or changed  
11 work, as well as suspensions, delays of Work caused or ordered by APCO,  
12 Gemstone, and/or their representatives.  
13 c. failing and/or refusing to comply with the Agreement; and  
14 d. negligently or intentionally preventing, obstructing, hindering, or interfering  
15 with Zitting Brothers performance of the Work.

16 12. Zitting Brothers is owed an amount in excess of Ten Thousand Dollars (\$10,000) for the  
17 Work.

18 13. Zitting Brothers has been required to engage the services of an attorney to collect the  
19 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
20 interest therefore.

21 **SECOND CAUSE OF ACTION**  
22 **(Breach of Implied Covenant of Good Faith & Fair Dealing - Against All Defendants)**

23 14. Zitting Brothers repeats and realleges each and every allegation contained in the  
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

25 15. There is a covenant of good faith and fair dealing implied in every agreement, including  
26 the Agreement between Zitting Brothers and APCO and/or Gemstone.

27 ...  
28 ...

1           16.     APCO and/or Gemstone breached their duty to act in good faith by performing the  
2 Agreement in a manner that was unfaithful to the purpose of the Agreement, thereby denying Zitting  
3 Brothers's justified expectations.

4           17.     Due to the actions of APCO and/or Gemstone, Zitting Brothers suffered damages in an  
5 amount to be determined at trial for which Zitting Brothers is entitled to judgment plus interest.

6           18.     Zitting Brothers has been required to engage the services of an attorney to collect the  
7 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
8 interest therefore.

9                                   **THIRD CAUSE OF ACTION**  
10                   **(Unjust Enrichment or in the Alternative Quantum Meruit - Against All Defendants)**

11           19.     Zitting Brothers repeats and realleges each and every allegation contained in the  
12 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as  
13 follows:

14           20.     Zitting Brothers furnished the Work for the benefit of and at the specific instance  
15 requested of the Defendants.

16           21.     As to APCO and/or Gemstone, this cause of action is being pled in the alternative.

17           22.     APCO and/or Gemstone accepted, used and enjoyed the benefit of Zitting Brothers's  
18 Work.

19           23.     APCO and/or Gemstone knew or should have known that Zitting Brothers expected  
20 to be paid for the Work.

21           24.     Zitting Brothers has demanded payment of the Outstanding Balance.

22           25.     To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding  
23 Balance.

24           26.     The Defendants have been unjustly enriched, to the detriment of Zitting Brothers.

25           27.     Zitting Brothers has been required to engage the services of an attorney to collect the  
26 Outstanding Balance, and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
27 interest therefore.

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**FOURTH CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien - Against All Defendants)**

28. Zitting Brothers repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

29. The provision of the Work was at the special instance and request of APCO and/or Gemstone for the improvement of the Property.

30. As provided by NRS 108.245, APCO and/or Gemstone had actual knowledge of Zitting Brothers's delivery of the Work to the Property or Zitting Brothers provided a Notice of Right to Lien, as prescribed by Nevada law.

31. Zitting Brothers demanded payment of an amount in excess of Ten Thousand and no/100 Dollars (\$10,000), which amount remains past due and owing.

32. On or about December 23, 2008, Zitting Brothers timely recorded a Notice of Lien in Book 20081223 of the Official Records of Clark County, Nevada, as Instrument No. 0003690 (the "Lien"), attached hereto as **Exhibit 1**.

33. The Lien was in writing and was timely recorded against the Property for the outstanding balance due to Zitting Brothers in the amount of Seven Hundred Eighty Eight Thousand Four Hundred and Five Dollars and Forty-One Cents (\$788,405.41), with payment to be made upon Project progress.

34. The Lien was served upon the record Owners and/or their authorized agents, as required by law.

35. Zitting Brothers is entitle to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

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1 38. Zitting Brothers's claims against the Property and/or any leasehold estates are superior  
2 to the claim(s) of Loe Lenders and/or any other Defendant.

3 39. Zitting Brothers has been required to engage the services of an attorney to collect the  
4 Outstanding Balance due and owing for the Work, and Zitting Brothers is entitled to recover its  
5 reasonable costs, attorney's fees and interest therefore.

6 **SEVENTH CAUSE OF ACTION**  
7 **(Violation of NRS 624)**

8 40. Zitting Brothers repeats and realleges each and every allegation contained in the  
9 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

10 41. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as APCO),  
11 to, among other things, timely pay their subcontractors (such as Zitting Brothers), as provided in the  
12 Statute.

13 42. In violation of the Statute, APCO has failed and/or refused to timely pay Zitting Brothers  
14 monies due and owing.

15 43. APCO's violation of the Statute constitutes negligence per se.

16 44. By reason foregoing, Zitting Brothers is entitled to a judgment against APCO in the  
17 amount of the Outstanding Balance.

18 45. Zitting Brothers has been required to engage the services of an attorney to collect the  
19 outstanding Balance and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and  
20 interests therefore.

21 **WHEREFORE**, Zitting Brothers prays that this Honorable Court:

- 22 1. Enters judgment against the Defendants, and each of them, jointly and severally, for  
23 Zitting Brothers's reasonable costs and attorney's fees incurred in the collection of the  
24 Outstanding Balance;  
25 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
26 Zitting Brothers's reasonable costs and attorney's fees incurred in the collection of the  
27 Outstanding Balance, as well as an award of interest thereon;  
28



- 1 3. Enters a judgment declaring that Zitting Brothers has a valid and enforceable mechanic's  
2 lien against the Property, with priority over all Defendants, in an amount of the  
3 Outstanding Balance;  
4 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable  
5 attorney's fees, costs and interest thereon, and that this Honorable Court enter an Order  
6 that the Property, and improvements, such as may be necessary, be sold pursuant to the  
7 laws of the State of Nevada, and that the proceeds of said sale be applied to the payment  
8 of sums due Zitting Brothers herein; and  
9 5. For such other and further relief as this Honorable Court deems just and proper in the  
10 premises.

11 Dated this 30<sup>th</sup> day of April, 2009.

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13  
14 By 

15 Michael M. Edwards, Esq.  
16 Nevada Bar No. 006281  
17 Reuben H. Cawley, Esq.  
18 Nevada Bar No. 009384  
19 400 South Fourth Street, Suite 500  
20 Las Vegas, Nevada 89101  
21 Attorneys for Plaintiff  
22 Zitting Brothers Construction, Inc.  
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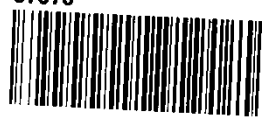
*E. J. Smith*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 slmorris@wmb-law.net

9 Attorneys for  
10 Camco Pacific Construction Company, Inc. and  
11 Fidelity and Deposit Company of Maryland

DISTRICT COURT  
CLARK COUNTY, NEVADA

08A571228  
87873



**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

12 APCO CONSTRUCTION, a Nevada  
13 corporation

Plaintiff,

vs.

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; COMMONWEALTH LAND  
20 TITLE INSURANCE COMPANY; FIRST  
21 AMERICAN TITLE INSURANCE  
22 COMPANY; and DOES I through X,

Defendants.

Case No: A571228  
Dept. No: X

**ANSWER TO NOORDA SHEET  
METAL COMPANY'S THIRD PARTY  
COMPLAINT AND CAMCO PACIFIC  
CONSTRUCTION'S COUNTERCLAIM**

23 NOORDA SHEET METAL COMPANY, a  
24 Nevada corporation,

Lien Claimant,

vs.

