

1 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
2 subordinate to all mechanics' liens, including Accuracy's.

3 87. A dispute has arisen, and an actual controversy now exists over the priority issue
4 of Accuracy's mechanics' lien over other encumbrances on the property.

5 88. Accuracy is entitled to a court order declaring that its mechanics' lien has a
6 superior lien position on the Property over any other lien or encumbrance created by or for the
7 benefit of SFC or any other entity.

8 **WHEREFORE**, Accuracy prays that this Honorable Court:

9 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
10 the APCO Outstanding Balance and CAMCO Outstanding Balance amounts;

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

15 3. Enter a judgment declaring that Accuracy has valid and enforceable mechanic's
16 liens against the Property, with priority over all Defendants, in an amount of the APCO
17 Outstanding Balance and CAMCO Outstanding Balance;

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

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1 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of
2 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
3 entity; and,

4 6. For such other and further relief as this Honorable Court deems just and proper in
5 the premises.
6

7 Dated this 23 day of June 2009.

PEEL BRIMLEY LLP


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Nevada Bar No. 4359

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*Attorneys for Accuracy Glass & Mirror
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR
COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada
corporation; APCO CONSTRUCTION, a
Nevada corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

Defendants.

BRUIN PAINTING CORPORATION, a
California corporation,

Plaintiff in Intervention,

vs.

CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation;
GEMSTONE DEVELOPMENT WEST, INC.,
Nevada corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND;
SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; DOES I through X;
ROE CORPORATIONS I through X; BOE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**BRUIN PAINTING'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT**

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

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BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,
Defendants.

BRUIN PAINTING CORPORATION ("Bruin") by and through its attorneys PEEL
BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third
Party Complaint ("Amended Complaint") against the above-named defendants complains, avers
and alleges as follows:

THE PARTIES

1. Bruin is and was at all times relevant to this action a Nevada limited-liability
company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding
a Nevada State Contractor's license, which license is in good standing.

2. Bruin is informed and believes and therefore alleges that Defendant GEMSTONE
DEVELOPMENT WEST, INC., Nevada corporation ("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:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
001 thru 163-32-112-246) 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 Owners caused or allowed to be constructed certain
improvements (the "Property").

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

3 4. Bruin is informed and believes and therefore alleges that Defendant CAMCO
4 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
5 at all times relevant to this action doing business as a licensed contractor authorized to conduct
6 business in Clark County, Nevada and acting as the general contractor to the Project.

7 5. Bruin is informed and believes and therefore alleges that Defendant, FIDELITY
8 AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a
9 bonding company licensed and qualified to do business as a surety in Nevada.

10 6. Bruin is informed and believes and therefore alleges that Defendant Scott
11 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
12 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
13 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
14 securing loans given to the Owner for, inter alia, development of the Property.

15 7. Bruin does not know the true names of the individuals, corporations, partnerships
16 and entities sued and identified in fictitious names as DOES I through X, ROE
17 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
18 LENDERS I through X. Bruin alleges that such Defendants claim an interest in or to the
19 Properties, and/or are responsible for damages suffered by Bruin as more fully discussed under
20 the claims for relief set forth below. Bruin will request leave of this Honorable Court to amend
21 this Complaint to show the true names and capacities of each such fictitious Defendant when
22 Bruin discovers such information.

23 ///

24 ///

FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

8. Bruin repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

9. On or about August 26, 2008, Bruin entered into a Subcontract Agreement ("Agreement") with CPCC to provide certain painting and wall covering related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada

10. Bruin furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

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

12. Bruin furnished the Work and has otherwise performed its duties and obligations as required by the Agreement.

13. CPCC has breached the Agreement by, among other things:

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

1 14. Bruin is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
2 Work.

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

7 **SECOND CAUSE OF ACTION**
8 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

9 16. Bruin repeats and realleges each and every allegation contained in the preceding
10 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
11 follows:

12 17. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the Agreement.

14 18. CPCC breached its duty to act in good faith by performing the Agreement in a
15 manner that was unfaithful to the purpose of the Agreement, thereby denying Bruin's justified
16 expectations.

17 19. Due to the actions of CPCC, Bruin suffered damages in an amount to be
18 determined at trial for which Bruin is entitled to judgment plus interest.
19

20 20. Bruin has been required to engage the services of an attorney to collect the
21 Outstanding Balance, and Bruin is entitled to recover its reasonable costs, attorney's fees and
22 interest therefore.
23

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

26 21. Bruin repeats and realleges each and every allegation contained in the preceding
27 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
28 follows:

22. Bruin furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Bruin expected to be paid for the Work.

26. Bruin has demanded payment of the Outstanding Balance.

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

28. The Defendants have been unjustly enriched, to the detriment of Bruin.

29. Bruin has been required to engage the services of an attorney to collect the Outstanding Balance, and Bruin is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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

30. Bruin repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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

32. As provided at NRS 108.245 and common law, the Defendants had knowledge of Bruin's delivery of the Work to the Property or Bruin provided a Notice of Right to Lien.

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

1 34. On or about December 17, 2008, Bruin timely recorded a Notice of Lien in Book
2 20081217 of the Official Records of Clark County, Nevada, as Instrument No. 0001837 (the
3 “Original Lien”).

4 35. On or about February 3, 2009, Bruin timely recorded an Amended/Restated Notice
5 of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No.
6 0000315 (the “Amended Lien”).

7 36. The Original Lien and Amended Lien are hereinafter referred to as the “Liens”.
8

9 37. The Liens were in writing and were recorded against the Property for the
10 outstanding balance due to Bruin in the amount of Seven Hundred Seventy-One Thousand Four
11 Hundred One and 32/100 Dollars (\$771,401.32).

12 38. The Liens were served upon the Owner and/or its authorized agents, as required by
13 law.
14

15 39. Bruin is entitled to an award of reasonable attorney’s fees, costs and interest on the
16 Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

17 **FIFTH CAUSE OF ACTION**
18 **(Claim of Priority)**

19 40. Bruin repeats and realleges each and every allegation contained in the preceding
20 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
21 follows:

22 41. Bruin is informed and believes and therefore alleges that construction on the
23 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
24 Property, including the deeds of trust recorded by SFC.
25

26 42. Bruin is informed and believes and therefore alleges that even if a deed(s) of trust
27 and/or other interest(s) in the Property were recorded before construction on the Property
28 commenced, those deed(s) of trust, including SFC’s, were thereafter expressly subordinated to

Bruin's statutory mechanics' lien thereby elevating Bruin's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

43. Bruin's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

44. Bruin has been required to engage the services of an attorney to collect the Outstanding Balance due and owing for the Work, and Bruin is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

45. Bruin repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

46. Prior to the events giving rise to this Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).

47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

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

49. Bruin furnished the Work as stated herein and has not been paid for the same. Bruin therefore claims payment on said Bond.

50. The CPCC Surety is obligated to pay Bruin the sums due.

51. Demand for the payment of the sums due to Bruin has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Bruin.

52. CPCC and the CPCC Surety owe Bruin the penal sum of the Bond.

1 53. Bruin was required to engage the services of an attorney to collect the Outstanding
2 Balance due and owing to Bruin and Bruin is entitled to recover its reasonable attorney's fees and
3 costs therefore.

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

6 54. Bruin repeats and realleges each and every allegation contained in the preceding
7 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
8 follows:

9 55. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as
10 CPCC), to, among other things, timely pay their subcontractors (such as Bruin), as provided in the
11 in the Statute.

12 56. In violation of the Statute, CPCC have failed and/or refused to timely pay Bruin
13 monies due and owing.

14 57. CPCC's violation of the Statute constitutes negligence per se.

15 58. By reason of the foregoing, Bruin is entitled to a judgment against CPCC in the
16 amount of the Outstanding Balance

17 59. Bruin has been required to engage the services of an attorney to collect the
18 Outstanding Balance and Bruin is entitled to recover its reasonable costs, attorney's fees and
19 interests therefore.

20 **EIGHTH CAUSE OF ACTION**
21 **(Declaratory Judgment)**

22 60. Bruin repeats and realleges each and every allegation contained in the preceding
23 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
24 follows:

1 61. Upon information and belief, Owner is the Trustor and SFC is the beneficiary
2 under the following deeds of trust covering the real property at issue:

- 3 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
4 20060705, Instrument No. 0004264;
- 5 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
6 20060705, Instrument No. 0004265;
- 7 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
8 20060705, Instrument No. 0004266; and,
- 9 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book
 20080207, Instrument No. 01482.

10 62. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination
11 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior
12 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority
13 otherwise available to SFC by law or agreement".

14 63. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that
15 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of
16 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the
17 priority of competing liens or encumbrances on the property, such as Bruin's mechanics' lien.

18 64. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to
19 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they
20 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books
21 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
22 Senior Debt Deed of Trust.

23 65. Bruin is informed and believes and therefore alleges that construction on the
24 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
25
26
27
28

1 law, all mechanics' liens, including Bruin's, enjoy a position of priority over the Senior Debt
2 Deed of Trust.

3 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
4 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
5 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
6 subordinate to all mechanics' liens, including Bruin's.
7

8 67. A dispute has arisen, and an actual controversy now exists over the priority issue
9 of Bruin's mechanics' lien over other encumbrances on the property.

10 Bruin is entitled to a court order declaring that its mechanics' lien has a superior lien position on
11 the Property over any other lien or encumbrance created by or for the benefit of SFC or any other
12 entity.
13

14 **WHEREFORE**, Bruin prays that this Honorable Court:

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

17 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
18 Bruin's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance,
19 as well as an award of interest thereon;
20

21 3. Enter a judgment declaring that Bruin has valid and enforceable mechanic's liens
22 against the Property, with priority over all Defendants, in an amount of the Outstanding Balance;

23 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable
24 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the
25 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State
26 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Bruin herein;
27
28

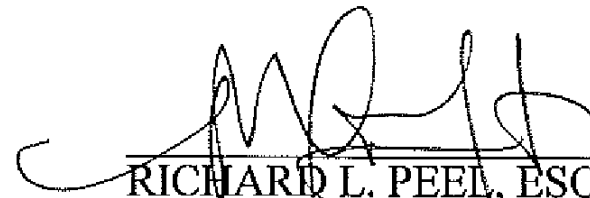
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1 5. Enter a judgment declaring that Bruin's mechanics' lien enjoys a position of
2 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
3 entity; and

4 6. For such other and further relief as this Honorable Court deems just and proper in
5 the premises.
6

7 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP


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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR
COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada
corporation; APCO CONSTRUCTION, a
Nevada corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP, a Florida
limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada
corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; JEFF HEIT PLUMBING CO, LLC,

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**HD SUPPLY WATERWORKS'
AMENDED STATEMENT OF FACTS
CONSTITUTING A NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT**

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

a Nevada limited-liability company; E & E
FIRE PROTECTION, LLC, a Nevada limited
liability company; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; OLD
REPUBLIC SURETY; PLATTE RIVER
INSURANCE COMPANY; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation ; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP ("HD Supply") by and through its attorneys PEEL
BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third-
Party Complaint ("Amended Complaint") against the above-named defendants complains, avers
and alleges as follows:

THE PARTIES

1. HD Supply is and was at all times relevant to this action a Florida limited
partnership, duly authorized, licensed and qualified to do business in Clark County, Nevada.

2. HD Supply is informed and believes and therefore alleges that Defendant
GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("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:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

1 appurtenances thereto, and surrounding space may be required for the convenient use and
2 occupation thereof, upon which Owners caused or allowed to be constructed certain
3 improvements (the "Property").

4
5 3. The whole of the Property is reasonably necessary for the convenient use and
6 occupation of the improvements.

7 4. HD Supply is informed and believes and therefore alleges that Defendant APCO
8 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
9 action doing business as a licensed contractor authorized to conduct business in Clark County,
10 Nevada.

11 5. HD Supply is informed and believes and therefore alleges that Defendant CAMCO
12 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
13 at all times relevant to this action doing business as a licensed contractor authorized to conduct
14 business in Clark County, Nevada.

15
16 6. HD Supply is informed and believes and therefore alleges that Defendant JEFF
17 HEIT PLUMBING CO, LLC, a Nevada limited-liability company ("JHPC"), is and was at all
18 times relevant to this action doing business as a licensed contractor authorized to conduct
19 business in Clark County, Nevada.

20
21 7. HD Supply is informed and believes and therefore alleges that Defendant E & E
22 FIRE PROTECTION, LLC, a Nevada limited liability company ("E&E"), is and was at all times
23 relevant to this action doing business as a licensed contractor authorized to conduct business in
24 Clark County, Nevada.

25 8. HD Supply is informed and believes and therefore alleges that Defendant,
26 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was
27 and is a bonding company licensed and qualified to do business as a surety in Nevada.
28

1 9. HD Supply is informed and believes and therefore alleges that Defendant, OLD
2 REPUBLIC SURETY (hereinafter "JHPC Surety"), was and is a bonding company licensed and
3 qualified to do business as a surety in Nevada.

4 10. HD Supply is informed and believes and therefore alleges that Defendant,
5 PLATTE RIVER INSURANCE COMPANY (hereinafter "E&E Surety"), was and is a bonding
6 company licensed and qualified to do business as a surety in Nevada.

7 11. HD Supply is informed and believes and therefore alleges that Defendant Scott
8 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
9 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
10 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
11 securing loans given to the Owner for, inter alia, development of the Property.

12 12. HD Supply does not know the true names of the individuals, corporations,
13 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE
14 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
15 LENDERS I through X. HD Supply alleges that such Defendants claim an interest in or to the
16 Properties, and/or are responsible for damages suffered by HD Supply as more fully discussed
17 under the claims for relief set forth below. HD Supply will request leave of this Honorable Court
18 to amend this Amended Complaint to show the true names and capacities of each such fictitious
19 Defendant when HD Supply discovers such information.

20
21
22
23 **FIRST CAUSE OF ACTION**
24 **(Breach of Contract – JHPC Credit Agreement)**

25 13. HD Supply repeats and realleges each and every allegation contained in the
26 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
27 alleges as follows:

1 14. In or around November 2008, HD Supply entered into a Credit Agreement (“JHPC
2 Agreement) with JHPC to provide certain plumbing related materials and supplies to the Property
3 located in Clark County, Nevada (the “JHPC Supplies”)

4 15. HD Supply furnished the JHPC Supplies for the benefit of and at the specific
5 instance and request of the JHPC.
6

7 16. Pursuant to the JHPC Agreement, HD Supply was to be paid an amount in excess
8 of Ten Thousand Dollars (\$10,000.00) (hereinafter “JHPC Outstanding Balance”) for the JHPC
9 Supplies.

10 17. HD Supply furnished the JHPC Supplies and has otherwise performed its duties
11 and obligations as required by the JHPC Agreement.

12 18. JHPC has breached the JHPC Agreement by, among other things:

13 a. Failing and/or refusing to pay the monies owed to HD Supply for the JHPC
14 Supplies;
15

16 b. Failing to adjust the JHPC Agreement price to account for extra and/or
17 changed work, as well as suspensions and delays of JHPC Supplies caused or ordered by the
18 Defendants and/or their representatives;

19 c. Failing to promptly recognize and grant time extensions to reflect additional
20 time allowable under the JHPC Agreement and permit related adjustments in scheduled
21 performance; and
22

23 d. Failing and/or refusing to comply with the JHPC Agreement and Nevada law.

24 19. HD Supply is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
25 the JHPC Supplies.
26
27
28

20. HD Supply has been required to engage the services of an attorney to collect the JHPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract – E&E Credit Agreement)

21. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22. In or around December 2008 HD Supply entered into a Credit Agreement with E&E (the "E&E Agreement") to provide certain piping, valves and related materials and supplies to the Property located in Clark County, Nevada (the "E&E Supplies")

23. HD Supply furnished the E&E Supplies for the benefit of and at the specific instance and request of E&E.

24. Pursuant to the E&E Agreement, HD Supply was to be paid an amount in excess of Ten Thousand Dollars (\$10,000.00) (hereinafter "E&E Outstanding Balance") for the E&E Supplies.

25. HD Supply furnished the E&E Supplies and has otherwise performed its duties and obligations as required by the E&E Agreement.

26. E&E has breached the E&E Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to HD Supply for the E&E Supplies;

b. Failing to adjust the E&E Agreement price to account for extra and/or changed work, as well as suspensions and delays of E&E Supplies caused or ordered by the Defendants and/or their representatives;

1 c. Failing to promptly recognize and grant time extensions to reflect additional
2 time allowable under the E&E Agreement and permit related adjustments in scheduled
3 performance; and

4 d. Failing and/or refusing to comply with the E&E Agreement and Nevada law.

5
6 27. HD Supply is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
7 the E&E Supplies.

8 28. HD Supply has been required to engage the services of an attorney to collect the
9 E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's
10 fees and interest therefore.

11
12 **THIRD CAUSE OF ACTION**
(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)

13 29. HD Supply repeats and realleges each and every allegation contained in the
14 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
15 alleges as follows:

16 30. There is a covenant of good faith and fair dealing implied in every agreement,
17 including the JHPC Agreement.

18
19 31. JHPC breached its duty to act in good faith by performing the JHPC Agreement in
20 a manner that was unfaithful to the purpose of the JHPC Agreement, thereby denying HD
21 Supply's justified expectations.

22 32. Due to the actions of JHPC, HD Supply has suffered damages in an amount to be
23 determined at trial for which HD Supply is entitled to judgment plus interest.

24 33. HD Supply has been required to engage the services of an attorney to collect the
25 JHPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's
26 fees and interest therefore.
27
28

FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)

34. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

35. There is a covenant of good faith and fair dealing implied in every agreement, including the E&E Agreement.

36. E&E breached its duty to act in good faith by performing the E&E Agreement in a manner that was unfaithful to the purpose of the E&E Agreement, thereby denying HD Supply's justified expectations.

37. Due to the actions of E&E, HD Supply has suffered damages in an amount to be determined at trial for which HD Supply is entitled to judgment plus interest.

38. HD Supply has been required to engage the services of an attorney to collect the E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

39. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

40. HD Supply furnished the JHPC Supplies and E&E Supplies for the benefit of and at the specific instance and request of the Defendants.

41. As to JHPC and E&E, this cause of action is being pled in the alternative.

42. The Defendants accepted, used and enjoyed the benefit of the JHPC Supplies and E&E Supplies.

1 43. The Defendants knew or should have known that HD Supply expected to be paid
2 for the JHPC Supplies and E&E Supplies.

3 44. HD Supply has demanded payment of the JHPC Outstanding Balance and E&E
4 Outstanding Balance.

5 45. To date, the Defendants have failed, neglected, and/or refused to pay the JHPC
6 Outstanding Balance and E&E Outstanding Balance.

7 46. The Defendants have been unjustly enriched, to the detriment of HD Supply.

8 47. HD Supply has been required to engage the services of an attorney to collect the
9 JHPC Outstanding Balance and E&E Outstanding Balance, and HD Supply is entitled to recover
10 its reasonable costs, attorney's fees and interest therefore.

11
12 **SIXTH CAUSE OF ACTION**
13 **(Foreclosure of Mechanic's Lien – JHPC Lien)**

14 48. HD Supply repeats and realleges each and every allegation contained in the
15 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
16 alleges as follows:

17 49. The provision of the JHPC Supplies was at the special instance and request of the
18 Defendants for the Property.

19 50. As provided at NRS 108.245 and common law, the Defendants had knowledge of
20 HD Supply's delivery of the JHPC Supplies to the Property or HD Supply provided a Notice of
21 Right to Lien.

22 51. HD Supply demanded payment of an amount in excess of Ten Thousand and
23 no/100 Dollars (\$10,000.00), which amount remains past due and owing.

24 52. On or about December 29, 2008, HD Supply timely recorded a Notice of Lien in
25 Book 20081229 of the Official Records of Clark County, Nevada, as Instrument No. 0000767
26 (the "JHPC Original Lien").

1 53. On or about February 4, 2009, HD Supply timely recorded an Amended Notice of
2 Lien in Book 20090204 of the Official Records of Clark County, Nevada, as Instrument No.
3 0004357 (the "JHPC Amended Lien").

4 54. The JHPC Original Lien and JHPC Amended Lien are collectively hereinafter
5 referred to as the "JHPC Liens."

6 55. The JHPC Liens were in writing and were recorded against the Property for the
7 outstanding balance due to HD Supply in the amount of Twenty-Five Thousand Four Hundred
8 Forty-One and 40/100 Dollars (\$25,441.40).

9 56. The JHPC Liens were served upon the Owner and/or its authorized agents, as
10 required by law.

11 57. HD Supply is entitled to an award of reasonable attorney's fees, costs and interest
12 on the JHPC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

13 **SEVENTH CAUSE OF ACTION**
14 **(Foreclosure of Mechanic's Lien – E&E Lien)**

15 58. HD Supply repeats and realleges each and every allegation contained in the
16 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
17 alleges as follows:
18

19 59. The provision of the E&E Supplies was at the special instance and request of the
20 Defendants for the Property.

21 60. As provided at NRS 108.245 and common law, the Defendants had knowledge of
22 HD Supply's delivery of the E&E Supplies to the Property or HD Supply provided a Notice of
23 Right to Lien.
24

25 61. HD Supply demanded payment of an amount in excess of Ten Thousand and
26 no/100 Dollars (\$10,000.00), which amount remains past due and owing.
27

1 62. On or about February 3, 2009, HD Supply timely recorded a Notice of Lien in
2 Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0004359
3 (the "E&E Lien").

4 63. The E&E Lien was in writing and was recorded against the Property for the
5 outstanding balance due to HD Supply in the amount of One Hundred Fifty-Nine Thousand Four
6 Hundred Seventy-Eight and 55/100 Dollars (\$159,478.55).

7 64. The E&E Lien was served upon the Owner and/or its authorized agents, as
8 required by law.
9

10 65. HD Supply is entitled to an award of reasonable attorney's fees, costs and interest
11 on the E&E Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.
12

13 **EIGHTH CAUSE OF ACTION**
14 **(Claim of Priority)**

15 66. HD Supply repeats and realleges each and every allegation contained in the
16 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
17 alleges as follows:

18 67. HD Supply is informed and believes and therefore alleges that construction on the
19 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
20 Property, including the deeds of trust recorded by SFC.

21 68. HD Supply is informed and believes and therefore alleges that even if a deed(s) of
22 trust and/or other interest(s) in the Property were recorded before construction on the Property
23 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to
24 HD Supply's statutory mechanics' lien thereby elevating HD Supply's statutory mechanics' lien
25 to a position superior to those deed(s) of trust and/or other interests(s) in the Property.
26

27 69. HD Supply's claim against the Property is superior to the claim(s) of SFC, any
28 other defendant, and/or any Loe Lender.

1 70. HD Supply has been required to engage the services of an attorney to collect the
2 JHPC Outstanding Balance due and owing for the JHPC Supplies and the E&E Outstanding
3 Balance due and owing for the E&E Supplies, and HD Supply is entitled to recover its reasonable
4 costs, attorney's fees and interest therefore.
5

6 **NINTH CAUSE OF ACTION**
7 **(Claim Against Bond – CPCC Surety)**

8 71. HD Supply repeats and realleges each and every allegation contained in the
9 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
10 alleges as follows:

11 72. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued
12 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
13 (\$50,000.00).
14

15 73. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

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

18 75. HD Supply furnished the E&E Supplies as stated herein and has not been paid for
19 the same. HD Supply therefore claims payment on said Bond.

20 76. The CPCC Surety is obligated to pay HD Supply the sums due.

21 77. Demand for the payment of the sums due to HD Supply has been made, but CPCC
22 and the CPCC Surety have failed, neglected and refused to pay the same to HD Supply.

23 78. CPCC and the CPCC Surety owe HD Supply the penal sum of the Bond.

24 79. HD Supply was required to engage the services of an attorney to collect the E&E
25 Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its
26 reasonable attorney's fees and costs therefore.
27
28

TENTH CAUSE OF ACTION
(Claim Against Bond – JHPC Surety)

80. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Prior to the events giving rise to this Amended Complaint, the JHPC Surety issued License Bond No. 1225706 (hereinafter the "Bond") in the sum of Five Thousand Dollars (\$5,000.00).

82. JHPC is named as principal and JHPC Surety is named as surety on the Bond.

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

84. HD Supply furnished the JHPC Supplies as stated herein and has not been paid for the same. HD Supply therefore claims payment on said Bond.

85. The JHPC Surety is obligated to pay HD Supply the sums due.

86. Demand for the payment of the sums due to HD Supply has been made, but JHPC and the JHPC Surety have failed, neglected and refused to pay the same to HD Supply.

87. JHPC and the JHPC Surety owe HD Supply the penal sum of the Bond.

88. HD Supply was required to engage the services of an attorney to collect the JHPC Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its reasonable attorney's fees and costs therefore.

ELEVENTH CAUSE OF ACTION
(Claim Against Bond – E&E Surety)

89. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

1 90. Prior to the events giving rise to this Amended Complaint, the E&E Surety issued
2 License Bond No. 41104547 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
3 (\$50,000.00).

4 91. E&E is named as principal and E&E Surety is named as surety on the Bond.

5 92. The Bond was provided pursuant to the requirements of NRS 624.270, which
6 Bond was in force during all times relevant to this action.
7

8 93. HD Supply furnished the E&E Supplies as stated herein and has not been paid for
9 the same. HD Supply therefore claims payment on said Bond.

10 94. The E&E Surety is obligated to pay HD Supply the sums due.

11 95. Demand for the payment of the sums due to HD Supply has been made, but E&E
12 and the E&E Surety have failed, neglected and refused to pay the same to HD Supply.
13

14 96. E&E and the E&E Surety owe HD Supply the penal sum of the Bond.

15 97. HD Supply was required to engage the services of an attorney to collect the E&E
16 Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its
17 reasonable attorney's fees and costs therefore.
18

19 **TWELFTH CAUSE OF ACTION**
20 **(Declaratory Judgment)**

21 98. HD Supply repeats and realleges each and every allegation contained in the
22 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
23 alleges as follows:

24 99. Upon information and belief, Owner is the Trustor and SFC is the beneficiary
25 under the following deeds of trust covering the real property at issue:

26 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
27 20060705, Instrument No. 0004264;

28 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
 20060705, Instrument No. 0004265;

1
2 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
20060705, Instrument No. 0004266; and,

3
4 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book
20080207, Instrument No. 01482.

5 100. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination
6 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior
7 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority
8 otherwise available to SFC by law or agreement".
9

10 101. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that
11 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of
12 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the
13 priority of competing liens or encumbrances on the property, such as HD Supply's mechanics'
14 lien.
15

16 102. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to
17 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they
18 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books
19 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
20 Senior Debt Deed of Trust.

21 103. HD Supply is informed and believes and therefore alleges that construction on the
22 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
23 law, all mechanics' liens, including HD Supply's, enjoy a position of priority over the Senior
24 Debt Deed of Trust.
25

26 104. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
27 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
28

1 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
2 subordinate to all mechanics' liens, including HD Supply's.

3 105. A dispute has arisen, and an actual controversy now exists over the priority issue
4 of HD Supply's mechanics' lien over other encumbrances on the property.

5 106. HD Supply is entitled to a court order declaring that its mechanics' lien has a
6 superior lien position on the Property over any other lien or encumbrance created by or for the
7 benefit of SFC or any other entity.

8 **WHEREFORE**, HD Supply prays that this Honorable Court:

9 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
10 the JHPC Outstanding Balance and E&E Outstanding Balance amounts;

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

14 3. Enter a judgment declaring that HD Supply has valid and enforceable mechanic's
15 liens against the Property, with priority over all Defendants, in an amount of the JHPC
16 Outstanding Balance and E&E Outstanding Balance;

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

22 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of
23 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
24 entity; and

6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

RICHARD E. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

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CLERK OF THE COURT

1 **STMT**
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3 Nevada Bar No. 4359
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15 dwayment@peelbrimley.com
16 *Attorneys for Heinaman Contract Glazing*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 **ACCURACY GLASS & MIRROR**
12 **COMPANY, INC., a Nevada corporation,**

13 **Plaintiff,**

14 **vs.**

15 **ASPHALT PRODUCTS CORP., a Nevada**
16 **corporation; APCO CONSTRUCTION, a**
17 **Nevada corporation; CAMCO PACIFIC**
18 **CONSTRUCTION COMPANY, INC., a**
19 **California corporation; GEMSTONE**
20 **DEVELOPMENT WEST, INC., Nevada**
21 **corporation; FIDELITY AND DEPOSIT**
22 **COMPANY OF MARYLAND; SCOTT**
23 **FINANCIAL CORPORATION, a North Dakota**
24 **corporation; DOES I through X; ROE**
25 **CORPORATIONS I through X; BOE**
26 **BONDING COMPANIES I through X; LOE**
27 **LENDERS I through X, inclusive,**

28 **Defendants.**

HEINAMAN CONTRACT GLAZING, a
California corporation,

Plaintiff in Intervention,

vs.

CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation;
GEMSTONE DEVELOPMENT WEST, INC.,
Nevada corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND;
SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; DOES I through X;
ROE CORPORATIONS I through X; BOE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

HEINAMAN CONTRACT GLAZING'S
AMENDED STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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HENDERSON, NEVADA 89074
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BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,
Defendants.

HEINAMAN CONTRACT GLAZING ("Heinaman") by and through its attorneys PEEL
BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third
Party Complaint ("Amended Complaint") against the above-named defendants complains, avers
and alleges as follows:

THE PARTIES

1. Heinaman is and was at all times relevant to this action a California corporation,
duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada
State Contractor's license, which license is in good standing.

2. Heinaman is informed and believes and therefore alleges that Defendant
GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("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:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
001 thru 163-32-112-246) 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 Owners caused or allowed to be constructed certain
improvements (the "Property").

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

3 4. Heinaman is informed and believes and therefore alleges that Defendant CAMCO
4 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
5 at all times relevant to this action doing business as a licensed contractor authorized to conduct
6 business in Clark County, Nevada.

7 5. Heinaman is informed and believes and therefore alleges that Defendant,
8 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was
9 and is a bonding company licensed and qualified to do business as a surety in Nevada.

10 6. Heinaman is informed and believes and therefore alleges that Defendant Scott
11 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
12 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
13 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
14 securing loans given to the Owner for, inter alia, development of the Property.

15 7. Heinaman does not know the true names of the individuals, corporations,
16 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE
17 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
18 LENDERS I through X. Heinaman alleges that such Defendants claim an interest in or to the
19 Properties, and/or are responsible for damages suffered by Heinaman as more fully discussed
20 under the claims for relief set forth below. Heinaman will request leave of this Honorable Court
21 to amend this Amended Complaint to show the true names and capacities of each such fictitious
22 Defendant when Heinaman discovers such information.

23 ///

24 ///

FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

8. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

9. In or around November 4, 2008, Heinaman entered into the Subcontract Agreement ("CPCC Agreement") with CPCC, to provide certain glass and glazing related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada.

10. Heinaman furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

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

12. Heinaman furnished the Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

13. CPCC has breached the CPCC Agreement by, among other things:

- a. Failing and/or refusing to pay the monies owed to Heinaman for the Work;
 - b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or their representatives;
 - c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;
 - d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
- and

1 e. Negligently or intentionally preventing, obstructing, hindering or interfering
2 with Heinaman's performance of the Work.

3 14. Heinaman is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
4 the Work.

5 15. Heinaman has been required to engage the services of an attorney to collect the
6 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and
7 interest therefore.
8

9 **SECOND CAUSE OF ACTION**
10 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

11 16. Heinaman repeats and realleges each and every allegation contained in the
12 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
13 alleges as follows:

14 17. There is a covenant of good faith and fair dealing implied in every agreement,
15 including the CPCC Agreement.

16 18. CPCC breached its duty to act in good faith by performing the CPCC Agreement
17 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying
18 Heinaman's justified expectations.

19 19. Due to the actions of CPCC, Heinaman suffered damages in an amount to be
20 determined at trial for which Heinaman is entitled to judgment plus interest.

21 20. Heinaman has been required to engage the services of an attorney to collect the
22 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and
23 interest therefore.
24

25 ///

26 ///

27 ///

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

21. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22. Heinaman furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Heinaman expected to be paid for the Work.

26. Heinaman has demanded payment of the Outstanding Balance.

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

28. The Defendants have been unjustly enriched, to the detriment of Heinaman.

29. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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

30. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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

1 32. As provided at NRS 108.245 and common law, the Defendants had knowledge of
2 Heinaman's delivery of the Work to the Property or Heinaman provided a Notice of Right to
3 Lien.

4 33. Heinaman demanded payment of an amount in excess of Ten Thousand and
5 no/100 Dollars (\$10,000.00), which amount remains past due and owing.
6

7 34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book
8 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the
9 "Original Lien").

10 35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien
11 in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355
12 (the "Amended Lien").
13

14 36. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

15 37. The Liens were in writing and were recorded against the Property for the
16 outstanding balance due to Heinaman in the amount of One Hundred Eighty-Seven Thousand
17 Five Hundred Twenty-Five and 26/100 Dollars (\$187,525.26).

18 38. The Liens were served upon the Owner and/or its authorized agents, as required by
19 law.
20

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

23 **FIFTH CAUSE OF ACTION**
24 **(Claim of Priority)**

25 40. Heinaman repeats and realleges each and every allegation contained in the
26 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
27 alleges as follows:
28

1 41. Heinaman is informed and believes and therefore alleges that construction on the
2 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
3 Property, including the deeds of trust recorded by SFC.

4 42. Heinaman is informed and believes and therefore alleges that even if a deed(s) of
5 trust and/or other interest(s) in the Property were recorded before construction on the Property
6 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to
7 Heinaman's statutory mechanics' lien thereby elevating Heinaman's statutory mechanics' lien to
8 a position superior to those deed(s) of trust and/or other interests(s) in the Property.
9

10 43. Heinaman's claim against the Property is superior to the claim(s) of SFC, any
11 other defendant, and/or any Loe Lender.

12 44. Heinaman has been required to engage the services of an attorney to collect the
13 Outstanding Balance due and owing for the Work, and Heinaman is entitled to recover its
14 reasonable costs, attorney's fees and interest therefore.
15

16 **SIXTH CAUSE OF ACTION**
17 **(Claim Against Bond – CPCC Surety)**

18 45. Heinaman repeats and realleges each and every allegation contained in the
19 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
20 alleges as follows:

21 46. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued
22 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
23 (\$50,000.00).
24

25 47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

26 48. The Bond was provided pursuant to the requirements of NRS 624.270, which
27 Bond was in force during all times relevant to this action.
28

1 49. Heinaman furnished the Work as stated herein and has not been paid for the same.
2 Heinaman therefore claims payment on said Bond.

3 50. The CPCC Surety is obligated to pay Heinaman the sums due.

4 51. Demand for the payment of the sums due to Heinaman has been made, but CPCC
5 and the CPCC Surety have failed, neglected and refused to pay the same to Heinaman.

6 52. CPCC and the CPCC Surety owe Heinaman the penal sum of the Bond.

7 53. Heinaman was required to engage the services of an attorney to collect the
8 Outstanding Balance due and owing to Heinaman and Heinaman is entitled to recover its
9 reasonable attorney's fees and costs therefore.
10

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

13 54. Heinaman repeats and realleges each and every allegation contained in the
14 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
15 alleges as follows:

16 55. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as
17 CPCC), to, among other things, timely pay their subcontractors (such as Heinaman), as provided
18 in the in the Statute.

19 56. In violation of the Statute, CPCC have failed and/or refused to timely pay
20 Heinaman monies due and owing.

21 57. CPCC's violation of the Statute constitutes negligence per se.

22 58. By reason of the foregoing, Heinaman is entitled to a judgment against CPCC in
23 the amount of the Outstanding Balance
24

25 59. Heinaman has been required to engage the services of an attorney to collect the
26 Outstanding Balance and Heinaman is entitled to recover its reasonable costs, attorney's fees and
27 interests therefore.
28

EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

60. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

61. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

62. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

63. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Heinaman's mechanics' lien.

64. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
2 Senior Debt Deed of Trust.

3 65. Heinaman is informed and believes and therefore alleges that construction on the
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
5 law, all mechanics' liens, including Heinaman's, enjoy a position of priority over the Senior Debt
6 Deed of Trust.

7
8 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Heinaman's.

12 67. A dispute has arisen, and an actual controversy now exists over the priority issue
13 of Heinaman's mechanics' lien over other encumbrances on the property.

14 68. Heinaman is entitled to a court order declaring that its mechanics' lien has a
15 superior lien position on the Property over any other lien or encumbrance created by or for the
16 benefit of SFC or any other entity.

17
18 **WHEREFORE**, Heinaman prays that this Honorable Court:

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

21 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
22 Heinaman's reasonable costs and attorney's fees incurred in the collection of the Outstanding
23 Balance, as well as an award of interest thereon;

24 3. Enter a judgment declaring that Heinaman has valid and enforceable mechanic's
25 liens against the Property, with priority over all Defendants, in an amount of the Outstanding
26 Balance;
27
28

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

1 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable
2 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the
3 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State
4 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Heinaman
5 herein;
6

7 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
9 entity; and

10 6. For such other and further relief as this Honorable Court deems just and proper in
11 the premises.

12 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP


RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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Attorneys for Heinaman Contract Glazing


CLERK OF THE COURT

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Attorneys for Helix Electric of Nevada, LLC d/b/a Helix Electric

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR
COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada
corporation; APCO CONSTRUCTION, a
Nevada corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

Defendants.

HELIX ELECTRIC OF NEVADA, LLC, a
Nevada limited-liability company, d/b/a HELIX
ELECTRIC,

Plaintiff in Intervention,

vs.

ASPHALT PRODUCTS CORP., a Nevada
corporation; APCO CONSTRUCTION, a
Nevada corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**HELIX ELECTRIC'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT**

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

PEEL BRIMLEY LLP
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1 DEVELOPMENT WEST, INC., Nevada
2 corporation; FIDELITY AND DEPOSIT
3 COMPANY OF MARYLAND; SCOTT
4 FINANCIAL CORPORATION, a North Dakota
5 corporation; DOES I through X; ROE
6 CORPORATIONS I through X; BOE
7 BONDING COMPANIES I through X; LOE
8 LENDERS I through X, inclusive,
9
10 Defendants.

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HELIX ELECTRIC OF NEVADA, LLC d/b/a HELIX ELECTRIC ("Helix") by and
through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting
a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named
defendants complains, avers and alleges as follows:

THE PARTIES

1. Helix is and was at all times relevant to this action a Nevada limited-liability
company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding
a Nevada State Contractor's license, which license is in good standing.

