

Activity ID		Activity Description	Orig Dur	Early Start	Early Finish	2009											
						AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B9-10		Tie into riser	8	08/28/08 07:00	08/28/08 14:59												
B9-20		Sprinkler leak test	16	08/28/08 15:00	08/29/08 14:59												
B9-55		Build Elevator Cars	112	09/12/08 07:00	09/22/08 22:59												
B9-65		Elevator Pre-Test	24	09/23/08 07:00	09/24/08 14:59												
B9-75		Elevator Test with State of Nevada for Temp. Use	24	09/24/08 15:00	09/25/08 22:59												
B9-85		Elevator Final Test	24	09/26/08 07:00	09/29/08 14:59												
B9-50		Test and balance	24	09/29/08 15:00	09/30/08 22:59												
INTERIOR - 1ST FLOOR																	
B9-160		Rough HVAC 1st Floor to Fire Lid	16	09/03/08 07:00	09/03/08 22:59												
B9-170		HVAC Inspection	8	09/04/08 07:00	09/04/08 14:59												
B9-180		Framing Inspection	8	09/04/08 15:00	09/04/08 22:59												
B9-190		Insulate 1st floor	24	09/05/08 07:00	09/08/08 14:59												
B9-200		Insulation Inspection	8	09/08/08 15:00	09/08/08 22:59												
B9-210		Drywall	56	09/09/08 07:00	09/12/08 14:59												
B9-220		Fire Lid 1st floor	56	09/09/08 07:00	09/12/08 14:59												
B9-230		Drywall Inspection	8	09/12/08 15:00	09/12/08 22:59												
B9-240		Fire Lid Inspection	8	09/12/08 15:00	09/12/08 22:59												
B9-250		Frame Soffits, Cans, Drywall	56	09/15/08 07:00	09/18/08 14:59												
B9-260		Tape / Texture	40	09/18/08 15:00	09/22/08 22:59												
B9-270		Light Weight Concrete 1st Floor	40	09/19/08 15:00	09/23/08 22:59												
B9-280		Install Trim & Doors 1st floor	80	09/24/08 07:00	09/30/08 22:59												
B9-290		Paint 1st floor	56	09/26/08 15:00	10/01/08 22:59												
B9-300		Install cabinets/countertops 1st floor	56	10/01/08 07:00	10/06/08 14:59												
B9-310		MEP & Fire Sprinkler Trim 1st floor	80	10/02/08 07:00	10/08/08 22:59												
B9-320		Install tile 1st floor	64	10/03/08 07:00	10/08/08 22:59												
B9-330		Install carpet 1st floor	40	10/06/08 15:00	10/08/08 22:59												
B9-340		Hardware Trim	24	10/06/08 15:00	10/07/08 22:59												
B9-350		Final MEP Inspection	24	10/09/08 07:00	10/10/08 14:59												
B9-1500		Pre punch 1st floor	40	10/10/08 15:00	10/14/08 22:59												
B9-1510		Punchlist 1st floor	40	10/15/08 07:00	10/17/08 14:59												
B9-1540		Final clean 1st floor	40	10/17/08 15:00	10/21/08 22:59												
INTERIOR - 2ND FLOOR																	
B9-460		Pre-Rock / Insulation 2nd Floor	32	09/04/08 07:00	09/05/08 22:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B9-870	Drywall Inspection	8	09/22/08 15:00	09/22/08 22:59												
B9-880	Frame Soffits, Cans, Drywall	56	09/23/08 07:00	09/26/08 14:59												
B9-900	Tape / Texture	40	09/26/08 15:00	09/30/08 22:59												
B9-920	Install Trim & Doors 3rd floor	80	09/29/08 07:00	10/09/08 22:59												
B9-910	Light Weight Concrete 3rd Floor	40	09/29/08 15:00	10/01/08 22:59												
B9-930	Paint 3rd floor	64	10/01/08 15:00	10/07/08 14:59												
B9-950	MEP & Fire Sprinkler Trim 3rd floor	80	10/03/08 07:00	10/09/08 22:59												
B9-940	Install Cabinets/Countertops 3rd Floor	56	10/06/08 07:00	10/09/08 14:59												
B9-960	Install tile 3rd floor	64	10/06/08 07:00	10/09/08 22:59												
B9-980	Install carpet 3rd floor	48	10/07/08 07:00	10/09/08 22:59												
B9-970	Hardware Trim	24	10/09/08 15:00	10/10/08 22:59												
B9-990	Final MEP Inspection	32	10/13/08 07:00	10/14/08 22:59												
B9-1550	Pre punch 3rd floor	32	10/15/08 07:00	10/16/08 22:59												
B9-1580	Punchlist 3rd floor	32	10/17/08 07:00	10/20/08 22:59												
B9-1600	Final clean 3rd floor	32	10/21/08 07:00	10/22/08 22:59												
INTERIOR - 4TH FLOOR																
B9-1120	Rough HVAC 4th Floor to Fire Lid	16	09/10/08 07:00	09/10/08 22:59												
B9-1140	HVAC Inspection	8	09/11/08 07:00	09/11/08 14:59												
B9-1150	Framing Inspection	8	09/11/08 15:00	09/11/08 22:59												
B9-1160	Insulate 4th floor	40	09/12/08 07:00	09/16/08 14:59												
B9-1170	Insulation Inspection	8	09/16/08 15:00	09/16/08 22:59												
B9-1180	Drywall	40	09/17/08 07:00	09/19/08 14:59												
B9-1190	Fire Lid 4th floor	40	09/17/08 07:00	09/19/08 14:59												
B9-1200	Drywall Inspection	8	09/19/08 15:00	09/19/08 22:59												
B9-1220	Fire Lid Inspection	8	09/19/08 15:00	09/19/08 22:59												
B9-1210	Frame Soffits, Cans, Drywall	40	09/22/08 07:00	09/24/08 14:59												
B9-1230	Tape / Texture	40	09/24/08 15:00	09/26/08 22:59												
B9-1240	Light Weight Concrete 4th Floor	40	09/25/08 15:00	09/29/08 22:59												
B9-1250	Install Trim & Doors 4th floor	40	09/30/08 07:00	10/02/08 14:59												
B9-1260	Paint 4th floor	40	10/02/08 15:00	10/06/08 22:59												
B9-1270	Install cabinets/countertops 4th floor	56	10/06/08 07:00	10/09/08 14:59												
B9-1280	MEP & Fire Sprinkler Trim 4th floor	56	10/07/08 07:00	10/10/08 14:59												
B9-1310	Install tile 4th floor	56	10/08/08 07:00	10/13/08 14:59												