25 CAMCO PACIFIC CONSTRUCTION  
26 COMPANY, INC., a California corporation;  
27 FIDELITY AND DEPOSIT COMPANY OF  
28 MARYLAND,

Third Party Defendants.

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CLERK OF THE COURT

18

1 CAMCO PACIFIC CONSTRUCTION  
2 COMPANY, INC., a California corporation

3 Counterclaimant,

4 vs.

5 NOORDA SHEET METAL COMPANY, a  
6 Nevada corporation,

7 Counterdefendant,

8 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
9 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
10 (hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as  
11 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
12 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of NOORDA SHEET  
13 METAL COMPANY (hereinafter "Plaintiff"), on file herein, and admit, deny and allege as  
14 follows:

15 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
16 the truth of the allegations contained in Paragraphs 6, 7, 8, 13, 14, 18, 20 and 21 of Plaintiff's  
17 Complaint, and therefore deny each and every allegation contained therein.

18 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 9, and  
19 31 of Plaintiff's Complaint.

20 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 5,  
21 10, 11, 12, 15, 17, 19, 22, 24, 25, 26, 28, 29, 32, 33, 34, 35, 37, 38, 40 and 41 of Plaintiff's  
22 Complaint.

23 4. As to Paragraphs 16, 23, 27, 30, 36 and 39 of Plaintiff's Complaint, Camco and  
24 Fidelity repeat and reallege the answers to paragraphs 1 through 41 as though fully set forth  
25 herein.

26 5. As to Paragraph 4 Camco and Fidelity admit that Camco was and is a California  
27 corporation licensed and authorized to conduct business in Clark County Nevada.  
28

1           6.     To the extent that any allegations set forth in Plaintiff's Complaint have not been  
2 answered, these answering Defendants deny each and every allegation or inference thereof not  
3 expressly set forth hereinabove.

4           7.     It has become necessary for these answering Defendants to retain the services of  
5 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,  
6 these answering Defendants have been damaged by the Plaintiff, and these answering  
7 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

8                               **AFFIRMATIVE DEFENSES**

9           1.     The Complaint on file herein fails to state a claim against Camco and Fidelity  
10 upon which relief can be granted.

11           2.     That any or all negligence or fault on the part of the Plaintiff would be active and  
12 primary, and any negligence or fault of Camco, if any, would be secondary and passive.

13           3.     Any and all damages sustained by Plaintiff are the result of its own negligence  
14 and breach of contract.

15           4.     Camco is not negligent with respect to the transactions which are the subject of  
16 the Complaint, and is and was not in breach of contract.

17           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
18 had full and complete knowledge and information in regard to the conditions and circumstances  
19 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
20 assume the risk attendant to any condition there or then present.

21           6.     The liability, if any, of Camco must be reduced by the percentage of fault of  
22 others, including the Plaintiff.

23           7.     The claims, and each of them, are barred by the failure of the Plaintiff to plead  
24 those claims with particularity.

25           8.     The claims of Plaintiff have been waived as a result of the acts and the conduct  
26 of the Plaintiff.

27           9.     The claim for breach of contract is barred as a result of the failure to satisfy  
28

1 conditions precedent.

2 10. Plaintiff has failed to mitigate its damages.

3 11. Defendant Fidelity is informed and believes that it is entitled to assert all of the  
4 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
5 raised, or that could have been raised, by Fidelity's principal.

6 12. Fidelity alleges that its liability, if any exists, which is expressly denied, is  
7 limited to the penal sum of the applicable Contractor's License Bond.

8 13. Any license or surety bond executed by Fidelity was limited to the classification  
9 of contracting activities as set forth in its Nevada State Contractor's License Bond.

10 14. The liability of Fidelity if any, is limited to its obligations as set forth in its surety  
11 bond agreement.

12 15. The liability of Fidelity if any, is limited to the statutory liability as set forth in  
13 NRS 624.273.

14 16. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
15 partnerships, corporations, associations, or other organizations that are not its named principal.

16 17. The damages sustained by Plaintiff, if any, were caused by the acts of third  
17 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
18 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
19 its principal are not liable in any manner to the Plaintiff.

20 18. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
21 partnerships, corporations, associations, or other organizations that are not its named principal.

22 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
23 because no judgment or court decree has been entered against its principal.

24 20. It has been necessary for Camco and Fidelity to retain the services of the law  
25 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
26 action, and Camco is entitled to payment of all costs, fees and expenses associated with and/or  
27 arising out of the defense of this action.

28



**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

4. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by reference and further allege:

5. Camco is informed and believes and thereupon alleges that Noorda entered into a Subcontract Agreement ("Subcontract Agreement") with APCO Construction related to the Manhattan West Condominiums project, located in Clark County, Nevada (the "Project").

6. On or about August 26, 2008, Camco and Noorda entered into a Ratification and Amendment of Subcontract Agreement ("Ratification Agreement") wherein Camco and Noorda acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

7. Section 3.4 of the Subcontract Agreement states: "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."

8. All payments made to subcontractors and suppliers on the Project were made directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and incorporated herein by this reference).

9. Camco never received payment on behalf of the subcontractors, including Noorda, and was therefore, not responsible nor liable for payment to the subcontractors, including Noorda.

10. Noorda agreed and expressly acknowledged that it assumed the risk of non-payment by the Owner.

11. Noorda breached its contract with Camco by demanding payment from Camco and by bringing claims against Camco and its License Bond Surety relative to payment for the work allegedly performed by Noorda on the Project.

12. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and

1 conditions of the Ratification Agreement.

2 13. Camco has been required to engage the services of the law firm of  
3 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
4 reasonable attorneys fees and costs therefor.

5 **SECOND CAUSE OF ACTION**

6 **(Breach of Covenant of Good Faith and Fair Dealing)**

7 14. Camco repeats and realleges each and every allegation contained in the  
8 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by  
9 reference and further allege:

10 15. The law imposes upon Noorda, by virtue of the contract, a covenant to act in  
11 good faith and deal fairly with Counterclaimant;

12 16. Despite this covenant, Noorda's intentional failure to abide by the terms of the  
13 parties written contract, Noorda breached its covenant to act in good faith and deal fairly;

14 17. As a result of its breach of the covenant of good faith and fair dealing, Noorda  
15 has injured Camco in an amount in excess of \$10,000.00.

16 18. Camco has been required to engage the services of the law firm of  
17 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
18 reasonable attorneys fees and costs therefor.

19 WHEREFORE, Counterclaimant Camco prays as follows:

20 1. This Court enter judgment against Counterdefendants, and each of them, in an  
21 amount in excess of \$10,000.00, plus interest at the contract rate;

22 2. For an award of reasonable attorneys' fees and costs for having to prosecute this  
23 action; and

24 ///

25 ///

26 ///

27 ///

28 ///

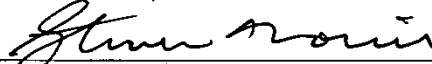


WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 3. For such other and further relief as the Court deems just and proper.