2. Helix is informed and believes and therefore alleges that Defendant GEMSTONE
DEVELOPMENT WEST, INC., Nevada corporation ("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:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

1 appurtenances thereto, and surrounding space may be required for the convenient use and
2 occupation thereof, upon which Owners caused or allowed to be constructed certain
3 improvements (the "Property").

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

6 4. Helix is informed and believes and therefore alleges that Defendant APCO
7 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
8 action doing business as a licensed contractor authorized to conduct business in Clark County,
9 Nevada. APCO may also be known as Asphalt Products Company.

10 5. Helix is informed and believes and therefore alleges that Defendant CAMCO
11 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
12 at all times relevant to this action doing business as a licensed contractor authorized to conduct
13 business in Clark County, Nevada.

14 6. Helix is informed and believes and therefore alleges that Defendant, FIDELITY
15 AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a
16 bonding company licensed and qualified to do business as a surety in Nevada.

17 7. Helix is informed and believes and therefore alleges that Defendant Scott Financial
18 Corporation ("SFC") is a North Dakota corporation with its principle place of business in
19 Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
20 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
21 securing loans given to the Owner for, inter alia, development of the Property.

22 8. Helix does not know the true names of the individuals, corporations, partnerships
23 and entities sued and identified in fictitious names as DOES I through X, ROE
24 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE

1 LENDERS I through X. Helix alleges that such Defendants claim an interest in or to the
2 Properties, and/or are responsible for damages suffered by Helix as more fully discussed under
3 the claims for relief set forth below. Helix will request leave of this Honorable Court to amend
4 this Amended Complaint to show the true names and capacities of each such fictitious Defendant
5 when Helix discovers such information.
6

7 **FIRST CAUSE OF ACTION**
8 **(Breach of Contract against APCO)**

9 9. Helix repeats and realleges each and every allegation contained in the preceding
10 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
11 follows:

12 10. On or about April 17, 2007 Helix entered into an Agreement with APCO (the
13 "APCO Agreement") to provide certain electrical related work, materials and equipment (the
14 "APCO Work") for the Property located in Clark County, Nevada.

15 11. Helix furnished the APCO Work for the benefit of and at the specific instance and
16 request of APCO and/or Owner.
17

18 12. Pursuant to the APCO Agreement, Helix was to be paid an amount in excess of
19 Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO
20 Work.

21 13. Helix furnished the APCO Work and has otherwise performed its duties and
22 obligations as required by the APCO Agreement.

23 14. APCO has breached the APCO Agreement by, among other things:

- 24 a. Failing and/or refusing to pay the monies owed to Helix for the APCO Work;
25 b. Failing to adjust the APCO Agreement price to account for extra and/or
26 changed work, as well as suspensions and delays of APCO Work caused or ordered by the
27 Defendants and/or their representatives;
28

1 c. Failing to promptly recognize and grant time extensions to reflect additional
2 time allowable under the APCO Agreement and permit related adjustments in scheduled
3 performance;

4 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law;
5 and
6

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering
8 with Helix's performance of the APCO Work.

9 15. Helix is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
10 APCO Work.

11 16. Helix has been required to engage the services of an attorney to collect the APCO
12 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
13 interest therefore.
14

15 **SECOND CAUSE OF ACTION**
16 **(Breach of Contract against CPCC)**

17 17. Helix repeats and realleges each and every allegation contained in the preceding
18 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
19 follows:

20 18. On or about September 4, 2008, Helix entered into the Ratification and
21 Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO
22 as the general contractor on the Project, to continue the work for the Property ("CPCC Work").

23 19. Helix furnished the CPCC Work for the benefit of and at the specific instance and
24 request of CPCC and/or Owner.
25

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

1 21. Helix furnished the CPCC Work and has otherwise performed its duties and
2 obligations as required by the CPCC Agreement.

3 22. CPCC has breached the CPCC Agreement by, among other things:
4 a. Failing and/or refusing to pay the monies owed to Helix for the CPCC Work;
5 b. Failing to adjust the CPCC Agreement price to account for extra and/or
6 changed work, as well as suspensions and delays of CPCC Work caused or ordered by the
7 Defendants and/or their representatives;
8 c. Failing to promptly recognize and grant time extensions to reflect additional
9 time allowable under the CPCC Agreement and permit related adjustments in scheduled
10 performance;
11 d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
12 and
13 e. Negligently or intentionally preventing, obstructing, hindering or interfering
14 with Helix's performance of the CPCC Work.
15

16 23. Helix is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
17 CPCC Work.
18

19 24. Helix has been required to engage the services of an attorney to collect the CPCC
20 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
21 interest therefore.
22

23 **THIRD CAUSE OF ACTION**
24 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

25 25. Helix repeats and realleges each and every allegation contained in the preceding
26 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
27 follows:
28

1 26. There is a covenant of good faith and fair dealing implied in every agreement,
2 including the APCO Agreement.

3 27. APCO breached its duty to act in good faith by performing the APCO Agreement
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Helix's
5 justified expectations.
6

7 28. Due to the actions of APCO, Helix suffered damages in an amount to be
8 determined at trial for which Helix is entitled to judgment plus interest.

9 29. Helix has been required to engage the services of an attorney to collect the APCO
10 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
11 interest therefore.
12

13 **FOURTH CAUSE OF ACTION**
14 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

15 30. Helix repeats and realleges each and every allegation contained in the preceding
16 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
17 follows:

18 31. There is a covenant of good faith and fair dealing implied in every agreement,
19 including the CPCC Agreement.

20 32. CPCC breached its duty to act in good faith by performing the CPCC Agreement
21 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Helix's
22 justified expectations
23

24 33. Due to the actions of CPCC, Helix suffered damages in an amount to be
25 determined at trial for which Helix is entitled to judgment plus interest.

26 34. Helix has been required to engage the services of an attorney to collect the CPCC
27 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and
28 interest therefore.

FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

35. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

36. Helix furnished the APCO Work and the CPCC Work for the benefit of and at the specific instance and request of the Defendants.

37. As to APCO and CPCC, this cause of action is being pled in the alternative.

38. The Defendants accepted, used and enjoyed the benefit of the APCO Work and CPCC Work.

39. The Defendants knew or should have known that Helix expected to be paid for the APCO Work and CPCC Work.

40. Helix has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Helix.

43. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

44. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

1 45. The provision of the Work was at the special instance and request of the
2 Defendants for the Property.

3 46. As provided at NRS 108.245 and common law, the Defendants had knowledge of
4 Helix's delivery of the APCO Work and CPCC Work to the Property or Helix provided a Notice
5 of Right to Lien.
6

7 47. Helix demanded payment of an amount in excess of Ten Thousand and no/100
8 Dollars (\$10,000.00), which amount remains past due and owing.

9 48. On or about January 12, 2009, Helix timely recorded a Notice of Lien in Book
10 20090112 of the Official Records of Clark County, Nevada, as Instrument No. 0002864 (the
11 "Original Lien").

12 49. On or about January 29, 2009, Helix timely recorded an Amended Notice of Lien
13 in Book 20090129 of the Official Records of Clark County, Nevada, as Instrument No. 0000237
14 (the "Amended Lien").
15

16 50. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

17 51. The Liens were in writing and were recorded against the Property for the
18 outstanding balance due to Helix in the amount of Three Million One Hundred Eighty-Six
19 Thousand One Hundred Two and 67/100 Dollars (\$3,186,102.67).
20

21 52. The Liens were served upon the Owner and/or its authorized agents, as required by
22 law.

23 53. Helix is entitled to an award of reasonable attorney's fees, costs and interest on the
24 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the
25 Nevada Revised Statutes.

26 ///

27 ///

SEVENTH CAUSE OF ACTION
(Claim of Priority)

54. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

55. Helix is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

56. Helix is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Helix's statutory mechanics' lien thereby elevating Helix's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

57. Helix's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

58. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Work due and owing for the APCO Work and CPCC Work, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

EIGHTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

59. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

1 60. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued
2 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
3 (\$50,000.00).

4 61. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

5 62. The Bond was provided pursuant to the requirements of NRS 624.270, which
6 Bond was in force during all times relevant to this action.
7

8 63. Helix furnished the CPCC Work as stated herein and has not been paid for the
9 same. Helix therefore claims payment on said Bond.

10 64. The CPCC Surety is obligated to pay Helix the sums due.

11 65. Demand for the payment of the sums due to Helix has been made, but CPCC and
12 the CPCC Surety have failed, neglected and refused to pay the same to Helix.
13

14 66. CPCC and the CPCC Surety owe Helix the penal sum of the Bond.

15 67. Helix was required to engage the services of an attorney to collect the CPCC
16 Outstanding Balance due and owing to Helix and Helix is entitled to recover its reasonable
17 attorney's fees and costs therefore.
18

19 **NINTH CAUSE OF ACTION**
 (Violation of NRS 624 - APCO)

20 68. Helix repeats and realleges each and every allegation contained in the preceding
21 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
22 follows:
23

24 69. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as
25 APCO), to, among other things, timely pay their subcontractors (such as Helix), as provided in
26 the in the Statute.

27 70. In violation of the Statute, APCO have failed and/or refused to timely pay Helix
28 monies due and owing.

1 71. APCO's violation of the Statute constitutes negligence per se.

2 72. By reason of the foregoing, Helix is entitled to a judgment against APCO in the
3 amount of the APCO Outstanding Balance.

4 73. Helix has been required to engage the services of an attorney to collect the APCO
5 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and
6 interests therefore.
7

8 **TENTH CAUSE OF ACTION**
9 **(Violation of NRS 624 - CPCC)**

10 74. Helix repeats and realleges each and every allegation contained in the preceding
11 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

12 75. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors such as
13 CPCC to, among other things, timely pay their subcontractors (such as Helix), as provided in the
14 in the Statute.

15 76. In violation of the Statute, CPCC failed and/or refused to timely pay Helix monies
16 due and owing.

17 77. CPCC's violation of the Statute constitutes negligence per se.

18 78. By reason of the foregoing, Helix is entitled to a judgment against CPCC in the
19 amount of the CPCC Outstanding Balance
20

21 79. Helix has been required to engage the services of an attorney to collect the CPCC
22 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and
23 interests therefore.

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- Helix Electric of NV\056 - APCO [Manhattan
West]\PX\Originals\090622 Helix Amd Stmt of

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

80. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

83. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Helix's mechanics' lien.

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
2 Senior Debt Deed of Trust.

3 85. Helix is informed and believes and therefore alleges that construction on the
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
5 law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt
6 Deed of Trust.

7
8 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Helix's.

12
13 87. A dispute has arisen, and an actual controversy now exists over the priority issue
14 of Helix's mechanics' lien over other encumbrances on the property.

15 88. Helix is entitled to a court order declaring that its mechanics' lien has a superior
16 lien position on the Property over any other lien or encumbrance created by or for the benefit of
17 SFC or any other entity.

18 **WHEREFORE**, Helix prays that this Honorable Court:

19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
20 the APCO Outstanding Balance and CPCC Outstanding Balance amounts;

21 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
22 Helix's reasonable costs and attorney's fees incurred in the collection of the APCO Outstanding
23 Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

24 3. Enter a judgment declaring that Helix has valid and enforceable mechanic's liens
25 against the Property, with priority over all Defendants, in an amount of the APCO Outstanding
26 Balance and CPCC Outstanding Balance;
27
28

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3333 E. SERENE AVENUE, STE. 200
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1 4. Adjudge a lien upon the Property for the APCO Outstanding Balance and CPCC
2 Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this
3 Honorable Court enter an Order that the Property, and improvements, such as may be necessary,
4 be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied
5 to the payment of sums due Helix herein;
6

7 5. Enter a judgment declaring that Helix' mechanics' lien enjoys a position of
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
9 entity; and

10 6. For such other and further relief as this Honorable Court deems just and proper in
11 the premises.

12 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP



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Nevada Bar No. 4359

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Attorneys for Helix Electric of Nevada, LLC

d/b/a Helix Electric


CLERK OF THE COURT

1 **STMT**
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16 *Attorneys for WRG Design, Inc.*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 **ACCURACY GLASS & MIRROR**
12 **COMPANY, INC., a Nevada corporation,**

13 Plaintiff,

14 vs.

15 **ASPHALT PRODUCTS CORP., a Nevada**
16 **corporation; APCO CONSTRUCTION, a**
17 **Nevada corporation; CAMCO PACIFIC**
18 **CONSTRUCTION COMPANY, INC., a**
19 **California corporation; GEMSTONE**
20 **DEVELOPMENT WEST, INC., Nevada**
21 **corporation; FIDELITY AND DEPOSIT**
22 **COMPANY OF MARYLAND; SCOTT**
23 **FINANCIAL CORPORATION, a North Dakota**
24 **corporation; DOES I through X; ROE**
25 **CORPORATIONS I through X; BOE**
26 **BONDING COMPANIES I through X; LOE**
27 **LENDERS I through X, inclusive,**

28 Defendants.

23 **WRG DESIGN, INC., a Delaware corporation,**

24 Plaintiff in Intervention,

25 vs.

26 **ASPHALT PRODUCTS CORP., a Nevada**
27 **corporation; APCO CONSTRUCTION, a**
28 **Nevada corporation; CAMCO PACIFIC**
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

WRG DESIGN, INC.'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

PEEL BRIMLEY LLP
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1 DEVELOPMENT WEST, INC., Nevada
2 corporation; FIDELITY AND DEPOSIT
3 COMPANY OF MARYLAND; SCOTT
4 FINANCIAL CORPORATION, a North Dakota
5 corporation; DOES I through X; ROE
6 CORPORATIONS I through X; BOE
7 BONDING COMPANIES I through X; LOE
8 LENDERS I through X, inclusive,

Defendants.

9 WRG DESIGN, INC. ("WRG") by and through its attorneys PEEL BRIMLEY LLP, as
10 for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint
11 ("Amended Complaint") against the above-named defendants complains, avers and alleges as
12 follows:

13 THE PARTIES

14 1. WRG is and was at all times relevant to this action a Delaware corporation, duly
15 authorized, licensed and qualified to do business in Clark County, Nevada.

16 2. WRG is informed and believes and therefore alleges that Defendant GEMSTONE
17 DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant
18 to this action, the owner, reputed owner, or the person, individual and/or entity who claims an
19 ownership interest in that certain real property portions thereof located in Clark County, Nevada
20 and more particularly described as follows:

21 Manhattan West Condominiums (Project)
22 Spring Valley
23 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
24 PT N2 NW4 SEC 32 21 60
25 SEC 32 TWP 21 RNG 60

26 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
27 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
28 001 thru 163-32-112-246) including all easements, rights-of-way, common areas and
appurtenances thereto, and surrounding space may be required for the convenient use and

1 occupation thereof, upon which Owners caused or allowed to be constructed certain
2 improvements (the "Property").

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

5 4. WRG is informed and believes and therefore alleges that Defendant APCO
6 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
7 action doing business as a licensed contractor authorized to conduct business in Clark County,
8 Nevada. APCO may also be known as Asphalt Products Company.

9 5. WRG is informed and believes and therefore alleges that Defendant CAMCO
10 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
11 at all times relevant to this action doing business as a licensed contractor authorized to conduct
12 business in Clark County, Nevada.

13 6. WRG is informed and believes and therefore alleges that Defendant, FIDELITY
14 AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a
15 bonding company licensed and qualified to do business as a surety in Nevada.

16 7. WRG is informed and believes and therefore alleges that Defendant Scott
17 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
18 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
19 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
20 securing loans given to the Owner for, inter alia, development of the Property.

21 8. WRG does not know the true names of the individuals, corporations, partnerships
22 and entities sued and identified in fictitious names as DOES I through X, ROE
23 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
24 LENDERS I through X. WRG alleges that such Defendants claim an interest in or to the
25
26
27
28

1 Properties, and/or are responsible for damages suffered by WRG as more fully discussed under
2 the claims for relief set forth below. WRG will request leave of this Honorable Court to amend
3 this Amended Complaint to show the true names and capacities of each such fictitious Defendant
4 when WRG discovers such information.

5
6 **FIRST CAUSE OF ACTION**
(Breach of Contract against Owner)

7 9. WRG repeats and realleges each and every allegation contained in the preceding
8 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
9 follows:
10

11 10. On or about July 31, 2006 WRG entered into an Agreement with Owner (the
12 "Owner Agreement") to provide certain surveying and mapping related work, materials and
13 equipment to the Property located in Clark County, Nevada (the "Owner Services")

14 11. WRG furnished the Services for the benefit of and at the specific instance and
15 request of the Owner.

16 12. Pursuant to the Owner Agreement, WRG was to be paid an amount in excess of
17 Ten Thousand Dollars (\$10,000.00) (hereinafter "Owner Outstanding Balance") for the Owner
18 Services.
19

20 13. WRG furnished the Owner Services and has otherwise performed its duties and
21 obligations as required by the Owner Agreement.

22 14. The Owner has breached the Owner Agreement by, among other things:

23 a. Failing and/or refusing to pay the monies owed to WRG for the Owner
24 Services;
25

26 b. Failing to adjust the Owner Agreement price to account for extra and/or
27 changed work, as well as suspensions and delays of Owner Services caused or ordered by the
28 Defendants and/or their representatives;

1 c. Failing to promptly recognize and grant time extensions to reflect additional
2 time allowable under the Owner Agreement and permit related adjustments in scheduled
3 performance;

4 d. Failing and/or refusing to comply with the Owner Agreement and Nevada law;
5 and
6

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering
8 with WRG's performance of the Owner Services.

9 15. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
10 Owner Services.

11 16. WRG has been required to engage the services of an attorney to collect the Owner
12 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
13 interest therefore.
14

15 **SECOND CAUSE OF ACTION**
16 **(Breach of Contract against APCO)**

17 17. WRG repeats and realleges each and every allegation contained in the preceding
18 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
19 follows:

20 18. On or about April 17, 2007 WRG entered into an Agreement with APCO (the
21 "APCO Agreement") to provide certain surveying and mapping related work, materials and
22 equipment to the Property located in Clark County, Nevada (the "APCO Services")

23 19. WRG furnished the APCO Services for the benefit of and at the specific instance
24 and request of APCO and/or Owner.
25

26 20. Pursuant to the APCO Agreement, WRG was to be paid an amount in excess of
27 Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO
28 Services.

1 21. WRG furnished the APCO Services and has otherwise performed its duties and
2 obligations as required by the APCO Agreement.

3 22. APCO has breached the APCO Agreement by, among other things:

4 a. Failing and/or refusing to pay the monies owed to WRG for the APCO
5 Services;

6 b. Failing to adjust the APCO Agreement price to account for extra and/or
7 changed work, as well as suspensions and delays of APCO Services caused or ordered by the
8 Defendants and/or their representatives;

9 c. Failing to promptly recognize and grant time extensions to reflect additional
10 time allowable under the APCO Agreement and permit related adjustments in scheduled
11 performance;

12 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law;
13 and

14 e. Negligently or intentionally preventing, obstructing, hindering or interfering
15 with WRG's performance of the APCO Services.

16 23. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
17 APCO Services.

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

21 **THIRD CAUSE OF ACTION**
22 **(Breach of Contract against CPCC)**

23 25. WRG repeats and realleges each and every allegation contained in the preceding
24 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
25 follows:

1 26. On or about August 26, 2008, WRG entered into the Ratification and Amendment
2 of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general
3 contractor on the Project, to continue the services for the Property ("CPCC Services").

4 27. WRG furnished the CPCC Services for the benefit of and at the specific instance
5 and request of CPCC and/or Owner.

6 28. Pursuant to the CPCC Agreement, WRG was to be paid an amount in excess of
7 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC
8 Services.

9 29. WRG furnished the CPCC Services and has otherwise performed its duties and
10 obligations as required by the CPCC Agreement.

11 30. CPCC has breached the CPCC Agreement by, among other things:

12 a. Failing and/or refusing to pay the monies owed to WRG for the CPCC
13 Services;

14 b. Failing to adjust the CPCC Agreement price to account for extra and/or
15 changed work, as well as suspensions and delays of CPCC Services caused or ordered by the
16 Defendants and/or their representatives;

17 c. Failing to promptly recognize and grant time extensions to reflect additional
18 time allowable under the CPCC Agreement and permit related adjustments in scheduled
19 performance;

20 d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
21 and

22 e. Negligently or intentionally preventing, obstructing, hindering or interfering
23 with WRG's performance of the CPCC Services.
24
25
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27
28

1 31. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
2 CPCC Services.

3 32. WRG has been required to engage the services of an attorney to collect the CPCC
4 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
5 interest therefore.
6

7 **FOURTH CAUSE OF ACTION**
8 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)**

9 33. WRG repeats and realleges each and every allegation contained in the preceding
10 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
11 follows:

12 34. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the Owner Agreement.

14 35. Owner breached its duty to act in good faith by performing the Owner Agreement
15 in a manner that was unfaithful to the purpose of the Owner Agreement, thereby denying WRG's
16 justified expectations.
17

18 36. Due to the actions of Owner, WRG suffered damages in an amount to be
19 determined at trial for which WRG is entitled to judgment plus interest.

20 37. WRG has been required to engage the services of an attorney to collect the Owner
21 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
22 interest therefore.
23

24 **FIFTH CAUSE OF ACTION**
25 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

26 38. WRG repeats and realleges each and every allegation contained in the preceding
27 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
28 follows:

1 39. There is a covenant of good faith and fair dealing implied in every agreement,
2 including the APCO Agreement.

3 40. APCO breached its duty to act in good faith by performing the APCO Agreement
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying WRG's
5 justified expectations.
6

7 41. Due to the actions of APCO, WRG suffered damages in an amount to be
8 determined at trial for which WRG is entitled to judgment plus interest.

9 42. WRG has been required to engage the services of an attorney to collect the APCO
10 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
11 interest therefore.

12 **SIXTH CAUSE OF ACTION**
13 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

14 43. WRG repeats and realleges each and every allegation contained in the preceding
15 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
16 follows:
17

18 44. There is a covenant of good faith and fair dealing implied in every agreement,
19 including the CPCC Agreement.

20 45. CPCC breached its duty to act in good faith by performing the CPCC Agreement
21 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying WRG's
22 justified expectations.

23 46. Due to the actions of CPCC, WRG suffered damages in an amount to be
24 determined at trial for which WRG is entitled to judgment plus interest.

25 47. WRG has been required to engage the services of an attorney to collect the CPCC
26 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
27 interest therefore.
28

SEVENTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

48. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

49. WRG furnished the Owner Services, APCO Services and CPCC Services for the benefit of and at the specific instance and request of the Defendants.

50. As to Owner, Asphalt, APCO and CPCC, this cause of action is being pled in the alternative.

51. The Defendants accepted, used and enjoyed the benefit of the Owner Services, APCO Services and CPCC Services.

52. The Defendants knew or should have known that WRG expected to be paid for the Owner Services, APCO Services and CPCC Services.

53. WRG has demanded payment of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance.

54. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

55. The Defendants have been unjustly enriched, to the detriment of WRG.

56. WRG has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

///

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EIGHTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

57. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

58. The provision of the Owner Services, APCO Services and CPCC Services was at the special instance and request of the Defendants for the Property.

59. As provided at NRS 108.245 and common law, the Defendants had knowledge of WRG's delivery of the Owner Services, APCO Services and CPCC Services Services to the Property or WRG provided a Notice of Right to Lien.

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

61. On or about February 13, 2009, WRG timely recorded a Notice of Lien in Book 20090213 of the Official Records of Clark County, Nevada, as Instrument No. 0004321 (the "Original Lien").

62. One or about April 27, 2009, WRG timely recorded an Amended Notice of Lien in Book 20090427 of the Official Records of Clark County, Nevada, as Instrument No. 0000107 (the "Amended Lien").

63. The Original Lien and Amended Lien are hereinafter collectively referred to as the "Liens".

64. The Liens were in writing and were recorded against the Property for the outstanding balance due to WRG in the amount of Two Hundred Seventy-Five Thousand One Hundred Fifteen and 66/100 Dollars (\$275,115.66).

65. The Liens were served upon the Owner and/or its authorized agents, as required by law.

1 66. WRG is entitled to an award of reasonable attorney's fees, costs and interest on the
2 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the
3 Nevada Revised Statutes.

4 **NINTH CAUSE OF ACTION**
5 **(Claim of Priority)**

6 67. WRG repeats and realleges each and every allegation contained in the preceding
7 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
8 follows:

9 68. WRG is informed and believes and therefore alleges that construction on the
10 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
11 Property, including the deeds of trust recorded by SFC.

12 69. WRG is informed and believes and therefore alleges that even if a deed(s) of trust
13 and/or other interest(s) in the Property were recorded before construction on the Property
14 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to
15 WRG's statutory mechanics' lien thereby elevating WRG's statutory mechanics' lien to a
16 position superior to those deed(s) of trust and/or other interests(s) in the Property.
17

18 70. WRG's claim against the Property is superior to the claim(s) of SFC, any other
19 defendant, and/or any Loe Lender.
20

21 71. WRG has been required to engage the services of an attorney to collect the Owner
22 Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance due and
23 owing for the Owner Services, APCO Services and CPCC Services, and WRG is entitled to
24 recover its reasonable costs, attorney's fees and interest therefore.
25

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TENTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

72. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

73. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the “Bond”) in the sum of Fifty Thousand Dollars (\$50,000.00).

74. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

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

76. WRG furnished the CPCC Services as stated herein and has not been paid for the same. WRG therefore claims payment on said Bond.

77. The CPCC Surety is obligated to pay WRG the sums due.

78. Demand for the payment of the sums due to WRG has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to WRG.

79. CPCC and the CPCC Surety owe WRG the penal sum of the Bond.

80. WRG was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to WRG and WRG is entitled to recover its reasonable attorney’s fees and costs therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

81. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

1 82. Upon information and belief, Owner is the Trustor and SFC is the beneficiary
2 under the following deeds of trust covering the real property at issue:

- 3 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
4 20060705, Instrument No. 0004264;
- 5 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
6 20060705, Instrument No. 0004265;
- 7 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
8 20060705, Instrument No. 0004266; and,
- 9 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book
 20080207, Instrument No. 01482.

10 83. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination
11 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior
12 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority
13 otherwise available to SFC by law or agreement".
14

15 84. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that
16 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of
17 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the
18 priority of competing liens or encumbrances on the property, such as WRG's mechanics' lien.

19 85. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to
20 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they
21 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books
22 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
23 Senior Debt Deed of Trust.
24

25 86. WRG is informed and believes and therefore alleges that construction on the
26 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
27
28

1 law, all mechanics' liens, including WRG's, enjoy a position of priority over the Senior Debt
2 Deed of Trust.

3 87. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
4 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
5 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
6 subordinate to all mechanics' liens, including WRG's.

7
8 88. A dispute has arisen, and an actual controversy now exists over the priority issue
9 of WRG's mechanics' lien over other encumbrances on the property.

10 89. WRG is entitled to a court order declaring that its mechanics' lien has a superior
11 lien position on the Property over any other lien or encumbrance created by or for the benefit of
12 SFC or any other entity.

13 **WHEREFORE**, WRG prays that this Honorable Court:

14
15 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
16 the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance
17 amounts;

18 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
19 WRG's reasonable costs and attorney's fees incurred in the collection of the Owner Outstanding
20 Balance, APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of
21 interest thereon;

22
23 3. Enter a judgment declaring that WRG has valid and enforceable mechanic's liens
24 against the Property, with priority over all Defendants, in an amount of the Owner Outstanding
25 Balance, APCO Outstanding Balance and CPCC Outstanding Balance;

26 4. Adjudge a lien upon the Property for the Owner Outstanding Balance, APCO
27 Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and
28

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

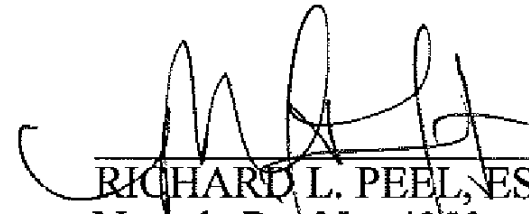
1 interest thereon, and that this Honorable Court enter an Order that the Property, and
2 improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and
3 that the proceeds of said sale be applied to the payment of sums due WRG herein;

4
5 5. Enter a judgment declaring that WRG's mechanics' lien enjoys a position of
6 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
7 entity; and

8 6. For such other and further relief as this Honorable Court deems just and proper in
9 the premises.

10 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP


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Nevada Bar No. 4359
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21 *Attorneys for WRG Design, Inc.*

ORIGINAL

31

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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*

JUN 26 12 25 PM '09
E. M. Fisher
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY NEVADA**

11 APCO CONSTRUCTION, a Nevada corporation,

12 Plaintiff,

13 vs.

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

21 Defendants.

22 AHERN RENTALS, INC., a Nevada corporation;

23 Plaintiff,

24 vs.

25 GEMSTONE DEVELOPMENT WEST, INC., a Nevada
26 corporation; GEMSTONE DEVELOPMENT, LLC, a
27 Nevada limited liability company; ACCURACY GLASS &
MIRROR COMPANY, INC., a Nevada corporation;
APCO CONSTRUCTION, ALEX EDELSTEIN,
individually; KELLY MARSHALL, individually;
EMPLOYERS MUTUAL CASUALTY COMPANY, a
foreign entity; COMMONWEALTH LAND TITLE
INSURANCE COMPANY; FIRST AMERICAN TITLE
INSURANCE COMPANY; HEINAMAN CONTRACT
GLAZING, a California corporation; NEAL ROFFER,
individually; CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a foreign corporation; DOES I through
X, inclusive; and ROE CORPORATIONS I through X,
inclusive;

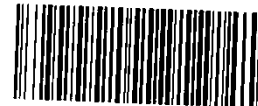
Defendants.

CASE NO.: A571228
DEPT. NO.: XIII

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

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

08A571228
207878



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

RECEIVED

JUN 26 2009

CLERK OF THE COURT

22

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

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 First Amended Statement of Facts Constituting Lien and Complaint-in-Intervention (hereinafter "Complaint") in response to Plaintiff, APCO CONSTRUCTION'S Complaint and Notice to Lien Claimants as follows:

IDENTIFICATION OF PARTIES

1. 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 GEMSTONE DEVELOPMENT WEST, INC. (hereinafter "Gemstone") is, and was at all times relevant hereto, a Nevada corporation licensed and doing business in Nevada; and is the owner of the real property commonly known as "Manhattan West", located at 9205 W. Russell, Las Vegas, NV; more particularly described as PT NE4 NW4 SEC 32 21 60; and on the date Ahern's liens were recorded the APN was identified by the Clark County Assessor as 163-32-101-019. As of the date of this Complaint, the APNs are identified by the Clark County Assessor as: 163-32-101-020, 163-32-101-022, 163-32-101-023, and 163-32-112-001 through 163-32-112-246 (hereinafter the "Property").

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

1 4. Upon information and belief, Defendant ACCURACY GLASS & MIRROR
2 COMPANY, INC. (hereinafter "Accuracy") is, and was at all times relevant hereto, a Nevada
3 corporation licensed and doing business in Nevada.

4 5. Upon information and belief, Defendant APCO CONSTRUCTION (hereinafter
5 "APCO") is, and was at all times relevant hereto, a Nevada corporation licensed and doing
6 business in Nevada.

7 6. Upon information and belief, Defendant ALEX EDELSTEIN (hereinafter
8 "Edelstein") is and was at all times relevant hereto a resident of Nevada and/or doing business
9 in Nevada.

10 7. Upon information and belief, Defendant KELLY MARSHALL (hereinafter
11 "Marshall") is and was at all times relevant hereto a resident of Nevada and/or doing business
12 in Nevada.

13 8. Upon information and belief, EMPLOYERS MUTUAL CASUALTY
14 COMPANY (hereinafter "Employers") is, and was at all times relevant hereto, a surety
15 licensed to conduct surety business in Nevada.

16 9. Upon information and belief, Defendant COMMONWEALTH LAND TITLE
17 INSURANCE COMPANY (hereinafter "Commonwealth") is, and was at all times relevant
18 hereto licensed and doing business in Nevada; and claims a priority in the Property pursuant to
19 an alleged deed of trust recorded on the Property on or about February 7, 2008, in Book No.
20 20080207 as Instrument No. 0001482.

21 10. Upon information and belief, Defendant FIRST AMERICAN TITLE
22 INSURANCE COMPANY (hereinafter "First American") is, and was at all times relevant
23 hereto licensed and doing business in Nevada; and claims a priority in the Property pursuant to
24 alleged deeds of trust recorded on the Property on or about July 5, 2006, in Book No.
25
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1 20060705, as Instrument Nos. 0004264, 0004265, 0004266; and the alleged amended deeds of
2 trust recorded on the Property on or about February 7, 2008, in Book No. 20080207 as
3 Instrument Nos. 0001484 and 0001485; and the alleged Second Amendment to the Third Deed
4 of Trust and Security Agreement with Assignment of Rents and Fixture Filing Line of Credit
5 recorded against the Property, on or about September 9, 2008, in Book No. 20080908, as
6 Instrument No. 0003943.

7
8 11. Upon information and belief, Defendant HEINAMAN CONTRACT GLAZING
9 (hereinafter "Heinaman") is, and was at all times relevant hereto, a California corporation
10 licensed and doing business in Nevada.

11 12. Upon information and belief, Defendant NEAL ROFFER (hereinafter "Roffer")
12 is and was at all times relevant hereto a resident of Nevada and/or doing business in Nevada.

13 13. Upon information and belief, Defendant CAMCO PACIFIC CONSTRUCTION
14 COMPANY, INC. (hereinafter "CAMCO") is, and was at all times relevant hereto, a California
15 corporation licensed and doing business in Nevada.

16 14. The true named and capacities, whether individual, corporate, associate, or
17 otherwise of those Defendants named herein as DOES I through X, and ROE
18 CORPORATIONS I through X are Defendants presently unknown to Ahern, who therefore
19 sues said Defendants by such fictitious names and Ahern will ask leave to amend this
20 Complaint to show their true names and capacities when the same have been ascertained.
21 Ahern believes that said Defendants are individuals or entities within the jurisdiction of this
22 Court, who may be holders of promissory notes secured by deeds of trust recorded against the
23 Property, may hold or claim an ownership or leasehold interest in the Property, may be
24 responsible for monies due and owing to Ahern, may be interfering with payments due to
25

1 Ahern, or are otherwise negligent or responsible in some manner for the events herein referred
2 to, and caused damages proximately caused thereby to Ahern as alleged herein.

3 **FIRST CAUSE OF ACTION**
4 **(Breach of Contract-Gemstone Development, Accuracy, and Heinaman)**

5 15. The allegations contained in the preceding paragraphs of this Complaint are
6 incorporated herein by this reference.

7 16. On or about August 22, 2008, Defendant Gemstone Development entered into a
8 written agreement/credit application (hereinafter "Agreement") with Ahern by the terms of
9 which Ahern agreed to provide equipment and/or miscellaneous materials to Gemstone
10 Development for use in its business in and around Clark County, Nevada. Thereafter,
11 Gemstone Development entered into a series of rental contracts pursuant to the Agreement for
12 the provision of various equipment.

13 17. On or about April 16, 1990, Defendant Accuracy entered into a written
14 agreement/credit application (hereinafter "Agreement") with Ahern by the terms of which
15 Ahern agreed to provide equipment and/or miscellaneous materials to Accuracy for use in its
16 business in and around Clark County, Nevada. Thereafter, Accuracy entered into a series of
17 rental contracts pursuant to the Agreement for the provision of various equipment.

18 18. On or about August 16, 1996, Defendant Heinaman entered into a written
19 agreement/credit application (hereinafter "Agreement") with Ahern by the terms of which
20 Ahern agreed to provide equipment and/or miscellaneous materials to Heinaman for use in its
21 business in and around Clark County, Nevada. Thereafter, Heinaman entered into a series of
22 rental contracts pursuant to the Agreement for the provision of various equipment.

23 19. In consideration of the equipment and materials Ahern agreed to rent to
24 Gemstone Development, Accuracy, and Heinaman, Gemstone Development, Accuracy, and
25
26

1 Heinaman agreed to pay to Ahern the rental cost of the equipment and purchase cost of the
2 materials.

3 20. Under the Agreements, Gemstone Development and Accuracy agreed to pay for
4 equipment and materials within ten (10) days of invoicing. Under the Agreement, Heinaman
5 agreed to pay for equipment and materials within thirty (30) days of invoicing. Gemstone
6 Development, Accuracy, and Heinaman further agreed to pay interest upon past due amounts
7 and attorneys' fees in the event of default.

8 21. Ahern supplied equipment and/or materials requested by Gemstone
9 Development, Accuracy, and Heinaman and/or by agents authorized to charge on behalf of
10 Gemstone Development, Accuracy, and Heinaman pursuant to the Agreements, and said
11 equipment and/or materials were used in the course of Gemstone Development, Accuracy, and
12 Heinaman's business activities, and Gemstone Development, Accuracy, and Heinaman
13 accepted said equipment and/or materials as satisfactory, completely and fully discharging the
14 obligations of Ahern under the Agreement.
15

16 22. All conditions precedent to Ahern's right to payment in full have been
17 performed and have occurred.

18 23. Notwithstanding Ahern's performance under the Agreement, Gemstone
19 Development has, without just cause or excuse and in violation of the Agreement, refused to
20 pay Ahern the balance of the amounts due and owing for the equipment and/or materials
21 supplied under the Agreement, to-wit: \$347,673.42, together with interest thereon. This
22 principal amount continues to accrue as Ahern's equipment and/or materials remain on the
23 Property and have not been returned to Ahern.
24

25 24. Ahern has made demand for the amount due and owing, however Gemstone
26 Development has wholly failed, neglected and refused to pay the aforesaid sums. As a result of
27

1 Gemstone Development's refusal to pay the sums currently due and owing, Ahern has been
2 damaged in the amount of \$347,673.42, together with interest thereon, and Ahern is entitled to
3 judgment against Gemstone Development in the accruing principal amount of \$347,673.42,
4 plus interest thereon, pursuant to the parties' Agreement and/or any applicable law until paid in
5 full.

6 25. Notwithstanding Ahern's performance under the Agreement, Accuracy has,
7 without just cause or excuse and in violation of the Agreement, refused to pay Ahern the
8 balance of the amounts due and owing for the equipment and/or materials supplied under the
9 Agreement, to-wit: \$46,208.44, together with interest thereon.
10

11 26. Ahern has made demand for the amount due and owing, however Accuracy has
12 wholly failed, neglected and refused to pay the aforesaid sums. As a result of Accuracy's
13 refusal to pay the sums currently due and owing, Ahern has been damaged in the amount of
14 \$46,208.44, together with interest thereon, and Ahern is entitled to judgment against Accuracy
15 in the principal amount of \$46,208.44, plus interest thereon, pursuant to the parties' Agreement
16 and/or any applicable law until paid in full.