AA 000152

EXHIBIT "2"

**RATIFICATION AND AMENDMENT OF SUBCONTRACT AGREEMENT
NOORDA SHEET METAL COMPANY**

This Ratification and Amendment of Subcontract Agreement ("Ratification") is made as of August 26, 2008 (the "Effective Date"), between NOORDA SHEET METAL COMPANY ("Subcontractor"), and Camco Pacific Construction Company, Inc. ("Camco").

RECITALS

A. Subcontractor and Asphalt Products Corporation also known as APCO Construction ("APCO") entered into the written Subcontract Agreement attached hereto as **Exhibit A** (the "**Subcontract Agreement**") related to the ManhattanWest Condominiums project located at West Russell Road and Rocky Hill Street in Clark County, Nevada.

B. Subcontractor and Camco desire to acknowledge, ratify, and agree to the terms of the Subcontract Agreement, whereby Camco will replace APCO as the "Contractor" under the Subcontract Agreement but, subject to the terms of this Ratification, all other terms and conditions of the Subcontract Agreement will remain in full force and effect.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, Subcontractor and Camco agree as follows:

AGREEMENT

1. **Amendments.** Attached hereto as **Exhibit B** are all of the amendments and modifications to the Subcontract Agreement that were executed by APCO and Subcontractor prior to the Effective Date (the "**Amendments**").

2. **Change Orders.** Attached hereto as **Exhibit C** are all of the change orders that have been submitted by Subcontractor to APCO prior to the Effective Date (the "**Submitted Change Orders**"). Set forth on **Exhibit D** hereto is a list of the Submitted Change Orders that have been approved by Camco as of the Effective Date (the "**Previously Approved Change Orders**").

3. **Removal of Future Buildings.** Notwithstanding any provision of this Ratification, Section 9.8 of the Subcontract Agreement is hereby amended and restated as follows:

9.8 Consideration. Notwithstanding any provision of this Subcontract Agreement, in the event of a partial termination of the Subcontract Agreement, at the time of such termination, if no work has been performed by Subcontractor on a given building or buildings that are subject to such termination, (a) the sole compensation to be paid by Contractor to Subcontractor with respect to such building or buildings shall be an aggregate of \$100 and (b) in no event shall Subcontractor be entitled to profit, markup, or compensation for any form of bulk discounts on services or work not performed.

4. **Subcontractor Scope of Work.** Notwithstanding any provision of this Ratification, the second paragraph of Exhibit A Subcontractor Scope of Work APCO Contract No. 168-43 is hereby amended and restated as follows:

The Scope of Work shall consist of the following:

ORNAMENTAL METALS & RAILINGS AND SHEET METAL FLASHINGS FOR BUILDINGS 8 & 9; ORNAMENTAL METALS AND SHEET METAL FLASHINGS FOR BUILDINGS 2 & 3: Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Taxes, and Necessary Insurance to install and complete all ORNAMENTAL METALS & RAILINGS AND SHEET METAL FLASHINGS FOR BUILDINGS 8 & 9; ORNAMENTAL METALS AND SHEET METAL FLASHINGS FOR BUILDINGS 2 & 3 pursuant to the Project Drawing List for the following amounts per building:

