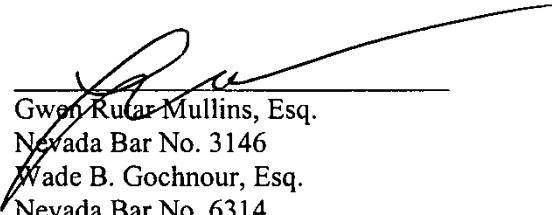


WHEREFORE, APCO prays for judgment as follows:

1. That HA Fabricators takes nothing by way of their Complaint on file herein and that the same be dismissed with prejudice against APCO;
2. For an award of attorneys' fees and costs incurred herein by APCO; and
3. For such other and further relief as this Court may deem just and proper.

DATED this 15th day of October, 2009.

HOWARD & HOWARD ATTORNEYS PLLC


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

COUNTERCLAIM

APCO CONSTRUCTION, a Nevada corporation (hereinafter "APCO"), by and through its attorneys of record, Gwen Rutar Mullins, Esq., and Wade B. Gochnour, Esq., of the law firm of Howard & Howard Attorneys PLLC hereby assert the following Counterclaim against Plaintiff HA Fabricators, Inc., a Utah corporation ("HA Fabricators"):

FIRST CAUSE OF ACTION
(Breach of Contract)

1. APCO is, and was at all times relevant hereto, a corporation duly organized under the laws of the State of Nevada doing business as a licensed general contractor.
2. Upon information and belief, HA Fabricators is a corporation duly organized under the laws of the State of Utah doing business as steel subcontractor.

...

1 3. APCO and HA Fabricators entered into a subcontract whereby HA Fabricators
2 agreed to perform certain construction work on the Manhattan West Multi-mix development
3 Project ("Manhattan West Project").

4 4. HA Fabricators was to perform all its work in good and workmanlike manner
5 and without any defects.

6 5. Upon information and belief, HA Fabricators failed to perform its work in the
7 workmanlike manner on the Manhattan West Project.

8 6. All conditions precedent to APCO's obligations have been satisfied or excused.

9 7. As a direct and proximate result of HA Fabricators' material breach, APCO has,
10 or will be damaged in the sum in excess of \$10,000.00.

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

13 **SECOND CAUSE OF ACTION**
14 **(Set-Off)**

15 9. APCO repeats and realleges each and every allegation contained in Paragraphs 1
16 through 8 of its Counterclaim as though fully set forth herein.

17 10. The Court must offset or set-off any damages caused by HA Fabricators to
18 APCO due to HA Fabricators' failure to perform its work in workmanlike manner from any
19 damages allegedly incurred by HA Fabricators as asserted in HA Fabricators' Complaint.

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

22 **THIRD-CAUSE OF ACTION**
23 **(Indemnification)**

24 12. APCO repeats and realleges each and every allegation contained in Paragraphs 1
25 through 11 of its Counterclaim as though fully set forth herein.

26 13. Gemstone Development West, Inc. ("Gemstone"), the developer of Manhattan
27 West Project, in another action, which is currently pending in the Eighth Judicial District Court,
28 has asserted a claim against APCO for improper workmanship of the work performed on

1 Manhattan West Project, including work performed by HA Fabricators.

2 14. Upon information and belief, Gemstone has asserted that the damages it incurred
3 as a result of improper workmanship, including HA Fabricators work, far exceed any monies
4 that Gemstone owes to APCO under its contract.

5 15. HA Fabricators should indemnify APCO for any and all losses, damages or
6 expenses APCO sustains as a result of any claims of Gemstone relative HA Fabricators' work
7 and for any monies that APCO is forced to otherwise pay as a result of HA Fabricators' work,
8 including, but not limited to, judgment, award and the attorney's fees and costs incurred by
9 APCO as a result thereto.

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

12 **FOURTH CAUSE OF ACTION**
13 **(Unjust enrichment)**

14 17. APCO repeats and realleges each and every allegation contained in Paragraphs 1
15 through 16 of its Counterclaim as though fully set forth herein.

16 18. Gemstone has asserted a claim against APCO for improper workmanship of the
17 work performed on Manhattan West Project, including, but not limited to, the work performed
18 by HA Fabricators.

19 19. Gemstone has asserted that the damages it incurred as a result of improper
20 workmanship, including the work of HA Fabricators, far exceed any monies that Gemstone
21 owes to APCO under its contract on Manhattan West Project.

22 20. If APCO is forced to pay any sums to Gemstone as a result of HA Fabricators'
23 improper workmanship of its work or is otherwise forced to pay HA Fabricators for work
24 improperly performed, HA Fabricators will receive a benefit.

25 21. Unless HA Fabricators is required to reimburse APCO for these sums, HA
26 Fabricators will be unjustly enriched to the detriment of APCO.

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

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Las Vegas, NV 89169
(702) 257-1483

**FIFTH CAUSE OF ACTION
(Contribution)**

23. APCO repeats and realleges each and every allegation contained in Paragraphs 1 through 22 of its Counterclaim as though fully set forth herein

24. Based on HA Fabricators' acts and/or omissions, if a judgment is rendered on behalf of Gemstone against APCO, APCO is entitled to contribution from HA Fabricators in an amount proportionate to the amount of negligence and/or fault attributable to HA Fabricators.

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

WHEREFORE, APCO prays for judgment against HA Fabricators as follows:

1. That HA Fabricators take nothing by way of its Complaint on file herein and that the same be dismissed with prejudice;

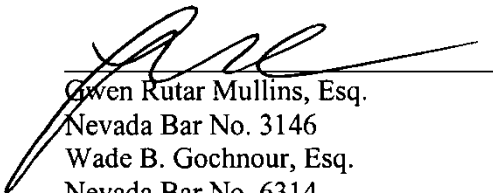
2. For an award of damages in the sum in excess of \$10,000.00;

3. For an award of attorneys' fees and costs incurred herein by APCO; and

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

DATED this 15th day of October, 2009.

HOWARD & HOWARD ATTORNEYS PLLC


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

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THIRD-PARTY COMPLAINT

APCO CONSTRUCTION, a Nevada corporation (hereinafter "APCO"), by and through its attorneys of record, Gwen Rutar Mullins, Esq., and Wade B. Gochnour, Esq. of the law firm of Howard & Howard Attorneys PLLC hereby assert the following Third Party Complaint against GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone"):

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GENERAL ALLEGATIONS

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

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

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

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

5. The Agreement was drafted by Gemstone.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 19. On or about July 8, 2008, APCO provided Gemstone its written notice of
27 APCO's dispute of the intended withholding.
28

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

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

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

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

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

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

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

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

20 (1) Issue the change order; or

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

27 27. NRS 624.610(3) provides:

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

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

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

(c) The prime contractor may submit to the owner a bill or invoice for the labor, materials, equipment or services that are the subject of the request for a change order; and

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

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

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

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

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

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

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

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

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

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

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

11 38. Also on August 15, 2008, despite the cure period still being in effect, Gemstone
12 improperly contacted several of APCO Subcontractors for Manhattan West Project, notifying
13 them that Gemstone was terminating its Agreement with APCO as of Monday, August 18,
14 2008, and that Gemstone already had a replacement general contractor in place.

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

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

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

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

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

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

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

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

12 46. APCO repeats and realleges each and every allegation contained in paragraphs 1
13 through 45 of its Third Party Complaint as though fully set forth herein

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**
6 **(Breach of Covenant of Good Faith and Fair Dealing)**

7 53. APCO repeats and realleges each and every allegation contained in
8 Paragraphs 1 through 52 of its Third Party Complaint as though fully set forth herein.

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

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

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

15 **THIRD CAUSE OF ACTION**
16 **(Indemnification)**

17 57. APCO repeats and realleges each and every allegation contained in
18 Paragraphs 1 through 56 of its Third Party Complaint as though fully set forth herein.

19 58. The construction work performed by HA Fabricators, Inc. ("HA
20 Fabricators") was performed on Manhattan West Project being developed by Gemstone.

21 59. APCO has received claims and demands from HA Fabricators for work
22 performed or materials supplied by HA Fabricators to Manhattan West Project, for which
23 APCO has not received payment from Gemstone.

24 60. Pursuant to the agreement between APCO and Gemstone, Gemstone
25 agreed to pay for all labor and materials performed or furnished by APCO's subcontractors
26 and/or suppliers on Manhattan West Project, including that performed by HA Fabricators.

27 61. Gemstone obtained any benefit that would have been conferred by the
28 construction work performed by HA Fabricators, and any other subcontractor and/or supplier of

1 APCO on Manhattan West Project.

2 62. Gemstone should equitably, or otherwise, indemnify APCO for any and
3 all losses, damages or expenses APCO sustains as a result of the Complaint filed by HA
4 Fabricators that APCO is or may be forced to otherwise pay as a result of the action filed by
5 HA Fabricators, including, but not limited, any judgment award and the attorney's fees and
6 costs incurred by APCO in defending the action filed by HA Fabricators.

7 63. APCO has been forced to retain counsel to bring this Third Party
8 Complaint and APCO requests the Court to award attorney's fees and costs resulting therefrom.

9 **FOURTH CAUSE OF ACTION**

10 **(Unjust Enrichment)**

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

13 65. If a judgment is obtained by HA Fabricators against APCO and APCO is
14 forced to pay any sums thereof to HA Fabricators, Gemstone will receive a benefit.

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

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

19 **FIFTH CAUSE OF ACTION**

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

- 21 1. For an award of damages in the sum in excess of \$10,000.00;
22 2. For an award of attorneys' fees and costs incurred herein by APCO;
23 3. That APCO be awarded pre-judgment on all amounts found due and
24 owing; and

25 ...

26 ...

27 ...


28 ...

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

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

DATED this 15 day of October 2009.

HOWARD & HOWARD ATTORNEYS PLLC


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

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

CERTIFICATE OF MAILING

I do hereby certify that on the 19th day of October, 2009 I served a copy of the foregoing APCO CONSTRUCTION'S ANSWER TO COMPLAINT, COUNTERCLAIM, AND THIRD PARTY COMPLAINT, by enclosing a true and correct copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and addressed to the following:

Michael C. Van, Esq.
Kevin R. Hansen, Esq.
SHUMWAY VAN & HANSEN
8985 South Eastern Avenue, Ste. 160
Las Vegas, Nevada 89123
Attorneys for Plaintiff



An employee of Howard & Howard Attorneys PLLC

50

1 **ACOM**
2 DONALD H. WILLIAMS, ESQ.
3 Nevada Bar No. 5548
4 WILLIAMS & WIESE
5 612 South Tenth Street
6 Las Vegas, Nevada 89101
7 Attorney for HARSCO CORPORATION

FILED
DEC 23 2009
Allen H. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 APCO CONSTRUCTION, a Nevada
9 corporation,

10 Plaintiff,

11 vs.

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

21 Defendants.

22 HARSCO CORPORATION, a foreign
23 corporation,

24 Plaintiff,

25 vs.

26 GEMSTONE DEVELOPMENT WEST, INC.,
27 a Nevada corporation; CONCRETE VISIONS,
28 INC., a Nevada corporation; SCOTT
FINANCIAL CORPORATION, a foreign
corporation; SELINA CISNEROS, an
individual, and DOES III through X,

Defendants.

CASE NO.: A571228
DEPT. NO.: X

Consolidated with:

A574391

A574792

A577623

A580889

A583289

A584730

A587168

A589195 and

A597089

**HARSCO CORPORATION'S SECOND
AMENDED COMPLAINT IN
INTERVENTION**

A577623



WILLIAMS & WIESE
Attorneys at Law
612 South Tenth Street
Las Vegas, NV 89101
Telephone: (702) 326-7555 Facsimile: (702) 326-7760

RECEIVED

DEC 23 2009

CLERK OF THE COURT

1 **HARSCO CORPORATION'S SECOND AMENDED COMPLAINT IN**
2 **INTERVENTION**

3 COMES NOW LIEN CLAIMANT HARSCO CORPORATION (hereinafter
4 "Harsco"), by and through its attorney, Donald H. Williams, Esq. of the LAW OFFICES OF
5 WILLIAMS & WIESE, and for its Complaint in Intervention, complains, avers and alleges
6 as follows:

7 **THE PARTIES**

- 8 1. Harsco is and was at all times relevant to this action a foreign corporation duly
9 authorized and qualified to do business in Clark County, Nevada as an erector of
10 scaffolds and bleachers, and held does hold a C-24 license with the Nevada State
11 Contractors Board.
- 12 2. Harsco is informed and believes that Defendant CONCRETE VISIONS, INC.
13 (hereinafter "Concrete" or "Defendant") was and is a Nevada corporation and was a
14 duly licensed general contractor.
- 15 3. Harsco is informed and believes and therefore alleges that Defendant GEMSTONE
16 DEVELOPMENT WEST, INC. (hereinafter "Gemstone") was and is at all times
17 relevant to this action, the owners, reputed owners, or the persons, individuals and/or
18 entities who claim an ownership interest in that certain real property portions thereof
19 located in Clark County, Nevada and more particularly described as follows:

20 Manhattan West
21 9205 West Russell Road
22 Clark County, Nevada
 APN 163-32-101-019

23 including all easements, rights-of-way, common areas and appurtenances thereto, and
24 surrounding space as may be required for the convenient use and occupation thereof,
25 upon which Gemstone caused or allowed to be constructed certain improvements (the
26 "Property").

- 27 4. The whole of the Property and Leasehold Estate are reasonably necessary for the
28 convenient use and occupation of the improvements.

- 1 5. Harsco is informed and believes and therefore alleges that Defendant SCOTT
2 FINANCIAL CORPORATION (hereinafter "lender Defendant") claim a priority in
3 the subject property due to the fact that it provided monies for the payment of bills
4 incurred during the construction, repair, improvement or alteration of the property
5 and thus acted as a lender as described in NRS 627.
- 6 6. Harsco is informed and believes that Defendant SELINA CISNEROS (hereinafter
7 "Ms. Cisneros") was a resident of Clark County, Nevada and did execute an
8 agreement to indemnify Concrete with regard to damages caused by Concrete
9 throughout its normal course of business.
- 10 7. Harsco does not know the true names of the individuals, corporations, partnerships,
11 lenders, bonding companies and entities sued and identified in fictitious names DOES
12 I through X. Harsco alleges that such Defendants claim an interest in or to the Project
13 and/or are responsible for damages suffered by Harsco as more fully discussed under
14 the claims for relief set forth below. Harsco will request leave of this Honorable
15 Court to amend this Complaint to show the true names and capacities of each such
16 fictitious Defendant when Harsco discovers such information.

17 **FIRST CAUSE OF ACTION**

18 **(Foreclosure of Mechanic's Lien against Gemstone)**

- 19 8. Harsco repeats and realleges each and every allegation contained in the preceding
20 paragraphs of this Complaint, incorporates them by reference, and further alleges as
21 follows:
- 22 9. The provision of the Work was at the special instance and request of Owners for the
23 improvement of the Property.
- 24 10. As provided at NRS 108.245, the Owners had actual knowledge of Harsco's delivery
25 of the Work to the Property or Harsco provided a Notice of Right to Lien, as
26 prescribed by Nevada law.
- 27 11. Harsco demanded payment of an amount in excess of Ten Thousand and no/100
28 Dollars (\$10,000.00), which amount remains past due and owing.

1 12. As afore pled, on or about November 12, 2008, Harsco timely recorded Notice of
2 Liens as follows: APN 163-32-101-019, in the Official Records of Clark County,
3 Nevada in Book No. 20081112 as Instrument No. 0005538 in the amount of
4 \$374,262.70.

5 13. The Lien is hereinafter referred to as "The Lien".

6 14. The Lien was in writing and was recorded against the Property for the outstanding
7 balance due to Harsco in the amount of \$374,262.70 (hereinafter "Outstanding
8 Balance").

9 15. The Lien was served upon the record Owner(s) and/or its/their authorized agents, as
10 required by law.

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

13 **SECOND CAUSE OF ACTION**

14 **(Claim of Priority against Lender Defendant)**

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

18 18. Harsco is informed and believes and therefore alleges that physical work of
19 improvement to the Property commenced before the recording of lender Defendant
20 and DOE(s)'s Deeds of Trust and/or other interest(s) in the Property and/or any
21 leasehold estates.

22 19. Harsco claims against the Property and/or any leasehold estates are superior to the
23 claim(s) of Lender Defendant, DOES, and/or any other Defendant.

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

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1 33. Harsco has been required to engage the services of an attorney to collect the
2 Outstanding Balance, and Harsco is entitled to recover its reasonable costs, attorney's
3 fees and interest therefore.

4 **FIFTH CAUSE OF ACTION**

5 **(Indemnity against Ms. Cisneros)**

6 34. Harsco repeats and realleges the allegations contained in the preceding paragraphs as
7 if fully set forth herein.

8 35. As a condition to Concrete receiving its concrete contracting license, Ms. Cisneros
9 executed an agreement to indemnify Concrete from any damages it may be found
10 liable for throughout the normal course of business.

11 36. To the extent that Concrete is found liable for any of the damages pled above, Harsco
12 is entitled to a judgment against Ms. Cisneros for said damages.

13 37. Harsco has been required to engage the services of an attorney to collect the
14 Outstanding Balance, and Harsco is entitled to recover its reasonable costs, attorney's
15 fees and interest therefore.

16 **PRAYER**

17 **WHEREFORE**, Harsco prays that this Honorable Court:

- 18 A. Enter judgment against the Defendants, and each of them, jointly and severally, in
19 the Outstanding Balance amount;
- 20 B. Enter a judgment against Defendants, and each of them, jointly and severally, for
21 Harsco's reasonable costs and attorney's fees incurred in the collection of the
22 Outstanding Balance, as well as an award of interest thereon;
- 23 C. Enter a judgment declaring that Harsco has a valid and enforceable mechanic's
24 lien against the Property, with priority over all Defendants, in an amount of the
25 Outstanding Balance;
- 26 D. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable
27 attorney's fees, costs and interest thereon, and that this Honorable Court enter an


28 ///

1 Order that the property, and improvements, such as may be necessary, be sold
2 pursuant to the laws of the State of Nevada, and that the proceeds of said sale be
3 applied to the payment of sums due Harsco herein.

4 E. 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 December, 2009.

8 WILLIAMS & WIESE

9
10 
11 DONALD H. WILLIAMS, ESQ.
12 Nevada Bar No. 5548
13 612 South Tenth Street
14 Las Vegas, Nevada 89101
15 *Attorney for Lien Claimant Harsco Corporation*

16 **CERTIFICATE OF MAILING**

17 Pursuant to NRCP 5 (b), I certify that I am an employee of Williams & Wiese, and
18 that on the 22 day of December 2009, I deposited for mailing at Las Vegas, Nevada a true
19 copy of the foregoing **HARSCO CORPORATION'S SECOND AMENDED**
20 **COMPLAINT IN INTERVENTION** in the above matter, as addressed as follows:

21 Gwen Mullins, Esq.
22 Wade B. Gochmour, Esq.
23 3800 Howard Hughes Pkwy., Ste. 1400
24 Las Vegas, Nevada 89169
25 *Attorneys for Apco Construction*

26 Nikola Skrinjaric, Esq.
27 2500 N. Buffalo Drive, Ste. 250
28 Las Vegas, Nevada 89128
Attorneys for Nevada Construction Services

///

///

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5 *Attorneys for Scott Financial Corporation*

6 Jeffrey R. Albregts, Esq.
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16 Justin Watkins, Esq.
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21 Steven L. Morris, Esq.
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26 D. Shane Clifford, Esq.
27 Robin E. Perkins, Esq.
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31 *Attorneys for Ahern Rental, Inc.*

32 Jennifer R. Lloyd-Robinson, Esq.
33 **PEZZILLO ROBINSON**
34 6750 Via Austi Pkwy., #710
35 Las Vegas, Nevada 89119
36 *Attorney for Tri-City Drywall, Inc.*

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Las Vegas, Nevada 89169
Attorneys for Gemstone Development West, Inc.



Employee of WILLIAMS & WIESE

ORIGINAL

FILED

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CLERK OF THE COURT

1 **COMP**
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4 BENNETT TUELLER JOHNSON & DEERE
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7 Telephone: (801) 438-2000
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9 Michael D. Rawlins
10 Nevada Bar No. 5467
11 ROOKER RAWLINS LLP
12 2360 Corporate Circle, Suite 280
13 Henderson, Nevada 89074
14 Telephone: (702) 990-8100
15 Facsimile: (702) 932-5266

16 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

17 UNITED SUBCONTRACTORS, INC.
18 dba SKYLINE INSULATION, a foreign
19 corporation,

Plaintiff,

20 vs.

21 APCO CONSTRUCTION, a Nevada
22 corporation, and DOE Defendants 1-40,

Defendants.

Case No.
Dept. No.

COMPLAINT

A-10-608717-C
647548



23 COMES NOW Plaintiff, United Subcontractors, Inc. dba Skyline Insulation, by and
24 through its attorneys of record, Benjamin D. Johnson of the law firm of BENNETT TUELLER
25 JOHNSON & DEERE and Michael D. Rawlins of the law firm of ROOKER RAWLINS LLP,
26 and for its Complaint against the Defendants, states and alleges as follows:
27
28

////

RECEIVED
JAN 22 2010
CLERK OF THE COURT

ROOKER RAWLINS
2360 CORPORATE CIRCLE, SUITE 280
HENDERSON, NV 89074
TELEPHONE: (702) 990-8100
FACSIMILE: (702) 932-5266

THE PARTIES

1
2 1. United Subcontractors, Inc. dba Skyline Insulation ("Skyline") is duly organized
3 and existing under the laws of the State of Nevada and lawfully conducts business in Clark
4 County, Nevada as a licensed contractor

5
6 2. Defendant APCO Construction ("APCO") is a company organized and existing
7 under the laws of the State of Nevada and conducting business in Clark County, Nevada.

8 3. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants DOES 1-40 are unknown to Plaintiff who therefore sues those
10 Defendants by such fictitious names, but are believed to be owners of the Property, persons
11 claiming an interest in the Property, persons who issued APCO license bonds and/or payment
12 bonds for some or all of the Defendants, persons who are the agents, servants, employers, or
13 employees of the other Defendants, and/or persons who are otherwise responsible for the
14 damages suffered by Plaintiff. Plaintiff may ask leave of this Court to amend this Complaint and
15 insert the true names and capacities of said DOES 1-40 when the same have been ascertained by
16 Plaintiff, together with the appropriate charging allegations, and to join these Defendants in this
17 action.
18
19

JURISDICTION AND VENUE

20
21 4. This court has jurisdiction over the Defendants and the subject matter of this
22 action.
23

24 5. This court is the proper venue for this action pursuant to the Nevada Revised
25 Statutes.
26

27 ////

28 ////

GENERAL ALLEGATIONS

6. APCO entered into an agreement with Skyline Insulation (the "Agreement") pursuant to which Skyline Insulation provided insulation, fireplaces and related labor and materials (the "Labor and Materials") in exchange for APCO's promise to pay for the Labor and Materials.