17 27. Notwithstanding Ahern's performance under the Agreement, Heinaman has,
18 without just cause or excuse and in violation of the Agreement, refused to pay Ahern the
19 balance of the amounts due and owing for the equipment and/or materials supplied under the
20 Agreement, to-wit: \$23,307.87, together with interest thereon. This principal amount continues
21 to accrue as Ahern's equipment and/or materials remain on the Property and have not been
22 returned to Ahern.
23

24 28. Ahern has made demand for the amount due and owing, however Heinaman has
25 wholly failed, neglected and refused to pay the aforesaid sums. As a result of Heinaman's
26 refusal to pay the sums currently due and owing, Ahern has been damaged in the amount of
27

1 \$23,307.87, together with interest thereon, and Ahern is entitled to judgment against Heinaman
2 in the accruing principal amount of \$23,307.87, plus interest thereon, pursuant to the parties'
3 Agreement and/or any applicable law until paid in full.

4 29. Ahern has been compelled to retain the services of legal counsel and has had to
5 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
6 from Gemstone Development, Accuracy, and Heinaman the attorneys' fees and costs incurred
7 in connection with this action.

8
9 **SECOND CAUSE OF ACTION**
(Claim Against Personal Guarantors – Edelstein, Marshall, Roffer)

10 30. The allegations contained in the preceding paragraphs of this Complaint are
11 incorporated herein by this reference.

12 31. On or about August 22, 2008, Defendant Edelstein, as part of the Agreement
13 executed and submitted by Gemstone Development, personally guaranteed payment of the
14 credit extended to Gemstone Development.

15 32. On or about April 16, 1990, Defendant Marshall, as part of the Agreement
16 executed and submitted by Accuracy, personally guaranteed payment of the credit extended to
17 Accuracy.

18 33. On or about August 16, 1996, Defendant Roffer, as part of the Agreement
19 executed and submitted by Heinaman, personally guaranteed payment of the credit extended to
20 Heinaman.

21 34. Pursuant to the personal guarantees, Defendants Edelstein, Marshall, and Roffer
22 guaranteed payment of all equipment rented and materials sold to Gemstone Development,
23 Accuracy, and Heinaman, respectively.

1 35. All conditions precedent to Ahern's right to payment in full from Edelstein,
2 Marshall, and Roffer have been performed and have occurred. Edelstein, Marshall, and
3 Roffer's refusal to pay is a material breach of the personal surety.

4 36. Notwithstanding Ahern's performance, Edelstein has, without just cause or
5 excuse, and in violation of the personal guarantee, refused to pay Ahern the balance currently
6 due and owing for the equipment and materials provided under the Agreement to Gemstone
7 Development, in the amount of \$347,673.42, together with interest thereon. This principal
8 amount continues to accrue as Ahern's equipment and/or materials remain on the Property and
9 have not been returned to Ahern.
10

11 37. Ahern has made demand for the amount due and owing, but Edelstein has
12 wholly failed, neglected, and refused to pay the aforesaid sums. As a result of Edelstein's
13 refusal to pay the sums currently due and owing, Ahern has been damaged in the amount of
14 \$347,673.42, together with interest thereon.

15 38. Because of Edelstein's failure to pay the sums due and owing to Ahern for the
16 rental of Ahern's equipment, Ahern, therefore, is entitled to judgment in the principal amount
17 of \$347,673.42, plus interest thereon pursuant to the parties' Agreement and/or any applicable
18 law until paid in full.
19

20 39. Notwithstanding Ahern's performance, Marshall has, without just cause or
21 excuse, and in violation of the personal guarantee, refused to pay Ahern the balance currently
22 due and owing for the equipment and materials provided under the Agreement to Accuracy, in
23 the amount of \$46,208.44, together with interest thereon.

24 40. Ahern has made demand for the amount due and owing, but Marshall has wholly
25 failed, neglected, and refused to pay the aforesaid sums. As a result of Marshall's refusal to
26

1 pay the sums currently due and owing, Ahern has been damaged in the amount of \$46,208.44,
2 together with interest thereon.

3 41. Because of Marshall's failure to pay the sums due and owing to Ahern for the
4 rental of Ahern's equipment, Ahern, therefore, is entitled to judgment in the principal amount
5 of \$46,208.44, plus interest thereon pursuant to the parties' Agreement and/or any applicable
6 law until paid in full.

7 42. Notwithstanding Ahern's performance, Roffer has, without just cause or excuse,
8 and in violation of the personal guarantee, refused to pay Ahern the balance currently due and
9 owing for the equipment and materials provided under the Agreement to Heinaman, in the
10 amount of \$23,307.87, together with interest thereon.

11 43. Ahern has made demand for the amount due and owing, but Roffer has wholly
12 failed, neglected, and refused to pay the aforesaid sums. As a result of Roffer's refusal to pay
13 the sums currently due and owing, Ahern has been damaged in the amount of \$23,307.87,
14 together with interest thereon.

15 44. Because of Roffer's failure to pay the sums due and owing to Ahern for the
16 rental of Ahern's equipment, Ahern, therefore, is entitled to judgment in the principal amount
17 of \$23,307.87, plus interest thereon pursuant to the parties' Agreement and/or any applicable
18 law until paid in full.

19 45. Ahern has been compelled to retain the services of legal counsel and has had to
20 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
21 from Defendants Edelstein, Marshall, and Roffer the attorneys fees and costs incurred in
22 connection with this action.

23 ///

24 ///

25

THIRD CAUSE OF ACTION

(Unjust Enrichment – Gemstone, Gemstone Development, Accuracy, APCO, Heinaman, Edelstein, Marshall, Roffer, and CAMCO)

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

47. The reasonable value of the equipment and materials Ahern provided to Defendants Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO pursuant to the Agreement is \$347,673.42. This amount is now due and owing to Ahern by Defendants Gemstone, APCO, and Edelstein, and CAMCO together with interest thereon.

48. Since Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO have received the value of Ahern's equipment and materials without paying for them, they have been unjustly enriched in the principal amount of \$347,673.42.

49. Because Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO have been unjustly enriched at Ahern's expense, Ahern is entitled to judgment against Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO jointly in the principal amount of \$347,673.42, plus interest thereon pursuant to the parties' Agreement and/or any applicable law until paid in full. Ahern is also entitled to recover from Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO attorneys' fees and costs incurred in connection with this action.

50. The reasonable value of the equipment and materials Ahern provided to Defendants Gemstone, Gemstone Development, APCO, Accuracy, Marshall, and CAMCO pursuant to the Agreement is \$46,208.44. This amount is now due and owing to Ahern by Defendants Gemstone, Gemstone Development, APCO, Accuracy, Marshall, and CAMCO together with interest thereon.

1 51. Since Gemstone, Gemstone Development, APCO, Accuracy, Marshall, and
2 CAMCO have received the value of Ahern's equipment and materials without paying for them,
3 they have been unjustly enriched in the principal amount of \$46,208.44.

4 52. Because Gemstone, Gemstone Development, APCO, Accuracy, Marshall, and
5 CAMCO have been unjustly enriched at Ahern's expense, Ahern is entitled to judgment against
6 Gemstone, Gemstone Development, APCO, Accuracy, Marshall, and CAMCO jointly in the
7 principal amount of \$46,208.44, plus interest thereon pursuant to the parties' Agreement and/or
8 any applicable law until paid in full. Ahern is also entitled to recover from Gemstone,
9 Gemstone Development, APCO, Accuracy, Marshall, and CAMCO attorneys' fees and costs
10 incurred in connection with this action.

11 53. The reasonable value of the equipment and materials Ahern provided to
12 Defendants Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and CAMCO
13 pursuant to the Agreement is \$23,307.87. This amount is now due and owing to Ahern by
14 Defendants Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and CAMCO
15 together with interest thereon.

16 54. Since Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and
17 CAMCO have received the value of Ahern's equipment and materials without paying for them,
18 they have been unjustly enriched in the principal amount of \$23,307.87.

19 55. Because Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and
20 CAMCO have been unjustly enriched at Ahern's expense, Ahern is entitled to judgment against
21 Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and CAMCO jointly in the
22 principal amount of \$23,307.87, plus interest thereon pursuant to the parties' Agreement and/or
23 any applicable law until paid in full. Ahern is also entitled to recover from Gemstone,
24
25
26
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1 Gemstone Development, APCO, Heinaman, Roffer, and CAMCO attorneys' fees and costs
2 incurred in connection with this action.

3 **FOURTH CAUSE OF ACTION**
4 **(Monies Due and Owing - Gemstone, Gemstone Development, Accuracy, APCO,**
5 **Heinaman, Edelstein, Marshall, Roffer, and CAMCO)**

6 56. The allegations contained in the preceding paragraphs of this Complaint are
7 incorporated herein by this reference.

8 57. Defendants Gemstone, Gemstone Development, APCO, Edelstein, and CAMCO
9 owe to Ahern the principal balance of \$347,673.42, together with interest accruing thereon, for
10 the equipment and materials provided by Ahern. Although demand for payment has been made
11 by Ahern, Defendants have refused and continues to refuse to pay for said equipment and
12 materials.

13 58. Ahern, therefore, is entitled to judgment against Defendants Gemstone,
14 Gemstone Development, APCO, Edelstein, and CAMCO in the principal amount of
15 \$347,673.42, plus interest thereon pursuant to the parties' Agreement and/or any applicable law
16 until paid in full. Ahern is also entitled to recover from Defendants the attorney's fees and
17 costs incurred in connection with this action.

18 59. Defendants Gemstone, Gemstone Development, APCO, Accuracy, Marshall,
19 and CAMCO owe to Ahern the principal balance of \$46,208.44, together with interest accruing
20 thereon, for the equipment and materials provided by Ahern. Although demand for payment
21 has been made by Ahern, Defendants have refused and continues to refuse to pay for said
22 equipment and materials.

23 60. Ahern, therefore, is entitled to judgment against Defendants Gemstone,
24 Gemstone Development, APCO, Accuracy, Marshall, and CAMCO in the principal amount of
25 \$46,208.44, plus interest thereon pursuant to the parties' Agreement and/or any applicable law
26

1 until paid in full. Ahern is also entitled to recover from Defendants the attorney's fees and
2 costs incurred in connection with this action.

3 61. Defendants Gemstone, Gemstone Development, APCO, Heinaman, Roffer, and
4 CAMCO owe to Ahern the principal balance of \$23,307.87 together with interest accruing
5 thereon, for the equipment and materials provided by Ahern. Although demand for payment
6 has been made by Ahern, Defendants have refused and continues to refuse to pay for said
7 equipment and materials.

8 62. Ahern, therefore, is entitled to judgment against Defendants Gemstone,
9 Gemstone Development, APCO, Heinaman, Roffer, and CAMCO in the principal amount of
10 \$23,307.87, plus interest thereon pursuant to the parties' Agreement and/or any applicable law
11 until paid in full. Ahern is also entitled to recover from Defendants the attorney's fees and
12 costs incurred in connection with this action.

13
14 **FIFTH CAUSE OF ACTION**
15 **(Foreclosure of Gemstone Lien)**

16 63. The allegations contained in the preceding paragraphs of this Complaint are
17 incorporated herein by this reference.

18 64. On or about January 8, 2009, Ahern recorded its Notice of Lien in Book
19 20090108 of the Official Records of Clark County, Nevada, as Instrument No. 0002969. The
20 Lien was in writing and was recorded against the Property for the principal balance due and
21 owing when the Lien was recorded.

22 65. The Lien was served upon Defendants to this Complaint and/or the owners or
23 reputed owners of the certain real properties described therein and, as required by law, is a
24 charge against the Property, and has been properly perfected pursuant to Chapter 108 of the
25 Nevada Revised Statutes.
26

1 66. Ahern is entitled to recover in this action the costs and fees it incurred in
2 preparing, recording, and serving its Notice of Lien.

3 67. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to
4 recover from the owner of the Property the attorney's fees and costs incurred in connection
5 with this action.

6 68. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to an
7 order from this Court directing that the Property be sold and foreclosed upon, and that from the
8 proceeds of said sale, Ahern be paid the principal sum of \$347,673.42, together with the
9 interest accruing thereon, plus reimbursement of the costs and attorney's fees incurred in
10 connection with this action.

11
12 **SIXTH CAUSE OF ACTION**
13 **(Foreclosure of Accuracy Lien)**

14 69. The allegations contained in the preceding paragraphs of this Complaint are
15 incorporated herein by this reference.

16 70. On or about January 8, 2009, Ahern recorded its Notice of Lien in Book
17 20090108 of the Official Records of Clark County, Nevada, as Instrument No. 0002970. The
18 Lien was in writing and was recorded against the Property for the principal balance due and
19 owing when the Lien was recorded.

20 71. The Lien was served upon Defendants to this Complaint and/or the owners or
21 reputed owners of the certain real properties described therein and, as required by law, is a
22 charge against the Property, and has been properly perfected pursuant to Chapter 108 of the
23 Nevada Revised Statutes.

24 72. Ahern is entitled to recover in this action the costs and fees it incurred in
25 preparing, recording, and serving its Notice of Lien.
26

1 73. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to
2 recover from the owner of the Property the attorney's fees and costs incurred in connection
3 with this action.

4 74. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to an
5 order from this Court directing that the Property be sold and foreclosed upon, and that from the
6 proceeds of said sale, Ahern be paid the principal sum of \$46,208.44, together with the interest
7 accruing thereon, plus reimbursement of the costs and attorney's fees incurred in connection
8 with this action.
9

10 **SEVENTH CAUSE OF ACTION**
11 **(Foreclosure of Heinaman Lien)**

12 75. The allegations contained in the preceding paragraphs of this Complaint are
13 incorporated herein by this reference.

14 76. On or about March 6, 2009, Ahern recorded its Notice of Lien in Book
15 20090306 of the Official Records of Clark County, Nevada, as Instrument No. 0004245. The
16 Lien was in writing and was recorded against the Property for the principal balance due and
17 owing when the Lien was recorded.

18 77. The Lien was served upon Defendants to this Complaint and/or the owners or
19 reputed owners of the certain real properties described therein and, as required by law, is a
20 charge against the Property, and has been properly perfected pursuant to Chapter 108 of the
21 Nevada Revised Statutes.
22

23 78. Ahern is entitled to recover in this action the costs and fees it incurred in
24 preparing, recording, and serving its Notice of Lien.
25
26
27

1 79. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to
2 recover from the owner of the Property the attorney's fees and costs incurred in connection
3 with this action.

4 80. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to an
5 order from this Court directing that the Property be sold and foreclosed upon, and that from the
6 proceeds of said sale, Ahern be paid the principal sum of \$23,307.87, together with the interest
7 accruing thereon, plus reimbursement of the costs and attorney's fees incurred in connection
8 with this action.
9

10 **EIGHTH CAUSE OF ACTION**
11 **(Claim Against Employers Bond)**

12 81. The allegations contained in the preceding paragraphs of this Complaint are
13 incorporated herein by this reference.

14 82. Employers provided bond number S346989 in the amount of \$15,000.00 for the
15 purpose of allowing Accuracy to obtain a C-8 license (hereinafter the "Bond").

16 83. One of the purposes of the Bond is to provide payment to claimants, such as
17 Ahern, who are not paid by Accuracy for work done under contract with Accuracy.

18 84. Ahern performed the services and provided the equipments and materials for
19 which it was contracted, and fulfilled each and every other obligation under the terms of the
20 Agreement with Accuracy.

21 85. Ahern is within the class of persons for whose benefit the Bond was provided.
22 Ahern is therefore entitled to recover from Employers the amounts due and owing to Ahern by
23 Accuracy.

24 86. Employers' refusal to pay the amounts due and owing by Accuracy is a breach
25 of Employers' contractual obligations to Accuracy and/or Ahern.
26

1 87. By reason of Employers' failure to pay the sums due and owing to Ahern for the
2 equipment rental, Ahern, is entitled to judgment against Employers in the principal amount of
3 \$46,208.44, plus interest thereon pursuant to the parties' Agreement and/or any applicable law
4 until paid in full.

5 88. Ahern has been compelled to retain the services of legal counsel and has had to
6 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
7 from Employers the attorneys' fees and costs incurred in connection with this action.

8
9 **NINTH CAUSE OF ACTION**
10 **(Claim of Priority over Deeds of Trust Against Commonwealth and First American)**

11 89. The allegations contained in the preceding paragraphs of this Complaint are
12 incorporated herein by this reference.

13 90. Upon information and belief, the physical work of improvement to the Property
14 commenced before Commonwealth and First American's recording of the alleged deeds of
15 trusts and/or other interests in the Property and/or any leasehold estates.

16 91. Ahern's mechanics liens recorded against the Property and/or any leasehold
17 estates are superior to the claims of Commonwealth, First American, any other Defendants, and
18 any Doe/Roe Defendants.

19 92. Ahern has been compelled to retain the services of legal counsel and has had to
20 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
21 from Defendants the attorneys' fees and costs incurred in connection with this action.

22 **WHEREFORE**, Ahern requests judgment as follows:

23 1. That this Court enter Judgment against Defendants, in the principal amount in
24 excess of \$10,000.00, plus interest thereon until paid in full;

2. That this Court enter judgment against Defendants, for a reasonable sum and for the costs or preparation, verification, service, recording, and enforcement of the Lien;

3. For reasonable attorneys' fees;

4. For costs of suit;

5. That the Court declare the rank and priority of all lien claims, secured claims, and that Ahern's Lien be ascertained and adjudged as a valid Lien with priority over all Defendants;

6. That the Lien be enforced according to law;

7. That the Court direct a foreclosure sale of the Property, and that the Property be sold and the proceeds be applied to the payment of the sums found due and owing to Ahern;

8. That the Court enter such deficiency judgments against Defendants as may be proper; and

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

DATED this 25 day of June, 2009.

DIXON TRUMAN FISHER & CLIFFORD P.C.

By: Robin E. Perkins
D. SHANE CLIFFORD, ESQ.
ROBIN E. PERKINS, ESQ.
221 North Buffalo Drive, Suite A
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Attorneys for Ahern

CERTIFICATE OF MAILING

I hereby certify that I am an employee of Dixon Truman Fisher & Clifford and that on the 26th ^{June} day of ~~May~~, 2009, I placed a true and correct copy of the **AHERN RENTAL INC.'S FIRST AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT-IN-INTERVENTION**, in the United States mail, postage prepaid, addressed as follows:

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14 
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21

ORIGINAL



STAT

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FILED

JUL 7 8 49 AM '09

Ed Smith
CLERK OF THE COURT

Attorneys for Plaintiff in Intervention
THE MASONRY GROUP NEVADA, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

08A571228
232453



APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; NEVADA CONSTRUCTION
SERVICES, a Nevada corporation; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation; COMMONWEALTH LAND TITLE
INSURANCE COMPANY; FIRST AMERICAN
TITLE INSURANCE COMPANY; and DOES 1
through X,

Defendants.

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

Plaintiff in Intervention ,

v.

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

Defendants in Intervention.

CASE NO. 08-A571228
Dept.: XIII

CONSOLIDATED WITH CASES:

08-A571792
08-A574391
08-A577623
08-A580889
09-A583289
09-A584730
09-A587168
09-A589195

STATEMENT OF FACTS
CONSTITUTING LIEN CLAIM AND
COMPLAINT IN INTERVENTION

1. Breach of Contract – APCO;
2. Quantum Meruit – APCO;
3. Open Book Account – APCO;
4. Breach of Contract – Camco;
5. Violation of NRS 624.626 - Camco;
6. Quantum Meruit - Camco;
7. Open Book Account - Camco;
8. Claim on Contractor's License Bond;
9. Foreclosure of Mechanic's Lien.

Exempt from Arbitration: Affects Real
Property

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

CLERK OF THE COURT

JUL 07 2009



Plaintiff in Intervention, THE MASONRY GROUP NEVADA, INC. ("TMG" or "Plaintiff in Intervention"), by and through its counsel of record, the law office of Gibbs, Giden, Locher, Turner & Senet LLP, in support of its Complaint against Defendants stated and named herein, alleges as follows:

INTRODUCTORY ALLEGATIONS

1. Plaintiff in Intervention, TMG, is a Nevada corporation duly authorized to conduct business in Nevada. TMG is a specialty contractor licensed by the State Contractors Board holding License No. 0029928 as a C18 masonry contractor, License No. 0056496 as a C14 steel reinforcing and erection contractor and License No. 0057307 as a C25 fencing and equipping playground contractor.

2. TMG is informed and believes that APCO construction ("APCO") is a Nevada corporation having its principal place of business in Clark County, Nevada.

3. TMG is informed and believes that APCO was the holder of Type A and Type B licenses issued by the Nevada State Contractors Board.

4. TMG is informed and believes that Camco Pacific Construction Company, Inc. ("Camco") is a California corporation.

5. TMG is informed and believes and thereon alleges that Camco was the holder of a Type B contractor's license issued by the Nevada State Contractors Board.

6. TMG is informed and believes and thereon alleges that Defendant Fidelity and Deposit Company of Maryland (hereinafter "Fidelity") is a surety company authorized to transact business within the State of Nevada. Plaintiff in Intervention is further informed and believes and thereon alleges that Fidelity and Deposit issued Surety Bond No. 08739721 in the sum of \$50,000 as the license bond for Camco.

7. TMG is informed and believes and thereon alleges that Gemstone Development West, Inc. ("Gemstone") is a Nevada Corporation having its principal place of business in Clark County, Nevada.

8. At all times herein mentioned the work of improvement known as Manhattan West ("Project") was located at West Russell Road and Rocky Hill Street, within Clark County.

FIRST CAUSE OF ACTION**(Against APCO Construction for Breach of Contract)**

9. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

10. On or about April 11, 2007 at Las Vegas, Nevada, TMG and APCO entered into a Subcontract Agreement for construction of masonry work on the Project ("Subcontract").

11. TMG has performed all conditions, covenants and obligations required to be performed by it pursuant to the Subcontract.

12. On or about October, 2008, APCO breached the Subcontract by failing to pay for work performed by TMG on the Project.

13. As a proximate result of the breach of contract of Camco, TMG has sustained damage in the sum of \$199,580.74 together with interest thereon at the legal rate from the date of breach, October, 2008.

SECOND CAUSE OF ACTION**(Against APCO Construction for the Reasonable Value of
Materials, Labor, Services and Equipment Provided)**

14. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

15. Within the last two years past, at Clark County, Nevada, TMG provided to APCO, materials, labor, services and equipment at the special instance and request of APCO, for which APCO agreed to pay the reasonable value.

16. The reasonable value of said materials, labor, services and equipment was \$199,580.74.

17. Neither the whole nor any part thereof has been paid and there is now due, owing and unpaid from APCO to TMG, the sum of \$199,580.74, together with interest thereon at the legal rate from October 2008.

///

THIRD CAUSE OF ACTION**(Against APCO Construction on an Open Book Account)**

18. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full. Within the last two years past at Clark County, Nevada, APCO became indebted to TMG on an open book account in the sum of \$199,580.74, for materials delivered and labor, services and equipment provided to APCO at the special instance and request of APCO, for which APCO agreed to pay the reasonable value.

19. The reasonable value of said materials, labor, services and equipment is the sum of \$199,580.74.

20. Neither the whole nor any part thereof has been paid and there is now due, owing and unpaid to TMG the sum of \$199,580.74, together with interest thereon at the legal rate from October 2008.

FOURTH CAUSE OF ACTION**(Against Camco Pacific Construction Company, Inc. for Breach of Contract)**

21. Plaintiff in Intervention refers to paragraphs 1-8 introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

22. On or about August 26, 2008 at Las Vegas, Nevada, TMG and Camco entered into a Ratification and Amendment of Subcontract Agreement for construction of masonry work on the Project ("Subcontract").

23. Pursuant to the terms of the ratification Camco became liable for all sums due under the subcontract agreement, including work performed by TMG at the direction of APCO.

24. TMG has performed all conditions, covenants and obligations required to be performed by it pursuant to the Subcontract.

25. On or about December, 2008, Camco breached the Subcontract by failing to pay for work performed by TMG on the Project.

26. As a proximate result of the breach of contract of Camco, TMG has sustained damage in the sum of \$756,647.12 together with interest thereon at the legal rate from the date of breach,

1 December, 2008.

2 **FIFTH CAUSE OF ACTION**

3 **(Against Camco Pacific Construction Company, Inc. for Violation of NRS 624.626)**

4 27. Plaintiff in Intervention refers to paragraphs 1-8 of the Introductory Allegations, and
5 8 through 10 of the First Cause of Action and hereby incorporates said paragraphs by reference
6 herein, as though set forth in full.

7 28. On January 5, 2009, TMG gave written notice to Camco, pursuant to NRS 624.626 of
8 TMG's intent to stop work within 15 days as a result of the non-payment by Camco. TMG also gave
9 Camco notice of TMG's intent to terminate the contract thereafter.

10 29. Subsequent to January 20, 2009, Camco continued to refuse to make payments to
11 TMG which were due under the construction agreement.

12 30. Thereafter, TMG gave notice to Camco of the termination of the construction
13 agreement.

14 31. As a proximate result of the violation of NRS 624.626 by Camco, TMG has sustained
15 damages in the sum of \$561,074.22, which represents the cost of all work, labor materials,
16 equipment and services, overhead and profit furnished by TMG to Camco for the Project, which was
17 unpaid, up through the date of termination of the construction agreement, together with interest
18 thereon pursuant to NRS 624.630.

19 32. As a further proximate result of the violation of NRS 624.626 by Camco, TMG is
20 entitled to recover costs and reasonable attorney's fees.

21 **SIXTH CAUSE OF ACTION**

22 **(Against Camco Pacific Construction Company, Inc. For the Reasonable
23 Value of Materials, Labor, Services and Equipment Provided)**

24 33. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and
25 hereby incorporates said paragraphs by reference herein, as though set forth in full.

26 34. Within the last two years past, at Clark County, Nevada, TMG provided to Camco,
27 materials, labor, services and equipment at the special instance and request of Camco, for which
28 Camco agreed to pay the reasonable value.

1 35. The reasonable value of said materials, labor, services and equipment was
2 \$561,074.22.

3 36. Neither the whole nor any part thereof has been paid and there is now due, owing and
4 unpaid from APCO to TMG, the sum of \$561,074.22, together with interest thereon at the legal rate
5 from December 2008.

6 **SEVENTH CAUSE OF ACTION**

7 **(Against Camco Pacific Construction Company, Inc. on an Open Book Account)**

8 37. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and
9 hereby incorporates said paragraphs by reference herein, as though set forth in full.

10 38. Within the last two years past at Clark County, Nevada, Camco became indebted to
11 TMG on an open book account in the sum of \$561,074.22, for materials delivered and labor, services
12 and equipment provided to Camco at the special instance and request of Camco, for which Camco
13 agreed to pay the reasonable value.

14 39. The reasonable value of said materials, labor, services and equipment is the sum of
15 \$561,074.22.

16 40. Neither the whole nor any part thereof has been paid and there is now due, owing and
17 unpaid to TMG the sum of \$561,074.22, together with interest thereon at the legal rate from
18 December 2008.

19 **EIGHTH CAUSE OF ACTION**

20 **(Against Camco Pacific Construction Company, Inc. and
21 Fidelity and Deposit of Maryland on Contractor's License Bond)**

22 41. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and
23 hereby incorporates said paragraphs by reference herein, as though set forth in full.

24 42. Camco, as principal, and Fidelity as surety, executed and delivered a contractor's
25 license bond to the Nevada State Contractors Board in accordance with NRS 624.670. Said bond is
26 identified as Bond No. 08739721; in the principal sum of \$50,000.

27 43. Said bond inures to the benefit of TMG as a supplier or materialman who furnished
28 materials and equipment for construction covered by the contracts.

1 44. Camco has willfully and deliberately failed to pay TMG for labor, materials and
2 equipment furnished by TMG to Camco.

3 45. Camco has violated Chapter 624 of the Nevada Revised Statutes and TMG is entitled
4 to recover against the bond issued by Fidelity.

5 **NINTH CAUSE OF ACTION**
6 **(Against Gemstone Development, West, Inc.**
7 **For Foreclosure of Mechanic's Lien)**

8 46. Plaintiff in Intervention refers to paragraphs 1-8 of the introductory allegations and
9 hereby incorporates said paragraphs by reference herein, as though set forth in full.

10 47. TMG is informed and believes and thereon alleges that Gemstone is the owner of the
11 Project.

12 48. TMG supplied labor, materials and equipment to Camco which were incorporated
13 into the Project.

14 49. TMG has served the notice of intent to lien required by NRS 108.226(6).

15 50. After TMG failed to receive payments from Camco, TMG caused to be recorded a
16 Mechanic's Lien against the property set forth on Exhibit "A." Said Mechanic's Lien was served on
17 the property owner in accordance with NRS 108.227.

18 51. TMG's lien is a valid lien upon all of the real property set forth on Exhibit "1."

19 52. There may be other lien claimants whose liens are subordinate to TMG's Notice of
20 Lien.

21 53. TMG was required to incur costs and attorney's fees in preparing, recording and
22 foreclosing its liens, which TMG is entitled to recover from defendants pursuant to NRS 108.237.

23
24 WHEREFORE, TMG prays for judgment against defendants as follows:

25
26 1. For damages in excess of \$10,000, according to proof at trial, together with interest
27 thereon at the legal rate from the date of breach, October 2008.

28 2. For an order declaring that TMG has a valid lien on all of the property, and in the

1 amounts set forth on Exhibit "A" which total \$756,647.12, together with interest thereon at the legal
2 rate;

3 3. For an order declaring that TMG's lien has priority over every other lien or claim on
4 each of the real properties; and,

5 4. For an order declaring that the properties be sold and proceeds from the sales apply to
6 the satisfaction of TMG's liens, together with the expenses of sale and costs and disbursements in
7 this action.

8 5. For costs of suit incurred herein;

9 6. For reasonable attorney's fees; and,

10 7. For such other relief as the Court may deem just and proper.
11

12 Dated: July 6, 2009

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

13
14 By: Becky A. Pinter

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9

20090226-0005925

Amended Notice of Lien

163-32-112-006 - continued on
exhibit A

Assessor's Parcel Number: See Attached - Exhibit A

The Undersigned claims a lien upon the Property described in this Notice for work, materials or equipment furnished or to be furnished for the Property or and/or any improvements thereon.

Fee: \$22.00
N/C Fee: \$0.00
02/26/2009 14:54:04
T20090065687
Requestor:
MASONRY GROUP NEVADA INC THE
Debbie Conway LEX
Clark County Recorder Pgs: 9

1. The amount of the original contract is: **\$1,531,800.00**
2. The total amount of all additional or changed work, materials and equipment, if any, is: **\$424,998.59**
3. The total amount of all payments received to date is: **\$1,001,587.90**
4. The amount of lien, after deducting all just credits and offsets will be: **\$756,647.12**
5. The name of the owner of the property, if known, is: **Gemstone Development West INC**
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: **Camco Pacific Construction Company, Inc.**
7. A brief statement of the terms of payment of the lien claimants contract is: **Net 30**
8. A description of the property to be charged with the lien is:
Physical Address: See Attached - Exhibit A

County Assessor's Parcel Number: See Attached - Exhibit A

The Masonry Group Nevada Inc.

By: Stacy Anderson
Stacy Anderson

State of Nevada)
County of Clark) ss.

STACY ANDERSON (print name), 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.

Stacy Anderson
Stacy Anderson
Authorized Signature of Lien Claimant

Subscribed and sworn to before me on this 25 day of the month of February of the year 2009