Building	Amount
Building 1	[\$xxx]
Building 2	\$375,772.00
Building 3	\$375,772.00
Building 4	[\$xxx]
Building 5	[\$xxx]
Building 6	[\$xxx]
Building 7	[\$xxx]
Building 8	\$783,237.00
Building 9	\$783,237.00
Building 10	[\$xxx]
Building 11	[\$xxx]
Building 12	[\$xxx]
Total:	\$2,318,018.00

Notwithstanding any provision of this Subcontract Agreement, Contractor has (a) delivered to Subcontractor a disk entitled "ManhattanWest Construction

Drawings August 29, 2008" containing all of the actual drawings, documents, and submittals for the Project (excluding the shop drawings) and (b) made available to Subcontractor all of the shop drawings for the Project (collectively, the "**Project Drawing List**"). Prior to the effective date, (a) Subcontractor received and reviewed the drawings, documents, and submittals contained in such Project Drawing List and (b) both parties hereby acknowledge that the version of such documents as of the Effective Date are hereby incorporated into this Agreement and shall serve as the relevant design documents for purposes of this Agreement.

Notwithstanding any provision of this Subcontract Agreement, the Scope of Work for (a) Buildings 2, 3, 7, 8, and 9 must be completed pursuant to the updated ManhattanWest Camco Pacific Construction Schedule, dated August 22, 2008 and attached hereto as **Schedule 1** (the "**Camco Schedule**") and (b) Buildings 1, 4, 5, 6, 10, 11, and 12 must be completed pursuant to the schedule to be delivered to Subcontractor by Contractor at the time that work on such buildings is commenced. Furthermore, it is expressly understood that Subcontractor shall provide such additional manpower and/or work such additional shifts as are reasonably requested by Camco, without additional expense to Camco.

5. Ratification. Subcontractor and Camco agree that (a) the terms of the Subcontract Agreement (as amended by this Ratification and including all Amendments, Previously Approved Change Orders, and the Camco Schedule) will govern their relationship regarding the Project, (b) Camco will be the "Contractor" under the Subcontract Agreement, and (c) Subcontractor and Camco agree to perform and fulfill all of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled thereunder by Subcontractor and Camco, respectively. Additionally, Subcontractor and Camco will be entitled to receive all of the benefits of the executory terms, covenants, conditions, and obligations required to be performed and fulfilled by Camco and Subcontractor, respectively. Notwithstanding any provision of this Ratification, this Ratification shall not be construed as an (i) approval or acceptance by Camco of the Submitted Change Orders that are not Previously Approved Change Orders or (b) acceptance by Subcontractor of Camco's decision, as of the Effective Date, not to approve the Submitted Change Orders that are not Previously Approved Change Orders.

6. Value Engineering. In the event that Camco delivers written notice to Subcontractor of a specific value engineering initiative (the "**VE Initiative**"), Subcontractor will provide to Camco, within three days, a revised price reflecting the VE Initiative and including all back-up and price breakdowns reasonably requested by Camco (the "**Value Engineering Deduct**"). Notwithstanding any provision of this Ratification or the Subcontract, in the event that Subcontractor fails to comply with the previous sentence of this Section 6, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work. Notwithstanding any provision of this Ratification or the Subcontract, in the event that the amount of the Value Engineering Deduct is not reasonably acceptable to Camco, Camco shall have the right to obtain an alternate price from a third-party, and if Subcontractor fails to meet such price, Camco shall have the right to unilaterally remove the work associated with the VE Initiative from the Scope of Work

7. **APCO Relationship.** Notwithstanding any provision of this Ratification, this Ratification shall not (a) be construed to alter the contractual relationship between APCO and Subcontractor prior to the Effective Date or (b) prejudice any rights or obligations of APCO and Subcontractor, to each other, arising or applicable under the Subcontract Agreement prior to the Effective Date.

8. **Third-Party Beneficiary.** Notwithstanding any provision of this Ratification or the Subcontract Agreement, it is expressly agreed that Gemstone Development West, Inc. is an intended third-party beneficiary of the obligations of Subcontractor under the Subcontract Agreement, including without limitation, any indemnity, warranty, insurance, or liquidated damage provisions.

9. **Successors and Assigns.** This Assignment is binding on and inures to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

10. **Governing Law.** This Assignment will be construed, interpreted, and enforced in accordance with, and governed by, the laws of the State of Nevada, including Nevada's statutes of limitations, but without regard to Nevada's conflicts of laws provisions.

11. **Further Assurances.** The parties agree to execute all instruments and documents of further assurance and will do any and all such acts as may be reasonably required to carry out their obligations and to consummate the transactions contemplated herein.