7. Skyline Insulation fully and satisfactorily provided the agreed-upon Labor and Materials in connection with the construction of improvements at the project known as The West Manhattan Condominiums (the "Project"), and it strictly adhered to the direction and authorization provided by APCO and its authorized agents and representatives.

8. Despite its promise to pay, APCO owes Skyline Insulation the principal amount of no less than \$110,731.00 for the Labor and Materials it provided to APCO, together with interest, attorneys' fees and costs.

9. Despite Skyline Insulation's demands, however, APCO has failed and refused to pay Skyline Insulation the amounts due.

FIRST CAUSE OF ACTION

(Breach of Contract)

10. The Plaintiff repeats and realleges the allegations contained in the preceding paragraphs of the Complaint, and incorporates the same by this reference as if more fully set forth herein.

11. The Agreement constitutes a valid and enforceable contract whereby Skyline Insulation agreed to provide Labor and Materials to the Project in exchange for APCO's promise to pay Skyline Insulation in full.

////

12. Skyline Insulation has satisfied its obligations under the Agreement by furnishing the agreed-upon Labor and Materials to the Project.

13. APCO, on the other hand, has materially breached the Agreement by, among other things, failing to pay Skyline Insulation in full.

14. As a direct and proximate result of APCO's breach of the Agreement as described above, Skyline Insulation has incurred, and continues to incur, damages in an amount in excess of \$10,000.00, in an amount to be determined at trial, plus on-going interest, lien filing fees, attorneys' fees and costs.

15. Plaintiff has been required to retain the services of an attorney in order to prosecute this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

16. The Plaintiff repeats and realleges the allegations contained in the preceding paragraphs of the Complaint, and incorporates the same by this reference as if more fully set forth herein.

17. In Nevada, every contract carries an implied covenant of good faith and fair dealing.

18. APCO's failure and refusal to comply with the terms of the Agreement constitutes a breach of the implied covenant of good faith and fair dealing.

19. As a direct and proximate cause of APCO's breach, Plaintiff has been damaged in an amount in excess of \$10,000.00, in an amount to be determined at trial.

20. As a direct and proximate cause of APCO's breach, Plaintiff has incurred special damages in an amount to be determined at trial.

21. Plaintiff has been required to retain the services of an attorney in order to prosecute this matter, and is therefore entitled to reasonable attorneys' fees and costs thereof.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

22. The Plaintiff repeats and realleges the allegations contained in the preceding paragraphs of the Complaint, and incorporates the same by this reference as if more fully set forth herein.

23. Plaintiff furnished materials and services to the Property at the specific request and benefit of the Defendants.

24. Defendants accepted, used and enjoyed the benefit of the materials and services Plaintiff provided.

25. Defendants knew or should have known that Plaintiff expected to be paid for the materials and services so provided.

26. If Defendants are allowed to retain the benefit of the materials and services Plaintiff provided without paying Plaintiff reasonable compensation therefore, Defendants will have been unjustly enriched at the expense of Plaintiff.

27. Based upon the forgoing, Plaintiff is entitled to judgment in an amount in excess of \$10,000.00, in an amount to be determined at trial, for the materials and services it provided to the Property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For a judgment against the Defendants, and each of them, jointly and severally, in the amount in excess of \$10,000.00 to be determined at trial, plus the interest from the time the balance was due, plus costs and attorneys' fees;

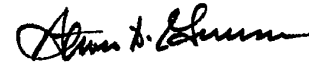
- 1 2. For a judgment against the Defendants, and each of them, jointly and severally,
2 for pre-judgment interest;
- 3 3. For a judgment against the Defendants, and each of them, jointly and severally,
4 for post-judgment interest from the date of Judgment until fully paid;
- 5 4. For a judgment against the Defendants, and each of them, jointly and severally,
6 for Plaintiff's reasonable attorneys' fees and costs incurred in the collection and/or prosecution
7 of this action;
- 8 5. For a judgment against the Defendants, and each of them, jointly and severally,
9 for special damages in an amount to be determined at trial;
- 10 6. For attorneys' fees and costs; and
- 11 7. For such other and further relief as the Court deems appropriate in the premises.

ROOKER RAWLINS LLP

By:

Michael D. Rawlins
2360 Corporate Circle, Suite 280
Henderson, Nevada 89074

Attorneys for Plaintiff



CLERK OF THE COURT

1 **STMT**

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8 dwayment@peelbrimley.com

Attorneys for Interstate Plumbing & Air Conditioning, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 vs.

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

21 Defendants.

22 **INTERSTATE PLUMBING & AIR**
CONDITIONING, LLC, a Nevada limited-
23 liability company,

24 Plaintiff in Intervention,

25 vs.

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

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

INTERSTATE PLUMBING & AIR
CONDITIONING'S STATEMENT OF
FACTS CONSTITUTING NOTICE OF
LIEN AND COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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HENDERSON, NEVADA 89074
(702) 990-7272 • FAX (702) 990-7273

Calendared
Date: 4/13/10

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13 rpeel@peelbrimley.com
14 mgebhart@peelbrimley.com
15 dwayment@peelbrimley.com
16 *Attorneys for Interstate Plumbing & Air Conditioning, LLC*
17
18 **DISTRICT COURT**
19
20 **CLARK COUNTY, NEVADA**

21 ACCURACY GLASS & MIRROR
22 COMPANY, INC., a Nevada corporation,
23
24 Plaintiff,

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
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.

INTERSTATE PLUMBING & AIR
CONDITIONING, LLC, a Nevada limited-
liability company,

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
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A587168

**INTERSTATE PLUMBING & AIR
CONDITIONING'S STATEMENT OF
FACTS CONSTITUTING NOTICE OF
LIEN AND COMPLAINT**

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

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.

11 INTERSTATE PLUMBING & AIR CONDITIONING, LLC ("Interstate") by and
12 through its attorneys PEEL BRIMLEY LLP, as for its Statement of Facts Constituting a Notice of
13 Lien and Complaint ("Complaint") against the above-named defendants complains, avers and
14 alleges as follows:

15 **THE PARTIES**

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

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

| | |
|----|---|
| 24 | Manhattan West Condominiums |
| 25 | Spring Valley |
| 26 | County Assessor Description: See Attached Exhibit 1 |
| 27 | SEC 32 TWP 21 RNG 60 |

28 and more particularly described as Clark County Assessor Parcel Numbers 63-32-101-020 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 "Work of Improvement").

4 3. The whole of the Work of Improvement and any leasehold estate in thereon is
5 reasonably necessary for the convenient use and occupation of the Work of Improvement.
6

7 4. Interstate 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. APCO may also be known as Asphalt Products Company.

11 5. Interstate 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. Interstate is informed and believes and therefore alleges that Defendant,
17 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was
18 and is a bonding company licensed and qualified to do business as a surety in Nevada.
19

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

25 8. Interstate does not know the true names of the individuals, corporations,
26 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE
27 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE
28

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

FIRST CAUSE OF ACTION
(Breach of Contract against APCO)

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

10. On or about April 17, 2007 Interstate entered into an Agreement with APCO (the "APCO Agreement") to provide certain plumbing and HVAC related work, materials and equipment (the "APCO Work") for the Work of Improvement located in Clark County, Nevada.

11. Interstate furnished the APCO Work for the benefit of and at the specific instance and request of APCO and/or Owner.

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

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

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

a. Failing and/or refusing to pay the monies owed to Interstate for the APCO Work;

1 b. Failing to adjust the APCO Agreement price to account for extra and/or
2 changed work, as well as suspensions and delays of APCO Work caused or ordered by the
3 Defendants and/or their representatives;

4 c. Failing to promptly recognize and grant time extensions to reflect additional
5 time allowable under the APCO Agreement and permit related adjustments in scheduled
6 performance;
7

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

10 e. Negligently or intentionally preventing, obstructing, hindering or interfering
11 with Interstate's performance of the APCO Work.

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

14 16. Interstate has been required to engage the services of an attorney to collect the
15 APCO Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's
16 fees and interest therefore.
17

18 **SECOND CAUSE OF ACTION**
19 **(Breach of Contract against CPCC)**

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

23 18. On or about August 26, 2008, Interstate entered into a Ratification and
24 Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO
25 as the general contractor on the Project, to continue the work for the Work of Improvement
26 ("CPCC Work").
27
28

1 19. Interstate furnished the CPCC Work for the benefit of and at the specific instance
2 and request of CPCC and/or Owner.

3 20. Pursuant to the CPCC Agreement, Interstate was to be paid an amount in excess of
4 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC
5 Work.
6

7 21. Interstate furnished the CPCC Work and has otherwise performed its duties and
8 obligations as required by the CPCC Agreement.

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

10 a. Failing and/or refusing to pay the monies owed to Interstate for the CPCC
11 Work;

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

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

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

22 e. Negligently or intentionally preventing, obstructing, hindering or interfering
23 with Interstate's performance of the CPCC Work.

24 23. Interstate is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
25 the CPCC Work.

26 ///

27 ///

28

1 24. Interstate has been required to engage the services of an attorney to collect the
2 CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's
3 fees and interest therefore.

4
5 **THIRD CAUSE OF ACTION**
6 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

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

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

12 27. APCO breached its duty to act in good faith by performing the APCO Agreement
13 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying
14 Interstate's justified expectations.

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

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

20
21 **FOURTH CAUSE OF ACTION**
22 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

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

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

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

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

34. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Interstate 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)

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

36. Interstate 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 Interstate expected to be paid for the APCO Work and CPCC Work.

40. Interstate 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 Interstate.

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

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

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

45. The provision of the Work was at the special instance and request of the Defendants for the Work of Improvement.

46. As provided at NRS 108.245 and common law, the Defendants had knowledge of Interstate's delivery of the APCO Work and CPCC Work to the Work of Improvement or Interstate provided a Notice of Right to Lien.

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

48. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the Official Records of Clark County, Nevada, as Instrument No. 201003290001085 (the "Plumbing Lien").

49. The Plumbing Lien was in writing and was recorded against the Work of Improvement for the outstanding balance due to Interstate in the amount of Three Million Three Hundred Seventy-Six Thousand Six Hundred and 45/100 Dollars (\$3,376,600.45).

50. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the Official Records of Clark County, Nevada, as Instrument No. 201003290001086 (the "HVAC Lien").

1 51. The HVAC Lien was in writing and was recorded against the Work of
2 Improvement for the outstanding balance due to Interstate in the amount of Seven Hundred
3 Thirty-Eight Thousand One Hundred Sixty-One and 63/100 Dollars (\$738,161.63).

4 52. The Plumbing Lien and HVAC Lien were served upon the Owner and/or its
5 authorized agents, as required by law.
6

7 53. Interstate is entitled to an award of reasonable attorney's fees, costs and interest on
8 the APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of
9 the Nevada Revised Statutes.

10 **SEVENTH CAUSE OF ACTION**
11 **(Claim of Priority)**

12 54. Interstate 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 55. Interstate is informed and believes and therefore alleges that construction on the
16 Work of Improvement commenced before the recording of any deed(s) of trust and/or other
17 interest(s) in the Work of Improvement, including the deeds of trust recorded by SFC.
18

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

26 57. Interstate's claim against the Work of Improvement is superior to the claim(s) of
27 SFC, any other defendant, and/or any Loe Lender.
28

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

5
6 **EIGHTH CAUSE OF ACTION**
7 **(Claim Against Bond – CPCC Surety)**

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

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

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

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

16 63. Interstate furnished the CPCC Work as stated herein and has not been paid for the
17 same. Interstate therefore claims payment on said Bond.

18 64. The CPCC Surety is obligated to pay Interstate the sums due.

19 65. Demand for the payment of the sums due to Interstate has been made, but CPCC
20 and the CPCC Surety have failed, neglected and refused to pay the same to Interstate.

21 66. CPCC and the CPCC Surety owe Interstate the penal sum of the Bond.

22 67. Interstate was required to engage the services of an attorney to collect the CPCC
23 Outstanding Balance due and owing to Interstate and Interstate is entitled to recover its
24 reasonable attorney's fees and costs therefore.
25
26

27 ///

28 ///

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

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

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

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

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

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

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

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

74. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this 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 CPCC to, among other things, timely pay their subcontractors (such as Interstate), as provided in the in the Statute.

1 76. In violation of the Statute, CPCC failed and/or refused to timely pay Interstate
2 monies due and owing.

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

4 78. By reason of the foregoing, Interstate is entitled to a judgment against CPCC in the
5 amount of the CPCC Outstanding Balance
6

7 79. Interstate has been required to engage the services of an attorney to collect the
8 CPCC Outstanding Balance and Interstate is entitled to recover its reasonable costs, attorney's
9 fees and interests therefore.

10 **ELEVENTH CAUSE OF ACTION**
11 **(Declaratory Judgment)**

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

- 17 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
18 20060705, Instrument No. 0004264;
19 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
20 20060705, Instrument No. 0004265;
21 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
22 20060705, Instrument No. 0004266; and,
23 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book
24 20080207, Instrument No. 01482.

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

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

5
6 84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to
7 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they
8 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books
9 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
10 Senior Debt Deed of Trust.

11 85. Interstate is informed and believes and therefore alleges that construction on the
12 Work of Improvement commenced at least before the recording of the Senior Debt Deed of Trust
13 and that by law, all mechanics' liens, including Interstate's, enjoy a position of priority over the
14 Senior Debt Deed of Trust.

15
16 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
17 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
18 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
19 subordinate to all mechanics' liens, including Interstate's.

20
21 87. A dispute has arisen, and an actual controversy now exists over the priority issue
22 of Interstate's mechanics' lien over other encumbrances on the property.

23 88. Interstate is entitled to a court order declaring that its mechanics' lien has a
24 superior lien position on the Work of Improvement over any other lien or encumbrance created by
25 or for the benefit of SFC or any other entity.

26 ///

27 ///

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

1 **WHEREFORE**, Interstate prays that this Honorable Court:

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

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

7 3. Enter a judgment declaring that Interstate has valid and enforceable mechanic's
8 liens against the Work of Improvement, with priority over all Defendants, in an amount of the
9 APCO Outstanding Balance and CPCC Outstanding Balance;

10 4. Adjudge a lien upon the Work of Improvement for the APCO Outstanding Balance
11 and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and
12 that this Honorable Court enter an Order that the Work of Improvement, and improvements, such
13 as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of
14 said sale be applied to the payment of sums due Interstate herein;

15 5. Enter a judgment declaring that Interstate' mechanics' lien enjoys a position of
16 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
17 entity; and
18
19

20 ///

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

3 Dated this 5 day of April 2010.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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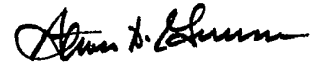
dwayment@peelbrimley.com

*Attorneys for Interstate Plumbing & Air
Conditioning, LLC*

EXHIBIT 1
Manhattan West

County Assessor Parcel Nos.: 163-32-101-020 and 163-32-101-022 thru 163-32-101-024
(Formerly 163-32-112-001 thru 163-32-112-246; formerly 163-32-101-019)

| Parcel Number/ Location Address/ Township | Property Description | Owner Name & Address |
|---|---|---|
| 163-32-101-020 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-022 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-023 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-024 Spring Valley (Formerly 163-32-112- 001 thru 163-32-112- 246; formerly 163-32- 101-019) | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |



CLERK OF THE COURT

1 APN #: 163-32-101-020, 163-32-101-022 thru
2 163-32-101-024 (formerly known as 163-32-101-019
and 163-32-112-001 thru 163-32-112-246)

LISP

3 RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

4 MICHAEL T. GEBHART, ESQ.

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5 DALLIN T. WAYMENT, ESQ.

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10 *Attorneys for Interstate Plumbing & Air Conditioning, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

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

23 Defendants.

24 INTERSTATE PLUMBING & AIR
CONDITIONING, LLC, a Nevada limited-liability
25 company,

26 Plaintiff in Intervention,

27 vs.

28 ASPHALT PRODUCTS CORP., a Nevada
corporation; APCO CONSTRUCTION, a Nevada

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

**INTERSTATE PLUMBING & AIR
CONDITIONING'S NOTICE OF
LIS PENDENS**

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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.

PLEASE TAKE NOTICE that an action was commenced and is pending in the above-
entitled Court to enforce that certain Notices and Claims of Lien recorded by Lien Claimant,
INTERSTATE PLUMBING & AIR CONDITIONING, LLC, ("Interstate"), in the Official
Records of Clark County, Nevada on March 29, 2010 as I201003290001085 (the "Plumbing
Lien") and a Notice of Lien on March 29, 2010 Instrument No. 201003290001086 (the "HVAC
Lien") affecting certain real property or portions thereof, owned or reputedly owned by
Defendants and described as follows:

| | |
|------------------------------|-----------------------------|
| | Manhattan West Condominiums |
| | Spring Valley |
| County Assessor Description: | See Attached Exhibit 1 |
| | 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).

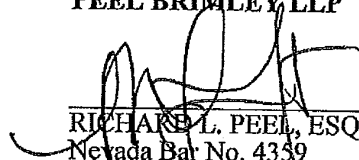
Pursuant to Nevada Mechanics Lien Statute, Interstate claims priority over the rights,
claims and interests of the named defendants in and to the property, including, but not limited to,
the claims of Scott Financial Corporation as more particularly set forth in its Senior Deed of Trust
recorded by Scott Financial Corporation in the Official Records of Clark County, Nevada on July
5, 2006, in Book 20060705 as Instrument No. 0004264, its Junior Deed of Trust recorded on July

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5, 2006, in Book 20060705 as Instrument No. 0004265, its Third Deed of Trust recorded on July 5, 2006 in Book 20060705 as Instrument No. 0004266 and its Senior Debt Deed of Trust recorded February 7, 2008, in Book 20080207 as Instrument No. 01482.

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL F. GEBHART, ESQ.

Nevada Bar No. 7718

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*Attorneys for Interstate Plumbing & Air
Conditioning, LLC*

WHEN RECORDED RETURN TO:

RICHARD L. PEEL, ESQ.

PEEL BRIMLEY LLP

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

EXHIBIT 1
Manhattan West

County Assessor Parcel Nos.: 163-32-101-020 and 163-32-101-022 thru 163-32-101-024
(Formerly 163-32-112-001 thru 163-32-112-246; formerly 163-32-101-019)

| Parcel Number/ Location Address/ Township | Property Description | Owner Name & Address |
|---|---|---|
| 163-32-101-020 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-022 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-023 Spring Valley | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |
| 163-32-101-024 Spring Valley (Formerly 163-32-112- 001 thru 163-32-112- 246; formerly 163-32- 101-019) | PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60 | Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465 |

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Attorneys for Interstate Plumbing & Air Conditioning, LLC

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.

INTERSTATE PLUMBING & AIR CONDITIONING,
LLC, a Nevada limited-liability company,

Plaintiff in Intervention,

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.

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

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**ACCEPTANCE OF SERVICE BY
ASPHALT PRODUCTS CORP. AND
APCO CONSTRUCTION**

PEEL BRIMLEY LLP
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1 I, Gwen Rutar Mullins, Esq. of the Law Offices of Howard & Howard Attorneys, P.C., attorneys
2 for **ASPHALT PRODUCTS CORP. AND APCO CONSTRUCTION** and thereby acting at their
3 request and on their behalf, hereby accepts service of the attached Summons, Initial Appearance Fee
4 Disclosure, Interstate Plumbing & Air Conditioning's Notice of Lis Pendens and Interstate Plumbing &
5 Air Conditioning's Statement of Facts Constituting Notice of Lien and Complaint.

6 DATED this _____ day of April 2010.

7 **HOWARD & HOWARD ATTORNEYS, P.C.**

8
9
10 _____
11 Gwen Rutar Mullins, Esq.
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14 Las Vegas, NV 89169
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18 *Attorneys for Asphalt Products Corp. & APCO*
19 *Construction*
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SUMM

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Attorneys for Interstate Plumbing & Air Conditioning, LLC

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.

INTERSTATE PLUMBING & AIR CONDITIONING,
LLC, a Nevada limited-liability company,

Plaintiff in Intervention,

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.

LEAD CASE NO.: A571228
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SUMMONS - CIVIL

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

1 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT**
2 **YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE**
3 **INFORMATION BELOW.**

4 **TO THE DEFENDANTS:**

5 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in its Complaint.

6 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you
exclusive of the day of service, you must do the following:

7 a. File with the Clerk of this Court, whose address is shown below, a formal written
8 response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

9 b. Serve a copy of your response upon the attorney whose name and address is
shown below.

10 2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and
11 failure to so respond will result in a judgment of default against you for the relief demanded in the
Complaint, which could result in the taking of money or property or other relief requested in the
Complaint.

12 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so
13 that your response may be filed in time.

14 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
15 members, commission members and legislators each have 45 days after service of this Summons within
which to file an Answer or other responsive pleading to the Complaint.

16 Submitted by:

STEVEN D. GRIERSON,
Clerk of the Court

17 **PEEL BRIMLEY LLP**

18 By: 

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*Attorneys for Interstate Plumbing & Air
Conditioning, LLC*

By: _____

SALEVAO ASIFOA
DISTRICT
COURT
SEAL
Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

APR 3 2010

Date

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

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

_____, being duly sworn, says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received _____ copy(ies) of the Summons, Statement of Facts Constituting a Notice of Lien and Complaint, and Notice of Lis Pendens on the _____ day of _____ 2010 and served the same on the _____ day of _____ 2010 by:

1. Delivering and leaving a copy with the defendant at _____
at (state address) _____.

2. Serving the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usually place of abode located at (state address) _____.

(Use paragraph 3 for service upon agent, completing A or B)

3. Serving the Defendant _____ by personally delivering and leaving a copy at (state address) _____.

a. With _____ as _____
an agent lawfully designated by statute to accept service of process;

b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (check appropriate method):

- ☐ Ordinary Mail
☐ Certified mail, return receipt requested
☐ Registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is (state address) _____.

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

EXECUTED this _____ day of _____ 2010.

Signature of Person Making Service

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IAFD

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Attorneys for Interstate Plumbing & Air Conditioning, LLC

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; DOES I
through X; ROE CORPORATIONS I through
X; BOE BONDING COMPANIES I through
X; LOE LENDERS I through X, inclusive,

Defendants.

INTERSTATE PLUMBING & AIR
CONDITIONING, LLC, a Nevada limited-
liability company,

Plaintiff in Intervention,

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

LEAD CASE NO.: A571228
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A583289

A584730

A587168

**INITIAL APPEARANCE FEE
DISCLOSURE**

(NRS CHAPTER 19)

PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074

COMPANY OF MARYLAND; DOES I
through X; ROE CORPORATIONS I through
X; BOE BONDING COMPANIES I through X;
LOE LENDERS I through X, inclusive,


Defendants.