Flor M. Galarza
Flor Galarza
Notary Public in and for the County and State

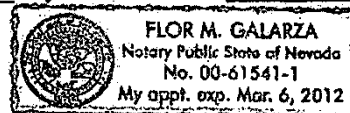


EXHIBIT A

EXHIBIT A

Physical Address		APN #	Lien Amount
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-006	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-007	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-008	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-009	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-010	\$ 2,582.41
9215 W RUSSELL RD 101	SPRING VALLEY	163-32-112-011	\$ 2,582.41
9215 W RUSSELL RD 102	SPRING VALLEY	163-32-112-012	\$ 2,582.41
9215 W RUSSELL RD 103	SPRING VALLEY	163-32-112-013	\$ 2,582.41
9215 W RUSSELL RD 201	SPRING VALLEY	163-32-112-014	\$ 2,582.41
9215 W RUSSELL RD 202	SPRING VALLEY	163-32-112-015	\$ 2,582.41
9215 W RUSSELL RD 203	SPRING VALLEY	163-32-112-016	\$ 2,582.41
9215 W RUSSELL RD 204	SPRING VALLEY	163-32-112-017	\$ 2,582.41
9215 W RUSSELL RD 205	SPRING VALLEY	163-32-112-018	\$ 2,582.41
9215 W RUSSELL RD 206	SPRING VALLEY	163-32-112-019	\$ 2,582.41
9215 W RUSSELL RD 207	SPRING VALLEY	163-32-112-020	\$ 2,582.41
9215 W RUSSELL RD 208	SPRING VALLEY	163-32-112-021	\$ 2,582.41
9215 W RUSSELL RD 209	SPRING VALLEY	163-32-112-022	\$ 2,582.41
9215 W RUSSELL RD 210	SPRING VALLEY	163-32-112-023	\$ 2,582.41
9215 W RUSSELL RD 301	SPRING VALLEY	163-32-112-024	\$ 2,582.41
9215 W RUSSELL RD 302	SPRING VALLEY	163-32-112-025	\$ 2,582.41
9215 W RUSSELL RD 303	SPRING VALLEY	163-32-112-026	\$ 2,582.41
9215 W RUSSELL RD 304	SPRING VALLEY	163-32-112-027	\$ 2,582.41
9215 W RUSSELL RD 305	SPRING VALLEY	163-32-112-028	\$ 2,582.41
9215 W RUSSELL RD 306	SPRING VALLEY	163-32-112-029	\$ 2,582.41
9215 W RUSSELL RD 307	SPRING VALLEY	163-32-112-030	\$ 2,582.41
9215 W RUSSELL RD 308	SPRING VALLEY	163-32-112-031	\$ 2,582.41
9215 W RUSSELL RD 309	SPRING VALLEY	163-32-112-032	\$ 2,582.41
9215 W RUSSELL RD 310	SPRING VALLEY	163-32-112-033	\$ 2,582.41
9215 W RUSSELL RD 401	SPRING VALLEY	163-32-112-034	\$ 2,582.41
9215 W RUSSELL RD 402	SPRING VALLEY	163-32-112-035	\$ 2,582.41
9215 W RUSSELL RD 403	SPRING VALLEY	163-32-112-036	\$ 2,582.41
9215 W RUSSELL RD 404	SPRING VALLEY	163-32-112-037	\$ 2,582.41
9215 W RUSSELL RD 405	SPRING VALLEY	163-32-112-038	\$ 2,582.41
9215 W RUSSELL RD 406	SPRING VALLEY	163-32-112-039	\$ 2,582.41
9215 W RUSSELL RD 407	SPRING VALLEY	163-32-112-040	\$ 2,582.41
9215 W RUSSELL RD 408	SPRING VALLEY	163-32-112-041	\$ 2,582.41
9215 W RUSSELL RD 409	SPRING VALLEY	163-32-112-042	\$ 2,582.41
9215 W RUSSELL RD 410	SPRING VALLEY	163-32-112-043	\$ 2,582.41
9215 W RUSSELL RD 501	SPRING VALLEY	163-32-112-044	\$ 2,582.41
9215 W RUSSELL RD 502	SPRING VALLEY	163-32-112-045	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9215 W RUSSELL RD 503	SPRING VALLEY	163-32-112-046	\$ 2,582.41
9215 W RUSSELL RD 504	SPRING VALLEY	163-32-112-047	\$ 2,582.41
9215 W RUSSELL RD 505	SPRING VALLEY	163-32-112-048	\$ 2,582.41
9215 W RUSSELL RD 506	SPRING VALLEY	163-32-112-049	\$ 2,582.41
9215 W RUSSELL RD 507	SPRING VALLEY	163-32-112-050	\$ 2,582.41
9215 W RUSSELL RD 508	SPRING VALLEY	163-32-112-051	\$ 2,582.41
9215 W RUSSELL RD 509	SPRING VALLEY	163-32-112-052	\$ 2,582.41
9215 W RUSSELL RD 510	SPRING VALLEY	163-32-112-053	\$ 2,582.41
9215 W RUSSELL RD 601	SPRING VALLEY	163-32-112-054	\$ 2,582.41
9215 W RUSSELL RD 602	SPRING VALLEY	163-32-112-055	\$ 2,582.41
9215 W RUSSELL RD 603	SPRING VALLEY	163-32-112-056	\$ 2,582.41
9215 W RUSSELL RD 604	SPRING VALLEY	163-32-112-057	\$ 2,582.41
9215 W RUSSELL RD 605	SPRING VALLEY	163-32-112-058	\$ 2,582.41
9215 W RUSSELL RD 606	SPRING VALLEY	163-32-112-059	\$ 2,582.41
9215 W RUSSELL RD 607	SPRING VALLEY	163-32-112-060	\$ 2,582.41
9215 W RUSSELL RD 608	SPRING VALLEY	163-32-112-061	\$ 2,582.41
9215 W RUSSELL RD 609	SPRING VALLEY	163-32-112-062	\$ 2,582.41
9215 W RUSSELL RD 610	SPRING VALLEY	163-32-112-063	\$ 2,582.41
9215 W RUSSELL RD 701	SPRING VALLEY	163-32-112-064	\$ 2,582.41
9215 W RUSSELL RD 702	SPRING VALLEY	163-32-112-065	\$ 2,582.41
9215 W RUSSELL RD 703	SPRING VALLEY	163-32-112-066	\$ 2,582.41
9215 W RUSSELL RD 704	SPRING VALLEY	163-32-112-067	\$ 2,582.41
9215 W RUSSELL RD 705	SPRING VALLEY	163-32-112-068	\$ 2,582.41
9215 W RUSSELL RD 706	SPRING VALLEY	163-32-112-069	\$ 2,582.41
9215 W RUSSELL RD 707	SPRING VALLEY	163-32-112-070	\$ 2,582.41
9215 W RUSSELL RD 708	SPRING VALLEY	163-32-112-071	\$ 2,582.41
9215 W RUSSELL RD 709	SPRING VALLEY	163-32-112-072	\$ 2,582.41
9215 W RUSSELL RD 710	SPRING VALLEY	163-32-112-073	\$ 2,582.41
9215 W RUSSELL RD 801	SPRING VALLEY	163-32-112-074	\$ 2,582.41
9215 W RUSSELL RD 802	SPRING VALLEY	163-32-112-075	\$ 2,582.41
9215 W RUSSELL RD 803	SPRING VALLEY	163-32-112-076	\$ 2,582.41
9215 W RUSSELL RD 804	SPRING VALLEY	163-32-112-077	\$ 2,582.41
9215 W RUSSELL RD 805	SPRING VALLEY	163-32-112-078	\$ 2,582.41
9215 W RUSSELL RD 806	SPRING VALLEY	163-32-112-079	\$ 2,582.41
9215 W RUSSELL RD 807	SPRING VALLEY	163-32-112-080	\$ 2,582.41
9215 W RUSSELL RD 808	SPRING VALLEY	163-32-112-081	\$ 2,582.41
9215 W RUSSELL RD 809	SPRING VALLEY	163-32-112-082	\$ 2,582.41
9215 W RUSSELL RD 810	SPRING VALLEY	163-32-112-083	\$ 2,582.41
9215 W RUSSELL RD 902	SPRING VALLEY	163-32-112-084	\$ 2,582.41
9215 W RUSSELL RD 903	SPRING VALLEY	163-32-112-085	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9215 W RUSSELL RD 904	SPRING VALLEY	163-32-112-086	\$ 2,582.41
9255 W RUSSELL RD 101	SPRING VALLEY	163-32-112-167	\$ 2,582.41
9255 W RUSSELL RD 102	SPRING VALLEY	163-32-112-168	\$ 2,582.41
9255 W RUSSELL RD 103	SPRING VALLEY	163-32-112-169	\$ 2,582.41
9255 W RUSSELL RD 104	SPRING VALLEY	163-32-112-170	\$ 2,582.41
9255 W RUSSELL RD 105	SPRING VALLEY	163-32-112-171	\$ 2,582.41
9255 W RUSSELL RD 106	SPRING VALLEY	163-32-112-172	\$ 2,582.41
9255 W RUSSELL RD 107	SPRING VALLEY	163-32-112-173	\$ 2,582.41
9255 W RUSSELL RD 108	SPRING VALLEY	163-32-112-174	\$ 2,582.41
9255 W RUSSELL RD 109	SPRING VALLEY	163-32-112-175	\$ 2,582.41
9255 W RUSSELL RD 110	SPRING VALLEY	163-32-112-176	\$ 2,582.41
9255 W RUSSELL RD 111	SPRING VALLEY	163-32-112-177	\$ 2,582.41
9255 W RUSSELL RD 112	SPRING VALLEY	163-32-112-178	\$ 2,582.41
9255 W RUSSELL RD 113	SPRING VALLEY	163-32-112-179	\$ 2,582.41
9255 W RUSSELL RD 114	SPRING VALLEY	163-32-112-180	\$ 2,582.41
9255 W RUSSELL RD 115	SPRING VALLEY	163-32-112-181	\$ 2,582.41
9255 W RUSSELL RD 116	SPRING VALLEY	163-32-112-182	\$ 2,582.41
9255 W RUSSELL RD 117	SPRING VALLEY	163-32-112-183	\$ 2,582.41
9255 W RUSSELL RD 118	SPRING VALLEY	163-32-112-184	\$ 2,582.41
9255 W RUSSELL RD 119	SPRING VALLEY	163-32-112-185	\$ 2,582.41
9255 W RUSSELL RD 120	SPRING VALLEY	163-32-112-186	\$ 2,582.41
9255 W RUSSELL RD 201	SPRING VALLEY	163-32-112-187	\$ 2,582.41
9255 W RUSSELL RD 202	SPRING VALLEY	163-32-112-188	\$ 2,582.41
9255 W RUSSELL RD 203	SPRING VALLEY	163-32-112-189	\$ 2,582.41
9255 W RUSSELL RD 204	SPRING VALLEY	163-32-112-190	\$ 2,582.41
9255 W RUSSELL RD 205	SPRING VALLEY	163-32-112-191	\$ 2,582.41
9255 W RUSSELL RD 206	SPRING VALLEY	163-32-112-192	\$ 2,582.41
9255 W RUSSELL RD 207	SPRING VALLEY	163-32-112-193	\$ 2,582.41
9255 W RUSSELL RD 208	SPRING VALLEY	163-32-112-194	\$ 2,582.41
9255 W RUSSELL RD 209	SPRING VALLEY	163-32-112-195	\$ 2,582.41
9255 W RUSSELL RD 210	SPRING VALLEY	163-32-112-196	\$ 2,582.41
9255 W RUSSELL RD 211	SPRING VALLEY	163-32-112-197	\$ 2,582.41
9255 W RUSSELL RD 212	SPRING VALLEY	163-32-112-198	\$ 2,582.41
9255 W RUSSELL RD 213	SPRING VALLEY	163-32-112-199	\$ 2,582.41
9255 W RUSSELL RD 214	SPRING VALLEY	163-32-112-200	\$ 2,582.41
9255 W RUSSELL RD 215	SPRING VALLEY	163-32-112-201	\$ 2,582.41
9255 W RUSSELL RD 216	SPRING VALLEY	163-32-112-202	\$ 2,582.41
9255 W RUSSELL RD 217	SPRING VALLEY	163-32-112-203	\$ 2,582.41
9255 W RUSSELL RD 218	SPRING VALLEY	163-32-112-204	\$ 2,582.41
9255 W RUSSELL RD 219	SPRING VALLEY	163-32-112-205	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9255 W RUSSELL RD 220	SPRING VALLEY	163-32-112-206	\$ 2,582.41
9255 W RUSSELL RD 301	SPRING VALLEY	163-32-112-207	\$ 2,582.41
9255 W RUSSELL RD 302	SPRING VALLEY	163-32-112-208	\$ 2,582.41
9255 W RUSSELL RD 303	SPRING VALLEY	163-32-112-209	\$ 2,582.41
9255 W RUSSELL RD 304	SPRING VALLEY	163-32-112-210	\$ 2,582.41
9255 W RUSSELL RD 305	SPRING VALLEY	163-32-112-211	\$ 2,582.41
9255 W RUSSELL RD 306	SPRING VALLEY	163-32-112-212	\$ 2,582.41
9255 W RUSSELL RD 307	SPRING VALLEY	163-32-112-213	\$ 2,582.41
9255 W RUSSELL RD 308	SPRING VALLEY	163-32-112-214	\$ 2,582.41
9255 W RUSSELL RD 309	SPRING VALLEY	163-32-112-215	\$ 2,582.41
9255 W RUSSELL RD 310	SPRING VALLEY	163-32-112-216	\$ 2,582.41
9255 W RUSSELL RD 311	SPRING VALLEY	163-32-112-217	\$ 2,582.41
9255 W RUSSELL RD 312	SPRING VALLEY	163-32-112-218	\$ 2,582.41
9255 W RUSSELL RD 313	SPRING VALLEY	163-32-112-219	\$ 2,582.41
9255 W RUSSELL RD 314	SPRING VALLEY	163-32-112-220	\$ 2,582.41
9255 W RUSSELL RD 315	SPRING VALLEY	163-32-112-221	\$ 2,582.41
9255 W RUSSELL RD 316	SPRING VALLEY	163-32-112-222	\$ 2,582.41
9255 W RUSSELL RD 317	SPRING VALLEY	163-32-112-223	\$ 2,582.41
9255 W RUSSELL RD 318	SPRING VALLEY	163-32-112-224	\$ 2,582.41
9255 W RUSSELL RD 319	SPRING VALLEY	163-32-112-225	\$ 2,582.41
9255 W RUSSELL RD 320	SPRING VALLEY	163-32-112-226	\$ 2,582.41
9255 W RUSSELL RD 401	SPRING VALLEY	163-32-112-227	\$ 2,582.41
9255 W RUSSELL RD 402	SPRING VALLEY	163-32-112-228	\$ 2,582.41
9255 W RUSSELL RD 403	SPRING VALLEY	163-32-112-229	\$ 2,582.41
9255 W RUSSELL RD 404	SPRING VALLEY	163-32-112-230	\$ 2,582.41
9255 W RUSSELL RD 405	SPRING VALLEY	163-32-112-231	\$ 2,582.41
9255 W RUSSELL RD 406	SPRING VALLEY	163-32-112-232	\$ 2,582.41
9255 W RUSSELL RD 407	SPRING VALLEY	163-32-112-233	\$ 2,582.41
9255 W RUSSELL RD 408	SPRING VALLEY	163-32-112-234	\$ 2,582.41
9255 W RUSSELL RD 409	SPRING VALLEY	163-32-112-235	\$ 2,582.41
9255 W RUSSELL RD 410	SPRING VALLEY	163-32-112-236	\$ 2,582.41
9255 W RUSSELL RD 411	SPRING VALLEY	163-32-112-237	\$ 2,582.41
9255 W RUSSELL RD 412	SPRING VALLEY	163-32-112-238	\$ 2,582.41
9255 W RUSSELL RD 413	SPRING VALLEY	163-32-112-239	\$ 2,582.41
9255 W RUSSELL RD 414	SPRING VALLEY	163-32-112-240	\$ 2,582.41
9255 W RUSSELL RD 415	SPRING VALLEY	163-32-112-241	\$ 2,582.41
9255 W RUSSELL RD 416	SPRING VALLEY	163-32-112-242	\$ 2,582.41
9255 W RUSSELL RD 417	SPRING VALLEY	163-32-112-243	\$ 2,582.41
9255 W RUSSELL RD 418	SPRING VALLEY	163-32-112-244	\$ 2,582.41
9255 W RUSSELL RD 419	SPRING VALLEY	163-32-112-245	\$ 2,582.41

EXHIBIT A

Physical Address		APN.#	Lien Amount
9255 W RUSSELL RD 420	SPRING VALLEY	163-32-112-246	\$ 2,582.41
9265 W RUSSELL RD 101	SPRING VALLEY	163-32-112-087	\$ 2,582.41
9265 W RUSSELL RD 102	SPRING VALLEY	163-32-112-088	\$ 2,582.41
9265 W RUSSELL RD 103	SPRING VALLEY	163-32-112-089	\$ 2,582.41
9265 W RUSSELL RD 104	SPRING VALLEY	163-32-112-090	\$ 2,582.41
9265 W RUSSELL RD 105	SPRING VALLEY	163-32-112-091	\$ 2,582.41
9265 W RUSSELL RD 106	SPRING VALLEY	163-32-112-092	\$ 2,582.41
9265 W RUSSELL RD 107	SPRING VALLEY	163-32-112-093	\$ 2,582.41
9265 W RUSSELL RD 108	SPRING VALLEY	163-32-112-094	\$ 2,582.41
9265 W RUSSELL RD 109	SPRING VALLEY	163-32-112-095	\$ 2,582.41
9265 W RUSSELL RD 110	SPRING VALLEY	163-32-112-096	\$ 2,582.41
9265 W RUSSELL RD 111	SPRING VALLEY	163-32-112-097	\$ 2,582.41
9265 W RUSSELL RD 112	SPRING VALLEY	163-32-112-098	\$ 2,582.41
9265 W RUSSELL RD 113	SPRING VALLEY	163-32-112-099	\$ 2,582.41
9265 W RUSSELL RD 114	SPRING VALLEY	163-32-112-100	\$ 2,582.41
9265 W RUSSELL RD 115	SPRING VALLEY	163-32-112-101	\$ 2,582.41
9265 W RUSSELL RD 116	SPRING VALLEY	163-32-112-102	\$ 2,582.41
9265 W RUSSELL RD 117	SPRING VALLEY	163-32-112-103	\$ 2,582.41
9265 W RUSSELL RD 118	SPRING VALLEY	163-32-112-104	\$ 2,582.41
9265 W RUSSELL RD 119	SPRING VALLEY	163-32-112-105	\$ 2,582.41
9265 W RUSSELL RD 120	SPRING VALLEY	163-32-112-106	\$ 2,582.41
9265 W RUSSELL RD 201	SPRING VALLEY	163-32-112-107	\$ 2,582.41
9265 W RUSSELL RD 202	SPRING VALLEY	163-32-112-108	\$ 2,582.41
9265 W RUSSELL RD 203	SPRING VALLEY	163-32-112-109	\$ 2,582.41
9265 W RUSSELL RD 204	SPRING VALLEY	163-32-112-110	\$ 2,582.41
9265 W RUSSELL RD 205	SPRING VALLEY	163-32-112-111	\$ 2,582.41
9265 W RUSSELL RD 206	SPRING VALLEY	163-32-112-112	\$ 2,582.41
9265 W RUSSELL RD 207	SPRING VALLEY	163-32-112-113	\$ 2,582.41
9265 W RUSSELL RD 208	SPRING VALLEY	163-32-112-114	\$ 2,582.41
9265 W RUSSELL RD 209	SPRING VALLEY	163-32-112-115	\$ 2,582.41
9265 W RUSSELL RD 210	SPRING VALLEY	163-32-112-116	\$ 2,582.41
9265 W RUSSELL RD 211	SPRING VALLEY	163-32-112-117	\$ 2,582.41
9265 W RUSSELL RD 212	SPRING VALLEY	163-32-112-118	\$ 2,582.41
9265 W RUSSELL RD 213	SPRING VALLEY	163-32-112-119	\$ 2,582.41
9265 W RUSSELL RD 214	SPRING VALLEY	163-32-112-120	\$ 2,582.42
9265 W RUSSELL RD 215	SPRING VALLEY	163-32-112-121	\$ 2,582.42
9265 W RUSSELL RD 216	SPRING VALLEY	163-32-112-122	\$ 2,582.42
9265 W RUSSELL RD 217	SPRING VALLEY	163-32-112-123	\$ 2,582.42
9265 W RUSSELL RD 218	SPRING VALLEY	163-32-112-124	\$ 2,582.42
9265 W RUSSELL RD 219	SPRING VALLEY	163-32-112-125	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 220	SPRING VALLEY	163-32-112-126	\$ 2,582.42
9265 W RUSSELL RD 301	SPRING VALLEY	163-32-112-127	\$ 2,582.42
9265 W RUSSELL RD 302	SPRING VALLEY	163-32-112-128	\$ 2,582.42
9265 W RUSSELL RD 303	SPRING VALLEY	163-32-112-129	\$ 2,582.42
9265 W RUSSELL RD 304	SPRING VALLEY	163-32-112-130	\$ 2,582.42
9265 W RUSSELL RD 305	SPRING VALLEY	163-32-112-131	\$ 2,582.42
9265 W RUSSELL RD 306	SPRING VALLEY	163-32-112-132	\$ 2,582.42
9265 W RUSSELL RD 307	SPRING VALLEY	163-32-112-133	\$ 2,582.42
9265 W RUSSELL RD 308	SPRING VALLEY	163-32-112-134	\$ 2,582.42
9265 W RUSSELL RD 309	SPRING VALLEY	163-32-112-135	\$ 2,582.42
9265 W RUSSELL RD 310	SPRING VALLEY	163-32-112-136	\$ 2,582.42
9265 W RUSSELL RD 311	SPRING VALLEY	163-32-112-137	\$ 2,582.42
9265 W RUSSELL RD 312	SPRING VALLEY	163-32-112-138	\$ 2,582.42
9265 W RUSSELL RD 313	SPRING VALLEY	163-32-112-139	\$ 2,582.42
9265 W RUSSELL RD 314	SPRING VALLEY	163-32-112-140	\$ 2,582.42
9265 W RUSSELL RD 315	SPRING VALLEY	163-32-112-141	\$ 2,582.42
9265 W RUSSELL RD 316	SPRING VALLEY	163-32-112-142	\$ 2,582.42
9265 W RUSSELL RD 317	SPRING VALLEY	163-32-112-143	\$ 2,582.42
9265 W RUSSELL RD 318	SPRING VALLEY	163-32-112-144	\$ 2,582.42
9265 W RUSSELL RD 319	SPRING VALLEY	163-32-112-145	\$ 2,582.42
9265 W RUSSELL RD 320	SPRING VALLEY	163-32-112-146	\$ 2,582.42
9265 W RUSSELL RD 401	SPRING VALLEY	163-32-112-147	\$ 2,582.42
9265 W RUSSELL RD 402	SPRING VALLEY	163-32-112-148	\$ 2,582.42
9265 W RUSSELL RD 403	SPRING VALLEY	163-32-112-149	\$ 2,582.42
9265 W RUSSELL RD 404	SPRING VALLEY	163-32-112-150	\$ 2,582.42
9265 W RUSSELL RD 405	SPRING VALLEY	163-32-112-151	\$ 2,582.42
9265 W RUSSELL RD 406	SPRING VALLEY	163-32-112-152	\$ 2,582.42
9265 W RUSSELL RD 407	SPRING VALLEY	163-32-112-153	\$ 2,582.42
9265 W RUSSELL RD 408	SPRING VALLEY	163-32-112-154	\$ 2,582.42
9265 W RUSSELL RD 409	SPRING VALLEY	163-32-112-155	\$ 2,582.42
9265 W RUSSELL RD 410	SPRING VALLEY	163-32-112-156	\$ 2,582.42
9265 W RUSSELL RD 411	SPRING VALLEY	163-32-112-157	\$ 2,582.42
9265 W RUSSELL RD 412	SPRING VALLEY	163-32-112-158	\$ 2,582.42
9265 W RUSSELL RD 413	SPRING VALLEY	163-32-112-159	\$ 2,582.42
9265 W RUSSELL RD 414	SPRING VALLEY	163-32-112-160	\$ 2,582.42
9265 W RUSSELL RD 415	SPRING VALLEY	163-32-112-161	\$ 2,582.42
9265 W RUSSELL RD 416	SPRING VALLEY	163-32-112-162	\$ 2,582.42
9265 W RUSSELL RD 417	SPRING VALLEY	163-32-112-163	\$ 2,582.42
9265 W RUSSELL RD 418	SPRING VALLEY	163-32-112-164	\$ 2,582.42
9265 W RUSSELL RD 419	SPRING VALLEY	163-32-112-165	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 420	SPRING VALLEY	163-32-112-166	\$ 2,582.42
9265 W RUSSELL RD 214	SPRING VALLEY	163-32-112-120	\$ 2,582.42
9265 W RUSSELL RD 215	SPRING VALLEY	163-32-112-121	\$ 2,582.42
9265 W RUSSELL RD 216	SPRING VALLEY	163-32-112-122	\$ 2,582.42
9265 W RUSSELL RD 217	SPRING VALLEY	163-32-112-123	\$ 2,582.42
9265 W RUSSELL RD 218	SPRING VALLEY	163-32-112-124	\$ 2,582.42
9265 W RUSSELL RD 219	SPRING VALLEY	163-32-112-125	\$ 2,582.42
9265 W RUSSELL RD 220	SPRING VALLEY	163-32-112-126	\$ 2,582.42
9265 W RUSSELL RD 301	SPRING VALLEY	163-32-112-127	\$ 2,582.42
9265 W RUSSELL RD 302	SPRING VALLEY	163-32-112-128	\$ 2,582.42
9265 W RUSSELL RD 303	SPRING VALLEY	163-32-112-129	\$ 2,582.42
9265 W RUSSELL RD 304	SPRING VALLEY	163-32-112-130	\$ 2,582.42
9265 W RUSSELL RD 305	SPRING VALLEY	163-32-112-131	\$ 2,582.42
9265 W RUSSELL RD 306	SPRING VALLEY	163-32-112-132	\$ 2,582.42
9265 W RUSSELL RD 307	SPRING VALLEY	163-32-112-133	\$ 2,582.42
9265 W RUSSELL RD 308	SPRING VALLEY	163-32-112-134	\$ 2,582.42
9265 W RUSSELL RD 309	SPRING VALLEY	163-32-112-135	\$ 2,582.42
9265 W RUSSELL RD 310	SPRING VALLEY	163-32-112-136	\$ 2,582.42
9265 W RUSSELL RD 311	SPRING VALLEY	163-32-112-137	\$ 2,582.42
9265 W RUSSELL RD 312	SPRING VALLEY	163-32-112-138	\$ 2,582.42
9265 W RUSSELL RD 313	SPRING VALLEY	163-32-112-139	\$ 2,582.42
9265 W RUSSELL RD 314	SPRING VALLEY	163-32-112-140	\$ 2,582.42
9265 W RUSSELL RD 315	SPRING VALLEY	163-32-112-141	\$ 2,582.42
9265 W RUSSELL RD 316	SPRING VALLEY	163-32-112-142	\$ 2,582.42
9265 W RUSSELL RD 317	SPRING VALLEY	163-32-112-143	\$ 2,582.42
9265 W RUSSELL RD 318	SPRING VALLEY	163-32-112-144	\$ 2,582.42
9265 W RUSSELL RD 319	SPRING VALLEY	163-32-112-145	\$ 2,582.42
9265 W RUSSELL RD 320	SPRING VALLEY	163-32-112-146	\$ 2,582.42
9265 W RUSSELL RD 401	SPRING VALLEY	163-32-112-147	\$ 2,582.42
9265 W RUSSELL RD 402	SPRING VALLEY	163-32-112-148	\$ 2,582.42
9265 W RUSSELL RD 403	SPRING VALLEY	163-32-112-149	\$ 2,582.42
9265 W RUSSELL RD 404	SPRING VALLEY	163-32-112-150	\$ 2,582.42
9265 W RUSSELL RD 405	SPRING VALLEY	163-32-112-151	\$ 2,582.42
9265 W RUSSELL RD 406	SPRING VALLEY	163-32-112-152	\$ 2,582.42
9265 W RUSSELL RD 407	SPRING VALLEY	163-32-112-153	\$ 2,582.42
9265 W RUSSELL RD 408	SPRING VALLEY	163-32-112-154	\$ 2,582.42
9265 W RUSSELL RD 409	SPRING VALLEY	163-32-112-155	\$ 2,582.42
9265 W RUSSELL RD 410	SPRING VALLEY	163-32-112-156	\$ 2,582.42
9265 W RUSSELL RD 411	SPRING VALLEY	163-32-112-157	\$ 2,582.42
9265 W RUSSELL RD 412	SPRING VALLEY	163-32-112-158	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 413	SPRING VALLEY	163-32-112-159	\$ 2,582.42
9265 W RUSSELL RD 414	SPRING VALLEY	163-32-112-160	\$ 2,582.42
9265 W RUSSELL RD 415	SPRING VALLEY	163-32-112-161	\$ 2,582.42
9265 W RUSSELL RD 416	SPRING VALLEY	163-32-112-162	\$ 2,582.42
9265 W RUSSELL RD 417	SPRING VALLEY	163-32-112-163	\$ 2,582.42
9265 W RUSSELL RD 418	SPRING VALLEY	163-32-112-164	\$ 2,582.42
9265 W RUSSELL RD 419	SPRING VALLEY	163-32-112-165	\$ 2,582.42
9265 W RUSSELL RD 420	SPRING VALLEY	163-32-112-166	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-001	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-002	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-003	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-004	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-005	\$ 2,582.42
			\$ 756,647.12

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 11:23 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 5, Bates Nos. 1001-1250)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT'S APPENDIX TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE, VOLUME 5,** 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:

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Las Vegas, Nevada 89101-6014
Attorneys for Respondent, Zitting Brothers Construction, Inc.

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

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1 and/or Penney DBA entered into a series of rental contracts pursuant to the Agreement for the
2 provision of various equipment.

3 10. In consideration of the equipment and materials Ahern agreed to rent to Penney
4 and/or Penney DBA, Penney and/or Penney DBA agreed to pay to Ahern the rental cost of the
5 equipment and purchase cost of the materials.

6 11. Under the Agreement, Penney and/or Penney DBA agreed to pay for equipment
7 and materials within thirty (30) days of invoicing. Penney and/or Penney DBA further agreed
8 to pay interest upon past due amounts and attorneys' fees in the event of default.
9

10 12. Ahern supplied equipment and/or materials requested by Penney and/or Penney
11 DBA and/or by agents authorized to charge on behalf of Penney and/or Penney DBA pursuant
12 to the Agreement, and said equipment and/or materials were used in the course of Penney
13 and/or Penney DBA's business activities, and Penney and/or Penney DBA accepted said
14 equipment and/or materials as satisfactory, completely and fully discharging the obligations of
15 Ahern under the Agreement.

16 13. All conditions precedent to Ahern's right to payment in full have been
17 performed and have occurred.

18 14. Notwithstanding Ahern's performance under the Agreement, Penney and/or
19 Penney DBA have, without just cause or excuse and in violation of the Agreement, refused to
20 pay Ahern the balance of the amounts due and owing for the equipment and/or materials
21 supplied under the Agreement, to-wit: \$5,279.78, together with interest thereon.
22

23 15. Ahern has made demand for the amount due and owing, however Penney and/or
24 Penney DBA have wholly failed, neglected and refused to pay the aforesaid sums. As a result
25 of Penney and/or Penney DBA's refusal to pay the sums currently due and owing, Ahern has
26 been damaged in the amount of \$5,279.78, together with interest thereon, and Ahern is entitled
27

1 to judgment against Penney and/or Penney DBA in the principal amount of \$5,279.78, plus
2 interest thereon, pursuant to the parties' Agreement and/or any applicable law until paid in full.

3 16. Ahern has been compelled to retain the services of legal counsel and has had to
4 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
5 from Penney and/or Penney DBA the attorneys' fees and costs incurred in connection with this
6 action.
7

8 **SECOND CAUSE OF ACTION**
9 **(Foreclosure of Longford Lien)**

10 17. The allegations contained in the preceding paragraphs of this Complaint are
11 incorporated herein by this reference.

12 18. On or about January 29, 2009, Ahern recorded its Notice of Lien in Book
13 20090129 of the Official Records of Clark County, Nevada, as Instrument No. 0005398. The
14 Lien was in writing and was recorded against the Property for the principal balance due and
15 owing when the Lien was recorded.

16 19. The Lien was served upon Defendants to this Complaint and/or the owners or
17 reputed owners of the certain real properties described therein and, as required by law, is a
18 charge against the Property, and has been properly perfected pursuant to Chapter 108 of the
19 Nevada Revised Statutes.

20 20. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to an
21 order from this Court directing that the Property be sold and foreclosed upon, and that from the
22 proceeds of said sale, Ahern be paid the principal sum of \$5,279.78, together with the interest
23 accruing thereon, plus reimbursement of the costs and attorney's fees incurred in connection
24 with this action.
25

26 21. Ahern is entitled to recover in this action the costs and fees it incurred in
27

1 preparing, recording, and serving its Notice of Lien.

2 22. Pursuant to Chapter 108 of the Nevada Revised Statutes, Ahern is entitled to
3 recover from the owner of the Property the attorney's fees and costs incurred in connection
4 with this action.

5 **THIRD CAUSE OF ACTION**
6 **(Claim Against Personal Guarantor – William)**

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

9 24. On or about August 28, 1997, Defendant William, as part of the Agreement
10 executed and submitted by Penney and/or Penney DBA, personally guaranteed payment of the
11 credit extended to Penney and/or Penney DBA.

12 25. Pursuant to the personal guarantee, Defendant William guaranteed payment of
13 all equipment rented and materials sold to Penney and/or Penney DBA.

14 26. All conditions precedent to Ahern's right to payment in full from William has
15 been performed and has occurred. William's refusal to pay is a material breach of the personal
16 surety.

17 27. Notwithstanding Ahern's performance, William has, without just cause or excuse,
18 and in violation of the personal guarantee, refused to pay Ahern the balance currently due and
19 owing for the equipment and materials provided under the Agreement to Penney and/or Penney
20 DBA, in the amount of \$5,279.78, together with interest thereon.

21 28. Ahern has made demand for the amount due and owing, but William has wholly
22 failed, neglected, and refused to pay the aforesaid sums. As a result of William's refusal to pay
23 the sums currently due and owing, Ahern has been damaged in the amount of \$5,279.78,
24 together with interest thereon.
25
26
27

1 29. Because of William's failure to pay the sums due and owing to Ahern for the
2 rental of Ahern's equipment, Ahern, therefore, is entitled to judgment in the principal amount
3 of \$5,279.78, plus interest thereon pursuant to the parties' Agreement and/or any applicable law
4 until paid in full.

5 30. Ahern has been compelled to retain the services of legal counsel and has had to
6 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
7 from Defendant William the attorney's fees and costs incurred in connection with this action.
8

9 **FOURTH CAUSE OF ACTION**
10 **(Unjust Enrichment – Penney, Penney DBA, William, and Longford)**

11 31. The allegations contained in the preceding paragraphs of this Complaint are
12 incorporated herein by this reference.

13 32. The reasonable value of the equipment and materials Ahern provided to
14 Defendants Penney, Penney DBA, William, and Longford pursuant to the Agreement is
15 \$5,279.78. This amount is now due and owing to Ahern by Defendants Penney, Penney DBA,
16 William, and Longford together with interest thereon.

17 33. Since Penney, Penney DBA, William, and Longford have received the value of
18 Ahern's equipment and materials without paying for them, they have been unjustly enriched in
19 the principal amount of \$5,279.78.

20 34. Because Penney, Penney DBA, William, and Longford have been unjustly
21 enriched at Ahern's expense, Ahern is entitled to judgment against Penney, Penney DBA,
22 William, and Longford jointly in the principal amount of \$5,279.78, plus interest thereon
23 pursuant to the parties' Agreement and/or any applicable law until paid in full. Ahern is also
24 entitled to recover from Penney, Penney DBA, William, and Longford attorneys' fees and costs
25 incurred in connection with this action.
26
27

FIFTH CAUSE OF ACTION

(Monies Due and Owing - Penney, Penney DBA, William, and Longford)

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

36. Defendants Penney, Penney DBA, William, and Longford owe to Ahern the principal balance of \$5,279.78, together with interest accruing thereon, for the equipment and materials provided by Ahern. Although demand for payment has been made by Ahern, Defendants have refused and continues to refuse to pay for said equipment and materials.

37. Ahern, therefore, is entitled to judgment against Defendants Penney, Penney DBA, William, and Longford in the principal amount of \$5,279.78, plus interest thereon pursuant to the parties' Agreement and/or any applicable law until paid in full. Ahern is also entitled to recover from Defendants the attorney's fees and costs incurred in connection with this action.

SIXTH CAUSE OF ACTION

(Claim Against Old Republic's Bond)

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

39. Old Republic provided bond number DLI-1247853 in the amount of \$10,000.00 for the purpose of allowing William Penney d/b/a Penney Construction to obtain an A12, A15, and A19 license (hereinafter the "Bond").

40. One of the purposes of the Bond is to provide payment to claimants, such as Ahern, who are not paid by Penney DBA for work done under contract with Penney DBA.

41. Ahern performed the services and provided the equipments and materials for which it was contracted, and fulfilled each and every other obligation under the terms of the

1 Agreement with Penney DBA.

2 42. Ahern is within the class of persons for whose benefit the Bond was provided.
3 Ahern is therefore entitled to recover from Old Republic the amounts due and owing to Ahern
4 by Penney DBA.

5 43. Old Republic' refusal to pay the amounts due and owing by Penney DBA is a
6 breach of Old Republic's contractual obligations to Penney DBA and/or Ahern.

7
8 44. By reason of Old Republic's failure to pay the sums due and owing to Ahern for
9 the equipment rental, Ahern, is entitled to judgment against Old Republic in the principal
10 amount of \$5,279.78, plus interest thereon pursuant to the parties' Agreement and/or any
11 applicable law until paid in full.

12 45. Ahern has been compelled to retain the services of legal counsel and has had to
13 participate in these legal proceedings to collect said sums, and is therefore entitled to recover
14 from Old Republic the attorneys' fees and costs incurred in connection with this action.

15 **WHEREFORE**, Ahern requests judgment as follows:

16 1. That this Court enter Judgment against Defendants, in the principal amount in
17 excess of \$10,000.00, plus interest thereon until paid in full;

18 2. That this Court enter judgment against Defendants, for a reasonable sum and for
19 the costs or preparation, verification, service, recording, and enforcement of the Lien;

20 3. For reasonable attorneys' fees;

21 4. For costs of suit;

22 5. That the Court declare the rank and priority of all lien claims, secured claims,
23 and that Ahern's Lien be ascertained and adjudged as a valid Lien with priority over all
24 Defendants;

25 6. That the Lien be enforced according to law;

26
27

1 7. That the Court direct a foreclosure sale of the Property, and that the Property be
2 sold and the proceeds be applied to the payment of the sums found due and owing to Ahern;

3 8. That the Court enter such deficiency judgments against Defendants as may be
4 proper; and

5 9. For such other and further relief as the Court deems just and proper.

6 DATED this 20th day of May, 2009.

7
8 **DIXON TRUMAN FISHER & CLIFFORD P.C.**

9
10 By: Robin E. Perkins
11 D. SHANE CLIFFORD, ESQ.
12 ROBIN E. PERKINS, ESQ.
13 221 North Buffalo Drive, Suite A
14 Las Vegas, NV 89145
15 Attorneys for Ahern

16 **CERTIFICATE OF MAILING**

17 I hereby certify that I am an employee of Dixon Truman Fisher & Clifford and that on
18 the 20th day of May, 2009, I placed a true and correct copy of the foregoing **AHERN**
19 **RENTAL INC.'S STATEMENT OF FACTS CONSTITUTING LIEN AND**
20 **COMPLAINT-IN-INTERVENTION** in the United States mail, postage prepaid, addressed as
21 follows:

22 Lori N. Brown, Esq.
23 Reed J. Werner, Esq.
24 HARMON & DAVIES P.C.
25 1428 S. Jones Blvd.
26 Las Vegas, NV 89146

27
Danny Roberts
An employee of Dixon Truman Fisher & Clifford

ORIGINAL



1 Jeffrey J. Whitehead, Esq.
2 Nevada Bar No. 3183
3 Whitehead Law Offices
4 2431 W. Horizon Ridge Pkwy.
5 Suite 110
6 Henderson NV 89052
7 VOX: (702) 451-7272
8 FAX: (702) 451-2947
9 email: jeff@whiteheadlaw.org

FILED

MAY 20 11 03 AM '09

Ed [Signature]
CLERK OF THE COURT

10 *Attorneys for Southwest Air Conditioning, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 **OLSON PRECAST COMPANY, a**
12 **Nevada Corporation,**

13 **Plaintiffs,**

14 **vs.**

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

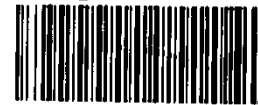
22 **Defendants.**

CASE NO.: A-09-589662-C

DEPT. NO.: II

STATEMENT OF FACTS
CONSTITUTING LIEN BY
SOUTHWEST AIR CONDITIONING,
INC.

A-09-589662-C
115412



STATEMENT OF FACTS CONSTITUTING LIEN BY SOUTHWEST AIR
CONDITIONING, INC.

SOUTHWEST AIR CONDITIONING, INC., by and through its attorney, JEFFREY J. WHITEHEAD,
ESQ., of WHITEHEAD LAW OFFICES, as and for its Statement of Facts Constituting Lien by
Southwest Air Conditioning, Inc., hereby states as follows:

1. Defendant Longford Southern Hills II, LLC is the owner of certain real property
bearing Assessor's Parcel Number 176-06-516-001.

CLERK OF THE COURT

MAY 20 2009

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2. Southwest Air Conditioning, Inc. is in the business of providing HVAC services, including manufacture and installation services.
3. Southwest Air Conditioning, Inc. entered into a contract with Longford Southern Hills II, LLC whereby Southwest Air Conditioning, Inc. was to provide HVAC services, and Longford Souther Hills II, LLC was to pay Southwest Air Conditioning, Inc. for those services in accordance with the terms of their contract.
4. Southwest Air Conditioning, Inc. performed all contracted services and all conditions precedent to payment under the contract.
5. Longford Southern Hills II, LLC has paid some but not all of the amounts due to Southwest Air Conditioning, Inc. under the Contract.
6. Southwest Air Conditioning, Inc. has claimed and continues to claim a lien upon the property described in this statement for work, materials, or equipment furnished or to be furnished for the improvement of the property:
7. The amount of the original contract is: \$192,720.00
8. The total amount of all additional or changed work, materials and equipment, if any, is:..... \$214,156.00
9. The total amount of all payments received to date is:..... \$355,806.90
....
10. The amount of the lien, after deducting all just credits and offsets, is:..... \$51,069.10
11. The name of the owner of the property is:

Longford Southern Hills II, LLC.

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12. 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:

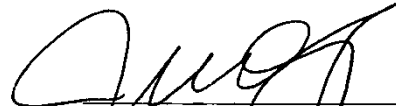
Longford Southern Hills II, LLC.

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

Payment within 30 days of invoice date.

DATED May 19, 2009.

Respectfully submitted,
WHITEHEAD LAW OFFICES



Jeffrey J. Whitehead, Esq.
Nevada Bar No. 3183
Whitehead Law Offices
2431 W. Horizon Ridge Pkwy.
Suite 110
Henderson NV 89052
VOX: (702) 451-7272
FAX: (702) 451-2947
email: jeff@whiteheadlaw.org

Attorney for Southwest Air Conditioning, Inc.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing STATEMENT OF FACTS
CONSTITUTING LIEN BY SOUTHWEST AIR CONDITIONING, INC. was sent May
19, 2009 to the following person(s) by the following method(s):

☐ facsimile transmission, pursuant to the amendment to the Eighth Judicial
District Court Rule 7.26, by faxing a true and correct copy of same to the
party or parties at the fax numbers indicated below:

☒ U.S. Mail, by depositing a true and correct copies of same in the United
States Mail, postage prepaid at Henderson, Nevada, to the persons at the
addresses listed below:

Reed J. Werner, Esq. & Starr H. Arvay,
Esq.
Harmon & Davies, P.C.
1428 S. Jones Blvd.
Las Vegas, NV 89146
FAX: (702) 733-1774
Attorneys for Plaintiff

Traffic Control Service, Inc.
c/o Resident Agent CSC Services of
Nevada, Inc.
502 E. John St.
Carson City, NV 89706

Mad Dog Heavy Equipment
330 E. Warm Springs Rd.
Las Vegas, NV 89119

Mammoth Underground, LLC
c/o Resident Agent Dixon, Truman,
Fisher & Clifford, P.C.
221 N. Buffalo Dr., Ste. A
Las Vegas, NV 89145

Topnotch Services, Inc.
c/o Resident Agent Kelly H. Swanson
6787 W. Tropicana Ave., Ste. 241
Las Vegas, NV 89103

Cemex Pacific Holdings, LLC
c/o Resident Agent Corporate Creations
Network
8275 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123

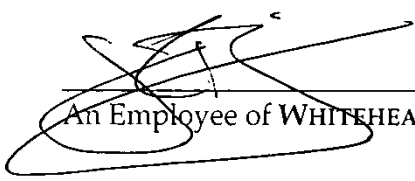
Ahern Rentals, Inc.
c/o Resident Agent Don F. Ahern
4241 S. Arville St.
Las Vegas, NV 89103

HCS Electrical Supply, LLC
c/o Resident Agent The Corporation
Trust Company of Nevada
6100 Neil Road, Ste. 500
Reno, NV 89511

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Par-3 Landscape & Maintenance, Inc.
c/o Resident Agent Paul Jaramillo
4610 Wynn Rd.
Las Vegas, NV 89103

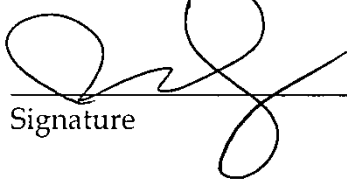
Auburn Electric, Inc.
c/o Resident Agent Augburn Electric,
Inc.
8001 Panpipe Court
Las Vegas, NV 89131


An Employee of WHITEHEAD LAW OFFICES

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding STATEMENT OF FACTS
CONSTITUTING LIEN BY SOUTHWEST AIR CONDITIONING, INC. filed in or
submitted for District Court Case Number A-09-589662-C does not contain the social
security number of any person.