2 DATED this 4<sup>th</sup> day of May, 2009.

3 WOODBURY, MORRIS & BROWN

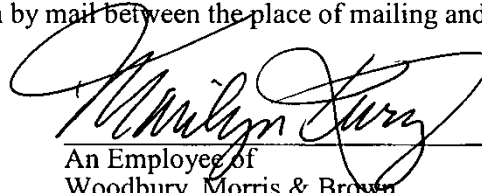
4   
5 STEVEN L. MORRIS, ESQ.  
6 Nevada Bar No. 7454  
7 701 N. Green Valley Pkwy., Suite 110  
8 Henderson, NV 89074-6178  
9 Attorneys for Camco and Fidelity

10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the 4<sup>th</sup> day of May, 2009, I served a copy of the **ANSWER**  
12 **TO NOORDA SHEET METAL COMPANY'S THIRD PARTY COMPLAINT AND**  
13 **CAMCO PACIFIC CONSTRUCTION'S COUNTERCLAIM** by facsimile and by enclosing  
14 a true and correct copy of the same in a sealed envelope upon which first-class postage was  
15 fully prepaid, and addressed to the following:

16 T. James Truman, Esq.  
17 T. JAMES TRUMAN & ASSOCIATES  
18 3654 North Rancho Drive  
19 Las Vegas, Nevada 89130  
20 Fax: 256-0156

21 and that there is regular communication by mail between the place of mailing and the place so  
22 addressed.

23   
24 An Employee of  
25 Woodbury, Morris & Brown  
26  
27  
28

# Exhibit A



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

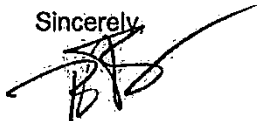
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NCS (voucher control) by November 13, 2008.~~

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad J. Scott', is written over a horizontal line.

Brad J. Scott  
President

15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit "A"



December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

~~Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299  
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AA 000814



Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Tuesday, December 16, 2008 9:38 AM  
**To:** Jennifer Olivares  
**Cc:** 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
**Subject:** ManhattanWest Status  
**Importance:** High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to "no further draws being approved".

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com

	
<b>Brad J. Scott, CRE</b>	15010 Sundown Drive
President	Bismarck, ND 58503
brad@scottfinancialcorp.com	Office: 701.255.2215
	Fax: 701.223.7299
	Cell: 701.220.3999
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4/1/2009

Exhibit "B"

**Jennifer Olivares**

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Monday, December 15, 2008 3:00 PM  
**To:** Anne Dwyer; Jennifer Olivares  
**Cc:** 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com  
**Subject:** FW: ManhattanWest  
**Importance:** High  
**Attachments:** Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.

This amount includes the current Heineman Payment request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com



Brad J. Scott, CRE	15010 Sundown Drive
President	Bismarck, ND 58503
brad@scottfinancialcorp.com	Office: 701.255.2215
	Fax: 701.223.7299
	Cell: 701.220.3999

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Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 000817

ORIGINAL

FILED

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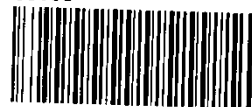
*Earl J. Smith*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 slmorris@wmb-law.net

9 Attorneys for  
10 Camco Pacific Construction Company, Inc. and  
11 Fidelity and Deposit Company of Maryland

DISTRICT COURT  
CLARK COUNTY, NEVADA

08A571228  
88068



**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

12 APCO CONSTRUCTION, a Nevada  
13 corporation

14 Plaintiff,

15 vs.

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

25 Defendants.

26 PROFESSIONAL DOORS AND  
27 MILLWORKS, LLC, a Nevada limited  
28 liability company,

Lien Claimant,

vs.

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

Third Party Defendants.

Case No: A571228  
Dept. No: X

**ANSWER TO PROFESSIONAL DOORS  
AND MILLWORKS, LLC'S THIRD  
PARTY COMPLAINT AND CAMCO  
PACIFIC CONSTRUCTION'S  
COUNTERCLAIM**

RECEIVED

MAY 05 2009

CLERK OF THE COURT

1 CAMCO PACIFIC CONSTRUCTION  
2 COMPANY, INC., a California corporation

3 Counterclaimant,

4 vs.

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

7 Counterdefendant,  
8

9 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
10 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
11 (hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as  
12 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
13 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of PROFESSIONAL  
14 DOORS AND MILLWORKS, LLC (hereinafter "Plaintiff"), on file herein, and admit, deny and  
15 allege as follows:

16 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
17 the truth of the allegations contained in Paragraphs 5, 6, 7, 12, 13, 17 and 20 of Plaintiff's  
18 Complaint, and therefore deny each and every allegation contained therein.

19 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 8, and 30  
20 of Plaintiff's Complaint.

21 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 4, 9,  
22 10, 11, 14, 16, 18, 19, 21, 23, 24, 25, 27, 28, 31, 32, 33, 34, 36, 37, 39 and 40 of Plaintiff's  
23 Complaint.

24 4. As to Paragraphs 15, 22, 26, 29, 35 and 38 of Plaintiff's Complaint, Camco and  
25 Fidelity repeat and reallege the answers to paragraphs 1 through 40 as though fully set forth  
26 herein.

27 5. As to Paragraph 3 Camco and Fidelity admit that Camco was and is a California  
28 corporation licensed and authorized to conduct business in Clark County Nevada.

1           6.     To the extent that any allegations set forth in Plaintiff's Complaint have not been  
2 answered, these answering Defendants deny each and every allegation or inference thereof not  
3 expressly set forth hereinabove.

4           7.     It has become necessary for these answering Defendants to retain the services of  
5 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,  
6 these answering Defendants have been damaged by the Plaintiff, and these answering  
7 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

8                           **AFFIRMATIVE DEFENSES**

9           1.     The Complaint on file herein fails to state a claim against Camco and Fidelity  
10 upon which relief can be granted.

11           2.     That any or all negligence or fault on the part of the Plaintiff would be active and  
12 primary, and any negligence or fault of Camco, if any, would be secondary and passive.

13           3.     Any and all damages sustained by Plaintiff are the result of its own negligence  
14 and breach of contract.

15           4.     Camco is not negligent with respect to the transactions which are the subject of  
16 the Complaint, and is and was not in breach of contract.

17           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
18 had full and complete knowledge and information in regard to the conditions and circumstances  
19 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
20 assume the risk attendant to any condition there or then present.

21           6.     The liability, if any, of Camco must be reduced by the percentage of fault of  
22 others, including the Plaintiff.

23           7.     The claims, and each of them, are barred by the failure of the Plaintiff to plead  
24 those claims with particularity.

25           8.     The claims of Plaintiff have been waived as a result of the acts and the conduct  
26 of the Plaintiff.

27           9.     The claim for breach of contract is barred as a result of the failure to satisfy  
28

1 conditions precedent.

2 10. Plaintiff has failed to mitigate its damages.

3 11. Defendant Fidelity is informed and believes that it is entitled to assert all of the  
4 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
5 raised, or that could have been raised, by Fidelity's principal.

6 12. Fidelity alleges that its liability, if any exists, which is expressly denied, is  
7 limited to the penal sum of the applicable Contractor's License Bond.

8 13. Any license or surety bond executed by Fidelity was limited to the classification  
9 of contracting activities as set forth in its Nevada State Contractor's License Bond.

10 14. The liability of Fidelity if any, is limited to its obligations as set forth in its surety  
11 bond agreement.

12 15. The liability of Fidelity if any, is limited to the statutory liability as set forth in  
13 NRS 624.273.

14 16. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
15 partnerships, corporations, associations, or other organizations that are not its named principal.

16 17. The damages sustained by Plaintiff, if any, were caused by the acts of third  
17 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
18 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
19 its principal are not liable in any manner to the Plaintiff.