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

Subcontractor

Noranda Sheet Metal, a Nevada corporation

Mark Waite

By: Mark Waite

Its: General Manager

Camco

Camco Pacific Construction Company, Inc., a California corporation

David Lamy

By:

Its: SVP

**SCHEDULE 1
TO EXHIBIT A
TO THE SUBCONTRACT AGREEMENT**

Camco Schedule

attached

**EXHIBIT A
TO THE RATIFICATION**

Subcontract Agreement

Attached

**EXHIBIT B
TO THE RATIFICATION**

Amendments

**EXHIBIT C
TO THE RATIFICATION**

Submitted Change Orders

**EXHIBIT D
TO THE RATIFICATION**

Previously Approved Change Orders

EXHIBIT "3"

APN: 163-32-101-019

NOTICE OF LIEN

20090108-0000267

Fee: \$15.00

N/C Fee: \$0.00

01/08/2009

08:00:31

T20090005853

Requestor:

LEGAL WINGS

Debbie Conway

ANI

Clark County Recorder Pgs: 2

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

1. The amount of the original contract is: \$2,318,018.00
2. The total amount of all changes and additions, if any, is: \$0.00
3. The total amount of all payments received to date is: \$1,177,157.70
4. The amount of the lien, after deducting all just credits and offsets, is: **\$945,351.40**
5. The name of the owner, if known, of the property is: Gemstone Development West Inc.
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: Asphalt Products Corporation also known as APCO Construction and/or Camco Pacific Construction Company, Inc.
7. A brief statement of the terms of payment of the lien claimant's contract is: Net payable 30 days after each billing.
8. A description of the property to be charged with the lien is:

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

DATED this 7 day of January, 2009.

NOORDA SHEET METAL COMPANY

By: T. JAMES TRUMAN & ASSOCIATES

By: 

T. JAMES TRUMAN, ESQ.

Nevada Bar No. 003620

3654 North Rancho Drive

Las Vegas, NV 89130

Attorneys for Noorda Sheet Metal Company

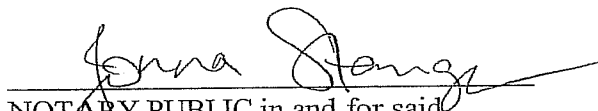
STATE OF NEVADA)
)
COUNTY OF CLARK)

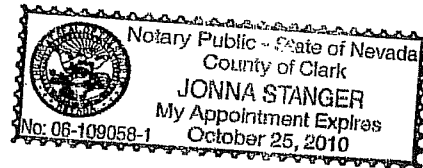
T. JAMES TRUMAN, being first duly sworn on oath according to law, deposes and says:

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


T. JAMES TRUMAN

SUBSCRIBED and SWORN to before me
this 7th day of January, 2009.


NOTARY PUBLIC in and for said
County and State.



RETURN TO:

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


CLERK OF THE COURT

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

9 Attorneys for
10 Camco Pacific Construction Company, Inc.

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

13 EXECUTIVE PLASTERING, INC., a
14 Nevada corporation

15 Plaintiff,

16 vs.

17 CAMCO PACIFIC CONSTRUCTION
18 COMPANY, INC., a California corporation;
19 DOE INDIVIDUALS I through X, inclusive;
20 and ROE CORPORATIONS I through X,
21 inclusive,

22 Defendants.

23 CAMCO PACIFIC CONSTRUCTION
24 COMPANY, INC,

25 Counterclaimant,

26 vs.

27 EXECUTIVE PLASTERING, INC.,

28 Counterdefendant.

Case No: A580889
Dept. No: X

ANSWER 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,
Morris & Brown, hereby answers the Complaint of EXECUTIVE PLASTERING, INC.

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

1 (hereinafter "Plaintiff"), on file herein, and admits, denies and alleges as follows:

2 1. Camco is without information or knowledge sufficient to ascertain the truth of
3 the allegations contained in Paragraphs 3, 4, 24, 29 and 30 of Plaintiff's Complaint, and
4 therefore denies each and every allegation contained therein.

5 2. Answering Paragraphs 1, 2, 5, 8, 13, 26, 32, 33, 34, 35, 43, 61, and 62 of
6 Plaintiff's Complaint, Camco admits the allegations contained therein.

7 3. Answering Paragraphs 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 27 of Plaintiff's
8 Complaint, Camco admits that the Subcontract/Ratification Agreement speaks for itself, as to
9 the remaining allegations set forth therein, Camco denies the same.

10 4. Answering Paragraph 25 of Plaintiff's Complaint, Camco admits that a
11 complaint was filed on behalf of Plaintiff with the Nevada State Contractors Board, and denies
12 the remainder of the allegations set forth therein.

13 5. Answering Paragraph 28 of Plaintiff's Complaint, Camco admits that as a result
14 of Gemstone's inability to pay the Subcontractors that Camco terminated its agreements with
15 said Subcontractors. Camco further admits that Plaintiff expressly agreed to assume the risk of
16 non-payment from Gemstone. As to the remaining allegations set forth therein Camco denies
17 the same.

18 6. Camco denies each and every allegation contained in Paragraphs 6, 7, 20, 21, 22,
19 23, 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 63, 64, 65, and
20 66 of Plaintiff's Complaint.

21 7. As to Paragraphs 31, 42, 48, 54, and 60 of Plaintiff's Complaint, Camco repeats
22 and realleges its answers to paragraphs 1 through 66 as though fully set forth herein.

23 8. To the extent that any allegations set forth in Plaintiff's Complaint have not been
24 answered, this answering Defendant denies each and every allegation or inference thereof not
25 expressly set forth hereinabove.