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
parties appearing in the above-entitled action as indicated below:

| | | |
|---|-----------------------------------|--|
| Name of Plaintiff – Interstate Plumbing & Air Conditioning, LLC | <input type="checkbox"/> \$270.00 | <input checked="" type="checkbox"/> \$223.00 |
| TOTAL REMITTED: (Required) | | \$223.00 |

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

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Attorneys for Interstate Plumbing & Air Conditioning, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a
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Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada corporation; CAMCO
PACIFIC CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE DEVELOPMENT
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DEPOSIT COMPANY OF MARYLAND; SCOTT
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INTERSTATE PLUMBING & AIR CONDITIONING,
LLC, a Nevada limited-liability company,

Plaintiff in Intervention,

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LEAD CASE NO.: A571228

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**ACCEPTANCE OF SERVICE BY
ASPHALT PRODUCTS CORP. AND
APCO CONSTRUCTION**

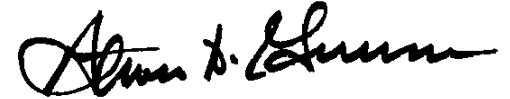
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1 I, Gwen Rutar Mullins, Esq. of the Law Offices of Howard & Howard Attorneys, P.C., attorneys
2 for **ASPHALT PRODUCTS CORP. AND APCO CONSTRUCTION** and thereby acting at their
3 request and on their behalf, hereby accepts service of the attached Summons, Initial Appearance Fee
4 Disclosure, Interstate Plumbing & Air Conditioning's Notice of Lis Pendens and Interstate Plumbing &
5 Air Conditioning's Statement of Facts Constituting Notice of Lien and Complaint.

6 DATED this 12th day of April 2010.

7 **HOWARD & HOWARD ATTORNEYS, P.C.**

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17 *Attorneys for Asphalt Products Corp. & APCO*
18 *Construction*
19
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27
28



CLERK OF THE COURT

1 ANS/CTCM
2 Steven L. Morris, Esq.
3 Nevada Bar No. 7454
4 Zachariah B. Parry, Esq.
5 Nevada Bar No. 11677
6 WOODBURY, MORRIS & BROWN
7 701 N. Green Valley Parkway, Suite 110
8 Henderson, Nevada 89074
9 slmorris@wmb-law.net
10 zparry@wmb-law.net
11 (702) 933-0777
12 *Attorneys for Camco Pacific Construction Company, Inc. and*
13 *Fidelity and Deposit Company of Maryland*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 In re:
12 Manhattan West Mechanics' Lien Litigation

Case No: A571228
Dept. No: XXV

And All Consolidated Cases

13 **ANSWER TO CACTUS ROSE'S STATEMENT OF FACTS**
14 **CONSTITUTING NOTICE OF LIEN AND COMPLAINT AND**
15 **CAMCO PACIFIC CONSTRUCTION COMPANY INC.'S COUNTERCLAIM**

16 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

17 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND

18 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as

19 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of

20 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HELIX ELECTRIC

21 OF NEVADA, LLC. d/b/a HELIX ELECTRIC, (hereinafter "Plaintiff" or "Helix"), on file

22 herein, and admit, deny, and allege as follows:

- 23 1. Camco and Fidelity are without information or knowledge sufficient to ascertain the
24 truth of the allegations contained in Paragraphs 7, 34, 35, and 39 of Plaintiff's
25 Complaint, and therefore deny each and every allegation contained therein.
26 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 38, 58,
27 59, 62, and 63 of Plaintiff's Complaint.
28 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 9, 10, 11,

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

12, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 36, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, and 65 of Plaintiff's Complaint.

4. As to Paragraph 17, Camco and Fidelity admit that there is a covenant of good faith and fair dealing implied in every agreement, and admit that Camco acted fairly and in good faith. Camco and Fidelity deny all remaining allegations therein.

5. As to Paragraph 40, Camco and Fidelity admit that Helix's claim against the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained therein.

6. As to Paragraph 52, Camco and Fidelity admit that NRS §§ 624.606 to 624.630 speak for themselves, but deny the remaining allegations contained therein.

7. As to Paragraphs 60 and 61, Camco and Fidelity admit that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations contained therein.

8. As to paragraph 64, Camco and Fidelity admit that a dispute has arisen, and an actual controversy now exists, but deny the remaining allegations contained therein.

9. As to Paragraphs 8, 16, 21, 30, 37, 42, 51, and 57 of Plaintiff's Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 65 as though fully set forth herein.

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

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

AFFIRMATIVE DEFENSES

1. The Complaint on file herein fails to state a claim against Camco and Fidelity upon

- 1 which relief can be granted.
- 2 2. That any or all negligence or fault on the part of the Plaintiff would be active and
- 3 primary, and any negligence or fault of Camco, if any, would be secondary and passive.
- 4 3. Any and all damages sustained by Plaintiff are the result of its own negligence and
- 5 breach of contract.
- 6 4. Camco is not negligent with respect to the transactions that are the subject of the
- 7 Complaint, and is and was not in breach of contract.
- 8 5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff had full
- 9 and complete knowledge and information in regard to the conditions and circumstances
- 10 then and there existing, and through Plaintiff's own knowledge, conduct, acts and
- 11 omissions, assume the risk attendant to any condition there or then present.
- 12 6. The liability, if any, of Camco must be reduced by the percentage of fault of others,
- 13 including the Plaintiff.
- 14 7. The claims, and each of them, are barred by the failure of the Plaintiff to plead those
- 15 claims with particularity.
- 16 8. The claims of Plaintiff have been waived as a result of the acts and the conduct of the
- 17 Plaintiff.
- 18 9. The claim for breach of contract is barred as a result of the failure to satisfy conditions
- 19 precedent.
- 20 10. The claims for breach of contract and breach of implied covenant of good faith and fair
- 21 dealing are barred by the statute of frauds.
- 22 11. Plaintiff brought the case at bar without reasonable grounds upon which to base a claim
- 23 for relief.
- 24 12. Plaintiff maintained the present action without reasonable grounds upon which to base a
- 25 claim for relief.
- 26 13. Plaintiff's claims are not well grounded in fact.
- 27 14. Plaintiff's claims are not warranted by existing law.
- 28

- 1 15. Plaintiff is barred from recovering by the doctrine of unclean hands.
- 2 16. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.
- 3 17. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
- 4 incomplete, or untimely, Plaintiff is not entitled to recover for said work.
- 5 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff now
- 6 complains.
- 7 19. There is no justiciable case or controversy as between Plaintiff and Camco and/or
- 8 Fidelity.
- 9 20. Plaintiff lacks standing to assert all or part of the causes of action contained in their
- 10 complaint.
- 11 21. Camco's performance on any contract was excused by Plaintiff's material breach
- 12 thereof.
- 13 22. Plaintiff failed to comply with the requirements of NRS Chapter 108 to perfect its
- 14 mechanic's lien and therefore would not be entitled to any recovery on its lien
- 15 foreclosure claim.
- 16 23. Plaintiff has failed to mitigate its damages.
- 17 24. Defendant Fidelity is informed and believes that it is entitled to assert all of the defenses
- 18 available to its principal, and Fidelity hereby incorporates by reference all defenses
- 19 raised, or that could have been raised, by Fidelity's principal.
- 20 25. Fidelity alleges that its liability, if any exists, which is expressly denied, is limited to the
- 21 penal sum of the applicable Contractor's License Bond.
- 22 26. Any license or surety bond executed by Fidelity was limited to the classification of
- 23 contracting activities as set forth in its Nevada State Contractor's License Bond.
- 24 27. The liability of Fidelity if any, is limited to its obligations as set forth in its surety bond
- 25 agreement.
- 26 28. The liability of Fidelity if any, is limited to the statutory liability as set forth in NRS
- 27 624.273.
- 28

- 1 29. Fidelity is not liable for the acts or omissions of persons, individuals, firms,
2 partnerships, corporations, associations, or other organizations that are not its named
3 principal.
- 4 30. The damages sustained by Plaintiff, if any, were caused by the acts of third persons who
5 were not agents, servants, or employees of Fidelity, or its principal, and who were not
6 acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity
7 or its principal are not liable in any manner to the Plaintiff.
- 8 31. Fidelity is not liable for the acts or omissions of persons, individuals, firms,
9 partnerships, corporations, associations, or other organizations that are not its named
10 principal.
- 11 32. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond because
12 no judgment or court decree has been entered against its principal.
- 13 33. It has been necessary for Camco and Fidelity to retain the services of the law offices of
14 Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action,
15 and Camco is entitled to payment of all costs, fees, and expenses associated with and/or
16 arising out of the defense of this action.
- 17 34. Pursuant To NRCP 8, all possible affirmative defenses may not have been alleged
18 herein, inasmuch as sufficient facts were not available after reasonable investigation and
19 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the
20 right to amend their Answer to allege additional affirmative defenses if subsequent
21 investigation warrants.
- 22 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:
- 23 1. That Plaintiff take nothing by way of its Complaint;
- 24 2. For an award of reasonable attorneys' fees and costs for having to defend this
25 action; and
- 26 3. For such other and further relief as the Court deems just and proper.

27 **COUNTERCLAIM**

28 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

1 “Camco”) by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,
2 Morris & Brown complains as follows:

3 **JURISDICTIONAL ALLEGATIONS**

- 4 1. Camco was and is at all times relevant to this action, a California corporation, doing
5 business in Clark County, Nevada as a contractor duly licensed by the Nevada State
6 Contractor’s Board.
- 7 2. Counterdefendant CACTUS ROSE CONSTRUCTION, an Arizona corporation
8 (hereinafter referred to as “Cactus”) is and was at all times relevant to this action, a
9 corporation conducting business in Clark County, Nevada.
- 10 3. The true names and capacities, whether individual, corporate, associate or
11 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.
12 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
13 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to
14 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
15 at such time as the same have been ascertained.

16 **FIRST CAUSE OF ACTION**

17 **(Abuse of Process)**

- 18 4. Camco repeats and realleges each and every allegation contained in the
19 preceding paragraphs of Camco’s Counterclaim, incorporates the same at this point by
20 reference and further alleges:
- 21 5. Camco was a general contractor for the Manhattan West Condominiums project, located
22 in Clark County, Nevada (the “Property,” and/or “Project”).
- 23 6. GEMSTONE DEVELOPMENT WEST, INC. (“Gemstone”) was the owner of the
24 Project.
- 25 7. Camco did not request proposals from any subcontractor on the Project and Camco did
26 not negotiate or enter into a contract with Cactus Rose.
- 27 8. Cactus Rose was selected by Gemstone and furnished its respective work and materials
28 at Gemstone’s direction and request.

- 1 9. No payments for the work and materials furnished to the Project came through
2 Camco.
- 3 10. There was no contract between Cactus Rose and Camco with regard to the Project.
- 4 11. The only viable claims Cactus Rose has, if any, are against Gemstone and/or the
5 Property.
- 6 12. Lacking a basis for relief against Camco, Cactus Rose has an ulterior purpose, other
7 than resolving a legal dispute, in bringing this lawsuit against Camco.
- 8 13. Cactus Rose has engaged in a willful act in the use of the legal process not proper in the
9 regular conduct of the proceeding.
- 10 14. Camco has been required to engage the services of the law firm of WOODBURY,
11 MORRIS & BROWN to prosecute this matter and Camco is entitled to a reasonable
12 attorneys fees and costs therefor.
- 13 **SECOND CAUSE OF ACTION**
- 14 **(Breach of Contract - In the Alternative)**
- 15 15. Camco repeats and realleges each and every allegation contained in the
16 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
17 reference and further alleges:
- 18 16. Apco Construction ("Apco") was initially the general contractor for the Project.
- 19 17. Cactus Rose and Apco entered into a Subcontract Agreement (the "Agreement") relative
20 to the Project.
- 21 18. Section 3.4 of the Agreement states: "Any payments to Subcontractor shall be
22 conditioned upon receipt of the actual payments by Contractor from Owner.
23 Subcontractor herein agrees to assume the same risk that the Owner may become
24 insolvent that Contractor has assumed by entering into the Prime Contract with the
25 Owner."
- 26 19. If any contract existed at all between Camco and Cactus Rose, it was an implied
27 contract based on the terms of the Agreement.
- 28 20. All payments made to subcontractors and suppliers on the Project were made directly by

1 Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and
2 incorporated herein by this reference).

3 21. Camco never received payment on behalf of the subcontractors, including Cactus Rose,
4 and was therefore, not responsible nor liable for payment to the subcontractors,
5 including Cactus Rose.

6 22. Cactus Rose agreed and expressly acknowledged that it assumed the risk of non-
7 payment by the Owner.

8 23. Cactus Rose breached its contract with Camco by demanding payment from Camco and
9 by bringing claims against Camco and its License Bond Surety relative to payment for
10 the work allegedly performed by Cactus Rose on the Project.

11 24. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and
12 conditions of the Ratification Agreement.

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

16 **THIRD CAUSE OF ACTION**

17 **(Breach of Covenant of Good Faith and Fair Dealing - In the Alternative)**

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

21 27. The law imposes upon Cactus Rose, by virtue of the contract, a covenant to act in good
22 faith and deal fairly with Counterclaimant;

23 28. Despite this covenant, Cactus Rose's intentional failure to abide by the terms of the
24 parties written contract, Cactus Rose breached its covenant to act in good faith and deal
25 fairly;

26 29. As a result of its breach of the covenant of good faith and fair dealing, Cactus Rose has
27 injured Camco in an amount in excess of \$10,000.00.

28 30. Camco has been required to engage the services of the law firm of

1 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a
2 reasonable attorneys fees and costs therefor.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Relief)**

5 31. Camco repeats and realleges each and every allegation contained in the
6 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
7 reference and further alleges:

8 32. Pursuant to Nevada Revised Statutes ("NRS") Chapter 30, the Uniform Declaratory
9 Judgment Act, and more particularly, NRS 30.030 and NRS 30.040, Camco asks this
10 Court to utilize its power to interpret the Agreement and declare the respective rights
11 and obligations of the parties, if any, under the Agreement, including, without
12 limitation, the complete or partial validity or invalidity of the Agreement, the terms and
13 conditions, if any, under which Cactus Rose would be entitled to a commission
14 thereunder, the duration or term of the Agreement, and the extent to which the
15 Agreement is unconscionable and/or unenforceable.

16 33. It has become necessary for Camco to retain the services of the law firm of Woodbury,
17 Morris & Brown to defend against the Complaint and to bring counterclaims against
18 Cactus Rose, and Camco is therefore entitled to an award of attorneys' fees and costs
19 incurred herein.

20 **FIFTH CAUSE OF ACTION**

21 **(Attorney's Fees)**

22 34. Camco repeats and realleges each and every allegation contained in the
23 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
24 reference and further alleges:

25 35. NRS 30.120 provides that "in any proceeding under NRS 30.010 to 30.160, inclusive,
26 the Court may make such award of costs as may seem equitable and just."

27 36. In this case, pursuant to NRS Chapter 30, the Uniform Declaratory Judgment Act, and
28 more particularly, NRS 30.030 and NRS 30.040, Camco has requested that this Court

1 declare the rights, status and relationships between the parties under the Agreement.
2 Camco has been forced to retain the services of an attorney and has incurred costs in
3 seeking such declaratory relief from this Court.

4 37. Therefore, Camco asks this Court, pursuant to NRS 30.120, to award Camco the
5 attorney's fees and costs that it incurs in the defense and prosecution of this litigation.

6 38. It has become necessary for Camco to retain the services of the law firm of Woodbury,
7 Morris & Brown to defend against the Complaint and to bring counterclaims against
8 Cactus Rose, and Camco is therefore entitled to an award of attorneys' fees and costs
9 incurred herein.

10 WHEREFORE, Counterclaimant Camco prays as follows:

11 1. For this Court to enter judgment against Counterdefendant in an amount in
12 excess of \$10,000.00, plus interest at the contract rate;

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

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

16 DATED this 13th day of April 2010.

WOODBURY, MORRIS & BROWN

17 /s/ Zachariah B. Parry
18 Steven L. Morris, Esq.
19 Nevada Bar No. 7454
20 Zachariah B. Parry, Esq.
21 Nevada Bar No. 11677
22 701 N. Green Valley Pkwy., Suite 110
23 Henderson, NV 89074-6178
24 *Attorneys for Camco and Fidelity*
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of April 2010, I served a copy of the **ANSWER TO CACTUS ROSE'S STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND COMPLAINT AND CAMCO PACIFIC CONSTRUCTION COMPANY INC.'S COUNTERCLAIM** on the interested parties by serving the same to the following parties in the below-indicated way:

| Counsel of Record | Method of Service |
|---|--|
| Brian K. Berman, Esq. 721 Gass Avenue Las Vegas, NV 89101 <i>Attorney for Ready Mix, Inc.</i> Fax: 382-6450 E-mail: b.k.berman@att.net | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Andrew F. Dixon, Esq. Jonathan W. Barlow, Esq. BOWLER, DIXON & TWITCHELL 400 North Stephanie #235 Henderson, NV 89014 <i>Attorneys for The Pressure Grout Company</i> Fax: 260-8983 E-mail: andrew@bdtlawyers.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Richard Dreitzer, Esq. BULLIVANT HOUSER BAILEY PC 3883 Howard Hughes Pkwy., Suite 550 Las Vegas, Nevada 89169 <i>Attorneys for Plaintiff Wiss, Janney, Elstner Associates, Inc.</i> Fax: 650-2995 E-mail: richard.dreitzer@bullivant.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Cabinetec, Inc. 2711 East Craig Road North Las Vegas, NV 89030-3367 | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Matthew Q. Callister, Esq. CALLISTER & REYNOLDS 823 S. Las Vegas Blvd. South, 5 th Floor Las Vegas, NV 89101 <i>Attorney for Executive Plastering, Inc.</i> Fax: 385-2899 E-mail: www.cllister-reynolds.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |

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|---|---|
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| <p>Kurt C. Faux, Esq. Willi H. Siepmann, Esq. FAUX LAW GROUP 1540 W. Warm Springs Road, Ste. 100 Henderson, NV 89014 <i>Attorneys for Platte River Insurance Co.</i> Fax: 458-5794 E-mail: kfaux@fauxlaw.com</p> | <p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery</p> |
| <p>Craig S. Newman, Esq. Dale B. Rycraft, Jr., Esq. FENNEMORE CRAIG, P.C. 300 South Fourth Street, Suite 1400 Las Vegas, Nevada 89101 <i>Attorneys for Ferguson Fire and Fabrication, Inc.</i> Fax: 692-8054 E-mail: cnewman@fclaw.com</p> | <p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery</p> |

| Counsel of Record | Method of Service |
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| Martin I. Melendrez, Esq. HAWKINS MELENDREZ, P.C. 9555 Hillwood Drive, Suite 150 Las Vegas, Nevada 89134 <i>Attorneys for Plaintiff HD Supply Construction Supply, L.P. d/b/a White Cap Construction Supply, Inc.</i> Fax: 318-8801 E-mail: mmelendrez@hawkinsmelendrez.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Sean D. Thueson, Esq. Gregory S. Gilbert, Esq. HOLLAND & HART LLP 3800 Howard Hughes Pkwy., 10 th Floor Las Vegas, NV 89169 <i>Attorneys for Gemstone Development West, Inc.</i> Fax: 669-4650 E-mail: hollandhart.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Gwen Rutar Mullins, Esq. Wade B. Gochmour, Esq. HOWARD & HOWARD, P.C. 3800 Howard Hughes Pkwy., #1400 Las Vegas, NV 89169 <i>Attorneys for APCO Consruction</i> Fax: 567-1568 E-mail: grm@h2law.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |

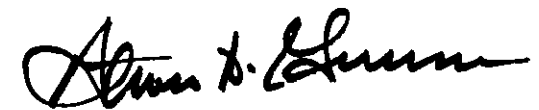
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| Joseph G. Went, Esq. Georlen K. Spangler, Esq. KOLESAR & LEATHAM, CHTD. 3320 W. Sahara Ave., Suite 380 Las Vegas, NV 89102 <i>Attorneys for Uintah Investments, LLC, dba Sierra Reinforcing</i> Fax: 362-9472 E-mail: www.klnevada.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |

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| <p>Ryan Bellows, Esq. McDONALD CARANO WILSON, LLP 100 West Liberty Street, 10th Floor Reno, Nevada 89505 <i>Attorneys for Fast Glass, Inc.</i> Fax: 788-2020 E-mail:</p> | <p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery</p> |
| <p>Glenn F. Meier, Esq. MEIER & FINE, LLC 2300 W, Sahara Ave., #430 Las Vegas, NV 89102 <i>Attorneys for Scott Financial Corporation</i> Fax: 673-1001 E-mail: www.mpnvlaw.com</p> | <p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery</p> |
| <p>K. Layne Morrill, Esq. Martin A. Aronson, Esq. MORRILL & ARONSON One E. Camelback Road, Ste. 340 Phoenix, AZ 85012 <i>Attorneys for Club Vista Financial Group, Tharaldson Motels II, Inc. and Gary D. Tharaldson</i></p> | <p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery</p> |

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| Jennifer R. Lloyd-Robinson, Esq. PEZZILLO ROBINSON 6750 Via Austi Parkway, #170 Las Vegas, NV 89119 <i>Attorneys for Tri-City Drywall, Inc.</i> Fax: 233-4252 E-mail: jrobinson@pezzillorobinson.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
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| T. James Truman, Esq. Stephen M. Dixon, Esq. T. JAMES TRUMAN & ASSOCIATES 3654 North Rancho Drive Las Vegas, NV 89130 <i>Attorneys for Noorda Sheetmetal, Dave Peterson Framing, Inc. E&E Fire Protection, LLC, Professional Door and Millworks, LLC, and The Pressure Grout Company</i> Fax: 396-3035 E-mail: ttruman@trumanlegal.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Justin L. Watkins, Esq. David Johnson, Esq. WATT, TIEDER, HOFFAR & FITZGERALD 3993 Howard Hughes Parkway, Suite 400 Las Vegas, Nevada 89169 <i>Attorneys for Granite Construction</i> Fax: 822-2650 E-mail: jwatkins@wthf.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Donald H. Williams, Esq. WILLIAMS & WIESE 612 South 10 th Street Las Vegas, NV 89101 <i>Attorneys for Harsco Corporation and EZA, P.C. dba OZ Architecture of Nevada, Inc.</i> Fax: 320-7760 E-mail: donaldhwillimaslaw@gmail.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |
| Michael M. Edwards, Esq. Reuben H. Cawley, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP Oxford Court 415 South Sixth Street, Suite 300 Las Vegas, Nevada 89101-6937 <i>Attorneys for Zitting Brothers Construction, Inc.</i> Fax: 382-1413 E-mail: www.wilsonelser.com | <input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery |

/s/ Zachariah B. Parry
Employee of WOODBURY, MORRIS & BROWN



CLERK OF THE COURT

1 **NOE**

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2 Nevada Bar No. 1625

Tami D. Cowden, Esq.