Signature

May 19, 2009
Date

Jeffrey J. Whitehead, Esq.

Print Name

Attorney

Title

ORIGINAL

33

FILED

MAY 27 3 49 PM '09

E. J. Smith
CLERK OF THE COURT

1 **STAT**
2 DALE B. RYCRAFT, JR., ESQ.
3 Nevada Bar No. 7165
4 **RYCRAFT LAW OFFICE**
5 2470 St. Rose Parkway, #102
6 Henderson, Nevada 89074
7 Telephone (702) 823-5715
8 Facsimile (702) 982-5908
9 *Attorney for Lien Claimant*
10 *Ferguson Fire & Fabrication, Inc.*

11
12
13
14 **DISTRICT COURT**
15 **COUNTY CLARK, NEVADA**

16 UINTAH INVESTMENTS, LLC, a
17 Nevada limited liability company dba
18 SIERRA FREINFORCING,

19 Plaintiff,

20 vs.

21 APCO CONSTRUCTION, a Nevada
22 corporation; GEMSTONE
23 DEVELOPMENT WEST, INC., a Nevada
24 corporation; and DOES I through X,

25 Defendants.

26 FERGUSON FIRE & FABRICATION,
27 INC., a corporation,

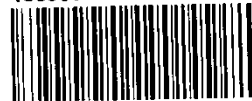
28 Lien Claimant,

29 vs.

Case No. A583289
Dept. No. XXIII

**FERGUSON FIRE & FARBRICATION,
INC.'S STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION**

09A583289
135930



RYCRAFT LAW OFFICE
2470 St. Rose Parkway, #102
Henderson, NV 89074
Phone: (702) 823-5715 ♦ Fax: (702) 982-5908

CLERK OF THE COURT

MAY 27 2009

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9

1 GEMSTONE DEVELOPMENT WEST,
2 INC., a Nevada corporation; CAMCO
3 PACIFIC CONSTRUCTION COMPANY,
4 INC., a foreign corporation; DOES 1
5 through 60, inclusive,
6
7 Defendants.

8 COMES NOW Lien Claimant FERGUSON FIRE & FABRICATION, INC.
9 (hereinafter "FERGUSON"), by and through its attorney, DALE B. RYCRAFT, JR., Esq. of
10 the RYCRAFT LAW OFFICE, and hereby submits its Statement of Facts Constituting Lien.

11 The materials provided by FERGUSON were furnished at the specific instance and
12 request of Defendants under Agreement with FERGUSON and approval of the remaining
13 Defendants (the "Contract"). FERGUSON timely recorded its mechanic's liens against the
14 subject property described as follows:

15 Building 2:
16 9275 W. Russell Road
17 Las Vegas, Nevada 89148

Assessors Description:

Manhattan West-Phase I
PLAT BOOK 141 PAGE 28
UNIT 101 BLOCK 2

18 Building 3:
19 9205 W. Russell Road
20 Las Vegas, Nevada 89148

SEC 32 TWP 21 RNG 60

21 Building 7:
22 9215 W. Russell Road
23 Las Vegas, Nevada 89148

Assessors Parcel No. 163-32-112-001

Assessors Description:

PT NE4 NW4 SEC 32 31 60
SEC 32 TWP 21 RNG 60

24 Building 8:
25 9265 W. Russell Road
26 Las Vegas, Nevada 89148

27 Building 9:
28 9255 W. Russell Road
Las Vegas, Nevada 89148

Assessors Parcel No. 163-32-101-020

RYCRAFT LAW OFFICE
2470 St. Rose Parkway, #102
Henderson, NV 89074
Phone: (702) 823-5715 ♦ Fax: (702) 982-5908

1 Therefore, FERGUSON claims liens against the subject properties in the total amount
2 of \$90,932.76.

3 DATED this ⁴¹26 day of May, 2009.

4 **RYCRAFT LAW OFFICE**

5 
6 DALE B. RYCRAFT, JR., ESQ.

7 Nevada Bar # 7165

8 2470 St. Rose Parkway, #102

9 Henderson, Nevada 89074

10 *Attorney for Lien Claimant*

11 *Ferguson Fire & Fabrication, Inc.*

12 **COMPLAINT IN INTERVENTION**

13 COMES NOW Lien Claimant FERGUSON FIRE & FABRICATION, INC.

14 (hereinafter "FERGUSON"), by and through its attorney, DALE B. RYCRAFT, JR., ESQ. of
15 the RYCRAFT LAW OFFICE, and for its Complaint in Intervention, complains, avers and
16 alleges as follows:

17 **THE PARTIES**

18 1. FERGUSON is and was at all times relevant to this action a corporation
19 incorporated in the State of Nevada, duly authorized and qualified to do business in Clark
20 County, Nevada as a duly licensed material supplier.

22 2. FERGUSON is informed and believes that Defendant GEMSTONE
23 DEVELOPMENT WEST, INC. (hereinafter "GEMSTONE") was and is a Nevada limited
24 liability company and was and is the owner of the subject Property.

25 3. FERGUSON is informed and believes that Defendant CAMCO PACIFIC
26 CONSTRUCTION COMPANY, INC. (hereinafter "CAMCO") was and is a general contractor
27 licensed to do business in the State of Nevada.
28

1 4. FERGUSON is informed and believes and therefore alleges that Defendant
2 GEMSTONE was and is at all times relevant to this action, the owner, reputed owner, or the
3 persons, individuals and/or entities who claim an ownership interest in that certain real
4 property portions thereof located in Clark County, Nevada and more particularly described as
5 follows:

6 Building 2:
7 9275 W. Russell Road
8 Las Vegas, Nevada 89148

Assessors Description:

Manhattan West-Phase I
PLAT BOOK 141 PAGE 28
UNIT 101 BLOCK 2

9 Building 3:
10 9205 W. Russell Road
11 Las Vegas, Nevada 89148

SEC 32 TWP 21 RNG 60

12 Building 7:
13 9215 W. Russell Road
14 Las Vegas, Nevada 89148

Assessors Parcel No. 163-32-112-001

Assessors Description:

15 Building 8:
16 9265 W. Russell Road
17 Las Vegas, Nevada 89148

PT NE4 NW4 SEC 32 31 60

SEC 32 TWP 21 RNG 60

18 Building 9:
19 9255 W. Russell Road
20 Las Vegas, Nevada 89148

Assessors Parcel No. 163-32-101-020

21 Including all easements, rights-of-way, common areas and appurtenances thereto, and
22 surrounding space as may be required for the convenient use and occupation thereof, upon
23 which GEMSTONE caused or allowed to be constructed certain improvements (the "Property").

24 5. The whole of the Property and the Leasehold Estate are reasonable necessary
25 for the convenient use and occupation of the improvements.

26 6. FERGUSON is informed and believes and thereon alleges that at all times
27 relevant to this action Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
28 ("CAMCO") is and was doing business as a licensed contractor authorized to conduct business

1 in Clark County, Nevada and contracted as general contractor and/or construction manager for
2 the MANHATTAN WEST project (the "Project").

3 7. FERGUSON does not know the true names of the individuals, corporations,
4 partnership and entities sued and identified in fictitious names as DOES 1 through 60.
5 FERGUSON alleges that such Defendants claim an interest in or to the Project and/or are
6 responsible for damages suffered by FERUGSON as more fully discussed under the claims for
7 relief set forth below. FERGUSON will request leave of this Honorable Court to amend this
8 Complaint to show the true names and capacities of each such fictitious Defendants when
9 FERGUSON discovers such information.
10

11 **FIRST CAUSE OF ACTION**

12 **(Foreclosure of Mechanic's Lien Against GEMSTONE)**

13
14 8. FERGUSON repeats and realleges each and every allegation contained in the
15 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
16 follows:

17 9. The provision for the Materials supplied to the Project was at the special
18 instance and request of Owners for the improvement of the Property.
19

20 10. As provided in NRS 108.245, the Owners had actual knowledge of
21 FERGUSON's delivery of the Material to the Property or FERGUSON provided a Notice of
22 Right to Lien, as prescribed by Nevada law.

23 11. FERGUSON demanded payment of an amount in excess of Ten Thousand and
24 no/100 Dollars (\$10,000.00), which amount remains past due and owing.
25

26 12. On or about February 10, 2009 timely recorded a Notice of Lien as follows: In
27 Book No. 20090210 as Instrument No. 0002713 in the amount of \$90,932.76.

28 13. The Lien is hereinafter referred to as "The Lien."

1 14. The Lien was in writing and was recorded against the Property for the
2 outstanding balance due to FERGUSON in the amount of \$90,932.76 (hereinafter
3 “Outstanding Balance”).

4 15. The Lien was served upon the record Owner and/or its authorized agents, as
5 required by law.

6 16 FERGUSON is entitled to an award of reasonable attorney’s fees, costs and
7 interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised
8 Statutes.

9
10 **SECOND CAUSE OF ACTION**

11 **(Unjust Enrichment – Against All Defendants)**

12 17. FERGUSON repeats and realleges each and every allegation contained in the
13 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
14 follows:

15 18. FERGUSON furnished the Materials for the benefit of and at the specific
16 instance and request of the Defendants.

17 19. The Defendants accepted, used and enjoyed the benefit of FERGUSON’s
18 Materials.

19 20. The Defendants knew or should have known that FERGUSON expected to be
20 paid for the Materials

21 21. FERGUSON has demanded payment of the Outstanding Balance.

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

24 23. The Defendants have been unjustly enriched, to the detriment of FERGUSON.

1 24. FERGUSON has engaged the services of an attorney to collect the Outstanding
2 Balance, and FERGUSON is entitled to recover its reasonable costs, attorney's fees and
3 interest therefore.

4 **FOURTH CAUSE OF ACTION**

5 **(Breach of Contract – Against All Defendants)**

6 25. FERGUSON repeats and realleges each and every allegation contained in the
7 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
8 follows:
9

10 26. FERGUSON has fully complied with the terms of the contract described above.

11 27. FERGUSON has failed to comply with the terms of the contract by failing to
12 pay FERGUSON the sum of \$90,932.76.
13

14 28. As a result of the breach of contract by Defendants, and each of them,
15 FERGUSON is entitled to a judgment in its favor upon the principal sum of \$90,932.76,
16 interest at the highest legal rate, and general damages in excess of \$10,000.00.

17 29. FERGUSON has engaged the services of an attorney to collect the Outstanding
18 Balance, and FERGUSON is entitled to recover its reasonable costs, attorney's fees and
19 interest therefore.
20

21 **PRAYER**

22 1. Enter judgment against the Defendants, and each of them, jointly and severally,
23 in the Outstanding Balance amount;

24 2. Enter a judgment against Defendants, and each of them, jointly and severally,
25 for FERGUSON's reasonable costs and attorney's fees incurred in the collection of the
26 Outstanding Balance, as well as an award of interest thereon;
27
28

RYCRAFT LAW OFFICE

2470 St. Rose Parkway, #102

Henderson, NV 89074

Phone: (702) 823-5715 ♦ Fax: (702) 982-5908


1 3. Enter a judgment declaring that FERGUSON has a valid and enforceable
2 mechanic's 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 that the
6 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the
7 State of Nevada, and that the proceeds of said sale be applied to the payment of sums due
8 FERGUSON herein; and
9

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

11 DATED this 26th day of May, 2009.

RYCRAFT LAW OFFICE


DALE B. RYCRAFT, JR., ESQ.

Nevada Bar # 7165

2470 St. Rose Parkway, #102

Henderson, Nevada 89074

Attorney for Lien Claimant

Ferguson Fire & Fabrication, Inc.

RYCRAFT LAW OFFICE
2470 St. Rose Parkway, #102
Henderson, NV 89074
Phone: (702) 823-5715 ♦ Fax: (702) 982-5908

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RYCRAFT LAW OFFICE and that on this 27 day of May, 2009, I personally caused the above and foregoing document titled, **FERGUSON FIRE & FABRICATION, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION**, to be served by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and/or


Gwen Rutar Mullins, Esq.
HOWARD & HOWARD
3800 H. Hughes Parkway, Suite 1400
Las Vegas, Nevada 89169

Joseph G. Went, Esq.
KOLESAR & LEATHAM, CHTD.
3320 W. Sahara Avenue, Suite 380
Las Vegas, Nevada 89102

Phillip T. Varricchio, Esq.
MUIJE & VARRICCHIO
1320 S. Casino Center
Las Vegas, Nevada 89104

Matthew Q. Callister, Esq.
CASSLISTER & REYNOLDS
823 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Richard A. Koch, Esq.
KOCH & BRIM, LLP
4520 S. Pecos Road, Suite 4
Las Vegas, Nevada 89121


An employee of Rycraft Law Office

1 RICHARD A. KOCH, ESQ.
Nevada Bar No. 1598
2 KOCH & BRIM, L.L.P.
4520 S. Pecos Road, Ste. #4
3 Las Vegas, Nevada 89121
(702) 451-3900
4 rkoch@kochandbrim.com
Attorneys for Lien Claimant:
5 Republic Crane Service, LLC

FILED

MAY 27 4 38 PM '09

DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

8 UINTAH INVESTMENTS, LLC, a Nevada
limited liability company, d/b/a SIERRA
9 REINFORCING,

10 Plaintiff,

11 vs.

12 APCO CONSTRUCTION, a Nevada
Corporation; GEMSTONE DEVELOPMENT
13 WEST, INC., a Nevada corporation; and
DOES I through X,

14 Defendants.

15 REPUBLIC CRANE SERVICE, LLC, a
16 Nevada limited liability company,

17 Lien Claimant/Intervenor,

18 vs.

19 APCO CONSTRUCTION, a Nevada
Corporation; GEMSTONE DEVELOPMENT
20 WEST, INC., a Nevada corporation; and
DOES I through X,

21 Respondents.
22

Case No. A583289
Dept. XXIII

09A583289
143754



23 **AMENDED STATEMENT OF FACTS CONSTITUTING LIEN CLAIM**
24 **BY REPUBLIC CRANE SERVICE, LLC**

25 COMES NOW Lien Claimant/Intervenor, Republic Crane Service, LLC, also
26 sometimes known as Republic Crane Services, LLC ("Republic Crane"), and for its
27 Statement of Facts Constituting Lien alleges and claims the following:

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MAY 27 2009

CLERK OF THE COURT

FILED

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CLERK OF THE COURT

1 **First Claim for Relief (Foreclosure of Lien Claim for Services Provided to**
2 **Apco Construction)**

- 3 1. Republic Crane is now, and at all times relevant hereto has been, a
4 Nevada limited liability company.
- 5 2. Respondent Apco Construction ("Apco") is now, and at all times relevant
6 hereto has been, a Nevada corporation and a licensed building contractor.
- 7 3. Respondent Gemstone Development West, Inc. ("Gemstone") is a
8 Nevada corporation and the owner of real property located at 9205 West
9 Russell Road, Las Vegas, Nevada (the "Property"), more particularly
10 described as:

11
12 SEE ATTACHED "EXHIBIT A" FOR FULL LEGAL DESCRIPTION

- 13
14 4. On or about August 25, 2008 Republic Crane entered into a written
15 subcontract agreement with Apco to perform labor and to provide
16 materials and services for the improvement of the Property.
- 17 5. Although Republic Crane performed all of the services required of it by its
18 subcontract agreement with Apco, the amount of \$9,932.73 is still due
19 and owing on that contract.
- 20 6. Republic Crane has performed all of the statutory requirements set forth in
21 NRS Chapter 108 for perfecting a mechanic's lien on the Property,
22 including the recording of a mechanic's lien with the Recorder of Clark
23 County, Nevada on December 8, 2008 as Instrument No. 1639 in Book
24 20081208.
- 25 7. Republic Crane is entitled to foreclose upon its mechanic's lien for
26 services and materials provided for the Apco contract, and to all other
27 remedies permitted to it by Chapter 108 of the Nevada Revised Statutes.
- 28 8. Republic Crane is entitled to recover its costs for recording and perfecting

1 the mechanic's lien, together with its attorney's fees and costs of suit, as
2 will as interest on the unpaid balance of what is owed.
3

4 **Second Claim for Relief (Foreclosure of Lien Claim for Services Provided to**
5 **Gemstone Development West, Inc.)**

- 6 9. Republic Crane repeats and incorporates herein each of the allegations
7 set forth in its First Claim for Relief as though fully set forth herein.
- 8 10. On or about August 28, 2008, Republic Crane entered into an "Equipment
9 Bare Lease Agreement" with Gemstone to provide cranes and other
10 equipment for construction work on the Property.
- 11 11. In December 2008, after Apco had defaulted in its payments to Republic
12 Crane, Gemstone agreed to take over the contract for the services
13 previously performed for Apco and agreed to accept all financial
14 responsibility for that contract.
- 15 12. Gemstone failed to make all payments under the Equipment Bare Lease
16 Agreement. The balance currently due and owing on the said obligation is
17 \$52,705.67.
- 18 13. Republic Crane has performed all of the statutory requirements set forth in
19 NRS Chapter 108 for perfecting a mechanic's lien on the Property,
20 including the recording of a mechanic's lien with the Recorder of Clark
21 County, Nevada on March 16, 2009 as Instrument No. 1819 in Book
22 20090316.
- 23 14. Republic Crane is entitled to foreclose upon its mechanic's lien and to all
24 other remedies permitted to it by Chapter 108 of the Nevada Revised
25 Statutes.
- 26 15. Republic Crane is entitled to recover its costs for recording and perfecting
27 the mechanic's lien, together with its attorney's fees and costs of suit, as
28 will as interest on the unpaid balance of what is owed.

1 **Third Claim for Relief (Unjust Enrichment Against Both Apco and Gemstone)**

2 16. Republic Crane repeats and incorporates herein each of the allegations
3 set forth in its First and Second Claims for Relief as though fully set forth
4 herein.

5 17. Republic Crane provided its labor, services, and materials for the benefit
6 of Apco and Gemstone and at their specific instance and request.

7 18. Apco and Gemstone accepted, used, and enjoyed the benefit of the labor
8 and services provided by Republic Crane.

9 19. Apco and Gemstone knew or should have known that Republic Crane
10 expected to be paid for its services.

11 20. Apco and Gemstone have been unjustly enriched to the detriment of
12 Republic Crane.

13
14 **Fourth Claim for Relief (Breach of Contract Against Both Apco and Gemstone)**

15 21. Republic Crane repeats and incorporates herein each of the allegations
16 set forth in its First, Second and Third Claims for Relief as though fully set
17 forth herein.

18 22. Republic Crane contracted with Apco and Gemstone to provide labor,
19 services, and materials for the benefit of Apco and Gemstone and at their
20 specific instance.

21 23. Republic Crane performed all of the services required of it under its
22 contract with Apco, but the sum of \$9,932.73 remains unpaid by Apco and
23 is now owed to Republic Crane by both Apco, as the primary contracting
24 party, and by Gemstone under its agreement to assume the Apco debt.

25 24. Republic Crane performed all of the services required of it under its
26 contract with Gemstone, but the sum of \$52,705.67 remains unpaid by
27 Gemstone for its own contract with Republic Crane.

28 25. Apco and Gemstone both are in breach of their contracts with Republic


1 Crane to pay the aforesaid sums.

2 WHEREFORE, Republic Crane Services, LLC prays for judgment as follows:

- 3 1. Judgment against both Apco and Gemstone for the sum of of \$9,932.73
4 for services rendered under the Apco contract.
- 5 2. Judgment against Gemstone for the sum of of \$52,705.67 for services
6 rendered under the Gemstone contract.
- 7 3. Judgment for interest, attorney's fees and costs incurred;
- 8 4. That the above sums, in total, be judged as a lien upon the Property and
9 that this Court enter an Order allowing sale of the Property as may be
10 necessary in the compliance with the laws of the State of Nevada, and
11 that the proceeds of such sale be applied to the payment of monies due to
12 Republic Crane Services, LLC; and
- 13 5. For such other and further relief as the Court may deem just and proper.

14 DATED this 27 day of May, 2009.

15 KOCH & BRIM, L.L.P.

16
17 
18 RICHARD A. KOCH, ESQ.
19 Nevada Bar NO. 1598
20 4520 S. Pecos Road, Ste. #4
21 Las Vegas, Nevada 89121
22 (702) 451-3900
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EXHIBIT "A"

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27 day of May, 2009, a copy of the foregoing **AMENDED STATEMENT OF FACTS CONSTITUTING LIEN CLAIM BY REPUBLIC CRANE SERVICE, LLC** was served pursuant to NRCP 5(b) by depositing copies in the United States Mail in a sealed envelope, postage pre-paid, addressed to the parties listed on the attached service list.


An employee of Koch & Brim, L.L.P.

APCO Construction
c/o James M. Barker, its RA
4420 S. Decatur Boulevard
Las Vegas, NV 89103

Arch Aluminum & Glass Co., Inc.
c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Law Offices of Robert L. Bachman
4001 Meadows Lane
Las Vegas, NV 89107

Carpets-N-More, LLC
c/o Gary E. Schnitzer, Esq., its RA
8985 E. Eastern Avenue, Suite 200
Las Vegas, NV 89123

Dave Peterson Framing, Inc.
Attn: David L. Peterson
9081 W Sahara Avenue, #290
Las Vegas, NV 89117

Eastridge Personnel of Las Vegas, Inc.
c/o Ailsa Leech, its RA
1220 S Maryland Parkway, Suite 204
Las Vegas, NV 89119

Ferguson Fire & Fabrication, Inc.
c/o CSC Services of Nevada, Inc.,
its RA
502 East John Street
Carson City, NV 89706

Geotek, Inc.
c/o Brownstein Hyatt Farber
Schreck, LLP, its RA
100 City Parkway, Suite 1600
Las Vegas, NV 89106-4614

HD Supply White Cap Construction
4171 Distribution Circle, Suite #107
North Las Vegas, NV 89030

Hi-Tech Fabrication Inc.
c/o Greg Griffith, its RA
6600 W Charleston Boulevard, #116
Las Vegas, NV 89146

Accuracy Glass & Mirror Company,
Inc.
c/o H. Bruce Cox, Esq., its RA
6511 Deer Springs Way
Las Vegas, NV 89131

Asphalt Solutions, LLC
c/o Rite, Inc., its RA
1905 South Eastern Avenue
Las Vegas, NV 89104

Buchele, Inc.
Attn: Thomas Buchele
4445 W Red Coach Avenue
North Las Vegas, NV 89031

Cell-Crete Fireproofing of Nevada, Inc.
c/o Business Filings Incorporated, its
RA
6100 Neil Road, Suite 500
Reno, NV 89511

Design Space Modular Buildings,
Inc.
2700 East Sunset Road, Suite 11
Las Vegas, NV 89120-3507

Executive Plastering, Inc.
c/o Springel & Fink LLP, its RA
2475 Village View Drive
Henderson, NV 89074

Freedom Fire Prevention, Inc.
c/o John Grul, its RA
1532 Owyhee Court
Las Vegas, NV 89110

Graybar Electric Company, Inc.
c/o CSC Services of Nevada, Inc.,
its RA
502 East John Street
Carson City, NV 89706

Harsco Corporation
c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Hyde Consulting Services, LLC
c/o Seena Hyde, its RA
1165 Forum Veneto Drive
Henderson, NV 89052

Ahern Rentals, Inc.
c/o Don F. Ahern, its RA
4241 S Arville Street
Las Vegas, NV 89103

Atlas Construction Supply, Inc.
c/o Nevada Corporate Headquarters,
Inc., its RA
101 Convention Center Drive, Suite 700
Las Vegas, NV 89109

Camco Pacific Construction Company,
Inc.
c/o The Prentice-Hall Corporation
System, Nevada, Inc., its RA
502 East John Street
Carson City, NV 89706

Creative Home Theatre, L.L.C.
c/o Paige Arcuri, its RA
5860 S Valley View Boulevard
Las Vegas, NV 89118

E & E Fire Protection, LLC
c/o T James Truman & Associates,
its RA
3654 North Rancho Drive
Las Vegas, NV 89130

Fast Glass
c/o Sierra Corporate Services -
Reno, its AR
100 West Liberty Street, 10th Floor
Reno, NV 89505

Gale Building Products
Attn: Robert D. Monroe
3326 Ponderosa Way, Suite A
Las Vegas, NV 89118

HD Supply Waterworks, LP
c/o Corporate Creations Network, its
RA
8275 South Eastern Avenue, #200
Las Vegas, NV 89123

Helix Electric of Nevada, LLC
c/o Peel Brimley LLP, its RA
3333 East Serene Avenue, Suite 200
Henderson, NV 89074

HydroPressure Cleaning, Inc.
413 Dawson Drive
Camarillo, CA 93012

INQUIPCO

c/o Maupin, Cox & Legoy, its RA
4785 Caughlin Parkway
Reno, NV 89519

Jensen Precast

3853 Losee Road
North Las Vegas, NV 89030-3326

Las Vegas Pipeline LLC

c/o Mark L. Blackwell, its RA
1489 W. Warm Springs Boulevard,
Suite 110
Henderson, NV 89014

Noorda Sheet Metal Company

c/o T. James Truman & Associates,
its RA
3654 North Rancho Drive
Las Vegas, NV 89130

Pape' Material Handling, Inc.

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Philcor T.V. & Electronic Leasing, Inc.

c/o Kenneth A. Woloson, Esq., its RA
400 S 4th Street, 3rd Floor
Las Vegas, NV 89101

Renaissance Pools & Spas, Inc.

c/o David Koch, Esq., its RA
11500 S. Eastern Avenue, Suite 100
Henderson, NV 89052

S. R. Bray Corp.

c/o Joseph Murray, its RA
3131 Olive Street
Las Vegas, NV 89104

Selectbuild Nevada, Inc.

c/o CSC Services of Nevada, Inc.,
its RA
502 East John Street
Carson City, NV 89706

Sunstate Equipment Co., LLC

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

**Interstate Plumbing & Air
Conditioning, LLC**

c/o Henry Lochtenberger, its RA
8363 West Sunset Road, Suite 300
Las Vegas, NV 89113

John Deere Landscapes, Inc.

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Masonry Group Nevada Inc., The

c/o Chad Herschi, its RA
4685 Berg Street
No. Las Vegas, NV 89081

Northstar Concrete, Inc.

c/o Kenneth A. Woloson, Esq., its
RA
400 S 4th Street, 3rd Floor
Las Vegas, NV 89101

Paramount Scaffold, Inc.

c/o Alejandro Hernandez, its RA
3224 Meade, Suite D
Las Vegas, NV 89103

Pressure Grout Company, The

c/o Incorp Services, Inc., its RA
375 N Stephanie Street, Suite 1411
Henderson, NV 89014-8909

Republic Crane Service, LLC

c/o Richard A. Koch, Esq
4520 South Pecos Road, Suite 4
Las Vegas, NV 89121

SWPPP Compliance Solutions, LLC

c/o Nicholas Lombardo, its RA
9365 Ft. Bayard Avenue
Las Vegas, NV 89178

Steel Structures, Inc.

c/o John Peter Lee, Esq., its RA
830 Las Vegas Boulevard, South
Las Vegas, NV 89101

Superior Traffic Services

5525 S. Valley View Boulevard,
Suite 1
Las Vegas, NV 89119

J.P. Landscaping & Design, LLC

c/o Start Your Biz, its RA
1701 N. Green Valley Parkway
Henderson, NV 89014

Larry Methvin Installations, Inc.

c/o Larry Methvin, Sr, its RA
4065 W Mesa Vista Avenue, Unit D
Las Vegas, NV 89118

Nevada Prefab Engineers, Inc.

c/o John Peter Lee, Esq., its RA
830 Las Vegas Boulevard, South
Las Vegas, NV 89101

Otis Elevator Company

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

**Patent Construction Systems, c/o
Harsco Corp.**

c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Professional Staffing-A.B.T.S., Inc

c/o National Registered Agents, Inc.
of NV, its RA
1000 East William Street, Suite 204
Carson City, NV 89701

3460 West Cheyenne Avenue

Suite 100
North Las Vegas, NV 89032

Sacramento Insulation Contractors

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Sunstate Companies, Inc.

c/o Richard Gruber, its RA
4435 E Colton Avenue
Las Vegas, NV 89115

Supply Network Inc.

c/o The Corporation Trust Company
of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Towey Equipment Co., Inc.
c/o Lynette Towey, its RA
3815 W Torino Avenue
Las Vegas, NV 89139-7708

Zitting Brothers Construction Inc.
c/o Contractor's Exam Center, Inc.,
its RA
3170 East Sunset Road, Suite B
Las Vegas, NV 89120

Tri-City Drywall, Inc.
c/o Jones Vargas, Chartered, its RA
3773 Howard Hyghes Parkway, 3rd
Floor So.
Las Vegas, NV 89169

Westward Ho, LLC
c/o National Registered Agents, Inc.
of NV, its RA
1000 East William Street, Suite 204
Carson City, NV 89701

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May 29 4 18 PM '09

E. J. ...
CLERK

08A571228
135443



DISTRICT COURT

CLARK COUNTY, NEVADA

1 **STAT**
2 WILLIAM R. URGAS, ESQ.
3 Nevada Bar No. 1195
4 CHRISTOPHER D. CRAFT, ESQ.
5 Nevada Bar No. 7314
6 JOLLEY URGAS WIRTH WOODBURY
7 & STANDISH
8 3800 Howard Hughes Parkway 16th Floor
9 Las Vegas, NV 89169
10 Telephone: (702) 699-7500
11 Attorneys for Pape Material Handling dba
12 Pape Rents

13 APCO CONSTRUCTION, a Nevada
14 corporation,

15 Plaintiff,

16 vs.

17 GEMSTONE DEVELOPMENT WEST,
18 INC.; and DOES I through X,

19 Defendant.

20 PAPE MATERIAL HANDLING dba
21 PAPE RENTS,

22 Plaintiff/Intervenor,

23 vs.

24 GEMSTONE DEVELOPMENT WEST,
25 INC.; ACCURACY GLASS & MIRROR
26 COMPANY, INC.; EMPLOYERS
27 MUTUAL CASUALTY COMPANY;
28 DOES I through X,

Defendants.

Case No. A571228
Dept. No. X

**STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION**

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

CLERK OF THE COURT

MAY 29 2009

RECEIVED

JOLLEY URGAS WIRTH
WOODBURY & STANDISH
ATTORNEYS AT LAW
3800 HOWARD HUGHES PARKWAY
SIXTEENTH FLOOR
WELLS FARGO TOWER
LAS VEGAS, NEVADA 89169
TELEPHONE (702) 699-7500

S:\WRU\Pending Matters\Pape Material Handling\Pleadings\Statement of Facts.wpd

Page 1 of 13

AA 001034

1 Plaintiff/Intervenor Pape Material Handling dba Pape Rents ("Pape"), by and through their
2 attorneys, Jolley Urga Wirth Woodbury & Standish, hereby brings its Statement of Facts
3
4 Constituting Lien, and complains and alleges as follows:

5 **GENERAL ALLEGATIONS**

6 1. Pape Material Handling dba Pape Rents ("Pape") is a company which provides rental
7 equipment for construction projects.

8 2. Defendant Gemstone Development West, Inc. ("Gemstone") is a Nevada corporation
9 and is the owner of the Manhattan West mixed use development located at APN 163-32-101-019
10 (the "Project").

11 3. Accuracy Glass and Mirror Company, Inc. ("Accuracy") is a Nevada corporation.

12 4. Pape is informed and believes that Employers Mutual Casualty Company is an entity
13 qualified to do business in Nevada in the field of providing insurance and surety bonds for
14 contractors, and posted bond S346989 (the "Bond") in the amount of \$15,000, effective August 13,
15 2006, on behalf of Accuracy.
16

17 5. The true names or capacities, whether individual, corporate, associate, or otherwise
18 of Defendants Does 1 through X, are unknown to Pape, who therefore sues said defendants by such
19 fictitious names. Pape is informed and believe and therefore alleges that each of the defendants
20 designated herein as a Doe is responsible in some manner for the events and happenings herein
21 referred to and caused injury and damages proximately thereby to Pape as herein alleged, or is an
22 insurer or lender or surety of one or more Defendants; that Pape will ask leave of this Court to
23 amend this Complaint to insert the true names and capacities of said Doe Defendants, when the same
24 have been ascertained by Pape, together with appropriate charging allegations, and to join such
25 defendants in this action.
26
27
28

1 5. In October, 2008, Pape and Accuracy entered into an agreement whereby Accuracy
2 would rent equipment from Pape for work on the Project.
3

4 6. Despite repeated demands from Pape, Defendants have failed to pay all amounts due
5 and owing to Pape for the rental equipment.

6 7. On January 20, 2009, Pape recorded a Notice of Mechanic's Lien against the Project
7 in Book No. 20090120, as Instrument No. 5051, in the amount of \$24,357.75 (the "Lien"). A copy
8 of the Lien is attached hereto as Exhibit 1.
9

10 **FIRST CLAIM FOR RELIEF**

11 **(Foreclosure on Mechanic's Lien)**

12 9. Pape repeats and realleges each and every preceding paragraph of this Complaint as
13 though fully set forth herein.

14 10. Pape provided rental equipment to Accuracy for the improvement of the Project
15 pursuant to a contract with Accuracy.
16

17 11. Pape has demanded payment of all sums due and owing on account of the equipment
18 provided, the total sum of which remains past due and owing to Pape.

19 12. Pape has complied with the provisions of Chapter 108 of the Nevada Revised
20 Statutes.

21 13. On or about January 20, 2009, Pape caused to be timely recorded a mechanic's lien
22 in Book No. 20090120, as Instrument No. 5051.
23

24 14. The Lien is valid and enforceable as against the Property.

25 15. Pape is entitled to foreclose the Lien and be reimbursed for the expenses incurred in
26 preparing, recording, and enforcing the same.
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SECOND CLAIM FOR RELIEF

(Breach of Contract)

17. Pape repeats and realleges each and every preceding paragraph of this Complaint as though fully set forth herein.

18. Pape has fully performed its obligations under its contract with Accuracy including all conditions precedent except as have been excused by the respective breaches by Accuracy.

19. Defendants have failed to fully pay for the equipment provided by Pape under the contract.

20. Pape has demanded that Accuracy fulfill its obligations under the contract, but Accuracy has refused.

21. The conduct of Accuracy alleged in the foregoing paragraphs constitutes a breach of contract.

22. As a result of Accuracy's breach of contract, Pape has suffered damages in excess of \$10,000.00 plus interest and any additional charges that may be proved at trial.

23. Pape has been required to retain the services of an attorney to prosecute this action and has been damaged thereby. In addition to the amount specified in the paragraph above, Pape is entitled to recover its reasonable attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

24. Pape repeats and realleges the allegations contained in each and every preceding paragraph as though fully set forth herein.

25. Defendants have requested, obtained, accepted, and enjoyed the benefits of the equipment provided by Pape. Defendants knew, or should have known, that Pape expected to be

1 paid by Defendants as set forth in the contracts.

2
3 26. Defendants have been unjustly enriched to the extent of Defendants' failure to make
4 payment to Pape, and Pape is entitled to damages in that amount plus interest and any additional
5 amounts proved at trial.

6 27. Pape has been required to retain the services of an attorney to prosecute this action
7 and Pape has been damaged thereby. In addition to the amount specified in the paragraph above,
8 Pape is entitled to recover its reasonable attorneys' fees and costs of suit.
9

10 **FOURTH CLAIM FOR RELIEF**

11 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

12 28. Pape repeats and realleges the allegations contained in each and every preceding
13 paragraph as though fully set forth herein.

14 29. Implied in the contract is a covenant of good faith and fair dealing between the
15 parties.
16

17 30. Accuracy has breached the implied covenant of good faith and fair dealing by failing
18 to pay for equipment provided by Pape under the contract.

19 31. As a result of Accuracy's breach of the implied covenant of good faith and fair
20 dealing, Pape has suffered damages in excess of \$10,000.00 plus interest and any additional charges
21 that may be proved at trial.

22 32. Pape has been required to retain the services of an attorney to prosecute this action
23 and Pape has been damaged thereby. In addition to the amount specified in the paragraph above,
24 Pape is entitled to recover its reasonable attorneys' fees and costs of suit.
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FIFTH CLAIM FOR RELIEF

(Priority of Lien)

33. Pape repeats and realleges each and every preceding paragraph of this Complaint as though fully set forth herein.

34. Pape is informed and believes and thereupon alleges that physical work of improvement to the Project commenced before the recording of all Doe Defendants' Deeds of Trust and/or Assignments of Deeds of Trust.

35. The Doe Defendants' interests in the Project were taken subject to Pape's lien claims, and Pape's lien claims are superior to the interests of the claims of the Doe Defendants against the Project.

36. Pape has been required to retain the services of attorneys to prosecute this action, and Pape has been damaged thereby. Therefore, Pape is entitled to recover reasonable attorney's fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(Claim against Bonding Company)

37. Pape repeats and realleges the allegations contained in each and every preceding paragraph as though fully set forth herein.