26 9. It has become necessary for this answering Defendant to retain the services of
27 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,
28

1 this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is
2 accordingly entitled to its attorney fees and costs incurred herein.

3 **AFFIRMATIVE DEFENSES**

4 1. The Complaint on file herein fails to state a claim against Camco upon which
5 relief can be granted.

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

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

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

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

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

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

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

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

25 10. Plaintiff has failed to mitigate its damages.

26 11. It has been necessary for Camco to retain the services of the law offices of
27 Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action, and
28

1 Camco is entitled to payment of all costs, fees and expenses associated with and/or arising out
2 of the defense of this action.

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

7 WHEREFORE, Defendant Camco prays as follows:

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

12 **COUNTERCLAIM**

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

16 **JURISDICTIONAL ALLEGATIONS**

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

20 2. Counterdefendant EXECUTIVE PLASTERING, INC. (hereinafter referred to as
21 "EPI") is and was at all times relevant to this action, a corporation conducting business in Clark
22 County, Nevada.

23 3. The true names and capacities, whether individual, corporate, associate or
24 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.
25 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
26 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to
27 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
28

1 at such time as the same have been ascertained.

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Contract)**

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

7 5. On or about April 17, 2007, EPI entered into a Subcontract Agreement
8 ("Subcontract Agreement") with APCO Construction related to the Manhattan West
9 Condominiums project, located in Clark County, Nevada (the "Project").

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

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

17 8. All payments made to subcontractors and suppliers on the Project were made
18 directly by Gemstone through Nevada Construction Services.

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

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

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

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

13. 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.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

14. 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:

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

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

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

18. 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 6th day of March, 2009.

WOODBURY, MORRIS & BROWN


STEVEN L. MORRIS, ESQ.

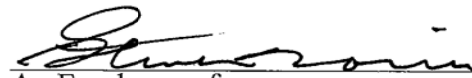
Nevada Bar No. 7454
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Camco

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of March, 2009, I served a copy of Camco's
ANSWER 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

FILED

MAR 10 9 15 AM '09

Earl D. Smith
CLERK OF THE COURT

COMP

Ronald S. Sofen, Esq.
Nevada State Bar # 7186
Becky A. Pintar, Esq.
Nevada State Bar # 7867
GIBBS, GIDEN, LOCHER, TURNER & SENET LLP
3993 Howard Hughes Parkway, Suite 530
Las Vegas, Nevada 89169-5994
(702) 836-9800

Attorneys for Plaintiff
THE MASONRY GROUP NEVADA, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

CASE NO.:
DEPT. NO.:

4584730
XI

COMPLAINT

1. Breach of Contract;
2. Violation of NRS 624.626;
3. Quantum Meruit;
4. Open Book Account;
5. Claim on Contractor's License Bond; and
6. Foreclosure of Mechanic's Lien

Exempt from Arbitration: Affects Real Property

Request for Assignment to Business Court

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

INTRODUCTORY ALLEGATIONS

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

RECEIVED

MAR 10 2009

CLERK OF THE COURT

FIRST CAUSE OF ACTION

(Against Camco Pacific Construction Company, Inc. for Breach of Contract)

18 7. Plaintiff refers to paragraphs 1-6 introductory allegations and hereby incorporates
19 said paragraphs by reference herein, as though set forth in full.

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

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

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

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

December, 2008.

SECOND CAUSE OF ACTION

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

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

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

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

15. Thereafter, TMG gave notice to Camco of the termination of the construction agreement.

16. As a proximate result of the violation of NRS 624.626 by Camco, TMG has sustained damages in the sum of \$756,647.12, which represents the cost of all work, labor materials, equipment and services, overhead and profit furnished by TMG to Camco for the Project, which was unpaid, up through the date of termination of the construction agreement, together with interest thereon pursuant to NRS 624.630.

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

THIRD CAUSE OF ACTION

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

18. Plaintiff refers to paragraphs 1-6 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

///

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

20. The reasonable value of said materials, labor, services and equipment was \$756,647.12.

21. Neither the whole nor any part thereof has been paid and there is now due, owing and unpaid from Camco to TMG, the sum of \$756,647.12, together with interest thereon at the legal rate from December 2008.

FOURTH CAUSE OF ACTION

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

22. Plaintiff refers to paragraphs 1-6 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

23. Within the last two years past at Clark County, Nevada, Camco became indebted to TMG on an open book account in the sum of \$756,647.12, for materials delivered and labor, services and equipment provided to Camco at the special instance and request of Camco, for which Camco agreed to pay the reasonable value.

24. The reasonable value of said materials, labor, services and equipment is the sum of \$756,647.12.

25. Neither the whole nor any part thereof has been paid and there is now due, owing and unpaid to TMG the sum of \$756,647.12, together with interest thereon at the legal rate from December 2008.

FIFTH CAUSE OF ACTION

(Against Camco Pacific Construction Company, Inc. and

Fidelity and Deposit of Maryland on Contractor's License Bond)

26. Plaintiff refers to paragraphs 1-6 of the introductory allegations and hereby incorporates said paragraphs by reference herein, as though set forth in full.