3 Nevada Bar No. 8994

GREENBERG TRAURIG, LLP

4 3773 Howard Hughes Parkway

Suite 400 North

5 Las Vegas, Nevada 89109

E-Mail: ferrariom@gtlaw.com;

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7 Telephone: (702) 792-3773

Facsimile: (702) 792-9002

8 *Attorneys for Defendants Club Vista Financial Services, LLC*

9 *And Tharaldson Motels II, Inc.*

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

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

14 **Plaintiffs,**

15 **v.**

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

25 **Defendants.**

26 **AND RELATED CASES AND**
27 **MATTERS**

Case No.: A571228
Dept. No.: XXIX

CONSOLIDATED CASES:
A571792, A574397, A574792,
A577623, A579963, A580889,
A583289, A584730, A587168,
A589195, A589677, A590319,
A592826, A596924, A597089,
A606730, A608717, and A608718

NOTICE OF ENTRY OF ORDER
APPROVING SALE OF PROPERTY

28 Please be advised that an Order Approving Sale of Property was entered on the 23rd day of


///

///

1 April, 2013. A copy is attached.

2 Dated this _____ day of April, 2012.

3 GREENBERG TRAURIG, LLP

4
5 By:  NV 12007 for:

6 Mark E. Ferrario, Esq.

7 Nevada Bar No. 1625

8 Tami D. Cowden, Esq.

9 Nevada Bar No. 8994

10 GREENBERG TRAURIG, LLP

11 3773 Howard Hughes Parkway

12 Suite 400 North

13 Las Vegas, Nevada 89109

14 E-Mail: ferrariom@gtlaw.com;

15 cowdent@gtlaw.com

16 Telephone: (702) 792-3773

17 Facsimile: (702) 792-9002

18 *Attorneys for Defendants Club Vista Financial*
19 *Services, LLC And Tharaldson Motels II, Inc.*

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing **Notice of Entry of Order Approving Sale of Property** on:

Please see the attached list downloaded from Wiznet

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

☐ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.

☐ by hand delivery.

☐ by sending via overnight courier in a sealed envelope.

☐ by faxing to the attorney at the fax number that is the last-known fax number.

☒ by electronic mail to the last known e-mail address, through Wiznet.

DATED this 25th day of April, 2013.

Valerie Larsen
An employee of Greenberg Traurig, LLP

E-Service Master List
For Case

null - Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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CLERK OF THE COURT

ORIGINAL

ORDER

Mark E. Ferrario (NV Bar No. 1625)
Tami D. Cowden (NV Bar No. 8994)
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*Attorneys for Defendants Club Vista Financial Services, LLC
and Tharaldson Motels II, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiffs,

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 I through X

Defendants.

**AND ALL RELATED CASES AND
MATTERS**

Case No.: A571228
Dept. No.: XXIX

CONSOLIDATED CASES:

A571792, A574397, A574792,
A577623, A579963, A580889,
A583289, A584730, A587168,
A589195, A589677, A590319,
A592826, A596924, A597089,
A606730, A608717, and A608718

**ORDER APPROVING SALE OF
PROPERTY**

Evidentiary hearings were held in the above-entitled matter on July 9 and 11, 2012 before the Honorable Susan Scann, Department 29, District Court, Clark County, on Scott Financial Corporation's Motion to Lift Stay, Allow Sale to Proceed with Deposit of Funds Pending Further Court Order, and for Posting of Bond on Order Shortening Time ("Motion"). At that time, the Seller, Gemstone Development West, Inc. ("Gemstone"), the Purchaser, WGH Acquisitions, Inc. ("WGH"), and lender Scott Financial Corporation ("Scott") sought Court approval of a Purchase and Sale Agreement ("the PSA") dated May 12, 2012. On July 31, 2012, this Court issued an

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04-12-13 2:12:50 PM

1 Order Granting In Part And Denying In Part Scott Financial Corporation's Motion To Lift Stay,
2 Allow Sale To Proceed With Deposit Of Funds Pending Further Court Order And For Posting Of
3 Bond On Order Shortening Time. Among other things, the Court:

- 4 • Denied Scott's request to approve the sale of the Property to WGH for \$18,050,000.00;
- 5 • Deemed the PSA to be "unenforceable and of no further effect;" and
- 6 • Decided to hold additional hearings to "determine the best and most appropriate way to
7 proceed to the expeditious sale of the property in the event the parties cannot agree on a
8 stipulated method of sale."

9 On July 11, 2012, this Court issued an Order to Show Cause Re: Summary
10 Determination of Lien Amounts; and the Possible Sale of the Property, and a hearing on the
11 same was held on July 18, 2012. At the July 18, 2012 hearing, the Court granted the Motion in
12 Part, ordering the sale of the property, and scheduled a hearing for July 26, 2012, which was
13 continued to August 16, 2012, to determine the bidding and sale procedures. At the August 16,
14 2012 hearing, the Court scheduled an auction for the sale of the Manhattan West Property
15 ("Property") for October 9, 2012.

16 At a September 26, 2012 telephonic conference with the Court, the parties informed the
17 Court of the possibility the parties would consent to the sale of the Property to a specific buyer,
18 without need for an auction, provided the price was acceptable to all parties. On September
19 28, 2012, the Court issued an Order Vacating the Auction Set for October 9, 2012 and set an
20 Order to Show Cause Re: Sale of the Property. The September 28, 2012 Order to Show Cause
21 Re: Sale of the Property decreed that all interested parties to the action appear on October 9,
22 2012 to show cause why an Order allowing the sale of the Property free of liens and
23 establishment of a fund as replacement security for the liens should not be entered by the
24 Court.

25 On October 9, 2012, the Court held a hearing on the Order to Show Cause Re: Sale of
26 the Property. The Court subsequently continued the hearing to allow the parties the opportunity
27 to review and clarify the terms of the proposed sale and to propose a written Order approving
28

1 the sale of the Property to WGH for \$20,000,000, preserving the net proceeds of the sale and
2 otherwise setting forth terms and conditions under which the Court would approve the sale.

3 In or about October 2012, Gemstone, WGH, and Scott executed a First Amendment to
4 the PSA ("First Amendment") as a convenient method to memorialize Gemstone's agreement
5 to sell the Property to WGH, with Scott's consent, for \$20,000,000. The First Amendment
6 purports to ratify the terms of the PSA, except as modified by the First Amendment. In or
7 about November 2012, Gemstone, WGH, and Scott executed a Second Amendment to the PSA
8 ("Second Amendment"), which by its terms supersedes and replaces the First Amendment to
9 the PSA, but which also purports to ratify the terms of the PSA, except as modified by the
10 Second Amendment.

11 By way of a Motion to Set Hearing, certain lien claimants raised concerns they had
12 with the PSA and Amendments and requested a hearing to discuss the same. The Court held a
13 hearing regarding such issues on January 3, 2013, which hearing was continued for further
14 consideration on January 16, 2013.

15 ACCORDINGLY, IT IS HEREBY ORDERED that:

16 A reasonable opportunity to object or be heard regarding the requested relief has been
17 afforded to all interested persons and there being no objection, the Court finds:

18 1. Compelling circumstances exist requiring the Property to be sold on the terms
19 outlined herein. The sale of the Property is in the best interest of all parties holding liens on the
20 Property.

21 2. The Purchase and Sale Agreement dated as of May 10, 2012 and the Second
22 Amendment to Purchase and Sale Agreement and Escrow Instructions dated as of November 7,
23 2012, which supersedes and replaces the First Amendment (collectively, the "Purchase and
24 Sale Agreement") between Gemstone Development West, Inc. and WGH Acquisitions, LLC
25 constitutes the best offer for the Property. The Court hereby approves the Purchase and Sale
26 Agreement, except as modified or amended by the terms of this Order, as follows:

27 3. Paragraph 2 of the Second Amendment is amended, modified and superseded as
28

1 follows: All contingencies shall be satisfied or waived by, the Property shall close escrow by,
2 and the Closing Date shall be, no later than June 17, 2013 unless extended by further Order of
3 this Court upon application prior to the Closing Date for good cause shown and with notice to
4 all parties.

5 4. Paragraph 4 of the Second Amendment is amended, modified and superseded as
6 follows: the sale of the Property is subject to approval of this Court as set forth in this Order.

7 5. Paragraph 9 of the Second Amendment is amended, modified and superseded as
8 follows: the amount of the broker commissions payable from the proceeds of the sale shall be
9 \$200,000.00 (Two Hundred Thousand U.S. Dollars).

10 6. The Property shall be sold free and clear of all liens including but not limited to
11 all liens as shown on the Preliminary Title Report No. 12-02-1358-KR prepared by Nevada
12 Title Company on March 12, 2013 and amended on April 3, 2013 attached hereto as Exhibit A.
13 Those existing liens on the Property, identified in the attached Exhibit "B," will be transferred
14 to the net proceeds from the sale and will retain the same force, effect, validity and priority that
15 previously existed against the Property subject to the determination of priority by the Supreme
16 Court of Nevada in the Writ Petition procedure discussed below. For purposes of this Order
17 "net proceeds from the sale" shall mean the sale proceeds available after the payment of sales
18 commissions (as determined by the Court), and other ordinary closing costs and any unpaid
19 property taxes.

20 7. The net proceeds from the sale (including any deposit under the Purchase and
21 Sale Agreement) are to be held in an interest-bearing account ("Account") pending final
22 resolution of the mechanic lien claimants' Joint Petition for Writ of Mandamus or, in the
23 Alternative, Prohibition filed in the Supreme Court of Nevada on June 22, 2012, or upon
24 resolution of any appeal brought with respect to the net proceeds from the sale. The contents
25 of the Account are to remain subject to Court control until the Court orders the distribution of
26 the contents to the party or parties the Nevada Supreme Court determines has a first priority
27 lien on the proceeds or as may otherwise be agreed upon by the parties. Nothing in the
28

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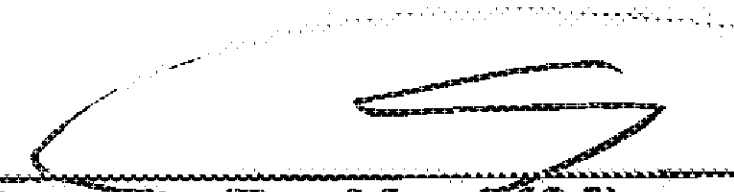
Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

IT IS SO ORDERED.

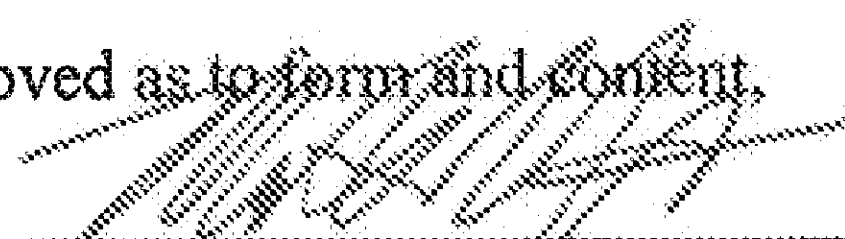
DATED this 23rd day of April, 2013.


DISTRICT COURT JUDGE

Respectfully submitted,

By: 
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Tami D. Cowden (Bar No. 8994)
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*Attorneys for Defendants Club Vista Financial Services, LLC
and Tharaldson Motels II, Inc.*

Approved as to form and content,

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Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

IT IS SO ORDERED.

DATED this _____ day of April, 2013.

DISTRICT COURT JUDGE

Respectfully submitted,

By: _____

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Attorneys for Various Lien Claimants

Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

IT IS SO ORDERED.

DATED this _____ day of April, 2013.

DISTRICT COURT JUDGE

Respectfully submitted,

By: _____
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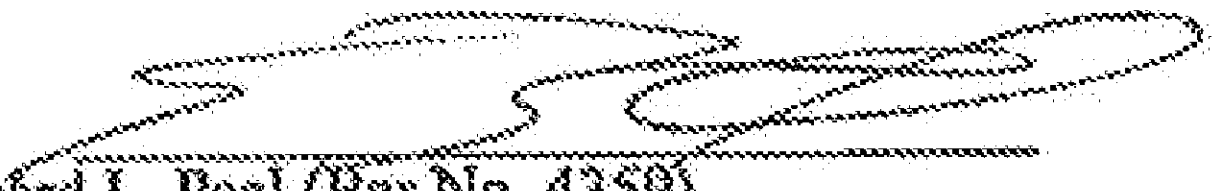
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Exhibit A

Exhibit A

NEVADA TITLE COMPANY
2500 North Buffalo, Suite # 150
Las Vegas, Nevada 89128
(702) 251-5000

ATTENTION: Kristin Ravelo

Amended April 3, 2013

Your Number

Order Number: 12-02-1358-KR / Kristin Ravelo

Dated as of March 12, 2013 at 7:30 a.m.

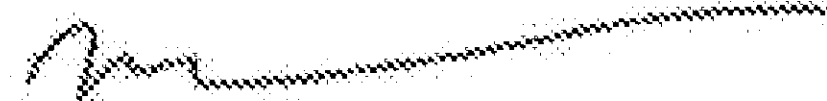
In response to the above referenced application for a policy of title insurance, Nevada Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in the exclusions and exceptions from coverage document attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in the exclusions and exceptions from coverage. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referenced to below and the exceptions and exclusions set forth in the exclusions from coverage of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance, and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.



Title Officer: Martin Bressler

SCHEDULE A

The form of Policy of Title Insurance contemplated by this report is:

- ☐ California Land Title/American Land Title Association Homeowners Policy
- ☐ American Land Title Association Lender's Policy 2006 PROPOSED INSURED in the amount of \$, Premium Amount \$
- ☐ American Land Title Association Owners Policy 2006
- ☐ California Land Title Association Standard Owner's/Lenders

THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS SCHEDULE COVERED BY THIS REPORT IS:

A Fee

Title to said estate or interest at the date hereof is vested in:

Gemstone Development West, Inc., a Nevada corporation

The land referred to in this report is situated in the State of Nevada, County of Clark, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF FOR LEGAL DESCRIPTION:

Address: Vacant Land Las Vegas, NV

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL I:

THE WEST HALF (W ½) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224982 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

THE WEST HALF (W ½) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO CLARK COUNTY BY GRANT DEED RECORDED SEPTEMBER 22, 1972 IN BOOK 265 AS DOCUMENT NO. 224994 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY SHOWN IN FINAL ORDER OF CONDEMNATION RECORDED NOVEMBER 20, 1998 IN BOOK 981120 AS DOCUMENT NO. 00763 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF

PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL III:

THE EAST HALF (E ½) OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M.

EXCEPTING THEREFROM THAT PROPERTY CONVEYED TO THE COUNTY OF CLARK BY GRANT, BARGAIN, SALE AND DEDICATION DEED RECORDED AUGUST 23, 2007 IN BOOK 20070823 AS DOCUMENT NO. 04782 OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING WITHIN THE EXTERIOR BOUNDARIES OF REVERSIONARY FINAL MAP OF PLATS AS SHOWN BY MAP THEREOF IN BOOK 141 OF PLATS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL IV:

A TRACT OF LAND BEING A PORTION OF THE NORTH HALF (N ½) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SAID SECTION 32, SAID POINT BEING ON THE CENTERLINE OF "RUSSELL ROAD"; THENCE ALONG THE EAST LINE THEREOF, SOUTH 00°45'29" WEST, 45.01 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD" AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

- (1) SOUTH 00°45'29" WEST, 5.00 FEET;
- (2) NORTH 89°28'01" EAST, 100.71 FEET;
- (3) SOUTH 80°02'11" EAST, 1.52 FEET TO THE BEGINNING OF A 20.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 11°15'11" WEST;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ALONG SAID 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 79°15'57" (THE LONG CHORD OF WHICH BEARS SOUTH 39°06'50" WEST, 25.51 FEET) FOR AN ARC LENGTH OF 27.67 FEET; THENCE SOUTH 03°30'45" WEST, 68.29 FEET; THENCE

SOUTH 02°09'32" WEST, 81.12 FEET; THENCE SOUTH 17°40'33" WEST, 32.81
 FEET; THENCE SOUTH 27°55'25" WEST, 41.45 FEET; THENCE SOUTH 00°35'59"
 EAST, 308.38 FEET; THENCE SOUTH 45°19'56" EAST, 20.47 FEET; THENCE
 NORTH 89°24'01" EAST, 109.32 FEET; THENCE SOUTH 26°03'44" EAST, 21.96
 FEET; THENCE SOUTH 35°52'59" WEST, 41.00 FEET; THENCE SOUTH 57°56'46"
 WEST, 29.28 FEET; THENCE SOUTH 89°25'29" WEST, 145.72 FEET; THENCE
 SOUTH 00°45'29" WEST, 349.42 FEET; THENCE NORTH 90°00'00" WEST, 74.74
 FEET; THENCE NORTH 00°00'07" WEST, 304.72 FEET; THENCE SOUTH
 89°18'50" WEST, 258.60 FEET; THENCE NORTH 00°46'11" EAST, 44.21 FEET;
 THENCE SOUTH 89°23'43" WEST, 312.37 FEET; THENCE NORTH 00°46'53"
 EAST, 370.04 FEET; THENCE SOUTH 89°13'07" EAST, 5.00 FEET TO THE
 BEGINNING OF A 10.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO
 THE NORTHEAST, TO WHICH A RADIAL LINE BEARS NORTH 89°13'07" WEST;
 THENCE SOUTHEASTERLY ALONG SAID 10.00 FOOT RADIUS CURVE TO THE
 LEFT THROUGH A CENTRAL ANGLE OF 91°22'53" (THE LONG CHORD OF
 WHICH BEARS SOUTH 44°54'33" EAST, 14.31 FEET) FOR AN ARC LENGTH OF
 15.95 FEET; THENCE NORTH 89°24'01" EAST, 22.46 FEET; THENCE SOUTH
 54°17'04" EAST, 42.60 FEET; THENCE NORTH 35°42'56" EAST, 18.50 FEET;
 THENCE SOUTH 54°17'04" EAST, 14.50 FEET TO THE BEGINNING OF A 26.00
 FOOT RADIUS CURVE, CONCAVE TO THE NORTH; THENCE EASTERLY
 ALONG SAID 26.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A
 CENTRAL ANGLE OF 36°18'55" (THE LONG CHORD OF WHICH BEARS SOUTH
 72°26'32" EAST, 16.20 FEET) FOR AN ARC LENGTH OF 16.48 FEET; THENCE
 NORTH 89°24'01" EAST, 48.35 FEET; THENCE SOUTH 00°35'59" EAST, 19.00
 FEET; THENCE NORTH 89°24'12" EAST, 37.56 FEET TO THE BEGINNING OF A
 23.50 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST; THENCE
 NORTHEASTERLY ALONG SAID 23.50 FOOT RADIUS CURVE TO THE LEFT
 THROUGH A CENTRAL ANGLE OF 47°53'29" (THE LONG CHORD OF WHICH
 BEARS NORTH 65°27'27" EAST, 19.08 FEET) FOR AN ARC LENGTH OF 19.64
 FEET; THENCE NORTH 41°30'43" EAST, 30.28 FEET TO THE BEGINNING OF A
 20.00 FOOT RADIUS CURVE, CONCAVE TO THE WEST; THENCE NORTHERLY
 ALONG SAID 20.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A
 CENTRAL ANGLE OF 72°57'04" (THE LONG CHORD OF WHICH BEARS NORTH
 05°02'11" EAST, 23.78 FEET) FOR AN ARC LENGTH OF 25.46 FEET; THENCE
 NORTH 31°26'22" WEST, 45.62 FEET; THENCE SOUTH 59°33'15" WEST, 18.50
 FEET TO THE BEGINNING OF A 297.01 FOOT RADIUS NON-TANGENT CURVE,
 CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 59°04'19"
 WEST; THENCE NORTHERLY ALONG SAID 297.01 FOOT RADIUS NON-
 TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF
 19°39'01" (THE LONG CHORD OF WHICH BEARS NORTH 21°06'11" WEST,
 101.37 FEET) FOR AN ARC LENGTH OF 101.86 FEET; THENCE NORTH 78°14'25"
 EAST, 15.18 FEET TO THE BEGINNING OF A 2.50 FOOT RADIUS CURVE,
 CONCAVE TO THE NORTHWEST; THENCE NORTHEASTERLY ALONG SAID
 2.50 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF

105°11'40" (THE LONG CHORD OF WHICH BEARS NORTH 25°38'35" EAST, 3.97 FEET) FOR AN ARC LENGTH OF 4.59 FEET TO THE BEGINNING OF A 102.50 FOOT RADIUS REVERSE CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS SOUTH 63°02'45" WEST; THENCE NORTHERLY ALONG SAID 102.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 26°21'16" (THE LONG CHORD OF WHICH BEARS NORTH 13°46'37" WEST, 46.73 FEET) FOR AN ARC LENGTH OF 47.15 FEET; THENCE NORTH 00°35'59" WEST, 55.31 FEET; THENCE SOUTH 89°24'01" WEST, 3.00 FEET TO THE BEGINNING OF A 25.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, TO WHICH A RADIAL LINE BEARS NORTH 89°24'01" EAST; THENCE NORTHWESTERLY ALONG SAID 25.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°00'00" (THE LONG CHORD OF WHICH BEARS NORTH 45°35'59" WEST, 35.36 FEET) FOR AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 00°35'59" WEST, 5.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID "RUSSELL ROAD"; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 89°24'01" EAST, 516.96 FEET TO THE POINT OF BEGINNING.

SCHEDULE B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$3,247.99, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$813.31 unpaid delinquent third Monday in August

Second installment of \$811.56 unpaid delinquent first Monday in October

Third installment of \$811.56 unpaid delinquent first Monday in January

Fourth installment of \$811.56 unpaid delinquent first Monday in March

Affects: Parcel I

Parcel No. 163-32-101-020

7. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$12,782.80, plus costs and penalties.

Affects: Parcel I

8. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$8,882.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,214.27 unpaid delinquent third Monday in August

Second installment of \$2,219.47 unpaid delinquent first Monday in October

Third installment of \$2,219.47 unpaid delinquent first Monday in January

Fourth installment of \$2,219.47 unpaid delinquent first Monday in March

Affects: Parcel II

Parcel No. 163-32-101-022

9. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$35,994.29, plus costs and penalties.