38. Employers Mutual Casualty Company posted bond S346989 (the "Bond") in the amount of \$15,000, effective August 13, 2006, on behalf of Accuracy in connection with its contractor's license. The bond is in place to ensure payment to entities such as Pape which provided equipment to Accuracy.

39. Employers Mutual Casualty Company is liable to Pape for the debts of Accuracy to the extent of the amount of the bond, \$15,000.

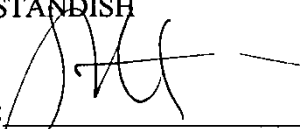
1 40. Pape has been required to retain the services of an attorney to prosecute this action
2
3 and Pape has been damaged thereby. In addition to the amount specified in the paragraph above,
4 Pape is entitled to recover its reasonable attorneys' fees and costs of suit.

5 WHEREFORE, Pape demands judgment against Defendants, jointly and severally, in its
6 favor as follows:

- 7 1. That the Lien be enforced against the Project according to law;
8 2. That the Court declare the rank and priority of all lien claims and secured claims, and
9 that Pape's liens be given priority and declared superior and ascertained and adjudged as a valid lien;
10 3. That the Court direct the foreclosure sale of the Project;
11 4. That the Project be sold and the proceeds of sale be applied to the payment of the
12 sums due and owing to Pape; and
13 5. For reasonable attorney's fees and costs of suit incurred herein; and
14 6. For such other and further relief as the Court deems just and proper.

15 DATED this 29 day of May, 2009.

16
17
18 JOLLEY URGA WIRTH WOODBURY
19 & STANDISH

20 By: 
21 WILLIAM R. URGA, ESQ.
22 Nevada Bar No. 1195
23 CHRISTOPHER D. CRAFT, ESQ.
24 Nevada Bar No. 7314
25 3800 Howard Hughes Parkway, 16th Floor
26 Las Vegas, Nevada 89169
27 Attorneys for Pape Material Handling dba
28 Pape Rents

1
2 **CERTIFICATE OF SERVICE BY MAIL**

3 My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard
4 Hughes Parkway, Suite 1600, Las Vegas, Nevada 89169.

5 On this day I served the within STATEMENT OF FACTS CONSTITUTING LIEN on the
6 parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope,
7 addressed as follows:

8 Gwen Rutar Mullins, Esq.
9 Wade B. Gochnour, Esq.
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23
24 and placing the envelope in the mail bin at the firm's office.

25 I am readily familiar with the firm's practice of collection and processing correspondence
26 for mailing. Under that practice it is deposited with the U. S. Postal Service on the same day it is
27 placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary

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course of business.

I certify under penalty of perjury that the foregoing is true and correct, and that this

Certificate of Service by Mail was executed by me on May 29, 2009 at Las Vegas, Nevada.


An employee of JOLLEY URGAS WIRTH
WOODBURY & STANDISH

ORIGINAL

FILED

MAY 29 4 18 PM '09

Electronically Filed
CLERK OF THE COURT

1 **STAT**
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4 BRIAN K. WALTERS
5 Nevada Bar No. 009711
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9 Telephone: (702) 862-8300
10 Facsimile: (702) 862-8400
11 Attorneys for Plaintiff
12 SELECTBUILD NEVADA, INC.

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 UINTAH INVESTMENTS, LLC, a Nevada
16 limited liability company, d/b/a SIERRA
17 REINFORCING,

18 Plaintiff,

19 vs.

20 APCO CONSTRUCTION, a Nevada corporation;
21 GEMSTONE DEVELOPMENT WEST, INC., a
22 Nevada corporation; and DOES I through X,

23 Defendants.

24 SELECTBUILD NEVADA, INC., a Nevada
25 corporation;

26 Plaintiff in Intervention.

27 vs.

28 APCO CONSTRUCTION, a Nevada corporation;
CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation;
GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; DOE INDIVIDUALS I
through X, inclusive; and ROE CORPORATIONS
I through X, inclusive,

Defendants.

Case No.: A583289
Dept. No.: XXIII

**SELECTBUILD NEVADA, INC.'S
STATEMENT OF FACTS
CONSTITUTING LIEN**

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RECEIVED

MAY 29 2009

CLERK OF THE COURT

13

1 Plaintiff SELECTBUILD NEVADA, INC., by and through its counsel, the law firm of
2 Morris Polich & Purdy LLP, hereby files its Statement of Facts Constituting Lien and complains
3 and alleges as follows:
4

5 **PARTIES**

6 1. Plaintiff, SELECTBUILD NEVADA, INC. (hereinafter "SelectBuild") is and at
7 all times relevant hereto was a Nevada Corporation duly authorized to conduct business in Clark
8 County, Nevada.

9 2. Upon information and belief, Defendant APCO CONSTRUCTION (hereinafter
10 "APCO") is and at all times relevant hereto was a Nevada Corporation duly authorized to
11 conduct business in Clark County, Nevada.

12 3. Upon information and belief, Defendant CAMCO PACIFIC CONSTRUCTION
13 COMPANY, INC. (hereinafter "CAMCO") is and at all times relevant hereto was a California
14 Corporation duly authorized to conduct business in Clark County, Nevada.

15 4. Upon information and belief, Defendant GEMSTONE DEVELOPMENT
16 WEST, INC. (hereinafter "GEMSTONE") is and at all times relevant hereto was a Nevada
17 Corporation duly authorized to conduct business in Clark County, Nevada. GEMSTONE is the
18 owner of the real property that was improved by SelectBuild's labor, services, and/or materials.

19 5. Upon information and belief, Defendants DOES I - X and ROE
20 CORPORATIONS I - X are persons, corporations or other entities whose true identities are
21 presently unknown to SelectBuild, and who are sued by fictitious names. SelectBuild believes
22 that such fictitious Defendants are, or may be, directly, jointly and/or severally liable to
23 SelectBuild for the payment of the sums set forth herein or claim an interest in all or a portion of
24 the real property described herein. SelectBuild will seek leave to amend this complaint when
25 the true identities of these defendants are known.

26 **FACTS COMMON TO ALL CLAIMS**

27 6. Upon information and belief, GEMSTONE is the owner of certain real property in
28 Clark County, Nevada designated by Assessor Parcel Number (APN) 163-32-101-019. This
property is the location of the West Manhattan Condominiums Project (hereinafter "Project").

1 7. GEMSTONE entered into an agreement with APCO whereby APCO agreed to
2 serve as the general contractor for the construction of the Project.

3 8. On or about July 21, 2008, SelectBuild entered into a subcontract agreement
4 with APCO wherein SelectBuild agreed to provide all services, labor and/or materials related
5 to "on/off site concrete curbs, valley gutters, drives, sidewalks, brick pavers, colored concrete,
6 and trash enclosure foundations." APCO agreed to pay SelectBuild \$496,577 for said
7 services.

8 9. On or about September 5, 2008, APCO terminated its general contract with
9 GEMSTONE. At the time APCO terminated the general contract with GEMSTONE,
10 outstanding invoices in the amount of \$5,868 remained due and owing from APCO to
11 SelectBuild.

12 10. Upon information and belief, GEMSTONE entered into an agreement with
13 CAMCO to replace APCO in order to complete the Project. On or about August 26, 2008,
14 CAMCO issued "Ratification and Amendment of Subcontract" agreements to all Project
15 subcontractors wherein CAMCO "replaced" APCO as general contractor under the original
16 subcontracts. Upon information and belief, all project subcontractors were required to execute
17 the Ratification and Amendment of Subcontract agreement.

18 11. In reliance on the Ratification and Amendment of Subcontract Agreement with
19 CAMCO, SelectBuild continued to provide its services to CAMCO for the benefit and
20 improvement of the Project.

21 12. On or about December 22, 2008, CAMCO sent a letter to Project subcontractors
22 indicating that GEMSTONE had advised that funding for the Project had been withdrawn and as
23 a result, CAMCO was terminating all subcontracts.

24 13. The letter from CAMCO also disclaimed any obligation to pay the subcontractors
25 for the services they had provided based on a "pay if paid" provision contained in the subcontract
26 agreements.

27 14. There is now an amount in excess of \$62,250.50 that remains due and owing from
28 CAMCO for the services, labor and/or materials provided by SelectBuild for the benefit and

1 improvement of the Project.

2 15. SelectBuild issued several demands for payment of amounts due and owing to
3 both APCO and CAMCO to no avail.

4 16. On January 5, 2009, two Notices of Lien were recorded against APN 163-32-101-
5 019 for APCO and CAMCO's failure to remit payment for services, labor and/or materials
6 provided for the benefit and improvement of said parcel. (See Notices of Lien, true and correct
7 copies attached hereto as Exhibit "A").

8 17. SelectBuild is informed and believes that the work of improvement has not been
9 completed.

10 18. No offsets to SelectBuild's claims exist.

11 **FIRST CLAIM FOR RELIEF**

12 **(Breach of Contract as to APCO CONSTRUCTION, CAMCO PACIFIC**
13 **CONSTRUCTION COMPANY, INC., DOES I through X and ROE CORPORATIONS I**
14 **through X)**

15 19. SelectBuild repeats and realleges each and every allegation contained in
16 Paragraphs 1 through 18, and incorporates the same as though fully set forth herein.

17 20. The subcontract and Ratification and Amendment of Subcontract Agreement
18 entered into between SelectBuild and APCO/ CAMCO are valid and enforceable contracts that
19 mandate payment to SelectBuild for the principal balance due of \$5,281.20 from APCO and
20 \$62,250.50 from CAMCO plus interest.

21 21. APCO and CAMCO benefited from the labor, services and/or materials provided
22 by SelectBuild.

23 22. SelectBuild fully performed and abided by the terms of its subcontract with
24 APCO and the Ratification and Amendment of Subcontract Agreement with CAMCO.

25 23. SelectBuild has made numerous requests for payment to APCO and CAMCO for
26 the outstanding balances due for services provided under the subcontract and the Ratification and
27 Amendment of Subcontract Agreement.

28 24. APCO and CAMCO's failure to satisfy their outstanding obligations to
SelectBuild for the services provided under the subcontract and the Ratification and Amendment
of Subcontract Agreement constitutes a breach of said agreements.

1 25. It has become necessary for SelectBuild to retain the services of MORRIS
2 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
3 herein including, without limitation, any and all attorneys' fees and interest pursuant to Nevada
4 law.

5 **SECOND CLAIM FOR RELIEF**

6 **(Foreclosure of Mechanics' Liens as to GEMSTONE DEVELOPMENT WEST, INC.,**
7 **DOES I through X, and ROE CORPORATIONS I through X)**

8 26. SelectBuild repeats and realleges each and every allegation contained in
9 Paragraphs 1 through 25, and incorporates the same as though fully set forth herein.

10 27 Services performed and labor provided by SelectBuild were provided at the
11 special request and instance of APCO and CAMCO for the benefit and improvement of the
12 property owned by GEMSTONE as described herein.

13 28. SelectBuild has made numerous requests for payment of the outstanding invoices
14 for its labor, services and/or materials provided at the special request and instance of APCO and
15 CAMCO for the benefit and improvement of the Project.

16 29. SelectBuild caused to be recorded two notices of mechanics' lien against APN
17 163-32-101-019, real property owned by GEMSTONE as described herein for \$5,868, the
18 amount due and owing from APCO and \$62,250.50, the amount due and owing from CAMCO
19 for the purpose of securing its claims against APCO and CAMCO. The recorded amounts
20 represent the unpaid balances of the subcontract and the Ratification and Amendment of
21 Subcontract Agreement.

22 30. SelectBuild has complied with the legal requirements set forth in NRS 108.221,
23 *et. seq.*, by: (1) Recording with the Clark County Recorder Notices of Mechanics' Liens on
24 January 5, 2009, (2) Serving copies of the notices of lien upon GEMSTONE, and (3) By
25 initiating this action within the statutory six-month period.

26 31. It has become necessary for SelectBuild to retain the services of MORRIS
27 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
28

1 herein including, without limitation, any and all attorneys' fees and interest pursuant to NRS
2 Chapter 108.221 *et seq.*

3
4 **THIRD CLAIM FOR RELIEF**

5 **(Quantum Meruit as to APCO CONSTRUCTION, CAMCO PACIFIC CONSTRUCTION
6 COMPANY, INC., DOES I through X and ROE CORPORATIONS I through X)**

7 32. SelectBuild repeats and realleges each and every allegation contained in
8 Paragraphs 1 through 31, and incorporates the same as though fully set forth herein.

9 33. SelectBuild provided labor, services and/or materials as stated herein at the
10 special instance and request of APCO and CAMCO, who contracted with SelectBuild to pay the
11 reasonable value of said services pursuant to the subcontract and Ratification and Amendment of
12 Subcontract Agreement discussed herein.

13 34. SelectBuild is entitled to Quantum Meruit for the fair market value of the labor,
14 services and/or materials provided to APCO and CAMCO for the benefit and improvement of
15 real property owned by GEMSTONE, which is equal to \$5,868 for amounts due and owing from
16 APCO and \$62,250.50 for the amounts due and owing from CAMCO.

17 35. It has become necessary for SelectBuild to retain the services of MORRIS
18 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
19 herein including, without limitation, any and all attorneys' fees and interest pursuant to Nevada
20 law.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Unjust Enrichment as to APCO CONSTRUCTION, CAMCO PACIFIC
23 CONSTRUCTION COMPANY, INC., DOES I through X and ROE CORPORATIONS I
24 through X)**

25 36. SelectBuild repeats and realleges each and every allegation contained in
26 Paragraphs 1 through 35, and incorporates the same as though fully set forth herein.

27 37. The amounts due and owing for labor, services and/or materials provided by
28 SelectBuild to APCO and CAMCO for the benefit and improvement of the Project was for the
use and benefit of APCO and CAMCO, and was reasonably worth the sums of \$5,868 for

1 amounts due and owing from APCO and \$62,250.50 for the amounts due and owing from
2 CAMCO, all of which remains due and owing plus interest.

3 38. SelectBuild has a reasonable expectation of being compensated in full for the
4 labor, services and/or materials provided, and APCO and CAMCO will have been unjustly
5 enriched should they be permitted to retain the benefit of said labor, services and/or materials
6 without payment in full to SelectBuild.

7 39. APCO and CAMCO accepted, used and enjoyed the benefit of the labor, services
8 and/or materials provided by SelectBuild for the Project.

9 40. APCO and CAMCO knew or should have known that SelectBuild expected to be
10 paid for the labor, services and/or materials provided for the Project.

11 41. Demand has been made upon APCO and CAMCO for payment, but APCO and
12 CAMCO have both refused to pay the amounts due and owing.

13 42. APCO and CAMCO have been unjustly enriched to the detriment of SelectBuild.

14 43. There now remains due and owing from APCO an amount in excess of \$5,868 for
15 the labor, services and/or materials provided by SelectBuild to the Project, plus interest, costs,
16 and attorneys' fees.

17 44. There now remains due and owing from CAMCO an amount in excess of
18 \$62,250.50 for the labor, services and/or materials provided by SelectBuild to the Project, plus
19 interest, costs, and attorneys' fees.

20 45. It has become necessary for SelectBuild to retain the services of MORRIS
21 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
22 herein including, without limitation, any and all attorneys' fees and interest pursuant to Nevada
23 law.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Breach of the Covenant of Good Faith and Fair Dealing as to APCO**
3 **CONSTRUCTION, CAMCO PACIFIC CONSTRUCTION COMPANY, INC., DOES I**
4 **through X and ROE CORPORATIONS I through X)**

5 46. SelectBuild repeats and realleges each and every allegation contained in
6 Paragraphs 1 through 45, and incorporates the same as though fully set forth herein.

7 47. Implied in every agreement entered into and executed within the State of Nevada
8 is a covenant that parties will act in good faith in regard to their dealings with one another.

9 48. APCO and CAMCO were parties to agreements with SelectBuild with respect to
10 the Project.

11 49. APCO and CAMCO owed a duty of good faith and fair dealing to SelectBuild.

12 50. APCO and CAMCO breached this duty by purposefully and willfully performing
13 in a manner unfaithful to and in direct conflict with the purpose and intent of the subcontract and
14 Ratification and Amendment of Subcontract Agreement discussed herein.

15 51. By APCO and CAMCO's breach of their duties under the subcontract and
16 Ratification and Amendment of Subcontract Agreement, SelectBuild's justified expectations that
17 APCO and CAMCO would adhere to the agreements was denied.

18 52. As a direct and proximate result of the APCO and CAMCO's actions or inactions
19 as herein alleged, SelectBuild has been damaged in an amount in excess of \$10,000.00, to be
20 determined by proof at trial.

21 53. By reason of the foregoing, SelectBuild is entitled to a judgment against APCO
22 and CAMCO in an amount in excess of \$10,000.00, together with interest thereon, costs and
23 attorneys' fees.

24 54. It has become necessary for SelectBuild to retain the services of MORRIS
25 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
26 herein including, without limitation, any and all attorneys' fees and interest pursuant to the
27 contracts and Nevada law.

28 ...

...

1 61. It has become necessary for SelectBuild to retain the services of MORRIS
2 POLICH & PURDY LLP to prosecute this claim and it is entitled to any and all costs incurred
3 herein including, without limitation, any and all attorneys' fees and interest pursuant to NRS
4 Chapter 108.221 *et seq.*
5

6 WHEREFORE, SELECTBUILD NEVADA, INC. requests the following relief from the
7 Defendants:

8 Judgment in the sum of \$5,868 against APCO CONSTRUCTION, together with the
9 maximum interest allowable by law per month until paid in full;
10

11 Judgment in the sum of \$62,250.50 against CAMCO PACIFIC CONSTRUCTION
12 COMPANY, INC., together with the maximum interest allowable by law per month until paid in
13 full;
14

15 Costs of preparing, recording, and perfecting the Notices of Mechanics' Lien, costs of
16 suit incurred herein, and reasonable attorney's fees;

17 That the sums set forth be adjudged liens upon the lands and premises described
18 hereinabove, owned or reputedly owned by GEMSTONE DEVELOPMENT WEST, INC., and
19 that the Court enter an order that in the event Defendants cannot or do not satisfy any judgment
20 by paying cash within ten days of the entry of judgment, that the real property, land and
21 improvements or such as may be necessary, be sold pursuant to the authority of Nevada Revised
22

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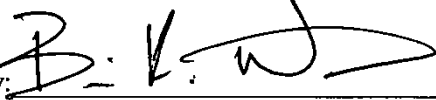
27 ...

28

1 Statutes, and that the proceeds of said sale be applied to the payment of sums due and owing to
2 SELECTBUILD NEVADA, INC.

3 DATED this 29th day of May, 2009.

4 **MORRIS POLICH & PURDY LLP**

5
6 By: 

7 NICHOLAS M. WIECZOREK

8 Nevada Bar No. 006170

9 BRIAN K. WALTERS

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13 Attorneys for Plaintiff

14 SELECTBUILD NEVADA, INC.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Morris Polich & Purdy LLP,
and that on this 29 day of May, 2009, I served a true and correct copy of the foregoing
SELECTBUILD NEVADA, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN as
follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed
envelope upon which first class postage was prepaid in Las Vegas, Nevada;
and/or
☐ to be sent via facsimile; and/or
☐ to be hand-delivered to the attorneys at the address listed below:

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26
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1 Mark J. Connot (10010)
John H. Gutke (10062)
2 HUTCHISON & STEFFEN, LLC
Peccole Professional Park
3 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
4 Tel: (702) 385-2500
Fax: (702) 385-2086
5 Email: mconnot@hutchlegal.com
jgutke@hutchlegal.com

6 *Attorneys for Buchele, Inc.*

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CLERK OF THE COURT

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 UTAH INVESTMENTS, LLC a Nevada
11 Limited Liability company d/b/a SIERRA
REINFORCING,

12 Plaintiff,

13 vs.

14
15 APCO CONSTRUCTION, a Nevada
corporation; GEMSTONE DEVELOPMENT
16 WEST, INC., a Nevada corporation; and
DOESI through X,

17 Defendants.
18


CASE NUMBER A583289
DEPT NUMBER XXIII

**STATEMENT OF FACTS
CONSTITUTING LIEN ON BEHALF
OF BUCHELE, INC.**

19 COMES NOW Buchele, Inc. ("Buchele"), by and through its attorneys of record of the
20 law firm Hutchison & Steffen, LLC, and makes the following statement of facts constituting
21 lien. This Statement is being made pursuant to NRS 108.239(3) .

22 DATED this 29 day of May, 2009.

23 HUTCHISON & STEFFEN, LLC

24
25 
26 Mark J. Connot
John H. Gutke
27 Peccole Professional Park
10080 West Alta Drive, Suite 200
28 Las Vegas, NV 89145

Attorneys for Buchele, Inc.

STATEMENT OF FACTS

Buchele is a Nevada corporation engaged in the business of, among other things, providing labor and materials in the area of concrete demolition, grading, supply and installation to various commercial construction projects. *See* affidavit of Tom Buchele, attached hereto as exhibit 1. Buchele entered into a subcontract agreement with defendant APCO Construction for concrete work to be performed at the Property described in the litigation herein, which is owned by defendant Gemstone Development West, Inc. ("Gemstone"). *Id.* At the specific request of the named defendants herein, Buchele performed labor and installed improvements at the Property at various times from June 5, 2008 through December 17, 2008. *Id.* On or about August 26, 2008, Camco Pacific Construction Company, Inc. ("Camco") ratified Buchele's subcontract with defendant APCO and assumed the terms of Buchele's subcontract with APCO. *Id.* Buchele continued completing the work at the Property until it was announced that Camco terminated its contract for cause with Gemstone. *Id.* Despite forwarding invoices to the defendants and to Camco reflecting the charges for the materials and supplies delivered, and labor performed, defendants and Camco failed, neglected and refused to pay the sums owed. *Id.* *See also* demand for payment attached hereto as exhibit 2. Accordingly, on December 17, 2008, Buchele filed its notice of lien (mechanic's lien) with the Clark County Recorder's Office, reflecting the total sum of \$77,220.70 due and owing to Buchele. *See* exhibit 1. *See also* Notice of Lien attached hereto as exhibit 3.

DATED this 29 day of May, 2009.

HUTCHISON & STEFFEN, LLC



Mark J. Connot (10010)
John H. Gutke (10062)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Buchele, Inc.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 1st day of June, 2009, I caused the above and foregoing document entitled **STATEMENT OF FACTS CONSTITUTING LIEN ON BEHALF OF BUCHELE, INC.** to be served as follows:

- ☒ [X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ [] Pursuant to EDCR 7.26, to be sent **via facsimile**; and/or
- ☐ [] to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Glenn F. Meier
Meier & Fine, LLC
2300 West Sahara Ave., Suite 430
Las Vegas, NV 89102
Attorneys for Defendant
Scott Financial Corporation

Gwen Rutar Mullins
Howard & Howard
3800 Howard Hughes Pkwy. #1400
Las Vegas, NV 89169
Attorneys for APCO Construction

Nikola Skrinjaric
Nevada Title Company
2500 N. Buffalo #150
Las Vegas, NV 89128
Attorney for Nevada Construction Services

Donald H. Williams
Williams & Wiese
612 South 10th Street
Las Vegas, NV 89101
Attorneys for Harsco Corporation

Jeffrey R. Albregts
Santoro Driggs Walch, et al.
400 South Fourth Street, 3rd Fl.
Las Vegas, NV 89101
Attorneys for Arch Aluminum and Glass Co.

Gregory S. Gilbert
Holland & Hart, LLP
3800 Howard Hughes Pkwy., 10th Fl.
Las Vegas, NV 89169
Attorneys for Gemstone Development West, Inc.

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

- 1 Steven L. Morris
Woodbury, Morris & Brown
- 2 701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074
- 3 *Attorneys for Cameo Pacific Construction and*
4 *Fidelity and Deposit Company of Maryland*
- 5 Jennifer Lloyd-Robinson
Pezillo Robinson
- 6 6750 Via Austi Pkwy. #170
Las Vegas, NV 89119
- 7 *Attorneys for Intervenor*
8 *Tri-City Drywall, Inc.*
- 9 Justin Watkins
Watt, Tieder, Hoffar & Fitzgerald, LLP
- 10 3993 Howard Hughes Pkwy. #400
Las Vegas, NV 89169
- 11 *Attorneys for Cabinectec, Inc.*
- 12 T. James Truman
T.J. & Associates
- 13 3654 N. Rancho Drive
Las Vegas, NV 89130
- 14 *Attorneys for Intervenor*
15 *Noorda Sheet Metal Company*
- 16 Martin A. Little
Jolley Urga Wirth Woodbury & Standish
- 17 3800 Howard Hughes Pkwy., Suite 1600
Las Vegas, NV 89130
- 18 *Attorneys for Intervenor*
19 *Nevada Prefab Engineers and Steel Structures, Inc.*
- 20 Christopher R. McCullough
McCullough, Perez & Associates
- 21 601 S. Rancho Dr. #A-10
Las Vegas, NV 89106
- 22 *Attorneys for Cell-Crete Fireproofing of Nevada, Inc.*
- 23 D. Shane Clifford
Robin E. Perkins
- 24 Dixon, Truman, Fisher & Clifford
- 25 221 N. Buffalo Drive #A
Las Vegas, NV 89145
- 26 *Attorneys for Ahern Rentals, Inc.*
- 27
- 28



An employee of Hutchison & Steffen, LLC

EXHIBIT 1

AFFIDAVIT OF TOM BUCHELE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

TOM BUCHELE, being first duly sworn, deposes and states as follows:

1. I am a resident of Clark County, Nevada, and am over the age of legal majority in this State and competent to testify to the facts set forth herein.
2. I make this affidavit in support Buchele, Inc.'s statement of facts constituting lien, filed in the action *Uintah Investments, LLC v. APCO Construction; Gemstone Development West*, Clark County District Court Case No. A583289.
3. I am the owner and president of Buchele, Inc.
4. Buchele, Inc. ("Buchele") is a Nevada corporation engaged in the business of, among other things, providing labor and materials in the area of concrete demolition, grading, supply and installation to various commercial construction projects.
5. Buchele entered into a subcontract agreement with defendant APCO Construction for grading work to be performed at the Property described in the litigation herein, which is owned by defendant Gemstone Development West, Inc. ("Gemstone").
6. At the specific request of the named defendants herein, Buchele performed labor and installed improvements at the Property at various times from June 5, 2008 through December 17, 2008.
7. On or about August 26, 2008, Camco Pacific Construction Company, Inc. ("Camco") ratified Buchele's subcontract with defendant APCO and assumed the terms of Buchele's subcontract with APCO. Buchele continued completing the work at the Property until it was announced that Camco terminated its contract for cause with Gemstone.

8. Despite forwarding invoices to the defendants and to Camco reflecting the charges for the materials and supplies delivered, and for the labor performed, defendants and Camco failed, neglected and refused to pay the sums owed.

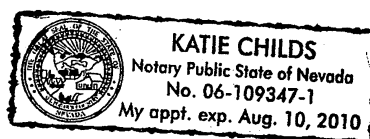
9. On December 17, 2008, Buchele filed its notice of lien (mechanic's lien) with the Clark County Recorder's Office, reflecting the total sum of \$77,220.70 due and owing to Buchele.

Further, your affiant sayeth naught.

Tom Buchele
Tom Buchele

Subscribed and sworn to before me,
this 21st day of May, 2009.

Katie Childs
Notary Public, in and for said
County and State



STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

EXHIBIT 2

BUCHELE INC.
P.O. Box 570025
Las Vegas, Nv. 89157-0025
Ph. 702 656-5383
Fax 656-4665

Nv.Lic. #46797

(SBE,NBE)

Date: Dec. 30, 08

TO: Camco Pacific
Fax 798-6655

Re: Manhattan West Project, Recap of pay applications submitted to Gemstone.

Pay app. # 3 Oct. 21,08 for \$36,000.00	Due Now.
Pay app. #4 Nov. 30,08 for \$19,411.70	Due Now.
Retention due from pay app. \$21,809.00	Due Now

Total due at this time for completed operations and materials stored on site. \$77,220.70

FAKED TO: Gemstone 8:18AM Dec 30, 08

EXHIBIT 3

(21)
20081230-0003196

APN: 16332101019

Recording requested by and mail documents to:

Name: Buchele, Inc.

Address: P.O. Box 570025

City/State/Zip: LAS VEGAS, NV. 89157

LIN101mk

Nevada Legal Forms & Books, Inc. (702) 870-8977

www.legalformsrus.com

Fee: \$15.00

N/C Fee: \$0.00

12/30/2008

13:13:18

T20080325322

Requestor:

BUCHELE INC

Debbie Conway

JJF

Clark County Recorder Pgs: 2

NOTICE OF LIEN (Mechanic Lien)

NOTICE IS HEREBY GIVEN:

1. That Buchele, Inc.
hereinafter known as "Claimant", hereby claims a lien pursuant to the provisions of N.R.S.,
108.221 to 108.246 inclusive, on property located in CLARK
County, Nevada. (Set forth legal description and commonly known address)
2. The amount of the original contract is \$ 262,900.00
3. The total amount of all changes and additions, if any, is \$ <44,810>
4. The total amount of all payments received to date is \$ 140,869.30
5. The amount of the lien, after deducting all just credits and offsets is \$ 77,220.70
6. The name of the owner(s), if known, of the property is/are Gemstone Apache LLC,
Gemstone Development West Inc, (owner) Alex Edelstein
7. The name of the person by whom the lien claimant was employed or to whom the lien claimant
furnished work, materials, or equipment is Gemstone Development West, Inc.
(CAMEO PACIFIC - ACTING AS CONTRACTOR FOR GEMSTONE DEVELOPMENT WEST)

Notice of Lien

Page 1 of 2

Initials J.B.

AA 001070

8. A brief statement of the terms of payment of the lien claimant's contract: To be paid by
Gemstone earth agents. For all labor and materials supplied
to job site. Jobsite address 9205-9255 W. Russell Rd., and
development of Russell Rd and Rocky Hill Rd. adjoining site.
Total amount due for all work provided. Contract terminated
after work was performed.

9. That the claim herein is entitled to a reasonable attorney's fee, statutory interest on the amount of this lien claim and costs incurred in perfecting this lien claim.

10. THIS FORM COMPLIES WITH NRS 108.226.

In Witness Whereof, I/We have hereunto set my hand/our hands this 30 day of December, 20 08.

Buchele, Inc

Print name of Claimant

Thomas Buchele

By: Thomas Buchele *

Authorized Signature

STATE OF NEVADA)

COUNTY OF CLARK)

Tom Buchele

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

I have read the foregoing Notice of Lien claim, 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.

Tom Buchele

Authorized Signature of Claimant

Thomas Buchele, President

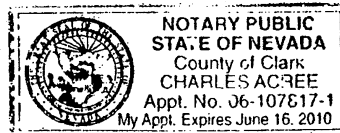
Subscribed and sworn to before me this 30 day of December, 20 08.

[Signature]

Notary Public

My commission expires: 6/16/2010

Consult an attorney if you doubt this forms fitness for your purpose.



ORIGINAL

26

1 David R. Koch (Bar No. 8830)
2 Steven B. Scow (Bar No. 9906)
3 KOCH & SCOW LLC
4 11500 S. Eastern Avenue, Suite 210
5 Henderson, Nevada 89052
6 (702) 318-5040
7 dkoch@kochscow.com
8 Attorneys for Lien Claimant:
9 Renaissance Pools & Spas, Inc.

FILED

JUN 1 12 13 PM '09

Ed Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 UINTAH INVESTMENT, LLC, a Nevada
10 limited liability company, d/b/a SIERRA
11 REINFORCING,

12 Plaintiff,

13 v.

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

18 Defendants.

19 RENAISSANCE POOLS & SPAS, INC.,
20 a Nevada Corporation,

21 Lien Claimant/Intervenor,

22 v.

23 GEMSTONE DEVELOPMENT WEST,
24 INC., a Nevada corporation; and DOES I
25 through X,

26 Respondents.

Case No. A583289
Dept. No. XXIII

STATEMENT OF FACTS
CONSTITUTING LIEN CLAIM BY
RENAISSANCE POOLS & SPAS,
INC.

09A583289
144992



CLERK OF DISTRICT COURT

JUN 1 2009

RECEIVED

1 Lien Claimant/Intervenor Renaissance Pools & Spas, Inc. ("Renaissance") hereby
2 submits its Statement of Facts Constituting Lien and alleges and claims the following:

3 1. Renaissance is, and at all times relevant hereto has been, a Nevada
4 corporation, duly licensed to conduct business in the State of Nevada, Clark County.

5 2. Respondent Gemstone Development West, Inc. ("Gemstone") is, and at all
6 times relevant hereto was, a Nevada corporation, duly licensed to conduct business in the
7 State of Nevada, Clark County.

8 3. Gemstone is the owner of real property located at 9205 West Russell Road,
9 Las Vegas, Nevada, APN 163-32-101-019 (the "Property"). The legal description of the
10 Property is attached hereto as Exhibit "A" and incorporated by this reference.

11
12 **FIRST CLAIM FOR RELIEF**
 (Foreclosure of Lien Claim against Gemstone)

13 4. On or about November 5, 2008, Renaissance and Camco Pacific
14 Construction Company, Inc. entered into a written subcontract agreement (the
15 "Agreement") to perform labor and to provide materials and services at the Property for
16 the improvement of the Property.

17 5. Although Renaissance performed all of the services required of it by the
18 Agreement, the amount of \$89,474.70 is still due and owing under the Agreement.

19 6. As owner of the Property, Gemstone has directly benefitted from the
20 improvements made to the Property by Renaissance, and Renaissance is entitled to
21 foreclose upon its mechanic's lien, recorded against the Property.

22 7. Renaissance has performed all of the statutory requirements set forth in NRS
23 Chapter 108 for perfecting a mechanic's lien on the Property, including the recording of a
24 mechanic's lien with the Clark County Recorder, State of Nevada, which was filed on
25 January 30, 2009, as Instrument No. 2909 in Book 20090130.

26 8. Renaissance is entitled to foreclose on its mechanic's lien and all other
27 remedies permitted to it by NRS Chapter 108.
28

1 9. Renaissance is entitled to recover its costs for recording and perfecting the
2 mechanic's lien, together with its attorneys' fees and costs of suit, as well as interest on the
3 unpaid balance.

4
5 **SECOND CLAIM FOR RELIEF**
6 **(Unjust Enrichment against Gemstone)**

7 10. Renaissance realleges and incorporates by reference all previous allegations
8 in this Statement as if set forth in full.

9 11. Renaissance provided its labor, services, and materials for the benefit of
10 Gemstone at its specific request and instruction.

11 12. Gemstone accepted, used, and enjoyed and continues to enjoy the benefit of
12 the labor, services, and materials provided by Renaissance.

13 13. Gemstone knew or should have known that Renaissance expected to be paid
14 for its labor, services, and materials.

15 14. Gemstone has been unjustly enriched to the detriment of Renaissance.

16 15. Renaissance is entitled to recover its attorneys' fees and costs, as well as
17 interest on the unpaid balance owed to Renaissance.

18 WHEREFORE, Renaissance prays for judgment as follows:

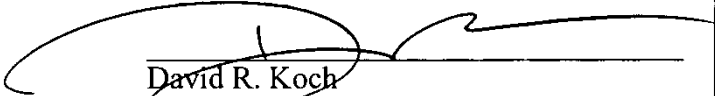
- 19 1. Judgment against Gemstone for the sum of \$89,474.74 for services rendered
20 under the Agreement;
21 2. Judgment for interest, attorneys' fees and costs incurred;
22 3. That the above sums, in total, be judged as a lien upon the Property and that
23 this Court enter an Order allowing sale of the Property as may be necessary
24 in compliance with the laws of the State of Nevada, and that the proceeds of
25 such sale be applied to the payment of monies due to Renaissance Pools &
26 Spas, Inc.; and
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4. For such other relief as the Court may deem just and proper.

KOCH & SCOW LLC

Date: May 29, 2009



David R. Koch
Attorneys for Lien Claimant/Intervenor
Renaissance Pools & Spas, Inc.