20 18. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
21 partnerships, corporations, associations, or other organizations that are not its named principal.

22 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
23 because no judgment or court decree has been entered against its principal.

24 20. It has been necessary for Camco and Fidelity to retain the services of the law  
25 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
26 action, and Camco is entitled to payment of all costs, fees and expenses associated with and/or  
27 arising out of the defense of this action.





**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

4. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by reference and further allege:

5. Camco is informed and believes and thereupon alleges that PDM entered into a Subcontract Agreement ("Subcontract Agreement") with APCO Construction related to the Manhattan West Condominiums project, located in Clark County, Nevada (the "Project").

6. On or about August 26, 2008, Camco and PDM entered into a Ratification and Amendment of Subcontract Agreement ("Ratification Agreement") wherein Camco and PDM acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

7. Section 3.4 of the Subcontract Agreement states: "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."

8. All payments made to subcontractors and suppliers on the Project were made directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and incorporated herein by this reference).

9. Camco never received payment on behalf of the subcontractors, including PDM, and was therefore, not responsible nor liable for payment to the subcontractors, including PDM.

10. PDM agreed and expressly acknowledged that it assumed the risk of non-payment by the Owner.

11. PDM breached its contract with Camco by demanding payment from Camco and by bringing claims against Camco and its License Bond Surety relative to payment for the work allegedly performed by PDM on the Project.

12. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and conditions of the Ratification Agreement.

1 13. Camco has been required to engage the services of the law firm of  
2 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
3 reasonable attorneys fees and costs therefor.

4 **SECOND CAUSE OF ACTION**

5 **(Breach of Covenant of Good Faith and Fair Dealing)**

6 14. Camco repeats and realleges each and every allegation contained in the  
7 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by  
8 reference and further allege:

9 15. The law imposes upon PDM, by virtue of the contract, a covenant to act in good  
10 faith and deal fairly with Counterclaimant;

11 16. Despite this covenant, PDM's intentional failure to abide by the terms of the  
12 parties written contract, PDM breached its covenant to act in good faith and deal fairly;

13 17. As a result of its breach of the covenant of good faith and fair dealing, PDM has  
14 injured Camco in an amount in excess of \$10,000.00.

15 18. Camco has been required to engage the services of the law firm of  
16 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
17 reasonable attorneys fees and costs therefor.

18 WHEREFORE, Counterclaimant Camco prays as follows:


19 1. This Court enter judgment against Counterdefendants, and each of them, in an  
20 amount in excess of \$10,000.00, plus interest at the contract rate;

21 2. For an award of reasonable attorneys' fees and costs for having to prosecute this  
22 action; and

23 3. For such other and further relief as the Court deems just and proper.

24 DATED this 4<sup>th</sup> day of May, 2009.

25 WOODBURY, MORRIS & BROWN

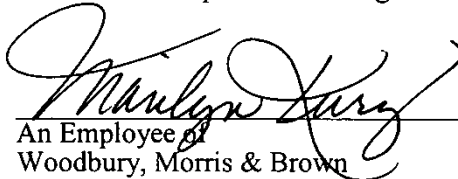
26   
27 STEVEN L. MORRIS, ESQ.  
28 Nevada Bar No. 7454  
701 N. Green Valley Pkwy., Suite 110  
Henderson, NV 89074-6178  
Attorneys for Camco and Fidelity

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of May, 2009, I served a copy of the ANSWER TO PDM'S THIRD PARTY COMPLAINT AND CAMCO PACIFIC CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and correct copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and addressed to the following:

T. James Truman, Esq.  
T. JAMES TRUMAN & ASSOCIATES  
3654 North Rancho Drive  
Las Vegas, Nevada 89130  
Fax: 256-0156

and that there is regular communication by mail between the place of mailing and the place so addressed.

  
An Employee of  
Woodbury, Morris & Brown

# Exhibit A



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

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would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

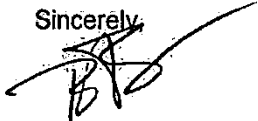
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit "A"



November 4, 2008

Mr. Mike Evans  
~~E&E Fire Protection LLC~~  
6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NCS~~ (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad J. Scott', is written over a horizontal line.

Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit "A"



December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

~~Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Tuesday, December 16, 2008 9:38 AM  
**To:** Jennifer Olivares  
**Cc:** 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
**Subject:** ManhattanWest Status  
**Importance:** High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to "no further draws being approved".

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

**Scott**  
Financial Corporation

**Brad J. Scott, CRE**  
President  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

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Bismarck, ND 58503  
Office: 701.255.2215  
Fax: 701.223.7299  
Cell: 701.220.3999

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4/1/2009

Exhibit "B"

**Jennifer Olivares**

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Monday, December 15, 2008 3:00 PM  
**To:** Anne Dwyer, Jennifer Olivares  
**Cc:** 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com  
**Subject:** FW: ManhattanWest  
**Importance:** High  
**Attachments:** Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.


This amount includes the current Heineman Payment request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com

	
<b>Brad J. Scott, CRE</b> President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 000835

ORIGINAL

FILED

MAY 5 12 01 PM '09

*E. J. Smith*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 [slmorris@wmb-law.net](mailto:slmorris@wmb-law.net)

9 Attorneys for  
10 Camco Pacific Construction Company, Inc. and  
11 Fidelity and Deposit Company of Maryland

DISTRICT COURT

CLARK COUNTY, NEVADA

08A571228  
87893



12 APCO CONSTRUCTION, a Nevada  
13 corporation

14 Plaintiff,

15 vs.

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

25 Defendants.

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

28 Lien Claimant,

vs.

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

Third Party Defendants.

Case No: A571228  
Dept. No: X

**ANSWER TO E&E FIRE  
PROTECTION, LLC'S THIRD PARTY  
COMPLAINT AND CAMCO PACIFIC  
CONSTRUCTION'S COUNTERCLAIM**

RECEIVED

MAY 05 2009

CLERK OF THE COURT

**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 CAMCO PACIFIC CONSTRUCTION  
2 COMPANY, INC., a California corporation

3 Counterclaimant,

4 vs.

5 E&E FIRE PROTECTION, LLC, a Nevada  
6 limited liability company,

7 Counterdefendant,

8 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
9 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
10 (hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as  
11 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
12 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of E&E FIRE  
13 PROTECTION, LLC, (hereinafter "Plaintiff" or "E&E"), on file herein, and admit, deny and  
14 allege as follows:

15 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
16 the truth of the allegations contained in Paragraphs 5, 8, 12, 16 and 19 of Plaintiff's Complaint,  
17 and therefore deny each and every allegation contained therein.

18 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 6, 7, and  
19 29 and 31 of Plaintiff's Complaint.

20 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 4, 9,  
21 10, 11, 13, 15, 17, 18, 20, 22, 23, 24, 26, 27, 30, 31, 32, 33, 35, 36, 38 and 39 of Plaintiff's  
22 Complaint.

23 4. As to Paragraphs 14, 21, 25, 28, 34 and 37 of Plaintiff's Complaint, Camco and  
24 Fidelity repeat and reallege the answers to paragraphs 1 through 39 as though fully set forth  
25 herein.

26 5. As to Paragraph 3 Camco and Fidelity admit that Camco was and is a California  
27 corporation licensed and authorized to conduct business in Clark County Nevada.  
28

1           6.     To the extent that any allegations set forth in Plaintiff's Complaint have not been  
2 answered, these answering Defendants deny each and every allegation or inference thereof not  
3 expressly set forth hereinabove.