Affects: Parcel II

10. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$7,317.63, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,832.37 unpaid delinquent third Monday in August

Second installment of \$1,828.42 unpaid delinquent first Monday in October

Third installment of \$1,828.42 unpaid delinquent first Monday in January

Fourth installment of \$1,828.42 unpaid delinquent first Monday in March

Affects: Parcel III

Parcel No. 163-32-101-023

11. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$26,814.71, plus costs and penalties.

Affects: Parcel III

12. State and County Taxes for the fiscal period of 2012 to 2013, a lien now due and payable in the total amount of \$307,660.62, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$77,039.94 unpaid delinquent third Monday in August

Second installment of \$76,873.56 unpaid delinquent first Monday in October

Third installment of \$76,873.56 unpaid delinquent first Monday in January

Fourth installment of \$76,873.56 unpaid delinquent first Monday in March

Affects: Parcel IV

Parcel No. 163-32-101-024

13. State and County Taxes for the fiscal period of 2010 to 2012, a lien now due and payable in the total amount of \$912,192.21, plus costs and penalties.

Affects: Parcel IV

14. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

15. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

16. Reservations and Easements in the patent from the United States of America, recorded September 9, 1957, in Book 139 as Document No. 114353, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

17. Reservations and Easements in the patent from the United States of America, recorded June 7, 1962, in Book 365 as Document No. 295090, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

18. Reservations and Easements in the patent from the United States of America, recorded October 16, 1979, in Book 1133 as Document No. 1092838, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

19. Reservations and Easements in the patent from the United States of America, recorded December 19, 1979, in Book 1163 as Document No. 1122179, of Official Records.

Said patent further reserves, and is subject to, a right-of-way not exceeding Thirty-three (33) feet in width along said boundaries, for roadway and public utility purposes.

The interest of the U.S.A. in and to all mineral rights and rights-of-way were transferred to Clark County, by instrument recorded January 28, 2000, in Book No. 20000128 as Document No. 00913 of Official Records.

Partial Release of Patent Easement Rights of Nevada Power Company, recorded March 1, 2007, in Book 20070301 as Document No. 02730 of Official Records

The above Rights of Way, not dedicated, has been vacated by an instrument recorded August 23, 2007, in Book 20070823, as Document No. 04781 Official Records, Clark County, Nevada.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

20. Terms, covenants, conditions and provisions in an instrument entitled, "GRANT, BARGAIN AND SALE DEED", recorded October 5, 2004, in Book 20041005 as Document No. 05012, of Official Records.
21. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC, PANTEA, LLC AND LAS VEGAS LAND DEV CO, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01346 of Official Records.
22. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of RUSSELL 215, LLC AND PANTEA, LLC, for private drainage easement, recorded December 30, 2004, in Book 20041230 as Document No. 01347 of Official Records.
23. Deed of Trust to secure an indebtedness of \$15,000,000.00 and any other amounts payable under the terms thereof:
Recorded: July 5, 2006 in Book 20060705 Document No. 04264 of Official Records.
Dated: June 26, 2006
Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

First Amendment to the above Senior Deed of Trust for an additional \$13,000,000.00 recorded February 7, 2008 in Book 20080207 as Document No. 01484

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

24. Deed of Trust to secure an indebtedness of \$10,000,000.00 and any other amounts payable under the terms thereof:

Recorded: July 5, 2006 in Book 20060705 Document No. 04265 of Official Records.

Dated: June 26, 2006

Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Junior Deed of Trust for an additional \$8,000,000.00 recorded May 22, 2007 in Book 20070522 as Document No. 04011, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An instrument purports to modify the terms of the hereinabove stated Deed of Trust as therein provided, executed by GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION and SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION, and recorded February 7, 2008, in Book 20080207 as Document No. 01485 of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

25. Deed of Trust to secure an indebtedness of \$13,000,000.00 and any other amounts payable under the terms thereof:

Recorded: July 5, 2006 in Book 20060705 Document No. 04266 of Official Records.

Dated: June 26, 2006

Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

NOTE: The Deed of Trust set forth above is purported to be a "CREDIT LINE" Deed of Trust. It is a requirement that the trustor of said Deed of Trust give written authorization to close said credit line account with beneficiary when the Deed of Trust is being paid through Nevada Title Company.

First Amendment to the above Third Deed of Trust for an additional \$10,000,000.00 recorded October 24, 2007 in Book 20071024 as Document No. 04182, of Official Records.

Terms, covenants, conditions and provisions in an instrument entitled, "ASSUMPTION AGREEMENT", recorded February 7, 2008, in Book 20080207 as Document No. 01483, of Official Records.

An Agreement which states that this document was subordinated to Deed of Trust recorded February 7, 2008 in Book 20080207 of Official Records as Document No. 01482; By agreement executed by SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 01486.

Second Amendment to the above Third Deed of Trust for an additional \$9,000,000.00 recorded September 9, 2008 in Book 20080909 as Document No. 03943, of Official Records.

26. Terms, covenants, conditions and provisions in an instrument entitled, "IMPROVEMENT PHASING AGREEMENT", recorded February 7, 2007, in Book 20070207 as Document No. 04555, of Official Records.

27. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for pedestrian access and utility, recorded August 23, 2007, in Book 20070823 as Document No. 04784 of Official Records.

28. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 04781 of Official Records.

The above document was re-recorded on August 28, 2007 in Book 20070828 as Document No. 04280.

29. Terms, covenants, conditions and provisions in an instrument entitled, "DEVELOPMENT AGREEMENT", recorded November 28, 2007, in Book 20071128 as Document No. 04645, of Official Records.

Ordinance to Adopt the Development recorded November 28, 2007 in Book 20071128 as Document No. 04646, of Official Records.

30. Terms, covenants, conditions and provisions in an instrument entitled, "OFF-SITE IMPROVEMENT AGREEMENT", recorded December 3, 2007, in Book 20071203 as Document No. 00472, of Official Records.

31. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, for water lines, recorded January 3, 2008, in Book 20080103 as Document No. 03130 of Official Records.

32. Deed of Trust to secure an indebtedness of \$110,000,000.00 and any other amounts payable under the terms thereof:
Recorded: February 7, 2008 in Book 20080207 Document No. 01482 of Official Records.
Dated: January 22, 2008
Trustor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION
Trustee: COMMONWEALTH LAND TITLE INSURANCE COMPANY
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

The amount due, terms and conditions of the indebtedness should be determined by contacting the owner of the debt.

33. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded July 3, 2008, in Book 20080703 as Document No. 00633 of Official Records.

34. Intentionally omitted (expunged in Case 08-A571391-B/08-A571228-B)

35. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.
Amount: \$217,911.29

36. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.
Amount: \$374,262.70

The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.

An action commenced in the District Court, dated June 4, 2009, Case No. A571228, entitled, "PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION'S NOTICE OF LIS PENDENS", PATENT CONSTRUCTION SYSTEMS, A DIVISION OF HARSCO CORPORATION, A FOREIGN CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NORTHSTAR CONCRETE, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; RICHARD THORNTON, AN INDIVIDUAL; SCOTT FINANCIAL CORPORATION; AN DOES I THROUGH X

Notice of Pendency of said Action was recorded June 10, 2009 in Book 20090610 as Document No. 04082 of Official Records.

37. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of LAS VEGAS VALLEY WATER DISTRICT, a Quasi Municipal Corporation, for pipelines, recorded September 9, 2008, in Book 20080909 as Document No. 01209 of Official Records.

38. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.
Amount: \$69,260.04

39. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.
Amount: \$79,420.00

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00986 of Official Records.
New Amount: \$79,420.61

40. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.
Amount: \$754,618.89

An action commenced in the District Court, dated April 9, 2009, Case No. A577623, entitled, "NOTICE OF LIS PENDENS", READY MIX, INC., A NEVADA CORPORATION -vs- CONCRETE VISIONS, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; ALEXANDER EDELSTEIN; SELINA MARIE CISNEROS; JUAN S. PULIDO; PLATTE RIVER INSURANCE COMPANY, A FOREIGN CORPORATION; APCO CONSTRUCTION, INC., A NEVADA CORPORATION; AND DOES I THROUGH X, INCLUSIVELY

Notice of Pendency of said Action was recorded April 12, 2010 in Book 20100412 as Document No. 01733 of Official Records.

41. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.
Amount: \$420,157.90

An action commenced in the District Court, dated February 27, 2009, Case No. A583289, entitled, "NOTICE OF LIS PENDENS", UTAH INVESTMENTS, LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A SIERRA REINFORCING -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00930 of Official Records.

42. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.
Amount: \$20,782,659.95

An action commenced in the District Court, dated December 9, 2008, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded December 10, 2008 in Book 20081210 as Document No. 02470 of Official Records.

The above lien was amended by Amended and Restated Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.

43. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.
Amount: \$161,000.00
44. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, D/B/A NV ENERGY, for electrical lines, recorded November 14, 2008, in Book 20081114 as Document No. 04014 of Official Records.
45. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199.
Amount: \$1,001,790.15
46. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.
Amount: \$461,795.78
47. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.
Amount: \$586,642.07
48. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. - AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.
Amount: \$30,383.68
49. Intentionally omitted (Expunged Case 08-A571228-B)
50. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.
Amount: \$400,000.00
51. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 141 of Plats, Page 28, of Official Records.

52. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.

Amount: \$1,956,902.53

The above lien was amended by Amended Notice of Lien recorded February 2, 2009 in Book 20090202 as Document No. 00834 of Official Records.

An action commenced in the District Court, dated April 7, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 9, 2009 in Book 20090409 as Document No. 01356 of Official Records.

An action commenced in the District Court, dated June 23, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "ACCURACY GLASS & MIRROR COMPANY, INC.'S AMENDED NOTICE OF LIS PENDENS", ACCURACY GLASS & MIRROR COMPANY, INC., A NEVADA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00234 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01819 of Official Records.

53. Intentionally omitted (Expunged Case 08-A571228-B)

54. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.

Amount: \$373,892.42

The effect of an instrument entitled, PARTIAL RELEASE OF LIEN, Recorded February 10, 2009 in Book 20090210 as Document No. 02380 of Official Records.

New Amount: \$358,892.42

The above lien was amended by Amended and Restated Notice of Lien recorded April 1, 2009 in Book 20090401 as Document No. 04564 of Official Records.

New Amount: \$202,592.07

An action commenced in the District Court, dated June 13, 2009, Case No. A571228, entitled, "LIS PENDENS", LAS VEGAS PIPELINE, LLC -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC.; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; DOES 1-40, DOE CORPORATIONS 1-40, DOE BONDING COMPANIES 1-40; DOE SURTIES 1-10; DOE LENDERS 1-10; AND DOE TENANTS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded June 15, 2009 in Book 20090615 as Document No. 04814 of Official Records.

55. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.

Amount: \$641,748.33

The above lien was amended by Amended/Restated Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.
New Amount: \$771,401.32

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00143 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "BRUIN PAINTING CORPORATION'S AMENDED NOTICE OF LIS PENDENS", BRUIN PAINTING CORPORATION, A CALIFORNIA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00235 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01817 of Official Records.

56. Intentionally omitted (Expunged A571228)

57. Intentionally omitted (Expunged A571228)

58. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01589.
Amount: \$199,000.00

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01815 of Official Records.

59. Intentionally omitted (Expunged A571228)

60. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.
Amount: \$57,611.11

61. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.
Amount: \$57,611.11

62. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00974.
Amount: \$85,260.82

63. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00975.
Amount: \$63,362.02
64. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00976.
Amount: \$3,685.15
65. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00977.
Amount: \$3,257.73
66. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.
Amount: \$788,405.41

An action commenced in the District Court, dated April 30, 2009, Case No. A-09-589195-C, entitled, "NOTICE OF LIS PENDENS", ZITTING BROTHERS CONSTRUCTION, INC., A UTAH CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 1, 2009 in Book 20090501 as Document No. 04227 of Official Records.

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02126 of Official Records.
New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02127 of Official Records.
New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02128 of Official Records.
New Amount: \$750,807.16

67. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.

Amount: \$25,441.40

The above lien was amended by Amended Notice of Lien recorded February 4, 2009 in Book 20090204 as Document No. 04357 of Official Records.

An action commenced in the District Court, dated April 24, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book 20090429 as Document No. 00144 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A587168, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HD SUPPLY WATERWORKS, LP'S AMENDED NOTICE OF LIS PENDENS", HD SUPPLY WATERWORKS, LP, A FLORIDA LIMITED PARTNERSHIP -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; JEFF HEIT PLUMBING CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00236 of Official Records.

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 02:14 p.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 7, Bates Nos. 1501-1750)

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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 7,** 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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/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

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| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09) | A587168 | 7 | 1504–1522 |
| Camco Pacific Construction Company, Inc.'s Answer to Bruin Painting Corporation's Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09) | A587168 | 7 | 1523–1541 |
| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Heinaman Contract Glazing's Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09) | A587168 | 7 | 1542–1561 |

| <u>DOCUMENT DESCRIPTION</u> | <u>CASE</u> | <u>VOL.</u> | <u>BATES NOS.</u> |
|--|--------------------|--------------------|--------------------------|
| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to WRG Design, Inc.'s Statement and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/11/09) | A587168 | 7 | 1562-1581 |
| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Nevada Prefab Engineers, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/25/09) | A587168 | 7 | 1582-1599 |
| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Steel Structures, Inc.'s Second Amended Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/25/09) | A571228 | 7 | 1600-1619 |
| Camco Pacific Construction Company, Inc. Answer to Executive Plastering, Inc.'s First Amended Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 09/30/09) | A580889 | 7 | 1620-1627 |
| APCO Construction's Answer to HA Fabricators, Inc.'s Answer, Counterclaim, and Third-Party Complaint (filed 10/19/09) | A596924 | 7 | 1628-1650 |
| Harsco Corporation's Second Amended Complaint (filed 12/23/09) | A577623 | 7 | 1651-1659 |

| <u>DOCUMENT DESCRIPTION</u> | <u>CASE</u> | <u>VOL.</u> | <u>BATES NOS.</u> |
|--|--------------------|--------------------|--------------------------|
| United Subcontractors, Inc. dba Skyline Insulation's (filed 01/22/10) | A608717 | 7 | 1660-1665 |
| Interstate Plumbing & Air Conditioning, LLC's Statement and Complaint (filed 04/05/10) | A571228 | 7 | 1666-1696 |
| Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland Answer to Cactus Rose's Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim (filed 04/13/10) | A571228 | 7, 8 | 1697-1713 |
| Notice of Entry of Order Approving Sale of Property (filed 05/25/2013) | A571228 | 8 | 1714-1780 |
| Notice of Entry of Order Releasing Sale Proceeds from Court-Controlled Escrow Account (filed 4/14/2016) | A571228 | 8 | 1781-1790 |
| Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amending Case Agenda (filed 10/7/2016) | A571228 | 8 | 1791-1794 |
| Order Granting Plaintiff's Motion to Dismiss (filed 9/20/2017) | A571228 | 8 | 1795-1796 |
| Stipulation and Order for Dismissal of Steel Structures, Inc.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, Inc. (filed 11/13/2009) | A571228 | 8 | 1797-1798 |

| | | | |
|---|---------|---|-----------|
| Stipulation and Order for Dismissal with Prejudice of Claims Asserted by Select Build Nevada, Inc. Against APCO Construction (filed 7/1/2010) | A571228 | 8 | 1799-1801 |
| 2018 Stipulation and Order to Dismiss Third Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice (filed 2/5/2018) | A571228 | 8 | 1802-1803 |
| Notice of Entry of Order (filed 5/25/2017) | A571228 | 8 | 1804-1811 |
| Findings of Fact, Conclusions of Law, and Order Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction (filed 12/29/2017) | A571228 | 8 | 1812-1822 |
| Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO (filed 4/25/2018) | A571228 | 8 | 1823-1893 |
| E&E Fire Protection, LLC's Findings of Fact and Conclusions of Law (filed 4/26/2018) | A571228 | 8 | 1894-1900 |
| Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law Re Camco (filed 4/26/2018) | A571228 | 8 | 1901-1912 |
| Findings of Fact and Conclusions of Law as to the Claims of Fast Glass, Inc. (filed 4/26/2018) | A571228 | 8 | 1913-1925 |
| Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing (filed 4/26/2018) | A571228 | 8 | 1926-1938 |

| | | | |
|---|---------|------|-----------|
| Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc. (filed 4/26/2018) | A571228 | 8 | 1939-1948 |
| Findings of Fact and Conclusions of Law as to the Claims of SWPPP Compliance Solutions, Inc. (filed 4/26/2018) | A571228 | 8 | 1949-1960 |
| Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc. (filed 4/26/2018) | A571228 | 8, 9 | 1961-1972 |
| United Subcontractors, Inc. DBA Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment (filed 5/31/2018) | A571228 | 9 | 1973-1997 |
| Stipulation and Order for Dismissal with Prejudice (filed 5/25/2018) | A571228 | 9 | 1998-1999 |
| Stipulation and Order of Dismissal of All Claims Relating to Cardo WRG., Inc. (filed 9/20/2017) | A571228 | 9 | 2000-2002 |
| Joint Order Granting, In Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West (filed 6/21/2010) | A571228 | 9 | 2003-2004 |
| Notice of Entry of Stipulation and Order for Dismissal of Steel Structures, Inc.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, Inc. (filed 11/16/2009) | A571228 | 9 | 2005-2008 |
| SWPPP Compliance Solutions, LLC's Amended Statement of Facts and Complaint | AF71228 | 9 | 2009-2021 |

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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


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

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

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

Thanks.

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



Scott
Financial Corporation

Brad J. Scott, CRE
President
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Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

A licensed and bonded corporate finance company.

4/1/2009

AA 001502

Exhibit B

Jennifer Olivares

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

4/1/2009

AA 001503

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

1 ANS/CTCM
2 STEVEN L. MORRIS
3 Nevada Bar No. 7454
4 **WOODBURY, MORRIS & BROWN**
5 701 N. Green Valley Parkway, Suite 110
6 Henderson, Nevada 89074
7 (702) 933-0777
8 slmorris@wmb-law.net
9 Attorneys for
10 Camco Pacific Construction Company, Inc. and
11 Fidelity and Deposit Company of Maryland

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiff,

12 vs.

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

20 Defendants.

21 **CAMCO PACIFIC CONSTRUCTION**
22 **COMPANY, INC., a California corporation**

23 Counterclaimant,

24 vs.

25 **ACCURACY GLASS & MIRROR, a**
26 Nevada corporation; and **DOES I through X,**
27 inclusive,

27 Counterdefendant,

FILED

SEP 11 5 25 PM '09

Erin Smith
CLERK OF THE COURT

Case No. A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO ACCURACY GLASS &
MIRROR COMPANY, INC.'S
COMPLAINT AND CAMCO PACIFIC
CONSTRUCTION INC.'S
COUNTERCLAIM**

09A587168
389415



1 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
2 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
3 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
4 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
5 Woodbury, Morris & Brown, hereby answer the Complaint of ACCURACY GLASS &
6 MIRROR COMPANY, INC., a Nevada corporation (hereinafter "Plaintiff"), on file herein, and
7 admit, deny and allege as follows:

8 1. Camco and Fidelity deny each and every allegation contained in Paragraphs 21,
9 22, 23, 24, 32, 33, 34, 36, 37, 38, 40, 41, 42, 43, 45, 47, 53, 58, 60, 61, 62, 63, 64, 65, 66, 67,
10 76, 77, 78, 79, and 88 of Plaintiff's Complaint.

11 2. Camco and Fidelity are without information or knowledge sufficient to ascertain
12 the truth of the allegations contained in Paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 26, 27, 28,
13 29, 46, 48, 49, 50, 51, 52, 56, 57, 69, 70, 71, 72, and 73 of Plaintiff's Complaint, and therefore
14 deny each and every allegation contained therein.

15 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 6, 7,
16 55, 81, 82, 85, and 86 of Plaintiff's Complaint.

17 4. As to Paragraphs 9, 17, 25, 30, 35, 44, 54, 59, 68, 74 and 80 of Plaintiff's
18 Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 88 as
19 though fully set forth herein.

20 5. As to Paragraph 18 Camco and Fidelity admit that Camco entered into a
21 Ratification and Amendment of Subcontract Agreement with Accuracy, but as for the remaining
22 allegations therein, Camco admits that the contract speaks for itself.

23 6. As to Paragraph 19 Camco admits that Accuracy furnished work for the benefit
24 of the Owner, but denies the remaining allegations therein.

25 7. As to Paragraph 31 Camco admits that it acted in good faith, but as for the
26 remaining allegations therein, Camco admits that the contract speaks for itself.

27 8. As to Paragraph 39 Camco admits that Accuracy knew or should have known
28

1 that payment would have been made by Owner, but denies the remaining allegations therein.

2 9. As to Paragraph 57 Camco denies that Accuracy's claim against the Property is
3 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
4 the remaining allegations therein.

5 10. As to Paragraph 75 Camco admits that the statutes speak for themselves, but
6 denies the remaining allegations therein.

7 11. As to Paragraph 83 Camco admits that the Mezzanine Deeds of Trust
8 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

9 12. As to Paragraph 84 Camco admits that the Mezzanine Deeds of Trust
10 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

11 13. As to Paragraph 87 Camco admits that there is an actual controversy as to the
12 overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

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

20 **AFFIRMATIVE DEFENSES**

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

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

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

27 4. Camco is not negligent with respect to the transactions which are the subject of
28

1 the Complaint, and is and was not in breach of contract.

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

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

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

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

12 9. The claim for breach of contract is barred as a result of the failure to satisfy
13 conditions precedent.

14 10. Plaintiff has failed to mitigate its damages.

15 11. Plaintiff's claims are barred from recovery by the doctrine of unclean hands.

16 12. Plaintiff's claims are barred from recovery by the doctrine of laches, waiver, and
17 estoppel.

18 13. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
19 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

20 14. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
21 now complains.

22 15. Plaintiff has failed to name parties that are necessary and/or indispensable to this
23 action.

24 16. Defendant Fidelity is informed and believes that it is entitled to assert all of the
25 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses
26 raised, or that could have been raised, by Fidelity's principal.

27 17. Fidelity alleges that its liability, if any exists, which is expressly denied, is
28

1 limited to the penal sum of the applicable Contractor's License Bond.

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

4 19. The liability of Fidelity if any, is limited to its obligations as set forth in its surety
5 bond agreement.

6 20. The liability of Fidelity if any, is limited to the statutory liability as set forth in
7 NRS 624.273.