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

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

6 29. Camco has willfully and deliberately failed to pay TMG for labor, materials and
7 equipment furnished by TMG to Camco.

8 30. Camco has violated Chapter 624 of the Nevada Revised Statutes and TMG is entitled
9 to recover against the bond issued by Fidelity.
10

11 **SIXTH CAUSE OF ACTION**

12 **(Against Gemstone Development, West, Inc.**

13 **For Foreclosure of Mechanic's Lien)**

14 31. Plaintiff refers to paragraphs 1-6 of the introductory allegations and hereby
15 incorporates said paragraphs by reference herein, as though set forth in full.

16 32. TMG is informed and believes and thereon alleges that Gemstone is the owner of the
17 Project.

18 33. TMG supplied labor, materials and equipment to Camco which were incorporated
19 into the Project.

20 34. TMG has served the notice of intent to lien required by NRS 108.226(6).

21 35. After TMG failed to receive payments from Camco, TMG caused to be recorded a
22 Mechanic's Lien against an property set forth on Exhibit "1." Said Mechanic's Lien was served on
23 the property owner in accordance with NRS 108.227.

24 36. TMG's lien is a valid lien upon all of the real property set forth on Exhibit "1."

25 37. There may be other lien claimants whose liens are subordinate to TMG's Notice of
26 Lien.

27 38. TMG was required to incur costs and attorney's fees in preparing, recording and
28 foreclosing its liens, which TMG is entitled to recover from defendants pursuant to NRS 108.237.

WHEREFORE, TMG prays for judgment against defendants as follows:

ON THE FIRST CAUSE OF ACTION

1. For damages in excess of \$10,000, according to proof at trial, together with interest thereon at the legal rate from the date of breach, December 2008.

ON THE SECOND CAUSE OF ACTION

2. For damages in excess of \$10,000, according to proof at trial, together with interest thereon at the legal rate from the date of breach, December 2008.

ON THE THIRD CAUSE OF ACTION

3. For damages in excess of \$10,000, according to proof at trial, together with interest thereon at the legal rate from the date of breach, December 2008.

ON THE FOURTH CAUSE OF ACTION

4. For damages in excess of \$10,000, according to proof at trial, together with interest thereon at the legal rate from the date of breach, December 2008.

ON THE FIFTH CAUSE OF ACTION

5. For an order declaring that TMG has a valid lien on all of the property, and in the amounts set forth on Exhibit "1," which total \$756,647.12, together with interest thereon at the legal rate;

6. For an order declaring that TMG's lien has priority over every other lien or claim on each of the real properties; and,

7. For an order declaring that the properties be sold and proceeds from the sales apply to the satisfaction of TMG's liens, together with the expenses of sale and costs and disbursements in this action.

///

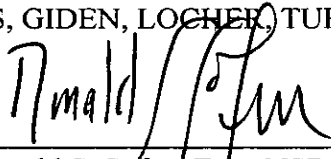
ON ALL CAUSE OF ACTION

8. For costs of suit incurred herein;
9. For reasonable attorney's fees; and,
10. For such other relief as the Court may deem just and proper.

Dated: March 3, 2009

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

By: _____


Ronald S. Sofen, Esq., NSB # 7186
Becky A. Pintar, Esq., NSB # 7867
3993 Howard Hughes Parkway, Suite 530
Las Vegas, Nevada 89169-5994
Attorneys for Plaintiff, THE MASONRY GROUP
NEVADA, INC.

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

EXHIBIT 1

AA 000180

(9)

20090226-0005925

Amended Notice of Lien

163-32-112-006 - continued on
exhibit A

Assessor's Parcel Number: See Attached - Exhibit A

The Undersigned claims a lien upon the Property described in this Notice for work, materials or equipment furnished or to be furnished for the Property or and/or any improvements thereon.

Fee: \$22.00

N/C Fee: \$0.00

02/26/2009

14:54:04

T20090065687

Requestor:

MASONRY GROUP NEVADA INC THE

Debbie Conway

LEX

Clark County Recorder Pgs: 9

1. The amount of the original contract is: **\$1,531,800.00**
2. The total amount of all additional or changed work, materials and equipment, if any, is: **\$424,998.59**
3. The total amount of all payments received to date is: **\$1,001,587.90**
4. The amount of lien, after deducting all just credits and offsets will be: **\$756,647.12**
5. The name of the owner of the property, if known, is: **Gemstone Development West INC**
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: **Camco Pacific Construction Company, Inc.**
7. A brief statement of the terms of payment of the lien claimants contract is: **Net 30**
8. A description of the property to be charged with the lien is:

Physical Address:

See Attached - Exhibit A

County Assessor's Parcel Number:

See Attached - Exhibit A

The Masonry Group Nevada Inc.

By: Stacy Anderson
Stacy Anderson

State of Nevada)
County of Clark) ss.