4           7.     It has become necessary for these answering Defendants to retain the services of  
5 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,  
6 these answering Defendants have been damaged by the Plaintiff, and these answering  
7 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

8                               **AFFIRMATIVE DEFENSES**

9           1.     The Complaint on file herein fails to state a claim against Camco and Fidelity  
10 upon which relief can be granted.

11           2.     That any or all negligence or fault on the part of the Plaintiff would be active and  
12 primary, and any negligence or fault of Camco, if any, would be secondary and passive.

13           3.     Any and all damages sustained by Plaintiff are the result of its own negligence  
14 and breach of contract.

15           4.     Camco is not negligent with respect to the transactions which are the subject of  
16 the Complaint, and is and was not in breach of contract.

17           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
18 had full and complete knowledge and information in regard to the conditions and circumstances  
19 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
20 assume the risk attendant to any condition there or then present.

21           6.     The liability, if any, of Camco must be reduced by the percentage of fault of  
22 others, including the Plaintiff.

23           7.     The claims, and each of them, are barred by the failure of the Plaintiff to plead  
24 those claims with particularity.

25           8.     The claims of Plaintiff have been waived as a result of the acts and the conduct  
26 of the Plaintiff.

27           9.     The claim for breach of contract is barred as a result of the failure to satisfy  
28



1 conditions precedent.

2 10. Plaintiff has failed to mitigate its damages.

3 11. Defendant Fidelity is informed and believes that it is entitled to assert all of the  
4 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
5 raised, or that could have been raised, by Fidelity's principal.

6 12. Fidelity alleges that its liability, if any exists, which is expressly denied, is  
7 limited to the penal sum of the applicable Contractor's License Bond.

8 13. Any license or surety bond executed by Fidelity was limited to the classification  
9 of contracting activities as set forth in its Nevada State Contractor's License Bond.

10 14. The liability of Fidelity if any, is limited to its obligations as set forth in its surety  
11 bond agreement.

12 15. The liability of Fidelity if any, is limited to the statutory liability as set forth in  
13 NRS 624.273.

14 16. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
15 partnerships, corporations, associations, or other organizations that are not its named principal.

16 17. The damages sustained by Plaintiff, if any, were caused by the acts of third  
17 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
18 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
19 its principal are not liable in any manner to the Plaintiff.

20 18. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
21 partnerships, corporations, associations, or other organizations that are not its named principal.

22 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
23 because no judgment or court decree has been entered against its principal.

24 20. It has been necessary for Camco and Fidelity to retain the services of the law  
25 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
26 action, and Camco is entitled to payment of all costs, fees and expenses associated with and/or  
27 arising out of the defense of this action.

28

WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

- ## COUNTERCLAIM

## JURISDICTIONAL ALLEGATIONS

- / / /

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

4. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by reference and further allege:

5. On or about August 26, 2008, Camco and E&E entered into a Subcontract Agreement (the "Agreement") relative to the Manhattan West Condominiums project, located in Clark County, Nevada (the "Project").

6. Section II.A. of the Subcontract Agreement states: "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 at 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."

7. All payments made to subcontractors and suppliers on the Project were made directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and incorporated herein by this reference).

8. Camco never received payment on behalf of the subcontractors, including E&E, and was therefore, not responsible nor liable for payment to the subcontractors, including E&E.

9. E&E agreed and expressly acknowledged that it assumed the risk of non-payment by the Owner.

1           10.     E&E breached its contract with Camco by demanding payment from Camco  
2     and by bringing claims against Camco and its License Bond Surety relative to payment for  
3     the work allegedly performed by E&E on the Project.

4           11.     Camco is entitled to all of its attorneys fees and costs pursuant to the terms and  
5     conditions of the Ratification Agreement.

6           12.     Camco has been required to engage the services of the law firm of  
7     WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
8     reasonable attorneys fees and costs therefor.

9                               **SECOND CAUSE OF ACTION**

10                           **(Breach of Covenant of Good Faith and Fair Dealing)**

11           13.     Camco repeats and realleges each and every allegation contained in the  
12     preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by  
13     reference and further allege:

14           14.     The law imposes upon E&E, by virtue of the contract, a covenant to act in good  
15     faith and deal fairly with Counterclaimant;

16           15.     Despite this covenant, E&E's intentional failure to abide by the terms of the  
17     parties written contract, E&E breached its covenant to act in good faith and deal fairly;

18           16.     As a result of its breach of the covenant of good faith and fair dealing, E&E has  
19     injured Camco in an amount in excess of \$10,000.00.

20           17.     Camco has been required to engage the services of the law firm of  
21     WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
22     reasonable attorneys fees and costs therefor.

23     WHEREFORE, Counterclaimant Camco prays as follows:

24           1.     This Court enter judgment against Counterdefendants, and each of them, in an  
25     amount in excess of \$10,000.00, plus interest at the contract rate;

26           2.     For an award of reasonable attorneys' fees and costs for having to prosecute this  
27     action; and

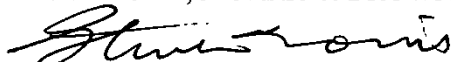
28     ///

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 3. For such other and further relief as the Court deems just and proper.

2 DATED this 4<sup>th</sup> day of May, 2009.

3 WOODBURY, MORRIS & BROWN

4 

5 STEVEN L. MORRIS, ESQ.

6 Nevada Bar No. 7454

7 701 N. Green Valley Pkwy., Suite 110

8 Henderson, NV 89074-6178

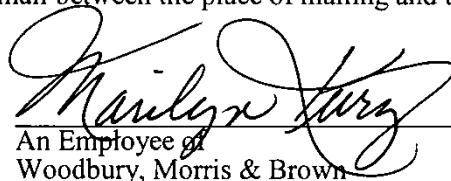
9 Attorneys for Camco and Fidelity

10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the 4<sup>th</sup> day of May, 2009, I served a copy of the **ANSWER**  
12 **TO E&E FIRE PROTECTION, LLC'S THIRD PARTY COMPLAINT AND CAMCO**  
13 **PACIFIC CONSTRUCTION'S COUNTERCLAIM** by facsimile and by enclosing a true and  
14 correct copy of the same in a sealed envelope upon which first-class postage was fully prepaid,  
15 and addressed to the following:

16 T. James Truman, Esq.  
17 T. JAMES TRUMAN & ASSOCIATES  
18 3654 North Rancho Drive  
19 Las Vegas, Nevada 89130  
20 Fax: 256-0156

21 and that there is regular communication by mail between the place of mailing and the place so  
22 addressed.

23   
24 An Employee of  
25 Woodbury, Morris & Brown

# Exhibit A



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

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Office: 701.255.2215 • Fax: 701.223.7299

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would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.



Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

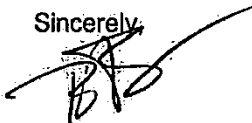
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans  
~~E&E Fire Protection LLC~~  
6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NCS (voucher control) by November 13, 2008.~~

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad J. Scott', is written over the word 'Sincerely'.

Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit "A"



December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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AA 000850

Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]  
Sent: Tuesday, December 16, 2008 9:38 AM  
To: Jennifer Olivares  
Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
Subject: ManhattanWest Status  
Importance: High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to no further draws being approved.