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

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

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

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

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

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

27 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

28 1. That Plaintiff take nothing by way of its Complaint;

1 2. For an award of reasonable attorneys' fees and costs for having to defend this
2 action; and

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

4 **COUNTERCLAIM**

5 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter
6 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,
7 Morris & Brown complains as follows:

8 **JURISDICTIONAL ALLEGATIONS**

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

12 2. Counterdefendant ACCURACY GLASS & MIRROR COMPANY, INC., a
13 Nevada corporation (hereinafter referred to as "Accuracy") is and was at all times relevant to
14 this action, a corporation conducting business in Clark County, Nevada.

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

21 **FIRST CAUSE OF ACTION**

22 **(Breach of Contract)**

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

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

1 "Project").

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

5 7. Section 3.4 of the Subcontract Agreement states: "Any payments to
6 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from
7 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become
8 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner."

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

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

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

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

20 12. Camco is entitled to all of its attorneys' fees and costs pursuant to the terms
21 and conditions of the Ratification Agreement.

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

25 **SECOND CAUSE OF ACTION**

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

27 14. Camco repeats and realleges each and every allegation contained in the
28 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by

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

1 reference and further allege:

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

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

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

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

11 WHEREFORE, Counterclaimant Camco prays as follows:

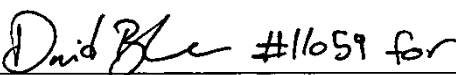
12 1. This Court enter judgment against Counterdefendants, and each of them, in an
13 amount in excess of \$10,000.00, plus interest at the contract rate;

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

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

17 DATED this 11th day of September 2009.

18 WOODBURY, MORRIS & BROWN

19  #11059 for

20 STEVEN L. MORRIS, ESQ.

21 Nevada Bar No. 7454

22 701 N. Green Valley Pkwy., Suite 110

23 Henderson, NV 89074-6178

24 Attorneys for Camco and Fidelity

25

26

27

28

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

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of September 2009, I served a copy of the
ANSWER TO ACCURACY GLASS & MIRROR COMPANY, INC.'S COMPLAINT
AND CAMCO PACIFIC CONSTRUCTION INC.'S COUNTERCLAIM by facsimile and
by enclosing a true and correct copy of the same in a sealed envelope upon which first-class
postage was fully prepaid, and addressed to the following:

RICHARD L. PEEL, ESQ
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Fax: 702-990-7273

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

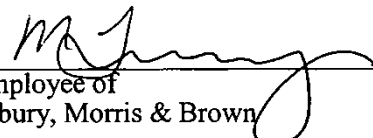

An Employee of
Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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

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

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

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

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

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

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

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

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

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

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

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

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

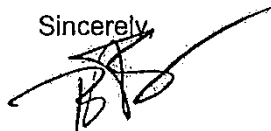
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad JV Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

AA 001518



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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AA 001519

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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

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

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

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

Thanks.

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



Brad J. Scott, CRE
President
brad@scottfinancialcorp.com
15010 Sundown Drive
Bismarck, ND 58503
Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

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4/1/2009

AA 001521

Exhibit "B"

Jennifer Olivares

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



Brad J. Scott, CRE 15010 Sundown Drive
President Bismarck, ND 58503
brad@scottfinancialcorp.com Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

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

4/1/2009

AA 001522

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

1 ANS/CTCM
2 STEVEN L. MORRIS
3 Nevada Bar No. 7454
4 **WOODBURY, MORRIS & BROWN**
5 701 N. Green Valley Parkway, Suite 110
6 Henderson, Nevada 89074
7 (702) 933-0777
8 slmorris@wmb-law.net
9 Attorneys for
10 Camco Pacific Construction Company, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

26 Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO BRUIN PAINTING
CORPORATION'S STATEMENT OF
FACTS CONSTITUTING LIEN, THIRD-
PARTY COMPLAINT, AND CAMCO
PACIFIC CONSTRUCTION INC.'S
COUNTERCLAIM**

09A587168
389434



FILED

SEP 11 5 22 PM '09

Ed [Signature]
CLERK OF THE COURT

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

1 BRUIN PAINTING CORPORATION, a
2 California corporation,

3
4 Plaintiff in Intervention,

5 vs.

6 CAMCO PACIFIC CONSTRUCTION
7 COMPANY, INC., a California corporation;
8 GEMSTONE DEVELOPMENT WEST,
9 INC., Nevada corporation; FIDELITY AND
10 DEPOSIT COMPANY OF MARYLAND;
11 SCOTT FINANCIAL CORPORATION, a
12 North Dakota Corporation; DOES I through
13 X; ROE CORPORATIONS I through X;
14 BOE BONDING COMPANIES I through X;
15 LOE LENDERS I through X, inclusive,

16 Defendants.

17
18 CAMCO PACIFIC CONSTRUCTION
19 COMPANY, INC., a California corporation,

20 Counterclaimant,

21 vs.

22 BRUIN PAINTING CORPORATION, a
23 California corporation; and DOES I through
24 X, inclusive,

25 Counterdefendants,

26
27 Third Party Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

28 (hereinafter "Camco"), by and through its counsel, Steven L. Morris, Esq. of the law firm of
Woodbury, Morris & Brown, hereby answer the Third Party Complaint of BRUIN PAINTING
CORPORATION, (hereinafter "Plaintiff" or "Bruin"), on file herein, and admits, denies, and
alleges as follows:

1. Camco denies each and every allegation contained in Paragraphs 12, 13, 14, 15,
18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 53, 56, 57, 58 and 59 of Plaintiff's
Complaint.

2. Camco is without information or knowledge sufficient to ascertain the truth of
the allegations contained in Paragraphs 7, 32, 34, 35, 36, 37, 38 and 42 of Plaintiff's Complaint,

1 and therefore denies each and every allegation contained therein.

2 3. Camco admits the allegations contained in Paragraphs 1, 2, 3, 4, 6, 41, 61, 62,
3 65, and 66 of Plaintiff's Complaint.

4 4. As to Paragraphs 8, 16, 21, 30, 40, 45, 54, and 60 of Plaintiff's Complaint,
5 Camco repeats and realleges the answers to paragraphs 1 through 67 as though fully set forth
6 herein.

7 5. As to Paragraphs 5, 46, 47, 48, 49, 50, 51, and 52 of Plaintiff's Complaint, it is
8 unnecessary for Camco to respond in light of Bruin's August 3, 2009 Voluntary Dismissal of
9 Claims against Fidelity and Deposit Company of Maryland; nonetheless, Camco denies each
10 and every allegation contained therein.

11 6. As to Paragraph 9 Camco admits that Camco entered into a Subcontract
12 Agreement with Bruin, but as for the remaining allegations therein, Camco admits that the
13 contract speaks for itself.

14 7. As to Paragraph 10 Camco admits that Bruin furnished work for the benefit of
15 and at the specific request of the Owner, but denies the remaining allegations therein.

16 8. As to Paragraph 11 Camco admits that Bruin was to be paid by the Owner for its
17 services, but denies the remaining allegations therein.

18 9. As to Paragraph 17 Camco admits that it acted in good faith, but as for the
19 remaining allegations therein, Camco admits that the contract speaks for itself.

20 10. As to Paragraph 25 Camco admits that Bruin knew or should have known that
21 payment would have been made by Owner, but denies the remaining allegations therein.

22 11. As to Paragraph 43 Camco denies that Bruin's claim against the Property is
23 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
24 the remaining allegations therein and therefore denies the same.

25 12. As to Paragraph 55 Camco admits that the Statute speaks for itself, but denies
26 the remaining allegations therein.

27 13. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust
28 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

14. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

15. As to Paragraph 67 Camco admits that there is an actual controversy as to the overall priority of all the mechanic's liens, but denies the remaining allegations therein.

16. To the extent that any allegations set forth in Plaintiff's Complaint have not been answered, this answering Defendant denies each and every allegation or inference thereof not expressly set forth hereinabove.

17. It has become necessary for this answering Defendant to retain the services of WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result, this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is accordingly entitled to its attorney fees and costs incurred herein.

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

3 9. The claim for breach of contract is barred as a result of the failure to satisfy
4 conditions precedent.

5 10. Plaintiff brought the case at bar without reasonable grounds upon which to base a
6 claim for relief.

7 11. Plaintiff maintained the present action without reasonable grounds upon which to
8 base a claim for relief.

9 12. Plaintiff's claims are not well grounded in fact.

10 13. Plaintiff's claims are not warranted by existing law.

11 14. Plaintiff is barred from recovering by the doctrine of unclean hands.

12 15. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

13 16. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
14 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

15 17. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
16 now complains.

17 18. There is no justiciable case or controversy as between Plaintiff and Camco.

18 19. Plaintiff lacks standing to assert all or part of the causes of action contained in
19 their complaint.

20 20. Camco's performance on any contract was excused by Plaintiff's material breach
21 thereof.

22 21. Plaintiff has failed to mitigate its damages.

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

27 23. Pursuant To NRCP 8, all possible affirmative defenses may not have been
28 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and
inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to

1 amend its Answer to allege additional affirmative defenses if subsequent investigation warrants.

2 WHEREFORE, Third Party Defendant Camco prays as follows:

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

7 **COUNTERCLAIM**

8 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

9 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

10 Morris & Brown complains as follows:

11 **JURISDICTIONAL ALLEGATIONS**

12 1. Camco was and is at all times relevant to this action, a California corporation,

13 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State

14 Contractors Board.

15 2. Counterdefendant BRUIN PAINTING CORPORATION, a California

16 corporation (hereinafter referred to as "Bruin") is and was at all times relevant to this action, a

17 corporation conducting business in Clark County, Nevada.

18 3. The true names and capacities, whether individual, corporate, associate or

19 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.

20 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,

21 Counterclaimant sues Defendants by such fictitious names. Counterclaimant will ask leave to

22 amend this Counterclaim to show the true names and capacities of each such DOE Defendants

23 at such time as the same have been ascertained.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**

26 4. Camco repeats and realleges each and every allegation contained in the

27 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by

28 reference and further alleges:

5. On or about September 8, 2008, Camco and Bruin entered into a Subcontract

1 Agreement (the "Agreement") relative to the Manhattan West Condominiums project, located
2 in Clark County, Nevada (the "Project").

3 6. Section II.A. of the Subcontract Agreement states: "Contractor and
4 Subcontractor expressly acknowledge that all payments due to Subcontractor under this
5 Agreement shall be made by Contractor solely out of funds actually received by Contractor
6 from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein,
7 in the risk that Owner may for at any reason, including, but not limited to, insolvency or an
8 alleged dispute, fail to make one or more payments to Contractor for all or a portion of the
9 Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition
10 precedent to Contractor's obligation to pay Subcontractor; it being understood that
11 Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's
12 portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable
13 to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives
14 the corresponding payment from Owner."

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

18 8. Camco never received payment on behalf of the subcontractors, including
19 Bruin, and was therefore, not responsible nor liable for payment to the subcontractors,
20 including Bruin.

21 9. Bruin agreed and expressly acknowledged that it assumed the risk of non-
22 payment by the Owner.

23 10. Bruin breached its contract with Camco by demanding payment from Camco
24 and by bringing claims against Camco and its License Bond Surety relative to payment for
25 the work allegedly performed by Bruin on the Project.

26 11. Camco is entitled to all of its attorneys' fees and costs pursuant to the terms
27 and conditions of the Agreement.

28 12. Camco has been required to engage the services of the law firm of
WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a

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

reasonable attorneys' fees and costs therefor.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

Steven L. Morris #11059 for

STEVEN L. MORRIS, ESQ.

Nevada Bar No. 7454

701 N. Green Valley Pkwy., Suite 110

Henderson, NV 89074-6178

Attorneys for Camco

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

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
ANSWER TO BRUIN PAINTING CORPORATION'S STATEMENT OF FACT'S
CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and correct
copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and
addressed to the following:

RICHARD L. PEEL, ESQ
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Fax: 702-990-7273

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

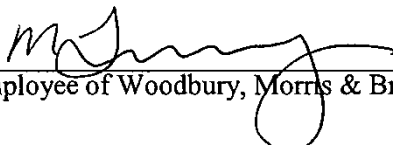

An Employee of Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

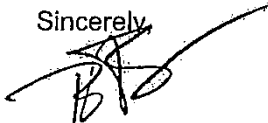
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection, LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', is written over the word 'Sincerely'.

Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

AA 001537



Exhibit A

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

AA 001538

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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


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

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

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

Thanks.

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

| | |
|---|--|
|  | |
| Brad J. Scott, CRE President brad@scottfinancialcorp.com | 15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999 |
| A licensed and bonded corporate finance company. | |

4/1/2009

AA 001540

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Dwyer; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



Brad J. Scott, CRE
President
brad@scottfinancialcorp.com
15010 Sundown Drive
Bismarck, ND 58503
Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

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

4/1/2009

AA 001541

ORIGINAL

37

pd.

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

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

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **ACCURACY GLASS & MIRROR**
15 **COMPANY, INC., a Nevada corporation,**

16 Plaintiff,

17 vs.

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

Defendants.

FILED

SEP 11 4 39 PM '09

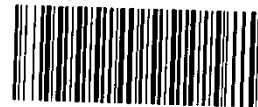
E. J. [Signature]
CLERK OF THE COURT

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO HEINAMAN CONTRACT
GLAZING'S STATEMENT OF FACTS
CONSTITUTING LIEN, THIRD-PARTY
COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM**

09A587168
390054



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

CLERK OF THE COURT
RECEIVED
SEP 11 2009

1 HEINAMAN CONTRACT GLAZING, a
2 California corporation,

3 Plaintiff in Intervention,

4 vs.

5 CAMCO PACIFIC CONSTRUCTION
6 COMPANY, INC., a California corporation;
7 GEMSTONE DEVELOPMENT WEST,
8 INC., Nevada corporation; FIDELITY AND
9 DEPOSIT COMPANY OF MARYLAND;
10 SCOTT FINANCIAL CORPORATION, a
11 North Dakota Corporation; DOES I through
12 X; ROE CORPORATIONS I through X;
13 BOE BONDING COMPANIES I through X;
14 LOE LENDERS I through X, inclusive,

15 Defendants.

16 CAMCO PACIFIC CONSTRUCTION
17 COMPANY, INC., a California corporation;
18 FIDELITY AND DEPOSIT COMPANY OF
19 MARYLAND,

20 Counterclaimant,

21 vs.

22 HEINAMAN CONTRACT GLAZING, a
23 California corporation; and DOES I through
24 X, inclusive,

25 Counterdefendants,

26 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
27 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
28 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
"Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
Woodbury, Morris & Brown, hereby answer the Third Party Complaint of HEINAMAN
CONTRACT GLAZING, (hereinafter "Plaintiff" or "Heinaman"), on file herein, and admit,
deny, and allege as follows:

1. Camco and Fidelity deny each and every allegation contained in Paragraphs 12,

1 13, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 46, 47, 48, 49, 50, 51, 52, 53,
2 56, 57, 58, 59, and 68 of Plaintiff's Complaint.

3 2. Camco and Fidelity are without information or knowledge sufficient to ascertain
4 the truth of the allegations contained in Paragraphs 7, 32, 34, 35, 36, 37, 38, and 42 of
5 Plaintiff's Complaint, and therefore deny each and every allegation contained therein.

6 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6,
7 41, 61, 62, 65, and 66 of Plaintiff's Complaint.

8 4. As to Paragraphs 8, 16, 21, 30, 40, 45, 54, and 60 of Plaintiff's Complaint,
9 Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 68 as though fully
10 set forth herein.

11 5. As to Paragraph 9 Camco and Fidelity admit that Camco entered into a
12 Subcontract Agreement with Heinaman, but as for the remaining allegations therein, Camco
13 admits that the contract speaks for itself.

14 6. As to Paragraph 10 Camco admits that Heinaman furnished work for the benefit
15 of and at the specific request of the Owner, but denies the remaining allegations therein.

16 7. As to Paragraph 11 Camco admits that Heinaman was to be paid by the Owner
17 for its services, but denies the remaining allegations therein.

18 8. As to Paragraph 17 Camco admits that it acted in good faith, but as for the
19 remaining allegations therein, Camco admits that the contract speaks for itself.

20 9. As to Paragraph 25 Camco admits that Heinaman knew or should have known
21 that payment would have been made by Owner, but denies the remaining allegations therein.

22 10. As to Paragraph 43 Camco denies that Heinaman's claim against the Property is
23 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
24 the remaining allegations therein.

25 11. As to Paragraph 55 Camco admits that the Statute speaks for itself, but denies
26 the remaining allegations therein.

27 12. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust
28

1 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

2 13. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust
3 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

4 14. As to Paragraph 67 Camco admits that there is an actual controversy as to the
5 overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

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

13 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

26 6. The liability, if any, of Camco must be reduced by the percentage of fault of
27 others, including the Plaintiff.
28

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

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

5 9. The claim for breach of contract is barred as a result of the failure to satisfy
6 conditions precedent.

7 10. Plaintiff has failed to mitigate its damages.

8 11. Plaintiff's claims are barred from recovery by the doctrine of unclean hands.

9 12. Plaintiff's claims are barred by the doctrine of laches and estoppel

10 13. To the extent that the Plaintiff's work was substandard, not workmanlike,
11 defective, incomplete, or untimely, Plaintiff is not entitled to recover for said work.

12 14. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
13 now complains.

14 15. Plaintiff has failed to name parties that are necessary and/or indispensable to this
15 action.

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

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

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

23 19. The liability of Fidelity if any, is limited to its obligations as set forth in its surety
24 bond agreement.

25 20. The liability of Fidelity if any, is limited to the statutory liability as set forth in
26 NRS 624.273.

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

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

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

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

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

13 26. Pursuant To NRCP 8, all possible affirmative defenses may not have been
14 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and
15 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to
16 amend their Answer to allege additional affirmative defenses if subsequent investigation
17 warrants.

18 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

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

23 **COUNTERCLAIM**

24 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter
25 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,
26 Morris & Brown complains as follows:

27 **JURISDICTIONAL ALLEGATIONS**

- 28 1. Camco was and is at all times relevant to this action, a California corporation,

1 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State
2 Contractor's Board.

3 2. Counterdefendant HEINAMAN CONTRACT GLAZING, a California
4 corporation (hereinafter referred to as "Heinaman") is and was at all times relevant to this
5 action, a corporation conducting business in Clark County, Nevada.

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

12 **FIRST CAUSE OF ACTION**

13 **(Breach of Contract)**

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

17 5. On or about September 8, 2008, Camco and Heinaman entered into a
18 Subcontract Agreement (the "Agreement") relative to the Manhattan West Condominiums
19 project, located in Clark County, Nevada (the "Project").

20 6. Section II.A. of the Subcontract Agreement states: "Contractor and
21 Subcontractor expressly acknowledge that all payments due to Subcontractor under this
22 Agreement shall be made by Contractor solely out of funds actually received by Contractor from
23 Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein, in the risk
24 that Owner may for at any reason, including, but not limited to, insolvency or an alleged
25 dispute, fail to make one or more payments to Contractor for all or a portion of the Contract
26 Work. Contractor's receipt of the corresponding payment from Owner is a condition precedent
27 to Contractor's obligation to pay Subcontractor; it being understood that Subcontractor is solely
28 responsible for evaluating Owner's ability to pay for Subcontractor's portion of the Contract

1 Work, and Subcontractor acknowledges that Contractor is not liable to Subcontractor for
2 payment of Subcontractor's invoice unless and until Contractor receives the corresponding
3 payment from Owner."

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

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

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

12 10. Heinaman breached its contract with Camco by demanding payment from
13 Camco and by bringing claims against Camco and its License Bond Surety relative to payment
14 for the work allegedly performed by Heinaman on the Project.

15 11. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and
16 conditions of the Agreement.

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

20 **SECOND CAUSE OF ACTION**

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

22 13. Camco repeats and realleges each and every allegation contained in the
23 preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by
24 reference and further allege:

25 14. The law imposes upon Heinaman, by virtue of the contract, a covenant to act in
26 good faith and deal fairly with Counterclaimant;

27 15. Despite this covenant, Heinaman's intentional failure to abide by the terms of the
28 parties written contract, Heinaman breached its covenant to act in good faith and deal fairly;

1 16. As a result of its breach of the covenant of good faith and fair dealing, Heinaman
2 has injured Camco in an amount in excess of \$10,000.00.

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

6 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

12 DATED this 11th day of September 2009.

13 | WOODBURY, MORRIS & BROWN

14
15 Paul Blue #11059 for
16 STEVEN L. MORRIS, ESQ.
17 Nevada Bar No. 7454
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Camco and Fidelity

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

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
**ANSWER TO HEINAMAN CONTRACT GLAZING'S STATEMENT OF FACT'S
CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM** by facsimile and by enclosing a true and correct
copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and
addressed to the following:

RICHARD L. PEEL, ESQ
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Fax: 702-990-7273

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

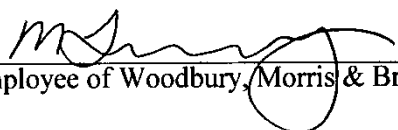

An Employee of Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

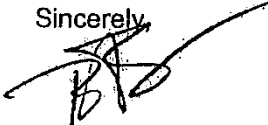
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

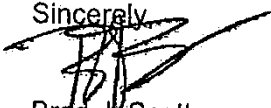
Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NOS~~ (voucher control) by November 13, 2008.

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

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

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

Sincerely,


Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299

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AA 001557



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299

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AA 001558

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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


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

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

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

Thanks.

Brad J. Scott
Scott Financial Corporation
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Bismarck, ND 58503
W: 701.255.2215
M: 701.220.3999
F: 701.223.7299
brad@scottfinancialcorp.com

| | |
|---|--|
|  | |
| Brad J. Scott, CRE President brad@scottfinancialcorp.com | 15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999 |
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4/1/2009

AA 001560

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Olivares; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
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Cell: 701.220.3999

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

4/1/2009

AA 001561

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

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

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

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **ACCURACY GLASS & MIRROR**
15 **COMPANY, INC.,** a Nevada corporation,

16 Plaintiff,

17 vs.

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

Defendants.

FILED

SEP 11 5 21 PM '09

Ed. [Signature]
CLERK OF THE COURT

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO WRG DESIGN, INC.'S
STATEMENT OF FACTS
CONSTITUTING LIEN, THIRD-PARTY
COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION INC.'S
COUNTERCLAIM**

09A587168
389442



1 WRG DESIGN, INC., a Delaware
2 corporation,

3 Plaintiff in Intervention,

4 vs.