EXHIBIT A

AA 001076

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 255 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. 0034783 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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- 28

See attached service list


An employee of KOCH & SCOW LLC

APCO Construction
c/o James M. Barker, its RA
4420 S. Decatur Boulevard
Las Vegas, NV 89103

Law Offices of Robert L. Bachman
4001 Meadows Lane
Las Vegas, NV 89107

Dave Peterson Framing, Inc.
Attn: David L. Peterson
9081 W. Sahara Avenue, #290
Las Vegas, NV 89117

Ferguson Fire & Fabrication, Inc.
c/o CSC Services of Nevada, Inc., its RA
502 East John Street
Carson City, NV 89706

HD Supply White Cap Construction
4171 Distribution Circle, Suite 107
North Las Vegas, NV 89030

Accuracy Glass & Mirror Company, Inc.
c/o H. Bruce Cox, Esq., its RA
6511 Deer Springs Way
Las Vegas, NV 89131

Buchele, Inc.
Attn: Thomas Buchele
4445 W. Red Coach Avenue
North Las Vegas, NV 89031

Design Space Modular Buildings, Inc.
2700 East Sunset Road, Suite 11
Las Vegas, NV 89120-3507

Freedom Fire Prevention, Inc.
c/o John Grul, its RA
1532 Owyhee Court
Las Vegas, NV 89110

Arch Aluminum & Glass Co., Inc.
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Carpets-N-More, LLC
c/o Gary E. Schnitzer, Esq., its RA
8985 E. Eastern Avenue, Suite 200
Las Vegas, NV 89123

Eastridge Personnel of Las Vegas, Inc.
c/o Ailsa Leech, its RA
4220 S. Maryland Parkway, Suite 204
Las Vegas, NV 89119

Geotek, Inc.
c/o Brownstein Hyatt Farber
Schrek, LLP, its RA
100 City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Hi-Tech Fabrication, Inc.
c/o Greg Griffith, its RA
6600 W. Charleston Boulevard, #116
Las Vegas, NV 89146

Asphalt Solutions, LLC
c/o Rite, Inc., its RA
1905 South Eastern Avenue
Las Vegas, NV 89104

Cell-Crete Fireproofing of Nevada, Inc.
c/o Business Filings Incorporated, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Executive Plastering, Inc.
c/o Springel & Fink LLP, its RA
2475 Village View Drive
Henderson, NV 89074

Graybar Electric Company, Inc.
c/o CSC Services of Nevada, Inc., its RA
502 East John Street
Carson City, NV 89706

Harsco Corporation
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Ahern Rentals, Inc.
c/o Don F. Ahern, its RA
4241 S. Arville Street
Las Vegas, NV 89103

Camco Pacific Construction Company, Inc.
c/o The Prentice-Hall Corporation System,
Nevada, Inc., its RA
502 East John Street
Carson City, NV 89706

E&E Fire Protection, LLC
c/o T. James Truman & Associates, its RA
3654 North Rancho Drive
Las Vegas, NV 89130

Gale Building Products
Atn: Robert D. Monroe
3326 Ponderosa Way, Suite A
Las Vegas, NV 89118

Helix Electric of Nevada, LLC
c/o Peel Brimley LLP, its RA
3333 East Serene Avenue, Suite 200
Henderson, NV 89074

INQUIPCO
c/o Maupin, Cox & Legoy, its RA
4785 Caughlin Parkway
Reno, NV 89519

Las Vegas Pipeline LLC
c/o Mark L. Blackwell, its RA
1489 W. Warm Springs Boulevard, Suite
110
Henderson, NV 89014

Pape' Material Handling, Inc.
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Hyde Consulting Services, LLC
c/o Seena Hyde, its RA
1165 Forum Veneto Drive
Henderson, NV 89052

Atlas Construction Supply, Inc.
c/o Nevada Corporate Headquarters, Inc.,
its RA
101 Convention Center Drive, Suite 70C
Las Vegas, NV 89109

Creative Home Theatre, LLC
c/o Paige Arcuri, its RA
5860 S. Valley View Boulevard
Las Vegas, NV 89118

Fast Glass
c/o Sierra Corporate Services - Reno, its RA
100 West Liberty Street, 10th Floor
Reno, NV 89505

HD Supply Waterworks, LP
c/o Corporate Creations Network, its RA
8275 South Eastern Avenue, #200
Las Vegas, NV 89123

HydroPressure Cleaning, Inc.
413 Dawson Drive
Camarillo, CA 93013

Jensen Precast
3853 Losee Road
North Las Vegas, NV 89030-3326

Noorda Sheet Metal Company
c/o T. James Truman & Associates, its RA
3654 North Rancho Drive
Las Vegas, NV 89130

Philcor TV & Electronic Leasing, Inc.
c/o Kenneth A. Woloson, Esq., its RA
400 S 4th Street, 3rd Floor
Las Vegas, NV 89101

Renaissance Pools & Spas, Inc.
c/o David Koch, Esq., its RA
11500 S. Eastern Avenue, Suite 210
Henderson, NV 89052

Selectbuild Nevada, Inc.
c/o CSC Services of Nevada, Inc., its RA
502 East John Street
Carson City, NV 89706

Interstate Plumbing & Air Conditioning, LLC
c/o Henry Lochtenberger, its RA
8363 West Sunset Road, Suite 300
Las Vegas, NV 89113

The Masonry Group Nevada Inc.,
c/o Chad Herschi, its RA
4685 Berg Street
North Las Vegas, NV 89081

Paramount Scaffold, Inc.
c/o Alejandro Hernandez, its RA
3224 Meade, Suite D
Las Vegas, NV 89103

Republic Crane Service, LLC
c/o Richard A. Koch, Esq.
4520 South Pecos Road, Suite 4
Las Vegas, NV 89121

Steel Structures, Inc.
c/o John Peter Lee, Esq., its RA
830 Las Vegas Boulevard, South
Las Vegas, NV 89101

JP Landscaping & Design, LLC
c/o Start Your Biz, its RA
1701 N. Green Valley Parkway
Henderson, NV 89014

Nevada Prefab Engineers, Inc.
c/o John Peter Lee, Esq., its RA
830 Las Vegas Boulevard, South
Las Vegas, NV 89101

S.R. Bray Corp.
c/o Joseph Murray, its RA
3131 Olive Street
Las Vegas, NV 89104

Sunstate Equipment Co., LLC
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

John Deere Landscapes, Inc.
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Northstar Concrete, Inc.
c/o Kenneth A. Woloson, Esq., its RA
400 S. 4th Street, 3rd Fl
Las Vegas, NV 89101

The Pressure Grout Company
c/o Incorp Services, Inc., its RA
375 N. Stephanie Street, Suite 1411
Henderson, NV 89014-8909

SWPPP Compliance Solutions, LLC
c/o Nicholas Lombardo, its RA
9365 Ft. Bayard Avenue
Las Vegas, NV 89178

Superior Traffic Services
5525 S. Valley View Boulevard, Suite 1
Las Vegas, NV 89110

Larry Methvin Installations, Inc.
c/o Larry Methvin, Sr., its RA
4065 W. Mesa Vista Avenue, Unit D
Las Vegas, NV 89118

Otis Elevator Company
c/o The Corporation Trust Company of
Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Patent Construction Systems, c/o Harsco Corp.
c/o The Corporation Trust Company of Nevada, its RA
6100 Neil Road, Suite 500
Reno, LV 89511

3460 West Cheyenne Avenue
Suite 100
North Las Vegas, NV 89032

Sunstate Companies, Inc.
c/o Richard Gruber, its RA
4435 E. Colton Avenue
Las Vegas, NV 89115

Towey Equipment Co., Inc.
c/o Lynette Towey, its RA
3815 W. Torino Avenue
Las Vegas, NV 89139-7708

Tri-City Drywall, Inc.
c/o Jones Vargas, Chartered, its RA
3773 Howard Hughes Parkway, 3rd Fl So.
Las Vegas, NV 89169

Professional Staffing – ABTS, Inc.
c/o National Registered Agents, Inc. of NV,
its RA
1000 East William Street, Suite 204
Carson City, NV 89701

Sacramento Insulation Contractors
c/o The Corporation Trust Company of Nevada, its RA
6100 Neil Road, Suite 500
Reno, NV 89511

Supply Network Inc.
c/o The Corporation Trust Company of Nevada, its RA
6100 Neil Road, Suite 500
Reno, LV 89511

Zitting Brothers Construction Inc.
c/o Contractor's Exam Center, Inc., its RA
3170 East Sunset Road, Suite B
Las Vegas, NV 89120

Westward Ho, LLC
c/o National Registered Agents, Inc. of NV,
its RA
1000 East William Street, Suite 204
Carson City, NV 89701

ORIGINAL

31

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

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7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 EXECUTIVE PLASTERING, INC., a
11 Nevada corporation,

12 Plaintiff,

13 vs.

14 CAMCO PACIFIC CONSTRUCTION
15 COMPANY, INC., a California corporation;
16 GEMSTONE DEVELOPMENT WEST,
17 INC., a Nevada Corporation; DOE
18 INDIVIDUALS I through X, inclusive; and
19 ROE CORPORATIONS I through X,
20 inclusive,

21 Defendants.

22 AND ALL RELATED CLAIMS

Case No. A-580889

Dept. No. ~~X~~ VIII

FIRST AMENDED COMPLAINT

Automatic Exemption from Arbitration
Extraordinary Relief Requested

09A580889
149967



23 COMES NOW, Plaintiff EXECUTIVE PLASTERING, INC., a Nevada Corporation, by
24 and through its attorneys, MATTHEW Q. CALLISTER, ESQ., and MATTHEW P.
25 PAWLOWSKI, ESQ., of the law firm CALLISTER & REYNOLDS, and hereby files this
26 Complaint against the above named Defendants, as follows:

PARTIES AND JURISDICTION

- 27 1. Plaintiff EXECUTIVE PLASTERING, INC., is and at all times pertinent hereto was a
28 Nevada Corporation, doing business in the State of Nevada, County of Clark, as
29 EXECUTIVE PLASTERING, INC.

RECEIVED

JUN 03 2009

CLERK OF THE COURT

- 1 2. Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. is an at all times
2 pertinent hereto was a California Corporation, doing business in the State of Nevada,
3 County of Clark, as CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
- 4 3. Defendant GEMSTONE DEVELOPMENT WEST, INC. is an at all times pertinent
5 hereto was a Nevada Corporation, doing business in the State of Nevada, County of
6 Clark, as CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
- 7 4. The true names and capacities of DOE INDIVIDUALS I through X, inclusive, are
8 unknown to the Plaintiff at this date; said Defendants are named herein, but may be
9 responsible or liable to the Plaintiff by virtue of the actions hereinafter described and
10 Plaintiff reserves his right to amend this Complaint to insert any additional charging
11 allegations, together with the party(ies) true identities and capacities, when the same have
12 been ascertained.
- 13 5. The true names and capacities of ROE CORPORATIONS I through X, inclusive, are
14 unknown to the Plaintiff at this date; said Defendant Corporations are named herein, but
15 may be responsible or liable to the Plaintiff by virtue of the actions hereinafter described
16 and Plaintiff reserves his right to amend the Complaint to insert any additional charging
17 allegations, together with their true identities and capacities, when the same have been
18 ascertained.
- 19 6. The acts and events giving rise to this action took place in Clark County, Nevada.
- 20 7. Exercise of jurisdiction by this Court over the Defendant in this action is appropriate.
- 21 8. Venue is proper in Clark County, Nevada.

22 **GENERAL FACTS AND ALLEGATIONS**

- 23 9. On or about April 17, 2007, Plaintiff Executive Plastering, Inc. and Asphalt Products
24 Corporation, also known as APCO Construction, ("APCO") entered into a written
25 Subcontract Agreement ("Subcontract Agreement") related to the Manhattan West
26 Condominiums project, located in Clark County, Nevada.
- 27 10. The owner of the Manhattan West Condominiums project is Defendant GEMSTONE
- 28

- 1 DEVELOPMENT WEST, INC (hereinafter, "Gemstone").
- 2 11. Pursuant to this agreement, Plaintiff was to supply of all labor, materials, tools,
3 equipment, supervision, management, permits, and taxes necessary to install and
4 complete all stucco work for all of the buildings that were a part of the Manhattan West
5 Condominium project.
- 6 12. The contract called for compensation to Plaintiff for said services in the amount of
7 \$1,453,900.00.
- 8 13. Section 3.4 of the agreement called for monthly progress payments to be made to the
9 Plaintiff, for the value of the work completed during the preceding month.
- 10 14. The Subcontract Agreement further required that, should APCO seek to terminate the
11 agreement, it must provide a written notice of termination to the Plaintiff, two calendar
12 days in advance of the effective date of termination.
- 13 15. On or about August 26, 2008, Plaintiff and Defendant CAMCO PACIFIC
14 CONSTRUCTION COMPANY, INC. (hereinafter, "Camco") executed a Ratification and
15 Amendment of Subcontract Agreement ("Ratification Agreement"), which concerns the
16 Manhattan West Condominiums project.
- 17 16. Under the Ratification Agreement, Plaintiff and Camco agreed to replace APCO with
18 Camco as, "Contractor," under the Subcontract Agreement between Plaintiff and APCO.
- 19 17. The Ratification Agreement further provided that Plaintiff would remain as the,
20 "Subcontractor," under the terms of the Subcontract Agreement.
- 21 18. This Ratification Agreement effectively replaced APCO with Camco as the general or
22 prime contractor for the construction of the mixed-use development project identified as
23 the Manhattan West Condominium project.
- 24 19. Subject to the terms of the Ratification Agreement, all other terms and conditions of the
25 Subcontract Agreement at issue in this action were to remain in full force and effect
26 between Plaintiff and Camco.
- 27 20. Pertinent terms of the Ratification Agreement include, but are not limited to, a
28 restatement of Plaintiff's responsibilities to, "Complete work per governing codes,

1 furnish and install all necessary Labor, Material, Equipment, Cartage, Freight,
2 Supervision, Taxes, and Necessary Insurance, excluding General Liability insurance, to
3 install and complete ALL STUCCO WORK INCLUDING POP OUTS AND LATHE
4 FOR BUILDINGS 2, 3, 7, 8 AND 9 pursuant to the Project Drawing List for a total
5 amount of \$1,453,900.00.”

6 21. The Ratification Agreement further provided: “Scope of Work concerning Buildings 2, 3,
7 7, 8, and 9 must be completed pursuant to the updated Manhattan West Camco Pacific
8 Construction Schedule, dated August 22, 2008, and Buildings 1, 4, 5, 6, 10, 11, and 12
9 must be completed pursuant to the schedule to be delivered to EPI by Camco at the time
10 that work on such buildings is commenced.

11 22. Since the execution of Subcontract Agreement, Plaintiff has fulfilled all of its obligations
12 to both Camco and to Gemstone, as owner of the project.

13 23. However, to date, Camco has accumulated a total of \$541,750.24 for unpaid services
14 performed and materials provided by the Plaintiff.

15 24. The Plaintiff has submitted invoices for payment and further submitted formal requests
16 for payment to Camco, to no avail.

17 25. As an act of good faith, and in order to keep the Manhattan West Condominium project
18 within schedule, Plaintiff continued to provide services and materials to Camco, despite
19 Camco’s refusal to pay the outstanding invoices of the Plaintiff.

20 26. To date, the Plaintiff remains unpaid for the \$541,750.24 in unpaid services performed
21 and materials provided.

22 27. On or about December 22, 2008, Camco informed Plaintiff by letter that Gemstone, the
23 had suspended construction of the Manhattan West Condominiums, because of
24 insufficient construction funds.

25 28. Consequently, this letter further stated that Gemstone could no longer pay its contractors.

26 29. Because of Gemstone’s inability to pay Camco, Camco terminated the Subcontract
27 Agreement immediately and refused to pay Plaintiff for past due balances for work
28 performed and materials provided.

1 30. On January 13, 2009, after serving a 15-day Notice of Intent to Lien and waiting the
2 requisite statutory period, Plaintiff served and recorded a Notice of Mechanic's Lien with
3 the Clark County Recorder, as and for the subject project.

4 17. To date, that lien remains unsatisfied by either Defendant Camco or Defendant Gemstone
5 Development West, Inc.

6
7 **FIRST CAUSE OF ACTION**
(Breach of Contract as to Defendant Camco)

8 31. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
9 further alleges, as follows:

10 32. There exists a subcontract agreement between Plaintiff and APCO for the provision of
11 construction services by Plaintiff on the real property identified as the Manhattan West
12 condominium construction project.

13 33. That said subcontract agreement constitutes a valid and enforceable contract, pursuant to
14 Nevada law.

15 34. There exists a ratification agreement between Plaintiff and Defendant Camco, which
16 directly references and ratifies the aforementioned contract for the provision of
17 construction services by Plaintiff on the real property identified as the Manhattan West
18 condominium construction project.

19 35. That said ratification agreement constitutes a valid and enforceable contract, pursuant to
20 Nevada law.

21 36. That Plaintiff has fully performed all of its duties and obligations, under the terms of the
22 contract at issue herein.

23 37. That Camco terminated the services of the Plaintiff without prior notice, in derogation of
24 the terms of the contract.

25 38. That Camco has failed to tender full payment to the Plaintiff, as and for services
26 performed and materials provided to Camco, as per the terms of the contract at issue in
27 this action.

28 39. Said acts and omissions constitute a material and unjustifiable breach of the contract, at

1 issue herein.

2 40. That, as a result of Camco's breach of the terms of the contract, Plaintiff has been injured
3 in an amount in excess of ten thousand dollars (\$10,000.00).

4 41. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
5 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
6 attorney's fees and costs of court for having to bring this action.

7
8 **SECOND CAUSE OF ACTION**
(Breach of the Covenant of Good Faith and
9 *Fair Dealing as to Camco)*

10 42. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
11 further alleges, as follows:

12 43. Camco had a duty to act in good faith and fair dealing in executing its obligations under
13 the contract at issue in this litigation.

14 44. Camco has breached this covenant of good faith and fair dealing by failing to promptly
15 tender payment to the Plaintiff, as and for construction services performed and materials
16 received, under the terms of the contract at issue in this litigation.

17 45. That these actions by Camco constitute bad faith in Camco's performance under the
18 contract at issue in this litigation.

19 46. That, as a result of Camco's Bad Faith, the Plaintiff has been injured in an amount in
20 excess of ten thousand dollars (\$10,000.00), and is entitled to recover the same.

21 47. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
22 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
23 attorney's fees and costs of court for having to bring this action.

24 **THIRD CAUSE OF ACTION**
25 *(Unjust Enrichment as to Defendant Camco)*

26 48. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
27 further alleges, as follows.

28 49. That Plaintiff provided construction materials and services to Camco, as requested by

1 Camco.

2 50. Camco received, has used and continues to enjoy the benefit of these materials and
3 services provided by Plaintiff.

4 51. To date, Camco has failed and refused to tender payment to the Plaintiff, as and for said
5 materials and services.

6 52. As a result of the receipt of construction materials and services from the Plaintiff and
7 Camco's failure to pay for said services, Camco has been unjustly enriched in an amount
8 in excess of ten thousand dollars (\$10,000.00), and the Plaintiff has accordingly been
9 damaged in said amount.

10 53. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
11 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
12 attorney's fees and costs of court for having to bring this action.

13
14 **FOURTH CAUSE OF ACTION**
(Unjust Enrichment as to Defendant Gemstone)

15 54. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
16 further alleges, as follows.

17 55. Gemstone is the owner of the real property at issue in this litigation, which is also the
18 building site of the Manhattan West Condominium project.

19 56. Gemstone engaged APCO and subsequently Defendant Camco to construct the
20 Manhattan West Condominium project on its property.

21 57. That Plaintiff provided construction materials and services to Camco, as requested by
22 Camco, for the Manhattan West project.

23 58. Gemstone, as owner of the subject property, has received, used and continues to enjoy the
24 benefit of these materials and services provided by Plaintiff.

25 59. To date, Gemstone has failed and refused to tender payment to the Plaintiff, as and for
26 said materials and services, which have benefitted Gemstone's property.

27 60. As a result of the receipt of construction materials and services from the Plaintiff and
28 Gemstone's failure to pay for said services, Gemstone has been unjustly enriched in an

1 amount in excess of ten thousand dollars (\$10,000.00), and the Plaintiff has accordingly
2 been damaged in said amount.

3 61. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
4 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
5 attorney's fees and costs of court for having to bring this action.

6
7 **FIFTH CAUSE OF ACTION**
(Violation of NRS 624.624)

8 62. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
9 further alleges, as follows:

10 63. Pursuant to NRS 624.624, Defendant was obligated by law to tender prompt payment to
11 Plaintiff, as and for services performed and materials received by the Defendant, under
12 the terms of the contract between the Plaintiff and Defendant.

13 64. However, to date, Defendant has failed to timely issue payment to the Plaintiff for
14 outstanding balances for services performed and materials received by the Defendant,
15 under the terms of the contract between the Plaintiff and Defendant..

16 65. As a result of this failure to promptly tender payment to Plaintiff, for services performed
17 and materials received, Defendant is in violation of NRS 624.624.

18 66. That, as a result of the foregoing, the Plaintiff has been injured in an amount in excess of
19 ten thousand dollars (\$10,000.00), and is entitled to recover the same.

20 67. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
21 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
22 attorney's fees and costs of court for having to bring this action.

23
24 **SIXTH CAUSE OF ACTION**
(Declaratory Relief)

25 68. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
26 further alleges, as follows:

27 69. A justiciable controversy exists between Plaintiff and Defendant as to (1) the legal
28 validity, force and effect of the subject contract at issue herein; (2) the amount allegedly

1 due and owing to Plaintiff under this contract; and (3) the performance of the parties
2 under the contract at issue herein.

3 70. Plaintiff's and the Defendant's interests are adverse regarding this justiciable controversy,
4 as Plaintiff and the Defendant have competing, contrary interests vis-a-vis the subject
5 contract at issue herein.

6 71. Plaintiff has a legally protectible interest in the controversy, because it has an interest in
7 the contract at issue herein.

8 72. The issue is ripe for judicial determination because, *inter alia*, it presents an existing
9 controversy as to the Parties' rights and obligations under the contract at issue herein.

10 73. Accordingly, Plaintiff is entitled to a declaratory judgment under the Uniform Declaratory
11 Judgments Act, NRS 30.010 *et seq.*, finding: (1) Defendant's actions as set forth fully
12 herein constitute a breach of the contract herein; and (2) that Plaintiff is entitled to
13 recover damages in this action, for monies due and owing for services performed for and
14 on behalf of the Defendant.

15 74. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
16 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
17 attorney's fees and costs of court for having to bring this action.

18
19 **SEVENTH CAUSE OF ACTION**
(Foreclosure on Mechanic's Lien, as to Gemstone)

20 75. Plaintiff repeats and re-alleges each and every allegation contained in this Complaint and
21 further alleges, as follows:

22 76. Gemstone Development West, Inc. is the owner of the real property, identified as APN
23 No. 163-32-101-019, and commonly identified as the Manhattan West Condominium
24 project.

25 77. As described above, Plaintiff provided significant stucco installation services at the
26 subject property.

27 78. At the present time, the sum of \$541,750.24 remains due and owing to the Plaintiff, as
28 and for the provision of said services.

1 79. On January 13, 2009, after serving a 15-day Notice of Intent to Lien and waiting the
2 requisite statutory period, Plaintiff served and recorded a Notice of Mechanic's Lien with
3 the Clark County Recorder, as and for the subject project.

4 17. To date, that lien remains unsatisfied by either Defendant Camco or Defendant Gemstone
5 Development West, Inc.

6 80. The Plaintiff has been required to retain the services of MATTHEW Q. CALLISTER,
7 ESQ. to prosecute this action, and Plaintiff is therefore entitled to recover its reasonable
8 attorney's fees and costs of court for having to bring this action.

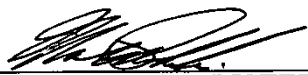
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10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief, based upon the foregoing Complaint, as follows:

- 12 1. That this Court enter a Declaratory Judgment that Camco's actions as set forth fully
13 herein constitute a breach of the contract at issue herein;
14 2. That Plaintiff be permitted to lawfully foreclose on its mechanic's lien in this action;
15 3. That Plaintiff be awarded actual damages in excess of \$10,000.00;
16 4. That Plaintiff be awarded reasonable attorney's fees;
17 5. That Plaintiff be awarded its costs of Court; and
18 6. That Plaintiff be awarded any other further relief as the Court may deem proper.

19 DATED: This 1 day of June, 2009.

20 **CALLISTER & REYNOLDS**

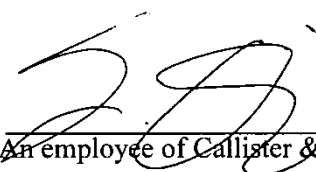
21
22 By: 
23 **MATTHEW Q. CALLISTER, ESQ.**
24 Nevada Bar No. 001396
25 **MATTHEW P. PAWLOWSKI, ESQ.**
26 Nevada Bar No. 009889
27 823 Las Vegas Blvd. South, 5th Floor
28 Las Vegas, Nevada 89101
Phone: (702) 385-3343
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2009, service of the foregoing ***First Amended Complaint*** was made by depositing a true and correct copy of the same in the United States Mails, first-class postage pre-paid, and addressed as follows:

Steven L. Morris, Esq.
WOODBURY, MORRIS & BROWN
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074
Fax: (702) 933-0778


An employee of Callister & Reynolds.

LAW OFFICES

MUIJE & VARRICCHIO

1320 S. CASINO CENTER BOULEVARD
LAS VEGAS, NEVADA 89104

Phone: (702) 386-7002 Fax: (702) 386-9135

CLERK OF THE COURT

ORIGINAL

FILED

JUN 12 3 46 PM '09

Earl D. Smith
CLERK OF THE COURT

STMT
MUIJE & VARRICCHIO
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muijeandvarricchio.com
Attorneys for Supply Network
dba Viking Supplynet

DISTRICT COURT

CLARK COUNTY, NEVADA

READY MIX, INC., a Nevada corporation,

Plaintiff,

v.

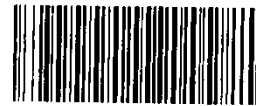
CONCRETE VISIONS, INC. a Nevada corporation; GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation, ALEXANDER EDELSTEIN; SELINA MARIE CISNEROS; JUAN S. PULIDO; PLATTE RIVER INSURANCE COMPANY, a foreign corporation; APCO CONSTRUCTION, INC., a Nevada Corporation and DOES I through X, inclusively, ;

Defendants.

Case No.: A577623

Dept. No.: XII

08A577623
167220



**STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN
INTERVENTION**

COMES NOW, Lien Claimant, SUPPLY NETWORK, INC. dba VIKING SUPPLYNET, by and through its counsel of record, Philip T. Varricchio, Esq. of the law firm Muje & Varricchio files this Statement of Facts Constituting Lien and Complaint in Intervention.

1. Claimant SUPPLY NETWORK, INC., is now, and at all times herein mentioned was, a corporation duly formed under the laws of the State of Michigan and registered to do business in the State of Nevada. SUPPLY NETWORK, INC., does business under the name of VIKING SUPPLYNET (hereinafter "SUPPLYNET").

2. Defendant JEFF HEIT PLUMBING CO., LLC (hereinafter "HEIT PLUMBING") is and all times mentioned herein was, a Nevada limited liability company authorized to conduct business within the estate of Nevada and is a contractor duly licensed by the State of Nevada Contractor's Board. Defendant HEIT PLUMBING, was a contractor for a certain project known as Manhattan West Condos, located at 9205-9255 W. Russell Road Las Vegas, Nevada.

Assessor's Description: PT NE4 NW4 SEC 32 21 60,
PT N2 NW4 SEC 32 TWP 21 RGN 60

Owner: GEMSTONE DEVELOPMENT WEST, INC.
9121 W. Russell Road, #117
Las Vegas, Nevada 89148

3. Claimant Supplynet is informed and believes that GEMSTONE DEVELOPMENT WEST, INC. (hereinafter "GEMSTONE") is a Nevada corporation duly qualified to conduct business in County of Clark, State of Nevada and is or was the record owner of the above described real property in Clark County, Nevada commonly known as "Manhattan West Condos".

4. At the request of Heit Plumbing, Supplynet pursuant to its contract did provide materials to be used for fire sprinklers. The materials were to be utilized for the improvements and constructions of the described real property, and was in fact used and incorporated into the real property previously described herein.

5. The total amount of the original contract is \$20,596.03. The total amount of all materials is \$20,596.03. The total amount of the lien, after deducting all just credits and offsets is \$20,596.03.

FIRST CAUSE OF ACTION

(Foreclosure of Mechanic's Lien) Gemstone Development West, Inc. and Gemstone Apache, LLC.

6. Supplynet, hereby repeats and realleges as though fully set forth herein the allegations of Paragraphs 1 through 5 of this Complaint.

7. Supplynet, in order to secure its claim has perfected a Mechanic's Lien upon the property by complying with the procedures set forth in NRS 108.221 through NRS 108.246, inclusive as follows:

1 (a) Recording with the Office of the Recorder of Clark County,
2 Nevada, a Notice of Lien Claim date January 12, 2009, a copy
3 of which is attached hereto.

4 (b) By filing a Statement of Facts in this action.

5 8. Supplynet has substantially complied with and satisfied the provisions of NRS
6 108.246.

7 9. Supplynet has caused the Notice of Lien Claim to be recorded in the Office of the
8 Recorder not later than ninety (90) days following completion of the last services.

9 10. Supplynet is entitled to an Order entered by this Court directing that the property be
10 sold and foreclosed upon and that portions of the proceeds of said sale be paid to Supplynet in the
11 amount of its lien, \$20,596.03, together with interest thereon, costs and attorneys fees.

12 **SECOND CAUSE OF ACTION**

13 **(Breach of Contract)**
JEFF HEIT PLUMBING CO., LLC

14 11. Supplynet hereby repeats and realleges as though fully set forth herein the allegations
15 of Paragraphs 1 through 5 of the General Allegations and Paragraphs 6 through 10 of the First Cause
16 of Action of this Complaint.

17 12. Supplynet entered into an agreement with Heit Plumbing to provide materials to be
18 used for fire sprinklers, for the premises of the "Manhattan Condos" at the address above described.

19 13. Supplynet has fulfilled its obligations under the agreement by providing work and
20 materials as contracted for, as requested, on a timely basis and in a satisfactory manner.

21 14. Supplynet is due and owing the sum of \$20,596.03.

22 15. Despite demand, Heit Plumbing has failed and refused to pay the sums due and owing
23 to Supplynet.

24 16. Heit Plumbing has breached its contract with Supplynet by its failure to pay the sums
25 due and owing.

26 17. As a direct and proximate result of this breach, Supplynet has been damaged in the
27 amount of its outstanding balance of \$20,596.03 coupled with interest.
28

18. That Supplynet has been required to retain the services of Mujie & Varricchio, to prosecute this action, and is therefore entitled to reasonable attorney fees and costs of suit.

THIRD CAUSE OF ACTION

(Quantum Meruit)
**JEFF HEIT PLUMBING CO., LLC, GEMSTONE DEVELOPMENT WEST, INC./
GEMSTONE APACHE LLC**

19. Supplynet hereby repeats and realleges as though fully set forth herein the allegations of Paragraphs 1 through 5 of the General Allegations, Paragraphs 6 through 10 of the First Cause of Action and Paragraphs 11 through 18 of the Second Cause of Action of this Complaint.

20. Supplynet provided, materials at the request of Heit Plumbing; Supplynet is informed and believes that Heit Plumbing was working for the owners and the general contractor at their respective directions and with the expectation of compensation.

21. Heit Plumbing, Gemstone Development West, and Gemstone Apache, LLC obtained, accepted and enjoyed the benefits of the, materials provided by Supplynet. These entities knew, or reasonably should have know, that Supplynet expected to be fully paid for the materials provided and said entities have been unjustly enriched at the expense of Supplynet to the extent said entities have failed to fully pay for the materials.

22. The fair value of the material provided by Supplynet is \$20,596.03.

23. Despite demand, these entities have failed and refused to pay Supplynet for its materials. As a result, Supplynet has been damaged in an approximate amount of \$20,596.03 coupled with interest.

24. That Supplynet has been required to retain the services of Mujie & Varricchio, to prosecute this action, and is therefore entitled to reasonable attorney fees and costs of suit.

FOURTH CAUSE OF ACTION

(Open Account)
JEFF HEIT PLUMBING CO., LLC

25. Supplynet hereby repeats and realleges as though fully set forth herein the allegations of Paragraphs 1 through 5 of the General Allegations, Paragraphs 6 through 10 of the First Cause of Action, Paragraphs 11 through 18 of the Second Cause of Action and Paragraphs 19 through 24 of

1 the Third Cause of Action of this Complaint.

2 26. An account has been stated between Supplynet and Heit Plumbing; Heit Plumbing
3 owes and amount of \$20,596.03 and is subject to the Mechanics Lien claim herein.

4 27. That Supplynet has been required to retain the services of Muije & Varricchio, to
5 prosecute this action, and is therefore entitled to reasonable attorney fees and costs of suit.

6 **THIRD-PARTY CLAIM**

7 **(Personal Guarantor)**
8 **JEFFREY HEIT**

9 28. Supplynet hereby repeats and realleges as though fully set forth herein the allegations
10 of Paragraphs 1 through 5 of the General Allegations, Paragraphs 6 through 10 of the First Cause of
11 Action, Paragraphs 11 through 18 of the Second Cause of Action. Paragraphs 19 through 24 of the
12 Third Cause of Action and Paragraphs 25 through 27 of the Fourth Claim for Relief of this
13 Complaint.

14 29. That Supplynet, as a prerequisite to granting credit, and providing materials to Heit
15 Plumbing, did seek and procure the personal guarantee of its owner Jeffery Heit.

16 30. That the outstanding balance of \$20,596.03 is due and payable to Supplynet, and
17 Jeffrey Heit, is duly liable on its personal guarantee to Supplynet.

18 31. That Supplynet has been required to retain the services Muije & Varricchio to
19 prosecute this action and per the terms of the guarantee, attorney fees, court costs and interest are
20 recoverable.

21 WHEREFORE Claimant prays as follows:

- 22 1. Foreclosure upon the mechanic's lien of Supplynet upon the Property;
23 2. An order entered by this Court Directing that the property be sold and foreclosed
24 upon and that Supplynet be paid the sum of its Lien;
25 3. Pre-Judgment interest and Post Judgment interests.
26 4. For attorney fees plus costs of suit incurred herein;
27 and
28 5. For such other relief as is just and proper herein.

1 AS TO THE SECOND CAUSE OF ACTION.

- 2 1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
3 2. For attorney fees plus costs of suit incurred herein;
4 and
5 3. For such other relief as is just and proper herein.

6 AS TO THE THIRD CAUSE OF ACTION.

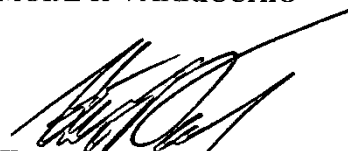
- 7 1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
8 2. For attorney fees plus costs of suit incurred herein;
9 and
10 3. For such other relief as is just and proper herein.

11 AS TO THE FOURTH CAUSE OF ACTION

- 12 1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
13 2. For attorney's fees plus costs of suit incurred herein;
14 and
15 3. For such other relief as is just and proper herein.

16
17 Dated this 12 day of June, 2009.

MUIJE & VARRICCHIO

18
19
20
21 
22 PHILIP T. VARRICCHIO, ESQ.
23 Nevada Bar No.: 1087
24 1320 S. Casino Center Blvd.
25 Las Vegas, NV 89101

26 *Attorney for Supply Network dba*
27 *Viking Supplynet*
28

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E. J. Smith
CLERK OF THE COURT

STAT

James E. Shapiro, Esq.
Nevada Bar No. 7907
GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000
Attorneys for
LAS VEGAS PIPELINE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC.;
DOES I through X, inclusive,

Defendants.

Case No. **A571228**

Dept. No. **X**

LAS VEGAS PIPELINE, LLC,

Plaintiff / Intervenor,

vs.

APCO CONSTRUCTION, a Nevada corporation;
GEMSTONE DEVELOPMENT WEST, INC.;
CAMCO PACIFIC CONSTRUCTION COMPANY,
INC.; DOES 1-40, DOE CORPORATIONS 1-40,
DOE BONDING COMPANIES 1-10; DOE
SURITIES 1-10; DOE LENDERS 1-10; and DOE
TENANTS 1-10, inclusive,

Defendants.

Date: N/A

Time: N/A

08A571228
170917



STATEMENT OF FACTS CONSTITUTING LIEN
AND COMPLAINT INTERVENTION

COMES NOW Plaintiff / Intervenor, LAS VEGAS PIPELINE, LLC ("Las Vegas Pipeline"), by and through its attorneys of record, GERRARD, COX & LARSEN, and for its Statement of Facts Constituting Lien and Complaint in Intervention, states and alleges as follows:

///

GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000

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GENERAL ALLEGATIONS

1. Plaintiff Las Vegas Pipeline is a Nevada Limited Liability Company.

2. Upon information and belief, Defendant APCO CONSTRUCTION ("APCO") is a Nevada corporation conducting business in Clark County, Nevada and at all relevant times, has held a Nevada contractor's license.

3. Upon information and belief, Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO") is a foreign corporation conducting business in Clark County, Nevada and at all relevant times, has held a Nevada contractor's license.

4. Upon information and belief, Defendant GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone"), is a Nevada corporation conducting business in Clark County, Nevada, and is the owner or reputed owner of that certain real property, commonly called the Manhattan West project, located at 9205 W. Russell Road, Clark County, Nevada, being more particularly described as PT NE4 NW4 SEC 32 21 60, SEC 32 TWP 21 RNG 60 and more fully described in that certain Grant Bargain Sale Deed recorded on February 7, 2008, as Document 20080207, Instrument 01481, Official Records, Clark County, Nevada, being further described as Assessor Parcel Number 163-32-101-019 (the "Property").

5. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants, DOES 1-40, DOE CORPORATIONS 1-40, DOE BONDING COMPANIES 1-10; DOE SURITIES 1-10; DOE LENDERS 1-10; and DOE TENANTS 1-10, inclusive, are unknown to Plaintiff who therefore sues those Defendants by such fictitious names, but are believed to be contractors hired by the other Defendants named in this Complaint, owners of the Property, issued contractor license bonds and/or payment bonds for some or all of the Defendants, are the agents, servants, employers, or employees of the other Defendants, and/or are otherwise responsible for the damages suffered by Curtis Excavating. Plaintiff may ask leave of this Court to amend this Complaint and insert the true names and capacities of said DOES 1-40, DOE CORPORATIONS 1-40, DOE BONDING COMPANIES 1-10; DOE SURITIES 1-10; DOE LENDERS 1-10; and DOE TENANTS 1-10, inclusive, when the same have been ascertained by

///

1 Plaintiff, together with the appropriate charging allegations, and to join these Defendants in this
2 action.

3 6. On or about October 24, 2007, Plaintiff entered into a Subcontract Agreement(the
4 "Contract") with APCO wherein Plaintiff agreed to provide subcontractor service and materials
5 related to the Property.

6 7. On or about August 26, 2008, CAMCO entered into a Ratification and Amendment
7 of Subcontract Agreement (the "Ratification Agreement") wherein CAMCO agreed to become
8 responsible for APCO's obligations under the Contract.

9 8. Notwithstanding Plaintiff's full compliance with all of its obligations under the
10 Contract, and the Ratification Agreement, APCO and CAMCO have failed and refused to perform
11 their obligations under the Contract and Ratification Agreement and have defaulted thereunder.

12 9. As a result of Defendant's actions and/or inactions, Plaintiff was forced to file a
13 mechanic's lien against the property on December 16, 2008, in the amount of \$373,892.42, as
14 Document 20081216, Instrument 004218, Official Records, Clark County, Nevada.

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

17 10. The Plaintiff repeats and realleges the allegations contained in Paragraphs 1
18 through 9 of the Complaint herein, and incorporates the same by this reference as if more fully
19 set forth herein.

20 11. The Contract between Plaintiff and APCO constitutes a valid, enforceable contract.

21 12. The Ratification Agreement between Plaintiff and CAMCO constitutes a valid,
22 enforceable contract.

23 13. Plaintiff has fulfilled all of his obligations under the Contract and Ratification
24 Agreement.

25 14. The Defendants have failed and refuses to comply with the terms of the Contract
26 and Ratification Agreement.

27 15. As a direct and proximate cause of the Defendants' breaches, Plaintiff has been
28 damaged in an amount in excess of \$10,000.00, in an amount to be determined at trial.

1 16. As a direct and proximate cause of the Defendants' actions, Plaintiff has incurred
2 special damages in the form of attorneys fees and costs, which continue to accrue, in an amount
3 to be determined at trial.

4 17. Plaintiff has been required to retain the services of an attorney in order to prosecute
5 this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

6 **SECOND CAUSE OF ACTION**

7 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

8 18. The Plaintiff repeats and realleges the allegations contained in Paragraphs 1
9 through 17 of the Complaint herein, and incorporates the same by this reference as if more fully
10 set forth herein.