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

	
Brad J. Scott, CRE President <a href="mailto:brad@scottfinancialcorp.com">brad@scottfinancialcorp.com</a>	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Call: 701.220.3999
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4/1/2009

Exhibit "B"

**Jennifer Olivares**

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Monday, December 15, 2008 3:00 PM  
**To:** Anne Dwyer; Jennifer Olivares  
**Cc:** 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com  
**Subject:** FW: ManhattanWest  
**Importance:** High  
**Attachments:** Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on account at NCS in the amount of \$998,866.72 back to SFC using the attached wiring instructions.


This amount includes the current Heineman Payment Request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com

	
<b>Brad J. Scott, CRE</b> President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 000853

ORIGINAL

FILED

MAY 5 4 10 PM '09

*Ed Smith*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 [slmorris@wmb-law.net](mailto:slmorris@wmb-law.net)

9 Attorneys for  
10 Camco Pacific Construction Company, Inc. and  
11 Fidelity and Deposit Company of Maryland

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

09A584730  
88688



14 THE MASONRY GROUP NEVADA, INC.,  
15 a Nevada corporation,

16 Plaintiff,

17 vs.

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

24 Defendants.

Case No: A584730  
Dept. No: XI

**ANSWER TO THE MASONRY GROUP  
NEVADA, INC.'S COMPLAINT AND  
CAMCO PACIFIC CONSTRUCTION'S  
COUNTERCLAIM**

25 CAMCO PACIFIC CONSTRUCTION  
26 COMPANY, INC., a California corporation

27 Counterclaimant,

28 vs.

THE MASONRY GROUP NEVADA, INC.,  
a Nevada corporation,

Counterdefendant,

Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

(hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND

(hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as

104  
WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

RECEIVED

MAY 5 2009

CLERK OF THE COURT

18



1 “Defendants”), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
2 Woodbury, Morris & Brown, hereby answer the Complaint of THE MASONRY GROUP  
3 NEVADA, INC., (hereinafter “Plaintiff”), on file herein, and admit, deny and allege as follows:

4 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
5 the truth of the allegations contained in Paragraphs 13, 15, 20, 24, 34, 35, 36 and 37 of  
6 Plaintiff’s Complaint, and therefore denies each and every allegation contained therein.

7 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 6, 8,  
8 and 32 of Plaintiff’s Complaint.

9 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 4, 9,  
10 10, 11, 14, 16, 17, 19, 21, 23, 25, 27, 28, 29, 30, 33 and 38 of Plaintiff’s Complaint.

11 4. As to Paragraphs 7, 12, 18, 22, 26 and 31 of Plaintiff’s Complaint, Camco and  
12 Fidelity repeat and reallege the answers to paragraphs 1 through 38 as though fully set forth  
13 herein.

14 5. To the extent that any allegations set forth in Plaintiff’s Complaint have not been  
15 answered, these answering Defendants deny each and every allegation or inference thereof not  
16 expressly set forth hereinabove.

17 6. It has become necessary for these answering Defendants to retain the services of  
18 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,  
19 these answering Defendants have been damaged by the Plaintiff, and these answering  
20 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

21 **AFFIRMATIVE DEFENSES**

22 1. The Complaint on file herein fails to state a claim against Camco and Fidelity  
23 upon which relief can be granted.

24 2. That any or all negligence or fault on the part of the Plaintiff would be active and  
25 primary, and any negligence or fault of Camco, if any, would be secondary and passive.

26 3. Any and all damages sustained by Plaintiff are the result of its own negligence  
27 and breach of contract.  
28

1           4.       Camco is not negligent with respect to the transactions which are the subject of  
2 the Complaint, and is and was not in breach of contract.

3           5.       At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
4 had full and complete knowledge and information in regard to the conditions and circumstances  
5 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
6 assume the risk attendant to any condition there or then present.

7           6.       The liability, if any, of Camco must be reduced by the percentage of fault of  
8 others, including the Plaintiff.

9           7.       The claims, and each of them, are barred by the failure of the Plaintiff to plead  
10 those claims with particularity.

11           8.       The claims of Plaintiff have been waived as a result of the acts and the conduct  
12 of the Plaintiff.

13           9.       The claim for breach of contract is barred as a result of the failure to satisfy  
14 conditions precedent.

15           10.      Plaintiff has failed to mitigate its damages.

16           11.      Defendant Fidelity is informed and believes that it is entitled to assert all of the  
17 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
18 raised, or that could have been raised, by Fidelity's principal.

19           12.      Fidelity alleges that its liability, if any exists, which is expressly denied, is  
20 limited to the penal sum of the applicable Contractor's License Bond.

21           13.      Any license or surety bond executed by Fidelity was limited to the classification  
22 of contracting activities as set forth in its Nevada State Contractor's License Bond.

23           14.      The liability of Fidelity if any, is limited to its obligations as set forth in its surety  
24 bond agreement.

25           15.      The liability of Fidelity if any, is limited to the statutory liability as set forth in  
26 NRS 624.273.

27           16.      Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
28

1 partnerships, corporations, associations, or other organizations that are not its named principal.

2 17. The damages sustained by Plaintiff, if any, were caused by the acts of third  
3 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
4 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
5 its principal are not liable in any manner to the Plaintiff.

6 18. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
7 partnerships, corporations, associations, or other organizations that are not its named principal.

8 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
9 because no judgment or court decree has been entered against its principal.

10 20. It has been necessary for Camco and Fidelity to retain the services of the law  
11 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
12 action, and Camco is entitled to payment of all costs, fees and expenses associated with and/or  
13 arising out of the defense of this action.

14 21. Pursuant To NRCP 8, all possible affirmative defenses may not have been  
15 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and  
16 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to  
17 amend their Answer to allege additional affirmative defenses if subsequent investigation  
18 warrants.

19 WHEREFORE, Defendants Camco and Fidelity pray as follows:

- 20 1. That Plaintiff take nothing by way of its Complaint;  
21 2. For an award of reasonable attorneys' fees and costs for having to defend this  
22 action; and  
23 3. For such other and further relief as the Court deems just and proper.

24 **COUNTERCLAIM**

25 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter  
26 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,  
27 Morris & Brown complains as follows:  
28

**JURISDICTIONAL ALLEGATIONS**

1  
2 1. Camco was and is at all times relevant to this action, a California corporation,  
3 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State  
4 Contractor's Board.

5 2. Counterdefendant THE MASONRY GROUP NEVADA, INC., a Nevada  
6 corporation, (hereinafter referred to as "TMG") is and was at all times relevant to this action, a  
7 corporation conducting business in Clark County, Nevada.

8 3. The true names and capacities, whether individual, corporate, associate or  
9 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.  
10 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,  
11 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to  
12 amend this Counterclaim to show the true names and capacities of each such DOE Defendants  
13 at such time as the same have been ascertained.

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

14  
15  
16 4. Camco repeats and realleges each and every allegation contained in the  
17 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by  
18 reference and further allege:

19 5. Camco is informed and believes and thereupon alleges that TMG entered into a  
20 Subcontract Agreement ("Subcontract Agreement") with APCO Construction related to the  
21 Manhattan West Condominiums project, located in Clark County, Nevada (the "Project").

22 6. On or about August 26, 2008, Camco and TMG entered into a Ratification  
23 and Amendment of Subcontract Agreement ("Ratification Agreement") wherein Camco and  
24 TMG acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

25 7. Section 3.4 of the Subcontract Agreement states: "Any payments to  
26 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from  
27 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become  
28 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner."