5 ASPHALT PRODUCTS CORP., a Nevada
6 corporation; APCO CONSTRUCTION, a
7 Nevada corporation; CAMCO PACIFIC
8 CONSTRUCTION COMPANY, INC., a
9 California corporation; GEMSTONE
10 DEVELOPMENT WEST, INC., Nevada
11 corporation; FIDELITY AND DEPOSIT
12 COMPANY OF MARYLAND; SCOTT
13 FINANCIAL CORPORATION, a North
14 Dakota Corporation; DOES I through X;
15 ROE CORPORATIONS I through X; BOE
16 BONDING COMPANIES I through X; LOE
17 LENDERS I through X, inclusive,

18 Defendants.

19 CAMCO PACIFIC CONSTRUCTION
20 COMPANY, INC., a California corporation;
21 FIDELITY AND DEPOSIT COMPANY OF
22 MARYLAND,

23 Counterclaimant,

24 vs.

25 WRG DESIGN, INC., a Delaware
26 corporation; and DOES I through X,
27 inclusive,

28 Counterdefendants,

21
22 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
23 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
24 (hereinafter "Fidelity")(Camco and Fidelity are sometimes collectively referred to herein as
25 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
26 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of WRG DESIGN,
27 INC., a Delaware corporation (hereinafter "Plaintiff"), on file herein, and admit, deny and allege
28 as follows:

1 1. Camco and Fidelity deny each and every allegation contained in Paragraphs 29,
2 30, 31, 32, 45, 46, 47, 50, 51, 53, 54, 55, 56, 58, 60, 66, 71, 73, 74, 75, 76, 77, 78, 79, 80, and
3 89 of Plaintiff's Complaint.

4 2. Camco and Fidelity are without information or knowledge sufficient to ascertain
5 the truth of the allegations contained in Paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20,
6 21, 22, 23, 24, 34, 35, 36, 37, 39, 40, 41, 42, 46, 61, 62, 63, 64, 65, and 69 of Plaintiff's
7 Complaint, and therefore deny each and every allegation contained therein.

8 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 6, 7,
9 68, 82, 83, 86, and 87 of Plaintiff's Complaint.

10 4. As to Paragraphs 9, 17, 25, 33, 38, 43, 48, 57, 67, 72, and 81 of Plaintiff's
11 Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 89 as
12 though fully set forth herein.

13 5. As to Paragraph 26 Camco and Fidelity admit that Camco entered into a
14 Ratification and Amendment of Subcontract Agreement with WRG, but as for the remaining
15 allegations therein, Camco admits that the contract speaks for itself.

16 6. As to Paragraph 27 Camco admits that WRG furnished work for the benefit of
17 and at the specific request of the Owner, but denies the remaining allegations therein.

18 7. As to Paragraph 28 Camco admits that WRG was to be paid by the Owner for its
19 services, but denies the remaining allegations therein.

20 8. As to Paragraph 44 Camco admits that it acted in good faith, but as for the
21 remaining allegations therein, Camco admits that the contract speaks for itself.

22 9. As to Paragraph 49 Camco admits that WRG furnished services for the benefit of
23 and at the specific instance of the Owner, but denies the remaining allegations therein.

24 10. As to Paragraph 52 Camco admits that WRG knew or should have known that
25 payment would have been made by Owner, but denies the remaining allegations therein.

26 11. As to Paragraph 57 Camco denies that WRG's claim against the Property is
27 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
28

1 the remaining allegations therein.

2 12. As to Paragraph 84 Camco admits that the Mezzanine Deeds of Trust
3 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

4 13. As to Paragraph 85 Camco admits that the Mezzanine Deeds of Trust
5 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

6 14. As to Paragraph 88 Camco admits that there is an actual controversy as to the
7 overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

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

15 **AFFIRMATIVE DEFENSES**

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

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

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

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

24 5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff
25 had full and complete knowledge and information in regard to the conditions and circumstances
26 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,
27 assume the risk attendant to any condition there or then present.
28

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

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

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

7 9. The claim for breach of contract is barred as a result of the failure to satisfy
8 conditions precedent.

9 10. Plaintiff has failed to mitigate its damages.

10 11. Plaintiff's claims are barred from recovery by the doctrine of unclean hands.

11 12. Plaintiff's claims are barred from recovery by the doctrine of laches, waiver, and
12 estoppel.

13 13. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
14 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

15 14. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
16 now complains.

17 15. Plaintiff has failed to name parties that are necessary and/or indispensable to this
18 action.

19 16. Defendant Fidelity is informed and believes that it is entitled to assert all of the
20 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses
21 raised, or that could have been raised, by Fidelity's principal.

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

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

26 19. The liability of Fidelity if any, is limited to its obligations as set forth in its surety
27 bond agreement.

28 20. The liability of Fidelity if any, is limited to the statutory liability as set forth in

1 NRS 624.273.

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

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

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

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

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

16 26. Pursuant To NRCP 8, all possible affirmative defenses may not have been
17 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and
18 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to
19 amend their Answer to allege additional affirmative defenses if subsequent investigation
20 warrants.

21 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

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

26 **COUNTERCLAIM**

27 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter
28 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

1 Morris & Brown complains as follows:

2 **JURISDICTIONAL ALLEGATIONS**

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

6 2. Counterdefendant WRG DESIGN, INC., a Delaware corporation (hereinafter
7 referred to as "WRG") is and was at all times relevant to this action, a corporation conducting
8 business in Clark County, Nevada.

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

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

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

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

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

26 7. Section 3.4 of the Subcontract Agreement states: "Any payments to
27 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from
28 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become

1 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.”

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

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

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

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

12 12. Camco is entitled to all of its attorneys’ fees and costs pursuant to the terms and
13 conditions of the Ratification Agreement.

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

17 **SECOND CAUSE OF ACTION**

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

19 14. Camco repeats and realleges each and every allegation contained in the
20 preceding paragraphs of Counterclaimant’s Counterclaim, incorporate the same at this point by
21 reference and further allege:

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

24 16. Despite this covenant, WRG’s intentional failure to abide by the terms of the
25 parties written contract, WRG breached its covenant to act in good faith and deal fairly;

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

28 18. Camco has been required to engage the services of the law firm of

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

1 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a
2 reasonable attorneys' fees and costs therefor.

3 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

9 DATED this 11th day of September 2009.

10 WOODBURY, MORRIS & BROWN

11
12 David Blake #11059 for
13 STEVEN L. MORRIS, ESQ.
14 Nevada Bar No. 7454
15 701 N. Green Valley Pkwy., Suite 110
16 Henderson, NV 89074-6178
17 Attorneys for Camco and Fidelity
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WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
ANSWER TO WRG DESIGN, INC.'S STATEMENT OF FACTS CONSTITUTING
LIEN, THIRD PARTY COMPLAINT AND CAMCO PACIFIC CONSTRUCTION'S
COUNTERCLAIM by facsimile and by enclosing a true and correct copy of the same in a
sealed envelope upon which first-class postage was fully prepaid, and addressed to the
following:

RICHARD L. PEEL, ESQ
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Fax: 702-990-7273

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

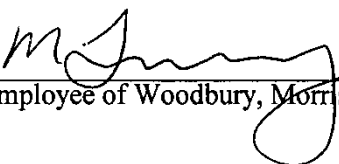

An Employee of Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

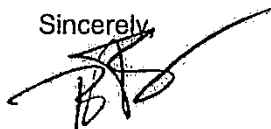
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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AA 001577



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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AA 001578

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

I anticipate this final decision will however likely lead to ~~the further draws being approved~~.

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


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

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

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

Thanks.

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

| | |
|---|--|
|  | |
| Brad J. Scott, CRE President brad@scottfinancialcorp.com | 15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999 |
| A licensed and bonded corporate finance company. | |

4/1/2009

AA 001580

Exhibit B

Jennifer Olivares

From: Brad J. Scott [mailto:brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Dwyer; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dperry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
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15010 Sundown Drive
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M: 701.220.3999
F: 701.223.7299
brad@scottfinancialcorp.com



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Fax: 701.223.7299
Cell: 701.220.3999

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

4/1/2009

AA 001581

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

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

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

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

09A587168
421201



FILED
SEP 25 2009
Alvin L. Johnson
CLERK OF COURT

14 APCO CONSTRUCTION, a Nevada
15 corporation

16 Plaintiff,

17 vs.

18 GEMSTONE DEVELOPMENT WEST,
19 INC.; and DOES I through X,

20 Defendants.

Case No: A571228
Dept. No: XXV

Consolidated with:

| | |
|----------------|---------|
| A574391 | A580889 |
| A574792 | A584730 |
| A577623 | A589195 |
| A583289 | A595552 |
| <u>A587168</u> | A597089 |

**ANSWER TO NEVADA PREFAB
ENGINEERS, INC.'S SECOND
AMENDED STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION**

21 STEEL STRUCTURES, INC., a Nevada
22 corporation; NEVADA PREFAB
23 ENGINEERS, INC., a Nevada Corporation.

24 Plaintiff/Intervenor,

25 vs.

26 GEMSTONE DEVELOPMENT WEST,
27 INC., APCO CONSTRUCTION, CAMCO
28 PACIFIC CONSTRUCTION, FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND, and DOES I through X,

Defendants.

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

3 Counterclaimant,

4 vs.

5 NEVADA PREFAB ENGINEERS, INC., a
6 Nevada corporation, DOES I through X,
inclusive,

7 Counterdefendant,
8

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

16 1. Camco and Fidelity are without information or knowledge sufficient to ascertain
17 the truth of the allegations contained in Paragraphs 7, 9, 10, 15, 18, 21, 41, 42, and 45 of
18 Plaintiff's Complaint, and therefore deny each and every allegation contained therein.

19 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5,
20 and 8 of Plaintiff's Complaint.

21 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 6,
22 12, 13, 16, 17, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 37, 38, 39, 43, 46, 47, and 48 of
23 Plaintiff's Complaint.

24 4. As to Paragraphs 14, 24, 31, 35, 40, and 44 of Plaintiff's Complaint, Camco and
25 Fidelity repeat and reallege the answers to paragraphs 1 through 48 as though fully set forth
26 herein.

27 5. As to Paragraph 11, Camco and Fidelity admit that Apco eventually ceased work
28 on the project, and that Camco was retained as the general contractor for the project, ratifying

1 the Apco-Nevada Prefab contract, but deny each and every other allegation contained therein.

2 6. As to Paragraph 36, Camco and Fidelity admit that implied in every Nevada
3 contract is a covenant of good faith and fair dealing, but deny each and every other allegation
4 contained therein.

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

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

12 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

27 7. The claims, and each of them, are barred by the failure of the Plaintiff to plead
28

1 those claims with particularity.

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

4 9. The claim for breach of contract is barred as a result of the failure to satisfy
5 conditions precedent.

6 10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

26 19. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond
27 because no judgment or court decree has been entered against its principal.
28

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

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

10 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

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

15 COUNTERCLAIM

16 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter
17 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,
18 Morris & Brown complains as follows:

19 JURISDICTIONAL ALLEGATIONS

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

23 2. Counterdefendant NEVADA PREFAB ENGINEERS, INC., a Nevada
24 corporation (hereinafter referred to as "Nevada Prefab") is and was at all times relevant to this
25 action, a corporation conducting business in Clark County, Nevada.

26 3. The true names and capacities, whether individual, corporate, associate or
27 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.
28 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,

1 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to
2 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
3 at such time as the same have been ascertained.
4

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract)**

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

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

14 6. On or about September 4, 2008, Camco and Nevada Prefab entered into a
15 Ratification and Amendment of Subcontract Agreement ("Ratification Agreement") wherein
16 Camco and Nevada Prefab acknowledged, ratified, and agreed to the terms of the Subcontract
17 Agreement.

18 7. Section 3.4 of the Subcontract Agreement states: "Any payments to
19 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from
20 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become
21 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner."

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

25 9. Camco never received payment on behalf of the subcontractors, including
26 Nevada Prefab, and was therefore not responsible nor liable for payment to the
27 subcontractors, including Nevada Prefab.

28 10. Nevada Prefab agreed and expressly acknowledged that it assumed the risk of

1 non-payment by the Owner.

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

5 12. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and
6 conditions of the Ratification Agreement.

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

10 **SECOND CAUSE OF ACTION**

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

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

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

17 16. Despite this covenant, Nevada Prefab's intentional failure to abide by the terms
18 of the parties written contract, Nevada Prefab breached its covenant to act in good faith and deal
19 fairly;

20 17. As a result of its breach of the covenant of good faith and fair dealing, Nevada
21 Prefab has injured Camco in an amount in excess of \$10,000.00.

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

25 WHEREFORE, Counterclaimant Camco prays as follows:

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

28 2. For an award of reasonable attorneys' fees and costs for having to prosecute this

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

1 action; and

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

3 DATED this 24th day of September 2009.

4 WOODBURY, MORRIS & BROWN

5 

6 STEVEN L. MORRIS, ESQ.

7 Nevada Bar No. 7454

8 701 N. Green Valley Pkwy., Suite 110

9 Henderson, NV 89074-6178

10 Attorneys for Camco and Fidelity

11 **CERTIFICATE OF MAILING**

12 I hereby certify that on the 25th day of September 2009, I served a copy of the

13 **ANSWER TO NEVADA PREFAB ENGINEERS, INC.'S SECOND AMENDED**

14 **STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN**

15 **INTERVENTION** by facsimile and by enclosing a true and correct copy of the same in a

16 sealed envelope upon which first-class postage was fully prepaid, and addressed to the
17 following:

18 Martin A. Little, Esq.

19 Christopher D. Craft, Esq.

20 JOLLEY URGAS WIRTH WOODBURY & STANDISH

21 3800 Howard Hughes Parkway 16th Floor

22 Las Vegas, Nevada 89169

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

25 

26 An Employee of Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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


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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit A



December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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AA 001596

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

I anticipate this final decision will however likely lead to ~~the October Draw being approved~~

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


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

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

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

Thanks.

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

| | |
|---|--|
|  | |
| Brad J. Scott, CRE President brad@scottfinancialcorp.com | 15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999 |
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4/1/2009

AA 001598

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Dwyer; Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
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F: 701.223.7299
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Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

AA 001599

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

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

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

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

16 **Plaintiff,**

17 **vs.**

18 **GEMSTONE DEVELOPMENT WEST,**
19 **INC.; and DOES I through X,**

20 **Defendants.**

21 **STEEL STRUCTURES, INC., a Nevada**
22 **corporation; NEVADA PREFAB**
23 **ENGINEERS, INC., a Nevada Corporation.**

24 **Plaintiff/Intervenor,**

25 **vs.**

26 **GEMSTONE DEVELOPMENT WEST,**
27 **INC., APCO CONSTRUCTION, CAMCO**
28 **PACIFIC CONSTRUCTION, FIDELITY**
AND DEPOSIT COMPANY OF
MARYLAND, and DOES I through X,

Defendants.

Case No: A571228
Dept. No: XXV

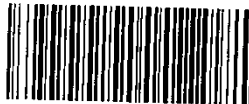
Consolidated with:

| | |
|---------|---------|
| A574391 | A580889 |
| A574792 | A584730 |
| A577623 | A589195 |
| A583289 | A595552 |
| A587168 | A597089 |

ANSWER TO STEEL STRUCTURES,
INC.'S SECOND AMENDED
STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION

FILED
SEP 25 2009
Clerk of Court

09A587168
421175



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

3 Counterclaimant,

4 vs.

5 STEEL STRUCTURES, INC., a Nevada
6 corporation, and DOES I through X,
inclusive,

7 Counterdefendant,
8

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

16 1. Camco and Fidelity are without information or knowledge sufficient to ascertain
17 the truth of the allegations contained in Paragraphs 7, 9, 10, 18, 21, 41, 42, and 45 of Plaintiff's
18 Complaint, and therefore deny each and every allegation contained therein.

19 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5,
20 and 8 of Plaintiff's Complaint.

21 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 6,
22 12, 13, 15, 16, 17, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 37, 38, 39, 43, 46, 47, and
23 48 of Plaintiff's Complaint.

24 4. As to Paragraphs 14, 24, 31, 35, 40, and 44 of Plaintiff's Complaint, Camco and
25 Fidelity repeat and reallege the answers to paragraphs 1 through 48 as though fully set forth
26 herein.

27 5. As to Paragraph 11, Camco and Fidelity admit that Apco eventually ceased work
28 on the project, and that Camco was retained as the general contractor for the project, ratifying

1 the Apco-Nevada Prefab contract, but deny each and every other allegation contained therein.
2 Camco further denies that there was any contract or contractual agreement whatsoever between
3 Camco and Plaintiff Steel Structures, Inc.

4 6. As to Paragraph 36, Camco and Fidelity admit that implied in every Nevada
5 contract is a covenant of good faith and fair dealing, but deny that a contract existed between
6 Camco and Plaintiff, and further deny each and every other allegation contained therein.

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

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

14 **AFFIRMATIVE DEFENSES**

15 1. The Complaint on file herein fails to state a claim against Camco upon which
16 relief can be granted.

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

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

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

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

27 6. The liability, if any, of Camco must be reduced by the percentage of fault of
28

1 others, including the Plaintiff.

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

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

6 9. The claim for breach of contract is barred as a result of the failure to satisfy
7 conditions precedent.

8 10. The claims for breach of contract and breach of implied covenant of good faith
9 and fair dealing are barred by the statute of frauds.

10 11. Plaintiff brought the case at bar without reasonable grounds upon which to base a
11 claim for relief.

12 12. Plaintiff maintained the present action without reasonable grounds upon which to
13 base a claim for relief.

14 13. Plaintiff's claims are not well grounded in fact.

15 14. Plaintiff's claims are not warranted by existing law.

16 15. Plaintiff is barred from recovering by the doctrine of unclean hands.

17 16. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

18 17. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
19 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

20 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
21 now complains.

22 19. There is no justiciable case or controversy as between Plaintiff and Camco.

23 20. Plaintiff lacks standing to assert all or part of the causes of action contained in
24 their complaint.

25 21. Camco's performance on any contract was excused by Plaintiff's material breach
26 thereof.

27 22. Plaintiff has failed to mitigate its damages.
28

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

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

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

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

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

2. Counterdefendant STEEL STRUCTURES, INC., a Nevada corporation (hereinafter referred to as “Steel Structures”) is and was at all times relevant to this action, a corporation conducting business in Clark County, Nevada.

3. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.

1 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
2 Counterclaimant sues Defendants by such fictitious names. Counterclaimant will ask leave to
3 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
4 at such time as the same have been ascertained.

5 **FIRST CAUSE OF ACTION**

6 **(Abuse of Process)**

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

10 5. Camco was a general contractor for the Manhattan West Condominiums
11 project, located in Clark County, Nevada (the "Property," and/or "Project").

12 6. GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone") was the owner of
13 the Project.

14 7. Camco did not request proposals from any subcontractor on the Project and
15 Camco did not negotiate or enter into a contract with Steel Structures.

16 8. Steel Structures was selected by Gemstone and furnished its respective work and
17 materials at Gemstone's direction and request.

18 9. No payments for the work and materials furnished to the Project came through
19 Camco.

20 10. There was no contract between Steel Structures and Camco with regard to the
21 Project.

22 11. The only viable claims Steel Structures has, if any, are against Gemstone and/or
23 the Property.

24 12. Lacking a basis for relief against Camco, Steel Structures has an ulterior purpose,
25 other than resolving a legal dispute, in bringing this lawsuit against Camco.

26 13. Steel Structures has engaged in a willful act in the use of the legal process not
27 proper in the regular conduct of the proceeding.

28 14. Camco has been required to engage the services of the law firm of

1 WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a
2 reasonable attorneys' fees and costs therefor.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Contract - In the Alternative)**

5 15. Camco repeats and realleges each and every allegation contained in the
6 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
7 reference and further alleges:

8 16. Apco Construction ("Apco") was initially the general contractor for the Project.

9 17. Steel Structures and Apco entered into a Subcontract Agreement (the
10 "Agreement") relative to the Project.

11 18. Section 3.4 of the Agreement states: "Any payments to Subcontractor shall be
12 conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor
13 herein agrees to assume the same risk that the Owner may become insolvent that Contractor
14 has assumed by entering into the Prime Contract with the Owner."

15 19. If any contract existed at all between Camco and Steel Structures, it was an
16 implied contract based on the terms of the Agreement.

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

20 21. Camco never received payment on behalf of the subcontractors, including Steel
21 Structures, and was therefore, not responsible nor liable for payment to the subcontractors,
22 including Steel Structures.

23 22. Steel Structures agreed and expressly acknowledged that it assumed the risk of
24 non-payment by the Owner.

25 23. Steel Structures breached its contract with Camco by demanding payment from
26 Camco and by bringing claims against Camco and its License Bond Surety relative to payment
27 for the work allegedly performed by Steel Structures on the Project.

28 24. Camco is entitled to all of its attorneys' fees and costs pursuant to the terms and

1 conditions of the Ratification Agreement.

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

5 **THIRD CAUSE OF ACTION**

6 **(Breach of Covenant of Good Faith and Fair Dealing - In the Alternative)**

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

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

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

15 29. As a result of its breach of the covenant of good faith and fair dealing, Steel
16 Structures has injured Camco in an amount in excess of \$10,000.00.

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

20 **FOURTH CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 31. Camco repeats and realleges each and every allegation contained in the
23 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
24 reference and further alleges:

25 32. Pursuant to Nevada Revised Statutes ("NRS") Chapter 30, the Uniform
26 Declaratory Judgment Act, and more particularly, NRS 30.030 and NRS 30.040, Camco asks
27 this Court to utilize its power to interpret the Agreement and declare the respective rights and
28 obligations of the parties, if any, under the Agreement, including, without limitation, the

complete or partial validity or invalidity of the Agreement, the terms and conditions, if any, under which Steel Structures would be entitled to a commission thereunder, the duration or term of the Agreement, and the extent to which the Agreement is unconscionable and/or unenforceable.

33. It has become necessary for Camco to retain the services of the law firm of Woodbury, Morris & Brown to defend against the Complaint and to bring counterclaims against Steel Structures, and Camco is therefore entitled to an award of attorneys' fees and costs incurred herein.

FIFTH CAUSE OF ACTION

(Attorneys' Fees)

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

35. NRS 30.120 provides that "in any proceeding under NRS 30.010 to 30.160, inclusive, the Court may make such award of costs as may seem equitable and just."

36. In this case, pursuant to NRS Chapter 30, the Uniform Declaratory Judgment Act, and more particularly, NRS 30.030 and NRS 30.040, Camco has requested that this Court declare the rights, status and relationships between the parties under the Agreement. Camco has been forced to retain the services of an attorney and has incurred costs in seeking such declaratory relief from this Court.

37. Therefore, Camco asks this Court, pursuant to NRS 30.120, to award Camco the attorneys' fees and costs that it incurs in the defense and prosecution of this litigation.

38. It has become necessary for Camco to retain the services of the law firm of Woodbury, Morris & Brown to defend against the Complaint and to bring counterclaims against Steel Structures, and Camco is therefore entitled to an award of attorneys' fees and costs incurred herein.