STACY ANDERSON (print name), being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

Stacy Anderson
Stacy Anderson
Authorized Signature of Lien Claimant

Subscribed and sworn to before me on this 25 day of the month of February of the year 2009

Flor M. Galarza
Flor Galarza
Notary Public in and for the County and State

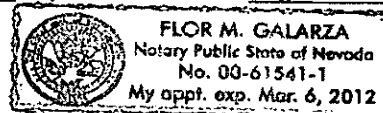


EXHIBIT 1

EXHIBIT A

Physical Address		APN #	Lien Amount
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-006	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-007	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-008	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-009	\$ 2,582.41
9205 W RUSSELL RD	SPRING VALLEY	163-32-112-010	\$ 2,582.41
9215 W RUSSELL RD 101	SPRING VALLEY	163-32-112-011	\$ 2,582.41
9215 W RUSSELL RD 102	SPRING VALLEY	163-32-112-012	\$ 2,582.41
9215 W RUSSELL RD 103	SPRING VALLEY	163-32-112-013	\$ 2,582.41
9215 W RUSSELL RD 201	SPRING VALLEY	163-32-112-014	\$ 2,582.41
9215 W RUSSELL RD 202	SPRING VALLEY	163-32-112-015	\$ 2,582.41
9215 W RUSSELL RD 203	SPRING VALLEY	163-32-112-016	\$ 2,582.41
9215 W RUSSELL RD 204	SPRING VALLEY	163-32-112-017	\$ 2,582.41
9215 W RUSSELL RD 205	SPRING VALLEY	163-32-112-018	\$ 2,582.41
9215 W RUSSELL RD 206	SPRING VALLEY	163-32-112-019	\$ 2,582.41
9215 W RUSSELL RD 207	SPRING VALLEY	163-32-112-020	\$ 2,582.41
9215 W RUSSELL RD 208	SPRING VALLEY	163-32-112-021	\$ 2,582.41
9215 W RUSSELL RD 209	SPRING VALLEY	163-32-112-022	\$ 2,582.41
9215 W RUSSELL RD 210	SPRING VALLEY	163-32-112-023	\$ 2,582.41
9215 W RUSSELL RD 301	SPRING VALLEY	163-32-112-024	\$ 2,582.41
9215 W RUSSELL RD 302	SPRING VALLEY	163-32-112-025	\$ 2,582.41
9215 W RUSSELL RD 303	SPRING VALLEY	163-32-112-026	\$ 2,582.41
9215 W RUSSELL RD 304	SPRING VALLEY	163-32-112-027	\$ 2,582.41
9215 W RUSSELL RD 305	SPRING VALLEY	163-32-112-028	\$ 2,582.41
9215 W RUSSELL RD 306	SPRING VALLEY	163-32-112-029	\$ 2,582.41
9215 W RUSSELL RD 307	SPRING VALLEY	163-32-112-030	\$ 2,582.41
9215 W RUSSELL RD 308	SPRING VALLEY	163-32-112-031	\$ 2,582.41
9215 W RUSSELL RD 309	SPRING VALLEY	163-32-112-032	\$ 2,582.41
9215 W RUSSELL RD 310	SPRING VALLEY	163-32-112-033	\$ 2,582.41
9215 W RUSSELL RD 401	SPRING VALLEY	163-32-112-034	\$ 2,582.41
9215 W RUSSELL RD 402	SPRING VALLEY	163-32-112-035	\$ 2,582.41
9215 W RUSSELL RD 403	SPRING VALLEY	163-32-112-036	\$ 2,582.41
9215 W RUSSELL RD 404	SPRING VALLEY	163-32-112-037	\$ 2,582.41
9215 W RUSSELL RD 405	SPRING VALLEY	163-32-112-038	\$ 2,582.41
9215 W RUSSELL RD 406	SPRING VALLEY	163-32-112-039	\$ 2,582.41
9215 W RUSSELL RD 407	SPRING VALLEY	163-32-112-040	\$ 2,582.41
9215 W RUSSELL RD 408	SPRING VALLEY	163-32-112-041	\$ 2,582.41
9215 W RUSSELL RD 409	SPRING VALLEY	163-32-112-042	\$ 2,582.41
9215 W RUSSELL RD 410	SPRING VALLEY	163-32-112-043	\$ 2,582.41
9215 W RUSSELL RD 501	SPRING VALLEY	163-32-112-044	\$ 2,582.41
9215 W RUSSELL RD 502	SPRING VALLEY	163-32-112-045	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9215 W RUSSELL RD 503	SPRING VALLEY	163-32-112-046	\$ 2,582.41
9215 W RUSSELL RD 504	SPRING VALLEY	163-32-112-047	\$ 2,582.41
9215 W RUSSELL RD 505	SPRING VALLEY	163-32-112-048	\$ 2,582.41