1           8.     All payments made to subcontractors and suppliers on the Project were made  
2 directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached  
3 hereto and incorporated herein by this reference).

4           9.     Camco never received payment on behalf of the subcontractors, including  
5 TMG, and was therefore, not responsible nor liable for payment to the subcontractors,  
6 including TMG.

7           10.    TMG agreed and expressly acknowledged that it assumed the risk of non-  
8 payment by the Owner.

9           11.    TMG breached its contract with Camco by demanding payment from Camco  
10 and by bringing claims against Camco and its License Bond Surety relative to payment for  
11 the work allegedly performed by TMG on the Project.

12           12.    Camco is entitled to all of its attorneys fees and costs pursuant to the terms and  
13 conditions of the Ratification Agreement.

14           13.    Camco has been required to engage the services of the law firm of  
15 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
16 reasonable attorneys fees and costs therefor.

17                                   **SECOND CAUSE OF ACTION**

18                                   **(Breach of Covenant of Good Faith and Fair Dealing)**

19           14.    Camco repeats and realleges each and every allegation contained in the  
20 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by  
21 reference and further allege:

22           15.    The law imposes upon TMG, by virtue of the contract, a covenant to act in good  
23 faith and deal fairly with Counterclaimant;

24           16.    Despite this covenant, TMG's intentional failure to abide by the terms of the  
25 parties written contract, TMG breached its covenant to act in good faith and deal fairly;

26           17.    As a result of its breach of the covenant of good faith and fair dealing, TMG has  
27 injured Camco in an amount in excess of \$10,000.00.

28           18.    Camco has been required to engage the services of the law firm of

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a  
2 reasonable attorneys fees and costs therefor.

3 WHEREFORE, Counterclaimant Camco prays as follows:

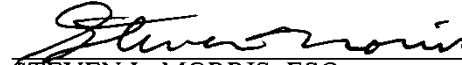
4 1. This Court enter judgment against Counterdefendants, and each of them, in an  
5 amount in excess of \$10,000.00, plus interest at the contract rate;

6 2. For an award of reasonable attorneys' fees and costs for having to prosecute this  
7 action; and

8 3. For such other and further relief as the Court deems just and proper.

9 DATED this 5<sup>th</sup> day of May, 2009.

10 WOODBURY, MORRIS & BROWN

11 

12 STEVEN L. MORRIS, ESQ.

13 Nevada Bar No. 7454

14 701 N. Green Valley Pkwy., Suite 110

15 Henderson, NV 89074-6178

16 Attorneys for Camco and Fidelity  
17  
18  
19  
20  
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22  
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28

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

I hereby certify that on the 5<sup>th</sup> day of May, 2009, I served a copy of the ANSWER TO THE MASONRY GROUP NEVADA, INC.'S COMPLAINT AND CAMCO PACIFIC CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and correct copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and addressed to the following:

Ronald S. Sofen, Esq.  
Becky A. Pintar, Esq.  
GIBBS, GIDEN, LOCHER, TURNER & SENET LLP  
3993 Howard Hughes Parkway, Suite 530  
Las Vegas, Nevada 89169  
Fax: 836-9802

and that there is regular communication by mail between the place of mailing and the place so addressed.

  
An Employee of  
Woodbury, Morris & Brown

# Exhibit A





**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

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would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

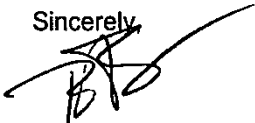
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans  
E&E Fire Protection LLC  
6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the September Payment Application. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and are anticipated to be processed and funded to NCS (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', is written over a horizontal line.

Brad J. Scott  
President

---

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Exhibit "A"



December 1, 2008

Leo Duckstein  
CabineTec Inc.  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the October Payment Application. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Tuesday, December 16, 2008 9:38 AM  
**To:** Jennifer Olivares  
**Cc:** 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'  
**Subject:** ManhattanWest Status  
**Importance:** High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to "no further draws being approved".

Foreclosure options and discussion on how we will proceed have been explored.


SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)

	
<b>Brad J. Scott, CRE</b> President <a href="mailto:brad@scottfinancialcorp.com">brad@scottfinancialcorp.com</a>	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
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4/1/2009

AA 000870



Exhibit "B"

**Jennifer Olivares**

---

**From:** Brad Scott [brad@scottfinancialcorp.com]  
**Sent:** Monday, December 15, 2008 3:00 PM  
**To:** Anne Dwyer; Jennifer Olivares  
**Cc:** 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com  
**Subject:** FW: ManhattanWest  
**Importance:** High  
**Attachments:** Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.

This amount includes the current Heineman Payment request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)



<b>Brad J. Scott, CRE</b>	15010 Sundown Drive
President	Bismarck, ND 58503
<a href="mailto:brad@scottfinancialcorp.com">brad@scottfinancialcorp.com</a>	Office: 701.255.2215
	Fax: 701.223.7299
	Cell: 701.220.3999

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---

Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

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4/1/2009

AA 000871

ORIGINAL

FILED

MAY 5 4 24 PM '09

*E. J. Smith*  
CLERK OF THE COURT

1 ANS/CTCM  
2 STEVEN L. MORRIS  
3 Nevada Bar No. 7454  
4 **WOODBURY, MORRIS & BROWN**  
5 701 N. Green Valley Parkway, Suite 110  
6 Henderson, Nevada 89074  
7 (702) 933-0777  
8 [slmorris@wmb-law.net](mailto:slmorris@wmb-law.net)

9 Attorneys for  
10 Camco Pacific Construction Company, Inc.

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

13 APCO CONSTRUCTION, a Nevada  
14 corporation

15 Plaintiff,

16 vs.

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; COMMONWEALTH LAND  
23 TITLE INSURANCE COMPANY; FIRST  
24 AMERICAN TITLE INSURANCE  
25 COMPANY; and DOES I through X,

26 Defendants.

27 CABINETEC, INC., a Nevada corporation,

28 Intervenor/Lien Claimant,

vs.

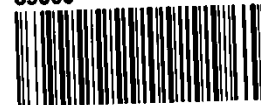
CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., a California corporation;  
APCO CONSTRUCTION, a Nevada  
corporation; GEMSTONE DEVELOPMENT  
WEST, INC., a Nevada corporation and;  
DOES I through X; and ROE  
CORPORATIONS I through X, inclusive,

Defendants in Intervention.

Case No: A571228  
Dept. No: X

**ANSWER TO CABINETEC, INC.'S  
COMPLAINT IN INTERVENTION AND  
CAMCO PACIFIC CONSTRUCTION  
COMPANY INC.'S COUNTERCLAIM**

08A571228  
89866



**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

**RECEIVED**  
MAY 05 2009  
CLERK OF THE COURT

1 CAMCO PACIFIC CONSTRUCTION  
2 COMPANY, INC., a California corporation

3 Counterclaimant,

4 vs.