WHEREFORE, Counterclaimant Camco prays as follows:

1. For this Court to enter judgment against Counterdefendant in an amount in

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


1 excess of \$10,000.00, plus interest at the contract rate;

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

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

5 DATED this 24th day of September 2009.

6 WOODBURY, MORRIS & BROWN

7 
8 STEVEN L. MORRIS, ESQ.
9 Nevada Bar No. 7454
10 701 N. Green Valley Pkwy., Suite 110
11 Henderson, NV 89074-6178
12 Attorneys for Camco

13 **CERTIFICATE OF MAILING**

14 I hereby certify that on the 25th day of September 2009, I served a copy of the
15 **ANSWER TO STEEL STRUCTURES, INC.'S SECOND AMENDED STATEMENT OF**
16 **FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION** by facsimile
17 and by enclosing a true and correct copy of the same in a sealed envelope upon which first-class
18 postage was fully prepaid, and addressed to the following:

19 Martin A. Little, Esq.
20 Christopher D. Craft, Esq.
21 JOLLEY URGAS WIRTH WOODBURY & STANDISH
22 3800 Howard Hughes Parkway 16th Floor
23 Las Vegas, Nevada 89169

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

26 
27 An Employee of Woodbury, Morris & Brown
28

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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Office: 701.255.2215 • Fax: 701.223.7299

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

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

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

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

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

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

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

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

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

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

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

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

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

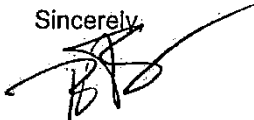
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit "A"



November 4, 2008

Mr. Mike Evans
E&E Fire Protection LLC
6380 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit "A"



December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299

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AA 001616

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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

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

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

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

Thanks.

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

| | |
|--|--|
|  | |
| Brad J. Scott, CRE President brad@scottfinancialcorp.com | 15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999 |
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4/1/2009

Exhibit B

Jennifer Olivares

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



| | |
|-----------------------------|----------------------|
| Brad J. Scott, CRE | 15010 Sundown Drive |
| President | Bismarck, ND 58503 |
| brad@scottfinancialcorp.com | Office: 701.255.2215 |
| | Fax: 701.223.7299 |
| | Cell: 701.220.3999 |

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

4/1/2009

AA 001619

ORIGINAL

FILED
SEP 30 2009

CLERK OF COURT

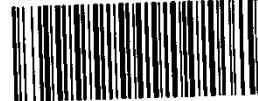
1 ANS/CTCM
2 STEVEN L. MORRIS
3 Nevada Bar No. 7454
4 **WOODBURY, MORRIS & BROWN**
5 701 N. Green Valley Parkway, Suite 110
6 Henderson, Nevada 89074
7 (702) 933-0777
8 slmorris@wmb-law.net

9 Attorneys for
10 Camco Pacific Construction Company, Inc.

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

08A571228
436252



13 EXECUTIVE PLASTERING, INC., a
14 Nevada corporation

15 Plaintiff,

16 vs.

17 CAMCO PACIFIC CONSTRUCTION
18 COMPANY, INC., a California corporation;
19 GEMSTONE DEVELOPMENT WEST,
20 Inc., a Nevada Corporation; DOE
21 INDIVIDUALS I through X, inclusive; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

25 CAMCO PACIFIC CONSTRUCTION
26 COMPANY, INC,

27 Counterclaimant,

28 vs.

EXECUTIVE PLASTERING, INC., and
DOES I through X,

Counterdefendants.

Case No: A580889
Dept. No: XXV

Consolidated with:
A571228

**ANSWER TO FIRST AMENDED
COMPLAINT AND COUNTERCLAIM**

Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

"Camco"), by and through its counsel, Steven L. Morris, Esq. of the law firm of Woodbury,

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

FILED
SEP 30 2009
CLERK OF COURT

1 Morris & Brown, hereby answers the First Amended Complaint of EXECUTIVE
2 PLASTERING, INC. (hereinafter "Plaintiff"), on file herein, and admits, denies and alleges as
3 follows:

4 1. Camco is without information or knowledge sufficient to ascertain the truth of
5 the allegations contained in Paragraphs 4, 5, 9, 26, and 30 of Plaintiff's Complaint, and
6 therefore denies each and every allegation contained therein.

7 2. Answering Paragraphs 1, 2, 3, 6, 7, 8, 10, 15, 27, 32, 33, 34, 35, 55, 56, 58, 59,
8 60, 69, 70, 72, and 76 of Plaintiff's Complaint, Camco admits the allegations contained therein.

9 3. Answering Paragraphs 11, 12, 13, 14, 16, 17, 18, 19, 20, and 21 of Plaintiff's
10 Complaint, Camco admits that the Subcontract/Ratification Agreement speaks for itself, as to
11 the remaining allegations set forth therein, Camco denies the same.

12 4. Answering Paragraph 28 of Plaintiff's Complaint, Camco admits that as a result
13 of Gemstone's inability to pay the Subcontractors that Camco terminated its agreements with
14 said Subcontractors. Camco further admits that Plaintiff expressly agreed to assume the risk of
15 non-payment from Gemstone. As to the remaining allegations set forth therein Camco denies
16 the same.

17 5. Answering Paragraph 43 of Plaintiff's Complaint, Camco admits that Camco had
18 a duty to act in good faith and fair dealing in executing its obligations under the contract at issue
19 in this litigation and further admits that it did so act.

20 6. Camco denies each and every allegation contained in Paragraphs 22, 23, 24, 25,
21 29, 30b (labelled '17' in error), 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 49, 50, 51, 52, 53, 57, 61,
22 63, 64, 65, 66, 67, 71, 73, 74, 77, 78, 79, 79b (labelled '17' in error), and 80 of Plaintiff's
23 Complaint.

24 7. As to Paragraphs 31, 42, 48, 54, 62, 68, and 75 of Plaintiff's Complaint, Camco
25 repeats and realleges its answers to paragraphs 1 through 80 as though fully set forth herein.

26 8. To the extent that any allegations set forth in Plaintiff's Complaint have not been
27 answered, this answering Defendant denies each and every allegation or inference thereof not
28

1 expressly set forth hereinabove.

2 9. It has become necessary for this answering Defendant to retain the services of
3 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,
4 this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is
5 accordingly entitled to its attorney fees and costs incurred herein.

6 **AFFIRMATIVE DEFENSES**

7 1. The Complaint on file herein fails to state a claim against Camco upon which
8 relief can be granted.

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

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

13 4. Camco is not negligent with respect to the transactions that are the subject of the
14 Complaint, and is and was not in breach of contract.

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

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

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

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

25 9. The claim for breach of contract is barred as a result of the failure to satisfy
26 conditions precedent.

27 10. The claim for breach of contract is barred by the statute of frauds.
28

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

1 11. Plaintiff brought the case at bar without reasonable grounds upon which to base a
2 claim for relief.

3 12. Plaintiff maintained the present action without reasonable grounds upon which to
4 base a claim for relief.

5 13. Plaintiff's claims are not well grounded in fact.

6 14. Plaintiff's claims are not warranted by existing law.

7 15. Plaintiff is barred from recovering by the doctrine of unclean hands.

8 16. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

9 17. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
10 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

11 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
12 now complains.

13 19. There is no justiciable case or controversy as between Plaintiff and Camco.

14 20. Plaintiff lacks standing to assert all or part of the causes of action contained in
15 their complaint.

16 21. Camco's performance on any contract was excused by Plaintiff's material breach
17 thereof.

18 22. Plaintiff has failed to mitigate its damages.

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

23 24. Pursuant To NRCP 8, all possible affirmative defenses may not have been
24 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and
25 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to
26 amend their Answer to allege additional affirmative defenses if subsequent investigation
27 warrants.
28

WHEREFORE, Defendant Camco prays as follows:

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

1. Camco was and is at all times relevant to this action, a Nevada corporation, doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State Contractor's Board.
2. Counterdefendant EXECUTIVE PLASTERING, INC. (hereinafter referred to as "EPI") is and was at all times relevant to this action, a corporation conducting business in Clark County, Nevada.
3. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant. Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore, Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to amend this Counterclaim to show the true names and capacities of each such DOE Defendants at such time as the same have been ascertained.

FIRST CAUSE OF ACTION

(Breach of Contract)

4. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by reference and further allege:
5. On or about April 17, 2007, EPI entered into a Subcontract Agreement

1 (“Subcontract Agreement”) with APCO Construction related to the Manhattan West
2 Condominiums project, located in Clark County, Nevada (the “Project”).

3 6. On or about August 26, 2008, Camco and EPI entered into a Ratification
4 and Amendment of Subcontract Agreement (“Ratification Agreement”) wherein Camco and
5 EPI acknowledged, ratified, and agreed to the terms of the Subcontract Agreement.

6 7. Section 3.4 of the Subcontract Agreement states: “Any payments to
7 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from
8 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become
9 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.”

10 8. All payments made to subcontractors and suppliers on the Project were made
11 directly by Gemstone through Nevada Construction Services.

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

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

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

20 12. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and
21 conditions of the Ratification Agreement.

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

25 **SECOND CAUSE OF ACTION**

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

27 14. Camco repeats and realleges each and every allegation contained in the
28 preceding paragraphs of Counterclaimant’s Counterclaim, incorporate the same at this point by

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

1 reference and further allege:

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

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

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

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

11 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

17 DATED this 30th day of September 2009.

18 WOODBURY, MORRIS & BROWN

19 

20 STEVEN L. MORRIS, ESQ.

21 Nevada Bar No. 7454

22 701 N. Green Valley Pkwy., Suite 110

23 Henderson, NV 89074-6178

24 Attorneys for Camco
25
26
27
28


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

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of September 2009, I served a copy of Camco's
ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIM by email and
by enclosing a true and correct copy of the same in a sealed envelope upon which first-class
postage was fully prepaid, and addressed to the following:

Matthew Q. Callister, Esq.
CALLISTER & REYNOLDS
823 Las Vegas Blvd. South, 5th Floor
Las Vegas, Nevada 89101
mqc@callisterreynolds.com

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


An Employee of Woodbury, Morris & Brown

ORIGINAL

42

FILED

OCT 19 2009

John H. Sullivan
CLERK OF COURT

A-09-596924-C
469423



1 ANSW

2 Gwen Rutar Mullins, Esq.

3 Nevada Bar No. 3146

4 Wade B. Gochmour, Esq.

5 Nevada Bar No. 6314

6 **Howard & Howard Attorneys PLLC**

7 3800 Howard Hughes Parkway

8 Suite 1400

9 Las Vegas, NV 89169

10 Telephone: (702) 257-1483

11 Facsimile: (702) 567-1568

12 E-mails: grm@h2law.com

13 wbg@h2law.com

14 *Attorneys for Defendant APCO Construction*

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

12 HA FABRICATORS, INC., a Utah
13 Corporation,

14 Plaintiff,

15 vs.

16 APCO CONSTRUCTION, a Nevada
17 corporation; GEMSTONE APACHE, LLC, a
18 Nevada Limited Liability Company; DOES I
19 through X, inclusive and ROE
20 CORPORATIONS I through X, inclusive;

21 Defendants.

22 APCO CONSTRUCTION, a Nevada
23 corporation,

24 Counterclaimant,

25 vs.

26 HA FABRICATORS, INC., a Utah
27 Corporation,

28 Counter-Defendant.

CASE NO.: A09-596924-C
DEPT. NO.: XXII

**APCO CONSTRUCTION'S ANSWER
TO COMPLAINT, COUNTERCLAIM,
AND THIRD-PARTY COMPLAINT**

Date: N/A

Time: N/A

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

1 APCO CONSTRUCTION, a Nevada
2 corporation,

3 Third-Party Plaintiff,

4 vs.

5 GEMSTONE DEVELOPMENT WEST., INC.,
6 a Nevada corporation; DOES 1 through 10
7 inclusive, ROE CORPORATIONS 1 through
8 10, inclusive,

9 Third-Party Defendants.

10 **ANSWER**

11 APCO CONSTRUCTION ("APCO"), by and through its attorneys, Gwen Rutar
12 Mullins, Esq. and Wade B. Gochmour, Esq. of the law firm of Howard and Howard Attorneys
13 PLLC, hereby files this Answer to Complaint of HA FABRICATORS, INC., a Utah
14 Corporation (hereinafter "HA Fabricators") and hereby responds and alleges as follows:

15 **PARTIES IN JURISDICTION**

16 1. Answering Paragraph 1 of the Complaint, APCO, upon information and belief,
17 admits that HA Fabricators are doing business in Clark County, Nevada. APCO denies all of
18 the remaining allegations contained in Paragraph 1 of the Complaint.

19 2. Answering Paragraph 2 and 6 of the Complaint, APCO admits the allegations
20 contained therein.

21 3. Answering Paragraphs 3, 4 and 5 of the Complaint, APCO does not have
22 sufficient knowledge or information upon which to base a belief as to the truth of the
23 allegations contained therein, and upon said grounds, denies each and every allegation
24 contained therein.

25 ...

26 ...

27 ...

28

GENERAL ALLEGATIONS

4. Answering Paragraph 7 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 3 of this Answer to the Complaint as though fully set forth herein.

5. Answering Paragraph 8 of the Complaint, APCO admits that APCO entered into a subcontract with HA Fabricators wherein HA Fabricators agreed to furnish labor and materials on the Manhattan West Multi-Mix Development Project. As to the remaining allegations of Paragraph 8 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of these allegations, and upon said grounds, denies them.

6. Answering Paragraph 9 of the Complaint, APCO denies each and every allegation contained therein.

7. Answering Paragraph 10 of the Complaint, APCO denies each and every allegation as they pertain to APCO. As to the remaining allegations of Paragraph 10 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of these allegations, and upon said grounds, denies them.

8. Answering Paragraphs 11 and 12 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FIRST CAUSE OF ACTION
(Breach of Contract
As against Defendant APCO)**

9. Answering Paragraph 13 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 8 of this Answer to the Complaint as though fully set forth herein.

10. Answering Paragraph 14 of the Complaint, APCO admits that APCO and HA Fabricators entered into a valid subcontract wherein HA Fabricators agreed to furnish labor and

1 materials on the Manhattan West Multi-Mix Development Project. As to the remaining
2 allegations of Paragraph 14 of the Complaint, APCO does not have sufficient knowledge or
3 information upon which to base a belief as to the truth of these allegations, and upon said
4 grounds, denies them.

5 11. Answering Paragraph 15 of the Complaint, APCO admits that the terms of the
6 subcontract speak for themselves. As to the remaining allegations of Paragraph 15 of the
7 Complaint, APCO does not have sufficient knowledge or information upon which to base a
8 belief as to the truth of these allegations, and upon said grounds, denies them.

9 12. Answering Paragraphs 16, 17 and 18 of the Complaint, APCO denies each and
10 every allegations contained therein.

11 **SECOND CAUSE OF ACTION**
12 **(Breach of Implied Covenant, Good Faith and Fair Dealing**
13 **As against Defendant APCO)**

14 13. Answering Paragraph 19 of the Complaint, APCO repeats and realleges each
15 and every allegation contained in paragraphs 1 through 12 of this Answer to the Complaint as
16 though fully set forth herein.

17 14. Answering Paragraph 20 of the Complaint, APCO admits that APCO entered
18 into a subcontract with HA Fabricators. APCO further admits that under Nevada law, every
19 contract contains an implied covenant of good faith and fair dealing and that the parties are
20 required to act in good faith and fair dealing relative any contract entered into. As to the
21 remaining allegations of Paragraph 20 of the Complaint, APCO does not have sufficient
22 knowledge or information upon which to base a belief as to the truth of these allegations, and
23 upon said grounds, denies them.

24 15. Answering Paragraph 21 of the Complaint, APCO admits that the terms of the
25 subcontract speak for themselves. As to the remaining allegations of Paragraph 21 of the
26 Complaint, APCO does not have sufficient knowledge or information upon which to base a
27 belief as to the truth of these allegations, and upon said grounds, denies them.

16. Answering Paragraphs 22, 23 and 24 of the Complaint, APCO denies each and every allegations contained therein.

**THIRD CAUSE OF ACTION
(Unjust Enrichment
As against both APCO and Gemstone)**

17. Answering Paragraph 25 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 16 of this Answer to the Complaint as though fully set forth herein.

18. Answering Paragraph 26 of the Complaint, APCO admits that HA Fabricators provided and performed work on the Manhattan West Multi-Mix Development Project. APCO denies the remaining allegations of Paragraph 26 of the Complaint as the same relate to APCO. As to the allegations that have been asserted against other defendants, including Gemstone, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

19. Answering Paragraphs 27 and 28 of the Complaint, APCO denies the allegations as the same relate to APCO. As to the allegations that have been asserted against other defendants, including Gemstone, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FOURTH CAUSE OF ACTION
(Constructive Trust
Plaintiff v APCO and Gemstone)**

20. Answering Paragraph 29 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 19 of this Answer to the Complaint as though fully set forth herein.

21. Answering Paragraph 30 of the Complaint, APCO admits that HA Fabricators provided and performed work on the Manhattan West Multi-Mix Development Project. APCO denies the remaining allegations of Paragraph 30 of the Complaint as the same relate to APCO.

1 As to the allegations that have been asserted against other defendants, including Gemstone,
2 APCO does not have sufficient knowledge or information upon which to base a belief as to the
3 truth of the allegations contained therein, and upon said grounds, denies each and every
4 allegation contained therein.

5 22. Answering Paragraphs 31, 33, 34 and 35 of the Complaint, APCO denies the
6 allegations as the same relate to APCO. As to the allegations that have been asserted against
7 other defendants, including Gemstone, APCO does not have sufficient knowledge or
8 information upon which to base a belief as to the truth of the allegations contained therein, and
9 upon said grounds, denies each and every allegation contained therein

10 23. Answering Paragraph 32 of the Complaint, APCO is not in possession of any
11 funds belonging to HA Fabricators. APCO denies the remaining allegations of Paragraph 30 of
12 the Complaint as the same relate to APCO. As to the allegations that have been asserted
13 against other defendants, including Gemstone, APCO does not have sufficient knowledge or
14 information upon which to base a belief as to the truth of the allegations contained therein, and
15 upon said grounds, denies each and every allegation contained therein.

16 **FIFTH CAUSE OF ACTION**
17 **(Services Performed, Account Stated, Open Book**
18 **as to Defendant APCO)**

19 24. Answering Paragraph 36 of the Complaint, APCO repeats and realleges each
20 and every allegation contained in paragraphs 1 through 23 of this Answer to the Complaint as
21 though fully set forth herein.

22 25. Answering Paragraphs 37, 38, 39, 40, and 41 of the Complaint, APCO denies
23 each and every allegation contained therein.

24 **SIXTH CAUSE OF ACTION**
25 **(Declaratory Relief)**

26 26. Answering Paragraph 42 of the Complaint, APCO repeats and realleges each
27 and every allegation contained in paragraphs 1 through 25 of this Answer to the Complaint as
28 though fully set forth herein.

1 27. Answering Paragraphs 43, 44 and 45 of the Complaint, APCO does not have
2 sufficient knowledge or information upon which to base a belief as to the truth of the
3 allegations contained therein, and upon said grounds, denies each and every allegation
4 contained therein.

5 **SEVENTH (sic) CAUSE OF ACTION**
6 **(Declaratory Relief)**

7 28. Answering Paragraph 42 of the Complaint, APCO repeats and realleges each
8 and every allegation contained in paragraphs 1 through 25 of this Answer to the Complaint as
9 though fully set forth herein.

10 29. Answering Paragraphs 43, 44 and 45 of the Complaint, APCO does not have
11 sufficient knowledge or information upon which to base a belief as to the truth of the
12 allegations contained therein, and upon said grounds, denies each and every allegation
13 contained therein.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 HA Fabricators has failed to state a claim against APCO upon which relief can be
17 granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 The claims of HA Fabricators have been waived as a result of their respective acts and
20 conduct.

21 **THIRD AFFIRMATIVE DEFENSE**

22 No monies are due HA Fabricators at this time as APCO has not received payment for
23 HA Fabricators' work from Gemstone Development West Inc., the developer of the Manhattan
24 West Multi-Mix Development Project ("Gemstone").

25 **FOURTH AFFIRMATIVE DEFENSE**

26 Any and all damages sustained by HA Fabricators are the result of negligence, breach
27 of contract and/or breach of warranty, express and/or implied, of a third-party over whom
28 APCO has no control, and for whose acts APCO is not responsible or liable to HA Fabricators.

FIFTH AFFIRMATIVE DEFENSE

At the time and place under the circumstances alleged by HA Fabricators, HA Fabricators had full and complete knowledge and information with regard to the conditions and circumstances then and there existing, and through HA Fabricators' own knowledge, conduct, acts and omissions, assumed the risk attendant to any condition there or then present.

SIXTH AFFIRMATIVE DEFENSE

Whatever damages, if any, were sustained by HA Fabricators, were caused in whole, or in part, or were contributed to, by reason of HA Fabricators' own actions.

SEVENTH AFFIRMATIVE DEFENSE

The liability, if any, of APCO must be reduced by the percentage of fault of others, including HA Fabricators.

EIGHTH AFFIRMATIVE DEFENSE

The damages alleged by HA Fabricators were caused by, and arose out of, the risk which HA Fabricators had knowledge and which HA Fabricators assumed.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

APCO's obligations to HA Fabricators have been satisfied or excused.

ELEVENTH AFFIRMATIVE DEFENSE

HA Fabricators failed to perform their work in workmanlike manner thus causing damages in excess to the sums HA Fabricators claims are due under the subcontract with APCO.

TWELFTH AFFIRMATIVE DEFENSE

The claim for breach of contract is barred as a result of HA Fabricators' failure to satisfy conditions precedent.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are premature.

FOURTEENTH AFFIRMATIVE DEFENSE

HA Fabricators should indemnify APCO for any and all losses, damages or expenses APCO sustains as a result of any claims by Gemstone for damages that Gemstone allegedly sustained due to HA Fabricators' improper workmanship on the Manhattan West Multi-Mix Development Project, including, but not limited to, any damage amount and the attorney's fees and costs incurred by APCO relative thereto.

FIFTEENTH AFFIRMATIVE DEFENSE

APCO is entitled to an offset or a setoff of any damages that APCO sustains as a result of HA Fabricators' failure to complete the work in a workmanlike manner and/or breach of contract.

SIXTEENTH AFFIRMATIVE DEFENSE

Any obligations or responsibilities of APCO under the subcontract with HA Fabricators, if any, have been replaced, terminated, voided, cancelled or otherwise released by any ratification HA Fabricators might have entered into with Gemstone and CAMCO and APCO no longer bears any liability thereunder.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

HA Fabricators has failed to comply with the requirements of NRS 624.

NINETEENTH AFFIRMATIVE DEFENSE

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