11 19. In Nevada, every contract carries an implied covenant of good faith and fair
12 dealing.

13 20. The Defendants' failure and refusal to comply with the terms of the Contract and
14 the Ratification Agreement constitute a breach of the implied covenant of good faith and fair
15 dealing.

16 21. As a direct and proximate cause of Defendants' breach, Plaintiff has been damaged
17 in an amount in excess of \$10,000.00, in an amount to be determined at trial.

18 22. Plaintiff has been required to retain the services of an attorney in order to prosecute
19 this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

20 **THIRD CAUSE OF ACTION**

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

22 23. The Plaintiff repeats and realleges the allegations contained in Paragraphs 1
23 through 22 of its Complaint herein, and incorporates the same by this reference as if more fully
24 set forth herein.

25 24. The Defendants hired Plaintiff to provide services related to the construction of the
26 Property.

27 25. At Defendants' request, Plaintiff provided the requested services.

28 ///

1 26. Plaintiff's services were reasonably necessary for the convenient use and
2 occupation of the Property and improvements thereon.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

18 34. The Plaintiff repeats and realleges the allegations contained in Paragraphs 1
19 through 33 of its Complaint herein, and incorporates the same by this reference as if more fully
20 set forth herein.

1 reasonable compensation therefore, APCO, CAMCO, Gemstone and Doe Corporations 1-10,
2 inclusive, will have been unjustly enriched at the expense of Plaintiff.

3 39. Plaintiff is entitled to judgment in an amount in excess of \$10,000.00, in an amount
4 to be determined at trial, for the materials and services it provided to the Property.

5 **FIFTH CAUSE OF ACTION**

6 **(Claim against Bond)**

7 40. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
8 39 of its Complaint herein, and incorporates the same by this reference as if more fully set forth
9 herein.

10 41. Prior to the events giving rise to this Complaint, DOE BONDING COMPANIES
11 1-10 and/or DOE SURITIES 1-10, issued certain bonds (the "Bonds") in favor of APCO and/or
12 CAMCO.

13 42. The Bonds were provided pursuant to the requirements of N.R.S. § 624.270, which
14 Bonds were in force during all times relevant to this action.

15 43. Plaintiff furnished the work as stated herein and has not been paid for the same.

16 44. Plaintiff therefore claims payment on said Bonds.

17 45. DOE BONDING COMPANIES 1-10 and/or DOE SURITIES 1-10 are obligated
18 to pay Plaintiff the penal sum of the Bonds.

19 46. Plaintiff has been required to retain the services of an attorney in order to prosecute
20 this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

21 **SIXTH CAUSE OF ACTION**

22 **(Violation of N.R.S. 624)**

23 47. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
24 46 of its Complaint herein, and incorporates the same by this reference as if more fully set forth
25 herein.

26 48. N.R.S. §§ 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such
27 as APCO and CAMCO), to, among other things, timely pay their subcontractors (such as
28 Plaintiff), as provided in the in the Statute.

GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000

1 49. In violation of the Statute, Behade has failed and/or refused to timely pay Plaintiff
2 monies due and owing.

3 50. As a result of the forgoing, Plaintiff is entitled to the remedies set forth in N.R.S.
4 Chapter 624.

5 51. By reason of the foregoing, Plaintiff is entitled to a judgment against APCO and
6 CAMCO in an amount in excess of \$10,000.00, plus accrued interest, attorneys fees and costs.

7 52. Plaintiff has been required to retain the services of an attorney in order to prosecute
8 this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

9
10 WHEREFORE, Plaintiff prays for relief as follows:

11 1. For damages in excess of \$10,000.00, in an amount to be determined at trial;

12 2. For a judgment declaring that Plaintiff has a valid lien against the Property in the
13 amount of \$373,892.42, plus interest, attorneys fees and costs, that Plaintiff's lien has priority
14 against any and all other liens against the Property and that the Property be sold and that the
15 amount owed to Plaintiff be paid from the proceeds of the sale;

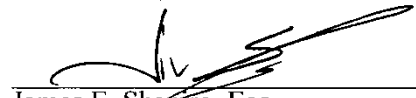
16 3. For special damages in excess of \$10,000.00, in an amount to be determined at
17 trial;

18 4. For attorneys fees and costs; and

19 5. For such other and further relief as the Court deems appropriate in the premises.

20 Dated this 13 day of June, 2009.

21 **GERRARD, COX & LARSEN**

22
23 
24 James E. Shapiro, Esq.
25 Nevada Bar No. 7907
26 2450 St. Rose Parkway, Suite 200
27 Henderson, Nevada 89074
28 Attorneys for LAS VEGAS PIPELINE, LLC

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26

1 STMT
2 MARC RISMAN, ESQ.
3 Nevada Bar No. 002455
4 10120 S. Eastern Ave. #200
5 Henderson, NV 89052
6 marcrisman@calneva-law.com
7 Phone: (702) 388-8100
8 Attorney for Creative Home Theatre, LLC

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Ed [Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

9 UINTAH INVESTMENTS, LLC, a Nevada)
10 Limited Liability Company, d/b/a SIERRA)
11 REINFORCING)

Plaintiff

Case No.: A-583289

Dept No.: 23

12 APCO CONSTRUCTION, a Nevada)
13 Corporation; GEMSTONE)
14 DEVELOPMENT WEST, INC., a Nevada)
15 corporation; and DOES I through X)

Defendants

STATEMENT OF FACTS
CONSTITUTING LIEN CLAIM BY
CREATIVE HOME THEATRE, LLC

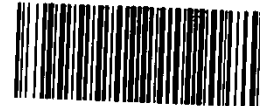
16 CREATIVE HOME THEATRE, LLC., a)
17 Nevada Limited Company,)

Lien Claimant/Intervenor,

18 APCO CONSTRUCTION, a Nevada)
19 Corporation; GEMSTONE)
20 DEVELOPMENT WEST, INC., a Nevada)
21 corporation; and DOES I through X)

Respondents.

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22 COMES NOW, Lien Claimant/Intervenor Creative Home Theatre, LLC., and for its
23 Statement of Facts Constituting Lien alleges and claims, the following:

- 24 1. Lien Claimant Creative Home Theatre, LLC. (hereinafter, "CHT" is now, and at all
25 relevant times hereto was, a Nevada Limited Liability Company, duly licensed to conduct
26 business in the State of Nevada, County of Clark.
- 27 2. Respondent APCO Construction (hereinafter, "APCO") is now, and at all relevant times
28 hereto was, a Nevada Corporation, duly licensed to conduct business in the State of
Nevada, County of Clark.

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1 3. Respondent, Gemstone Development West, Inc. (hereinafter, "Gemstone"), is now, and
2 at all relevant times hereto was, a Nevada Corporation, duly licensed to conduct business
3 in the State of Nevada, County of Clark.

4 4. Respondent, Gemstone, is the owner of real property, located at 9205 West Russell Road,
5 Las Vegas, Nevada, more particularly described as Clark County APN No. 163-32-101-
6 019 (hereinafter, "the Property"). The full legal description of this property is attached
7 hereto as Exhibit A, and incorporated fully herein by reference.

8 FIRST CLAIM FOR RELIEF

9 (Foreclosure of Lien Claim Against APCO)

10 5. On or about April 9, 2008, CHT and APCO entered into a written Subcontract
11 Agreement related to the Manhattan West Condominiums project, located in Clark
12 County, Nevada

13 6. Pursuant to this agreement, Plaintiff was to supply of all labor, materials, tools,
14 equipment, supervision, management, permits, and taxes necessary to install and
15 complete all low voltage infrastructure work for all of the buildings that were a part of
16 the Manhattan West Condominium project.

17 7. The contract called for compensation to CHT for said services in the amount of
18 \$131,784.00.

19 8. Additionally, APCO and GEMSTONE requested, via change orders and other means,
20 that CHT supply labor, materials, tools, equipment, supervision, and management, for
21 additional work performed at all of the buildings that were a part of the Manhattan West
22 Condominium project.

23 9. APCO and GEMSTONE were invoiced, without protest, \$136,232 for this additional
24 work.

25 10. Although CHT performed all of the services that it was allowed to, as required of it by
26 the Subcontractor Agreement and additional requests and changes, the amount of
27 \$193,002.19 is still due and owing on the contract, as and for services performed by CHT
28 that have not been paid for.

- 1 11. CHT has performed all of the statutory requirements set forth in NRS Chapter 108
2 for perfecting a Mechanic's Lien on the Property, including but not limited to the
3 recording of mechanic's liens with the Recorder of Clark County, Nevada on December
4 19, 2008 as Instrument Nos. 972-977 in Book 20081219.
- 5 12. CHT is entitled to foreclose on its Mechanic's Lien and to all other remedies
6 permitted to it by Chapter 108 of the NRS.
- 7 13. CHT is entitled to recover its costs of recording and perfecting its mechanic's lien,
8 together with its attorney's fees and costs of suit, as well as interest on the unpaid
9 balance.

10 SECOND CLAIM FOR RELIEF

11 (Foreclosure of Lien Claim Against Gemstone)

- 12 14. CHT repeats and realleges each and every allegation set forth in all preceding
13 paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and
14 further alleges, as follows:
- 15 15. Respondent Gemstone is the owner of real property, located at 9205 West Russell Road,
16 Las Vegas, Nevada, more particularly described as Clark County APN Nos. 163-32-101-
17 019. The full legal description of the Property is attached hereto as Exhibit A, and
18 incorporated fully herein by reference.
- 19 16. Although CHT performed all of the services required of it by the Subcontract
20 Agreement and additional requests and changes, the amount of \$193,002.19 is still due
21 and owing on the contract, as and for services performed by CHT that have not been paid
22 for.
- 23 17. As Gemstone has directly benefitted by the improvements made to the subject property
24 by CHT, CHT is entitled to foreclose upon its mechanic's lien, recorded against
25 Gemstone's property.
- 26 18. CHT has performed all of the statutory requirements set forth in NRS Chapter 108
27 for perfecting a Mechanic's Lien on the Property, including but not limited to the
28 recording of mechanic's liens with the Recorder of Clark County, Nevada on December

1 19, 2008 as Instrument Nos. 972-977 in Book 20081219.

2 19. CHT is entitled to foreclose on its Mechanic's Lien and to all other remedies
3 permitted to it by Chapter 108 of the NRS.

4 20. CHT is entitled to recover its costs of recording and perfecting its mechanids lien,
5 together with its attorney's fees and costs of suit, as well as interest on the unpaid
6 balance.

7 THIRD CLAIM FOR RELIEF

8 (Unjust EnrichmentAgainst APCO and Gemstone)

9 21. CHT repeats and realleges each and every allegation set forth in all preceding
10 paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and
11 further alleges, as follows:

12 22. CHT provided its labor, services and materials for the benefit of both APCO and
13 Gemstone at their specific request and instruction.

14 23. APCO and Gemstone accepted, used, enjoyed and continue to enjoy the benefit of the
15 labor, services and materials provided by CHT.

16 24. APCO and Gemstone knew or should have known that CHT expected to be paid for
17 its labor, services and material.

18 25. As a result of non-payment therefor, APCO and Gemstone have been unjustly enriched,
19 to the detriment of CHT.

20 26. CHT is entitled to recover its attorney's fees and costs of suit, as well as interest on the
21 unpaid balance owed to Executive as complained of herein.

22 FOURTH CLAIM FOR RELIEF

23 (Breach Of Contract Against APCO)

24 27. CHT repeats and realleges each and every allegation set forth in all preceding
25 paragraphs of this Statement Constituting a Lien, as though fully set forth herein, and
26 further alleges, as follows:

27 28. CHT contracted with APCO to provide labor, services and material for the benefit of
28 APCO at its request.

1 29. CHT performed all of the services required of it, but the sum of *\$541,750.24
2 remains unpaid and is now owing to CHT.

3 30. As a result of this non-payment, APCO is in breach of its contract with CHT, and
4 CHT has been injured in the above-amount.

5 31. CHT is entitled to recover its attorney's fees and costs of suit, as well as interest on
6 the unpaid balance owed to Executive as complained of herein.

7 **WHEREFORE**, CHT prays for judgment, as follows:

- 8 1. For actual damages in the amount of \$193,002.19;
9 2. For all interest, attorney's fees and costs incurred in litigating this action,
10 3. That the above sums, in total, be adjudicated as a lien upon the Property and that this
11 Honorable Court enter an Order allowing the sale of the Property, in compliance with the
12 laws of the State of Nevada, and that the proceeds of such sale be applied to the payment
13 of the sums due and owing to Executive; and
14 4. For any other further relief that this Honorable Court deems necessary and just under the
15 circumstances of this case.

16 DATED: This 12th day of June 2009.


17 
18 _____
19 MARC RISMAN, ESQ.
20 Nevada Bar No. 002455
21 10120 S. Eastern Ave. #200
22 Henderson, NV 89052
23 Phone: (702) 388-8100
24 Attorney for Creative Home Theatre, LLC
25
26
27
28

Exhibit A

Exhibit A

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 255 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. 0034783 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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E. J. [Signature]
CLERK OF THE COURT

COMP

Jennifer R. Lloyd-Robinson, Esq.
Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
Nevada State Bar No. 10928

PEZZILLO ROBINSON

6750 Via Austi Parkway, Suite 170
Las Vegas, Nevada 89119
Tel: 702 233-4225

Attorneys for Plaintiff-in-Intervention, Inquipco

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; NEVADA
CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
CORPORATION, a North Dakota corporation;
COMMONWEALTH LAND TITLE
INSURANCE COMPANY; FIRST AMERICAN
TITLE INSURANCE COMPANY; and DOES I
through X,

Defendants.

INQUIPCO, a Nevada corporation,

Plaintiff-in-Intervention,

vs.

ACCURACY GLASS & MIRROR COMPANY,
INC., a Nevada corporation; EMPLOYERS
MUTUAL CASUALTY COMPANY, a surety;
GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; MOES 1 - 10, inclusive; and
ZOE CORPORATIONS 1 - 10, inclusive;

Defendants-in-Intervention.

CASE NO.: A571228

DEPT.: 13

**STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT-IN-INTERVENTION**

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

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

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1 AND ALL RELATED MATTERS.
2

3 **STATEMENT OF FACTS CONSTITUTING LIEN**
4 **AND COMPLAINT-IN-INTERVENTION**

5 Plaintiff-in-Intervention, INQUIPCO, by and through the undersigned counsel, in support of
6 its Statement of Facts Constituting Lien and Complaint-in-Intervention against the Defendants-in-
7 Intervention stated and named herein, alleges as follows:

8 **PARTIES, JURISDICTION AND VENUE**
9

10 1. Plaintiff-in-Intervention, INQUIPCO, is a Nevada corporation duly authorized to
11 conduct business and conducting business within the State of Nevada.

12 2. Plaintiff-in-Intervention is informed and believes and based thereon alleges that
13 Defendant-in-Intervention ACCURACY GLASS & MIRROR COMPANY, INC. ("Accuracy") is a
14 Nevada corporation duly authorized to conduct business and conducting business as a licensed
15 contractor, license number 29964.

16 3. Plaintiff-in-Intervention is informed and believes and based thereon alleges that
17 Defendant-in-Intervention, EMPLOYERS MUTUAL CASUALTY COMPANY ("Employers"), is a
18 contractor's bond surety, authorized to conduct business in the State of Nevada, that issued a
19 contractor's license bond to Defendant Accuracy in the amount of \$15,000.00, bond number S346989,
20 for benefit of various public members injured by Accuracy's actions as a contractor, including
21 Plaintiff-in-Intervention.

22 4. Plaintiff-in-Intervention is informed and believes and based thereon alleges that
23 Defendant-in-Intervention, GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone") is the owner
24 of property described as Manhattan West and located at 9205 West Russell Road, Las Vegas, Nevada,
25 and formerly identified as Assessor's Parcel Number 163-32-101-019, but now identified as 163-32-
26 101-020, 163-32-101-022, 163-32-101-023, and 163-32-112-001 through 246 (the "Project"), which
27 is subject to the lien foreclosure claims alleged herein.

28 ///

1 5. Defendants sued herein under the fictitious names of MOES 1 through 10, inclusive,
2 are presently unknown to Plaintiff-in-Intervention but are believed to reside in the State of Nevada and
3 are in some respect liable for the acts and omissions, whether intentional, negligent or otherwise,
4 alleged herein.

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

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

10
11 **FIRST CAUSE OF ACTION**
12 **(Breach of Contract against Accuracy,**
13 **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

14 8. Plaintiff-in-Intervention repeats with the same force and effect paragraphs 1 through 7,
15 as if set forth in full.

16 9. Plaintiff-in-Intervention and Defendant entered into an agreement whereby Plaintiff-in-
17 Intervention agreed to provide labor and materials to be incorporated into and for the improvement of
18 the Project. The terms and conditions are contained in writings used to confirm the agreement
19 between Plaintiff-in-Intervention and Defendant ("the Contract").

20 10. Plaintiff-in-Intervention provided labor and materials to Defendant. Defendant agreed
21 to pay Plaintiff-in-Intervention for the labor and materials provided pursuant to the terms of the
22 Contract.

23 11. Defendant has breached the terms of the Contract by failing and refusing to pay for the
24 labor and materials provided by Plaintiff-in-Intervention, and now owes a sum in the amount of
25 \$8,027.52.

26 12. Plaintiff-in-Intervention has performed all conditions and promises required on its part
27 to be performed under the Contract, except as said performance has been waived, excused or
28 prevented by Defendant's breach of the Contract.

1 13. Based on Defendant's breach of the Contract as described above, Plaintiff-in-
2 Intervention has been damaged in a sum in the amount of \$8,027.52, together with fees, costs, and
3 interest thereon as provided in the Contract until paid in full and other such damage according to
4 proof.

5
6 **SECOND CAUSE OF ACTION**
7 **(For a Claim against Contractor's License Bond against Accuracy, Employers,**
8 **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

9 14. Plaintiff-in-Intervention repeats with the same force and effect paragraphs 1 through
10 13, as if set forth in full.

11 15. Plaintiff-in-Intervention is informed and believes and based thereon alleges that
12 Defendant Accuracy, as principal, and Defendant Employers, as surety, issued a contractor's license
13 bond in accordance with the provisions of Chapter 624 of the Nevada Revised Statutes. Said bond is
14 in the amount of \$15,000.00, and is conditioned upon full compliance by Accuracy with all of the
15 provisions of Chapter 624 of the Nevada Revised Statutes and inures to the benefit of all persons,
16 including Plaintiff-in-Intervention, damaged as a result of a violation of any requirements of said
chapter by Accuracy.

17 16. Plaintiff-in-Intervention is informed and believes and based thereon alleges that the
18 damages it has suffered are a direct and proximate result of violations of one or more of the following
19 sections of Chapter 624 of Nevada Revised Statutes by Accuracy:

20 (a) Section 624.3012(1) in that Accuracy diverted funds which were received for a
21 specific purpose in the prosecution of the construction of the Project and thereby deprived Plaintiff-in-
22 Intervention of payment to which it was entitled;

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

27 ///
28

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

1 17. In light of Accuracy's willful and deliberate failure to pay Plaintiff-in-Intervention for
2 the labor and materials Plaintiff-in-Intervention provided to Accuracy, Accuracy violated Chapter 624
3 of the Nevada Revised Statutes and Plaintiff-in-Intervention is entitled to recover against the license
4 bond issued by Defendant Employers.

5
6 **THIRD CAUSE OF ACTION**
7 **(Foreclosure of Lien against Gemstone, MOES 1-10, and**
8 **ZOE CORPORATIONS 1-10, inclusive)**

9 18. Plaintiff-in-Intervention repeats with the same force and effect paragraphs 1 through
10 17, as if set forth in full.

11 19. Within 31 days of first supplying labor and materials to the Property, Plaintiff-in-
12 Intervention served via certified mail, return receipt requested, a certain Notice to Owner of Right to
13 Lien upon Defendants or their successors in interest, as required by NRS 108.245, or was exempt from
14 the obligation to serve said Notice. Within 90 days of actual completion of the Project, and within 40
15 days of the recordation of any valid Notice of Completion on the Property, Plaintiff-in-Intervention
16 caused to be recorded a mechanic's lien on the Project in the amount of \$8,027.52 for work provided
17 pursuant to Plaintiff-in-Intervention's agreement with Accuracy, both in compliance with the
18 requirements of NRS 108.226 and served upon the record owner in compliance with the provisions of
19 NRS 108.227.

20 20. Plaintiff-in-Intervention's lien is valid upon the Project.

21 21. There may be other lien claimants whose liens may be subordinate to Plaintiff-in-
22 Intervention's Notice of Lien.

23 22. Plaintiff-in-Intervention was required to retain the undersigned firm of attorneys to
24 prosecute this action, and as a result has incurred and will continue to incur costs and attorneys fees in
25 preparing, recording and foreclosing its lien, which Plaintiff-in-Intervention is entitled to recover from
26 said Defendants.

27 ///

28 ///

FOURTH CAUSE OF ACTION
(Unjust Enrichment against Accuracy, Employers, Gemstone,
DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

23. Plaintiff-in-Intervention repeats with the same force and effect paragraphs 1 through 22, as if set forth in full.

24. Plaintiff-in-Intervention is informed and believes and based thereon alleges that Defendants, and each of them, have been unjustly enriched by the wrongful act of retaining the benefit of the labor and materials provided by Plaintiff-in-Intervention to the Project and then failing to pay Plaintiff-in-Intervention for said labor and materials.

25. As such, said Defendants have been unjustly enriched to the detriment and damage of Plaintiff-in-Intervention in the amount of \$8,027.52.

26. Plaintiff-in-Intervention has retained the services of an attorney to prosecute this action and is entitled to an award of attorney's fees and costs incurred.

WHEREFORE, Plaintiff-in-Intervention prays for relief as follows:

1. For compensatory damages in the amount of \$8,027.52, together with interest thereon at the contractual rate or as allowed by law until paid in full and other such damage according to proof;

2. For judgment declaring that Plaintiff-in-Intervention has a claim in the amount of \$8,027.52 against Accuracy's contractor's license bond, issued by Employers, plus interest thereon at the contractual rate from the date the amounts became due until paid, and that Plaintiff-in-Intervention's claim has priority over every other claim of interest on the bond;

3. For judgment declaring that Plaintiff-in-Intervention has a valid lien on the Project for the amount of \$8,027.52, plus interest from the date the amounts became due until paid in full, costs and fees, that Plaintiff-in-Intervention's liens have priority over every other lien or claim of interest on the Project, and that the Project be sold and proceeds from the sale be applied to satisfy Plaintiff-in-Intervention's lien, together with the expenses of sale and the costs and disbursements in this action;

4. For reasonable attorneys' fees and costs; and

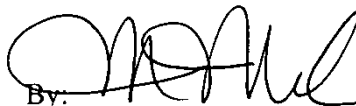
///

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

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

2
3 DATED: June 23, 2009

PEZZILLO ROBINSON

4
5 

By: _____

Jennifer R. Lloyd-Robinson, Esq.

Nevada State Bar No. 9617

Marisa L. Maskas, Esq.

Nevada State Bar No. 10928

6750 Via Austi Parkway, Suite 170

Las Vegas, Nevada 89119

Attorneys for Plaintiff-in-Intervention,

Inquipco

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on June
____, 2009, she served a copy of **STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT-
IN-INTERVENTION** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las
Vegas, Nevada, said envelope(s) addressed to:

Gwen Rutar Mullins, Esq. HOWARD & HOWARD, P.C. 3800 Howard Hughes Pkwy, Ste. 1400 Las Vegas, NV 89169 (702) 567-1568 <i>Attorneys for APCO Construction</i>	Donald H. Williams, Esq. WILLIAMS & WIESE 612 S. Tenth Street Las Vegas, NV 89101 (702) 320-7760 <i>Attorneys for Harsco Corporation</i>
Martin A. Little, Esq. JOLLEY URG A WIRTH WOODBURY & STANDISH 3 800 Howard Hughes Pkwy., 16th Floor Las Vegas, NV 89169 (702) 699-7555 <i>Attorneys for Steel Structures, Inc. and Nevada Prefab Engineers, Inc.</i>	Nikola Skrinjaric, Esq. NEVADA TITLE COMPANY 2500 N. Buffalo, #150 Las Vegas, NV 89128 (702) 251-3186 <i>Attorney for Nevada Construction Services</i>
Marilyn G. Fine, Esq. MEIER & FINE 2300 W. Sahara Ave., Ste. 430 Las Vegas, NV 89102 (702) 673-1001 <i>Attorneys for Scott Financial Corporation</i>	Jeffrey R. Albreghts, Esq. SANTORO DRIGGS 400 S. Fourth St., 3rd Floor Las Vegas, NV 89 101 (702) 791-1912 <i>Attorneys for Arch Aluminum and Glass Co.</i>
Gregory S. Gilbert, Esq. HOLLAND & HART 3 800 Howard Hughes Pkwy., 1 Oth Floor Las Vegas, NV 89169 (702) 669-4650 <i>Attorneys for Gemstone Development West, Inc.</i>	T. James Truman, Esq. T. JAMES TRUMAN & ASSOCIATES 3654 N. Rancho Dr. Las Vegas, NV 89130 (702) 396-3035 <i>Attorney for Noorda Sheet Metal</i>
D. Shane Clifford, Esq. DIXON TRUMAN FISHER & CLIFFORD 221 N. Buffalo Dr., #A Las Vegas, NV 89145 (702) 259-9759 <i>Attorneys for Ahern Rental, Inc.</i>	Justin L. Watkins, Esq. WATT, TIEDER, HOFFAR & FITZGERALD 3993 Howard Hughes Pkwy., Ste. 400 Las Vegas, NV 89169 (702) 822-2650 <i>Attorneys for Cabintec, Inc.</i>
Eric Dobberstein, Esq. Dobberstein & Associates 1399 Galleria Dr., Ste. 201 Henderson, NV 89014 <i>Attorneys for Insulpro Projects, Inc.</i>	

An Employee of Pezzillo Robinson


CLERK OF THE COURT

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Attorneys for Accuracy Glass & Mirror Company, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR
COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada
corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

Defendants.

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**FIRST AMENDED COMPLAINT RE
FORECLOSURE**

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

ACCURACY GLASS & MIRROR COMPANY, INC. ("Accuracy") by and through its
attorneys PEEL BRIMLEY LLP, as for its First Amended Complaint re Foreclosure ("Amended
Complaint") against the above-named defendants complains, avers and alleges as follows:

///

///

///

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

THE PARTIES

1. Accuracy is and was at all times relevant to this action a Nevada corporation duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

2. Accuracy is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("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:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) 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 Owners 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. Accuracy is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada. APCO may also be known as Asphalt Products Company.

1 5. Accuracy is informed and believes and therefore alleges that Defendant CAMCO
2 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CAMCO"), is and
3 was at all times relevant to this action doing business as a licensed contractor authorized to
4 conduct business in Clark County, Nevada.

5
6 6. Accuracy is informed and believes and therefore alleges that Defendant,
7 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CAMCO Surety"), was
8 and is a bonding company licensed and qualified to do business as a surety in Nevada.

9 7. Accuracy is informed and believes and therefore alleges that Defendant Scott
10 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
11 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
12 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
13 securing loans given to the Owner for, inter alia, development of the Property.

14
15 8. Accuracy does not know the true names of the individuals, corporations,
16 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE
17 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
18 LENDERS I through X. Accuracy alleges that such Defendants claim an interest in or to the
19 Properties, and/or are responsible for damages suffered by Accuracy as more fully discussed
20 under the claims for relief set forth below. Accuracy will request leave of this Honorable Court to
21 amend this Amended Complaint to show the true names and capacities of each such fictitious
22 Defendant when Accuracy discovers such information.

23
24 **FIRST CAUSE OF ACTION**
25 **(Breach of Contract against APCO)**

26 9. Accuracy repeats and realleges each and every allegation contained in the
27 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
28 alleges as follows:

H:\PB&S\CLIENT FILES\0001 - 0999 (A - C)\0039
- Accuracy Glass & Mirror\008 - APCO
Construction [Manhattan]

1 10. On or about April 17, 2007 Accuracy entered into an Agreement with APCO to
2 provide certain glass and glazing related work, materials, and equipment (the "APCO Work") for
3 the Property located in Clark County, Nevada.

4 11. Accuracy furnished the APCO Work for the benefit of and at the specific instance
5 and request of APCO and/or the Owner.

6 12. Pursuant to the APCO Agreement, Accuracy was to be paid an amount in excess
7 of Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO
8 Work.

9 13. Accuracy furnished the APCO Work and has otherwise performed its duties and
10 obligations as required by the APCO Agreement.

11 14. APCO breached the APCO Agreement by, among other things:

12 a. Failing and/or refusing to pay the monies owed to Accuracy for the APCO
13 Work;
14

15 b. Failing to adjust the APCO Agreement price to account for extra and/or
16 changed work, as well as suspensions and delays of the APCO Work caused or ordered by the
17 Defendants and/or their representatives;
18

19 c. Failing to promptly recognize and grant time extensions to reflect additional
20 time allowable under the APCO Agreement and permit related adjustments in scheduled
21 performance;
22

23 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law;
24 and

25 e. Negligently or intentionally preventing, obstructing, hindering or interfering
26 with Accuracy's performance of the APCO Work.

1 15. Accuracy is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
2 the APCO Work.

3 16. Accuracy has been required to engage the services of an attorney to collect the
4 APCO Outstanding Balance, and Accuracy is entitled to recover its reasonable costs, attorney's
5 fees and interest therefore.
6

7 **SECOND CAUSE OF ACTION**
8 **(Breach of Contract against CAMCO)**

9 17. Accuracy repeats and realleges each and every allegation contained in the
10 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
11 alleges as follows:

12 18. On or about August 26, 2008, Accuracy entered into a Ratification and
13 Amendment of Subcontract Agreement with CAMCO ("CAMCO Agreement") who replaced
14 APCO as the general contractor on the Project, to continue and complete the provision of work,
15 materials, and equipment for the Property ("CAMCO Work").
16

17 19. Accuracy furnished the CAMCO Work for the benefit of and at the specific
18 instance and request of CAMCO and/or the Owner.

19 20. Pursuant to the CAMCO Agreement, Accuracy was to be paid an amount in excess
20 of Ten Thousand Dollars (\$10,000.00) (hereinafter "CAMCO Outstanding Balance") for the
21 CAMCO Work.

22 21. Accuracy furnished the CAMCO Work and has otherwise performed its duties and
23 obligations as required by the CAMCO Agreement.

24 22. CAMCO has breached the CAMCO Agreement by, among other things:
25

26 a. Failing and/or refusing to pay the monies owed to Accuracy for the CAMCO
27 Work;
28

b. Failing to adjust the CAMCO Agreement price to account for extra and/or changed work, as well as suspensions and delays of CAMCO Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CAMCO Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the CAMCO Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Accuracy's performance of the CAMCO Work.

23. Accuracy is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the CAMCO Work.

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

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

25. Accuracy repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

26. There is a covenant of good faith and fair dealing implied in every agreement, including the APCO Agreement.

27. APCO breached its duty to act in good faith by performing the APCO Agreement in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Accuracy's justified expectations.

1 28. Due to the actions of APCO, Accuracy suffered damages in an amount to be
2 determined at trial for which Accuracy is entitled to judgment plus interest.

3 29. Accuracy has been required to engage the services of an attorney to collect the
4 APCO Outstanding Balance and Accuracy is entitled to recover its reasonable costs, attorney's
5 fees and interest therefore.
6

7 **FOURTH CAUSE OF ACTION**
8 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CAMCO)**

9 30. Accuracy repeats and realleges each and every allegation contained in the
10 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
11 alleges as follows:

12 31. There is a covenant of good faith and fair dealing implied in every agreement,
13 including the CAMCO Agreement.

14 32. CAMCO breached its duty to act in good faith by performing the CAMCO
15 Agreement in a manner that was unfaithful to the purpose of the CAMCO Agreement, thereby
16 denying Accuracy's justified expectations.
17

18 33. Due to the actions of CAMCO, Accuracy suffered damages in an amount to be
19 determined at trial for which Accuracy is entitled to judgment plus interest.

20 34. Accuracy has been required to engage the services of an attorney to collect the
21 CAMCO Outstanding Balance and Accuracy is entitled to recover its reasonable costs, attorney's
22 fees and interest therefore.
23

24 **FIFTH CAUSE OF ACTION**
25 **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

26 35. Accuracy repeats and realleges each and every allegation contained in the
27 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
28 alleges as follows:

36. Accuracy furnished the APCO Work and the CAMCO Work for the benefit of and at the specific instance and request of the Defendants.

38. The Defendants accepted, used, and enjoyed the benefit of the APCO Work and CAMCO Work.

38. The Defendants accepted, used, and enjoyed the benefit of the APCO Work and CO Work.

39. The Defendants knew or should have known that Accuracy expected to be paid for the APCO Work and the CAMCO Work.

40. Accuracy has demanded payment of the APCO Outstanding Balance and the CAMCO Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance or the CAMCO Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Accuracy.

43. Accuracy has been required to engage the services of an attorney to collect the APCO Outstanding Balance and the CAMCO Outstanding Balance and Accuracy is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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

44. Accuracy repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

45. The provision of the APCO Work and CAMCO Work was at the special instance and request of the Defendants for the Property.

46. As provided at NRS 108.245 and common law, the Defendants had knowledge of Accuracy's delivery of the APCO Work and CAMCO Work to the Property or Accuracy provided a Notice of Right to Lien.

1 47. Accuracy demanded payment of the APCO Outstanding Balance and CAMCO
2 Outstanding Balance.

3 48. On or about December 5, 2008, Accuracy timely recorded a Notice of Lien in
4 Book 20081205 of the Official Records of Clark County, Nevada, as Instrument No. 0001947
5 (the "Original Lien").
6

7 49. On or about February 2, 2009, Accuracy timely recorded an Amended Notice of
8 Lien in Book 20090202 of the Official Records of Clark County, Nevada, as Instrument No.
9 0000834 (the "Amended Lien").

10 50. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

11 51. The Liens were in writing and were recorded against the Property for the
12 outstanding balance due to Accuracy in the amount of One Million Nine Hundred Fifty-Six
13 Thousand Nine Hundred Two and 53/100 Dollars (\$1,956,902.53).
14

15 52. The Liens were served upon the Owner and/or its authorized agents, as required by
16 law.

17 53. Accuracy is entitled to an award of reasonable attorney's fees, costs and interest on
18 the APCO Outstanding Balance and CAMCO Outstanding Balance, as provided in Chapter 108
19 of the Nevada Revised Statutes.
20

21 **SEVENTH CAUSE OF ACTION**
22 **(Claim of Priority)**

23 54. Accuracy repeats and realleges each and every allegation contained in the
24 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
25 alleges as follows:

26 55. Accuracy is informed and believes and therefore alleges that construction on the
27 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
28 Property, including the deeds of trust recorded by SFC.

1 56. Accuracy is informed and believes and therefore alleges that even if a deed(s) of
2 trust and/or other interest(s) in the Property were recorded before construction on the Property
3 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to
4 Accuracy's statutory mechanics' lien thereby elevating Accuracy's statutory mechanics' lien to a
5 position superior to those deed(s) of trust and/or other interests(s) in the Property.
6

7 57. Accuracy's claim against the Property is superior to the claim(s) of SFC, any other
8 defendant, and/or any Loe Lender.

9 58. Accuracy has been required to engage the services of an attorney to collect the
10 APCO Outstanding Balance due and owing for the APCO Work and to collect the CAMCO
11 Outstanding Balance due and owing for the CAMCO Work and Accuracy is entitled to recover its
12 reasonable costs, attorney's fees and interest therefore.
13

14 **EIGHTH CAUSE OF ACTION**
15 **(Claim Against Bond – CAMCO Surety)**

16 59. Accuracy repeats and realleges each and every allegation contained in the
17 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
18 alleges as follows:

19 60. Prior to the events giving rise to this Amended Complaint, the CAMCO Surety
20 issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
21 (\$50,000.00).
22

23 61. CAMCO is named as principal and CAMCO Surety is named as surety on the
24 Bond.
25

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

28 63. Accuracy furnished the CAMCO Work as stated herein and has not been paid for
the same. Accuracy therefore claims payment on said Bond.

1 64. The CAMCO Surety is obligated to pay Accuracy the sums due.

2 65. Demand for the payment of the sums due to Accuracy has been made, but
3 CAMCO and the CAMCO Surety have failed, neglected and refused to pay the same to
4 Accuracy.

5 66. CAMCO and the CAMCO Surety owe Accuracy the penal sum of the Bond.

6 67. Accuracy was required to engage the services of an attorney to collect the
7 CAMCO Outstanding Balance due and owing to Accuracy and Accuracy is entitled to recover its
8 reasonable attorney's fees and costs therefore.
9

10 **NINTH CAUSE OF ACTION**
11 **(Violation of NRS 624 - APCO)**

12 68. Accuracy repeats and realleges each and every allegation contained in the
13 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
14 alleges as follows:

15 69. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors such as
16 APCO to, among other things, timely pay their subcontractors (such as Accuracy), as provided in
17 the in the Statute.
18

19 70. In violation of the Statute, APCO failed and/or refused to timely pay Accuracy
20 monies due and owing.

21 71. APCO's violation of the Statute constitutes negligence per se.

22 72. By reason of the foregoing, Accuracy is entitled to a judgment against APCO in
23 the amount of the APCO Outstanding Balance
24

25 73. Accuracy has been required to engage the services of an attorney to collect the
26 APCO Outstanding Balance and Accuracy is entitled to recover its reasonable costs, attorney's
27 fees and interests therefore.
28

TENTH CAUSE OF ACTION
(Violation of NRS 624 - CAMCO)

74. Accuracy repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

75. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors such as CAMCO to, among other things, timely pay their subcontractors (such as Accuracy), as provided in the in the Statute.

76. In violation of the Statute, CAMCO failed and/or refused to timely pay Accuracy monies due and owing.

77. CAMCO's violation of the Statute constitutes negligence per se.

78. By reason of the foregoing, Accuracy is entitled to a judgment against CAMCO in the amount of the CAMCO Outstanding Balance

79. Accuracy has been required to engage the services of an attorney to collect the CAMCO Outstanding Balance and Accuracy is entitled to recover its reasonable costs, attorney's fees and interests therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

80. Accuracy repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

83. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Accuracy's mechanics' lien.

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

85. Accuracy is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by law, all mechanics' liens, including Accuracy's, enjoy a position of priority over the Senior Debt Deed of Trust.

86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,