5 CABINETEC, INC., a Nevada corporation,

6 Counterdefendant,

7  
8 Defendant in Intervention CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
9 (hereinafter "Camco" or "Defendant"), by and through its counsel, Steven L. Morris, Esq. of the  
10 law firm of Woodbury, Morris & Brown, hereby answers the Complaint of CABINETEC, INC.  
11 (hereinafter "Cabinetec" or "Plaintiff"), on file herein, and admits, denies and alleges as  
12 follows:

13 1. Camco is without information or knowledge sufficient to ascertain the truth of  
14 the allegations contained in Paragraphs 5, 6, 7, 8, 9, 11, 13, 15, 17, 18, 22, 23, 35, 37, 41, 42,  
15 44, 47, 48, 54, 55, 56, 57, 58, 60, 62, 63, 64 and 65 of Plaintiff's Complaint, and therefore  
16 denies each and every allegation contained therein.

17 2. Camco admits the allegations contained in Paragraphs 1, 2, 3, 4, 10, and 24 of  
18 Plaintiff's Complaint.

19 3. Camco denies each and every allegation contained in Paragraphs 14, 16, 19, 20,  
20 25, 26, 28, 30, 31, 32, 33, 36, 38, 39, 43, 45, 49, 50, 51, 52, and 59 of Plaintiff's Complaint.

21 4. As to Paragraphs 12, 21, 27, 29, 34, 40, 46, 53, and 61 of Plaintiff's Complaint,  
22 Camco repeats and realleges its answers to paragraphs 1 through 65 as though fully set forth  
23 herein.

24 5. To the extent that any allegations set forth in Plaintiff's Complaint have not been  
25 answered, this answering Defendant denies each and every allegation or inference thereof not  
26 expressly set forth hereinabove.

27 6. It has become necessary for this answering Defendant to retain the services of  
28 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,

1 this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is  
2 accordingly entitled to its attorney fees and costs incurred herein.

3 **AFFIRMATIVE DEFENSES**

4 1. The Complaint on file herein fails to state a claim against Camco upon which  
5 relief can be granted.

6 2. That any or all negligence or fault on the part of the Plaintiff, if any, would be  
7 active and primary, and any negligence or fault of Camco, if any, would be secondary and  
8 passive.

9 3. Any and all damages sustained by Plaintiff are the result of its own negligence  
10 and breach of contract.

11 4. Camco is not negligent with respect to the transactions which are the subject of  
12 the Complaint, and is and was not in breach of contract.

13 5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
14 had full and complete knowledge and information in regard to the conditions and circumstances  
15 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
16 assume the risk attendant to any condition there or then present.

17 6. The liability, if any, of Camco must be reduced by the percentage of fault of  
18 others, including the Plaintiff.

19 7. The claims, and each of them, are barred by the failure of the Plaintiff to plead  
20 those claims with particularity.

21 8. The claims of Plaintiff have been waived as a result of the acts and the conduct  
22 of the Plaintiff.

23 9. The claim for breach of contract is barred as a result of the failure to satisfy  
24 conditions precedent.

25 10. Plaintiff has failed to mitigate its damages.

26 11. It has been necessary for Camco to retain the services of the law offices of  
27 Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action, and  
28

1 Camco is entitled to payment of all costs, fees and expenses associated with and/or arising out  
2 of the defense of this action.

3 12. Pursuant To NRCP 8, all possible affirmative defenses may not have been  
4 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and  
5 inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to  
6 amend its Answer to allege additional affirmative defenses if subsequent investigation warrants.

7 WHEREFORE, Defendant Camco prays as follows:

- 8 1. That Plaintiff take nothing by way of its Complaint;  
9 2. For an award of reasonable attorneys' fees and costs for having to defend this  
10 action; and  
11 3. For such other and further relief as the Court deems just and proper.

12 **COUNTERCLAIM**

13 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter  
14 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,  
15 Morris & Brown complains as follows:

16 **JURISDICTIONAL ALLEGATIONS**

17 1. Camco was and is at all times relevant to this action, a California corporation,  
18 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State  
19 Contractor's Board.

20 2. Counterdefendant CABINETEC, INC. (hereinafter referred to as "Cabinetec") is  
21 and was at all times relevant to this action, a corporation conducting business in Clark County,  
22 Nevada.

23 3. The true names and capacities, whether individual, corporate, associate or  
24 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.  
25 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,  
26 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to  
27 amend this Counterclaim to show the true names and capacities of each such DOE Defendants  
28

1 at such time as the same have been ascertained.

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Contract)**

4 4. Camco repeats and realleges each and every allegation contained in the  
5 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by  
6 reference and further allege:

7 5. Camco is informed and believes and thereupon alleges that Cabinetec entered  
8 into a Subcontract Agreement ("Subcontract Agreement") with APCO Construction related to  
9 the Manhattan West Condominiums project, located in Clark County, Nevada (the  
10 "Project").

11 6. On or about August 26, 2008, Camco and Cabinetec entered into a Ratification  
12 and Amendment of Subcontract Agreement ("Ratification Agreement") wherein Camco and  
13 Cabinetec acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

14 7. Section 3.4 of the Subcontract Agreement states: "Any payments to  
15 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from  
16 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become  
17 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner."

18 8. All payments made to subcontractors and suppliers on the Project were made  
19 directly by Gemstone through Nevada Construction Services.

20 9. Camco never received payment on behalf of the subcontractors, including  
21 Cabinetec, and was therefore, not responsible nor liable for payment to the subcontractors,  
22 including Cabinetec. (See Exhibit A, attached hereto and incorporated herein by this  
23 reference).

24 10. Cabinetec agreed and expressly acknowledged that it assumed the risk of non-  
25 payment by the Owner.

26 11. Cabinetec breached its contract with Camco by demanding payment from  
27 Camco and by bringing claims against Camco and its License Bond Surety relative to  
28 payment for the work allegedly performed by Cabinetec on the Project.

(702) 933-0777 ♦ Fax (702) 933-0778

WOODBURY, MORRIS & BROWN

701 N. Green Valley Parkway, Suite 110

Henderson, Nevada 89074

(702) 933-0777 ♦ Fax (702) 933-0778

1 3. For such other and further relief as the Court deems just and proper.

2 DATED this 5<sup>th</sup> day of May, 2009.

3 WOODBURY, MORRIS & BROWN

4 

5 STEVEN L. MORRIS, ESQ.

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9 Attorneys for Camco

10 **CERTIFICATE OF MAILING**

11 I hereby certify that on the 5<sup>th</sup> day of May, 2009, I served a copy of the ANSWER  
12 TO CABINETEC, INC.'S COMPLAINT IN INTERVENTION AND CAMCO PACIFIC  
13 CONSTRUCTION COMPANY INC.'S COUNTERCLAIM by facsimile and by enclosing a  
14 true and correct copy of the same in a sealed envelope upon which first-class postage was fully  
15 prepaid, and addressed to the following:

16 Justin L. Watkins, Esq.  
17 WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.  
18 3993 Howard Hughes Parkway, Suite 400  
19 Las Vegas, Nevada 89169  
20 Fax: 822-2650

21 and that there is regular communication by mail between the place of mailing and the place so  
22 addressed.

23   
24 An Employee of  
25 Woodbury, Morris & Brown  
26  
27  
28



# Exhibit A



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

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would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

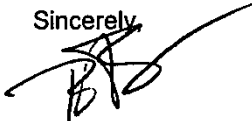
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans  
E&E Fire Protection LLC  
6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the September Payment Application. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and are anticipated to be processed and funded to NCS (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', written over the word 'Sincerely'.

Brad J. Scott  
President

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Exhibit "A"



December 1, 2008

Leo Duckstein  
CabineTec Inc  
2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the October Payment Application. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

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Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project