9215 W RUSSELL RD 506	SPRING VALLEY	163-32-112-049	\$ 2,582.41
9215 W RUSSELL RD 507	SPRING VALLEY	163-32-112-050	\$ 2,582.41
9215 W RUSSELL RD 508	SPRING VALLEY	163-32-112-051	\$ 2,582.41
9215 W RUSSELL RD 509	SPRING VALLEY	163-32-112-052	\$ 2,582.41
9215 W RUSSELL RD 510	SPRING VALLEY	163-32-112-053	\$ 2,582.41
9215 W RUSSELL RD 601	SPRING VALLEY	163-32-112-054	\$ 2,582.41
9215 W RUSSELL RD 602	SPRING VALLEY	163-32-112-055	\$ 2,582.41
9215 W RUSSELL RD 603	SPRING VALLEY	163-32-112-056	\$ 2,582.41
9215 W RUSSELL RD 604	SPRING VALLEY	163-32-112-057	\$ 2,582.41
9215 W RUSSELL RD 605	SPRING VALLEY	163-32-112-058	\$ 2,582.41
9215 W RUSSELL RD 606	SPRING VALLEY	163-32-112-059	\$ 2,582.41
9215 W RUSSELL RD 607	SPRING VALLEY	163-32-112-060	\$ 2,582.41
9215 W RUSSELL RD 608	SPRING VALLEY	163-32-112-061	\$ 2,582.41
9215 W RUSSELL RD 609	SPRING VALLEY	163-32-112-062	\$ 2,582.41
9215 W RUSSELL RD 610	SPRING VALLEY	163-32-112-063	\$ 2,582.41
9215 W RUSSELL RD 701	SPRING VALLEY	163-32-112-064	\$ 2,582.41
9215 W RUSSELL RD 702	SPRING VALLEY	163-32-112-065	\$ 2,582.41
9215 W RUSSELL RD 703	SPRING VALLEY	163-32-112-066	\$ 2,582.41
9215 W RUSSELL RD 704	SPRING VALLEY	163-32-112-067	\$ 2,582.41
9215 W RUSSELL RD 705	SPRING VALLEY	163-32-112-068	\$ 2,582.41
9215 W RUSSELL RD 706	SPRING VALLEY	163-32-112-069	\$ 2,582.41
9215 W RUSSELL RD 707	SPRING VALLEY	163-32-112-070	\$ 2,582.41
9215 W RUSSELL RD 708	SPRING VALLEY	163-32-112-071	\$ 2,582.41
9215 W RUSSELL RD 709	SPRING VALLEY	163-32-112-072	\$ 2,582.41
9215 W RUSSELL RD 710	SPRING VALLEY	163-32-112-073	\$ 2,582.41
9215 W RUSSELL RD 801	SPRING VALLEY	163-32-112-074	\$ 2,582.41
9215 W RUSSELL RD 802	SPRING VALLEY	163-32-112-075	\$ 2,582.41
9215 W RUSSELL RD 803	SPRING VALLEY	163-32-112-076	\$ 2,582.41
9215 W RUSSELL RD 804	SPRING VALLEY	163-32-112-077	\$ 2,582.41
9215 W RUSSELL RD 805	SPRING VALLEY	163-32-112-078	\$ 2,582.41
9215 W RUSSELL RD 806	SPRING VALLEY	163-32-112-079	\$ 2,582.41
9215 W RUSSELL RD 807	SPRING VALLEY	163-32-112-080	\$ 2,582.41
9215 W RUSSELL RD 808	SPRING VALLEY	163-32-112-081	\$ 2,582.41
9215 W RUSSELL RD 809	SPRING VALLEY	163-32-112-082	\$ 2,582.41
9215 W RUSSELL RD 810	SPRING VALLEY	163-32-112-083	\$ 2,582.41
9215 W RUSSELL RD 902	SPRING VALLEY	163-32-112-084	\$ 2,582.41
9215 W RUSSELL RD 903	SPRING VALLEY	163-32-112-085	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9215 W RUSSELL RD 904	SPRING VALLEY	163-32-112-086	\$ 2,582.41
9255 W RUSSELL RD 101	SPRING VALLEY	163-32-112-167	\$ 2,582.41
9255 W RUSSELL RD 102	SPRING VALLEY	163-32-112-168	\$ 2,582.41
9255 W RUSSELL RD 103	SPRING VALLEY	163-32-112-169	\$ 2,582.41
9255 W RUSSELL RD 104	SPRING VALLEY	163-32-112-170	\$ 2,582.41
9255 W RUSSELL RD 105	SPRING VALLEY	163-32-112-171	\$ 2,582.41
9255 W RUSSELL RD 106	SPRING VALLEY	163-32-112-172	\$ 2,582.41
9255 W RUSSELL RD 107	SPRING VALLEY	163-32-112-173	\$ 2,582.41
9255 W RUSSELL RD 108	SPRING VALLEY	163-32-112-174	\$ 2,582.41
9255 W RUSSELL RD 109	SPRING VALLEY	163-32-112-175	\$ 2,582.41
9255 W RUSSELL RD 110	SPRING VALLEY	163-32-112-176	\$ 2,582.41
9255 W RUSSELL RD 111	SPRING VALLEY	163-32-112-177	\$ 2,582.41
9255 W RUSSELL RD 112	SPRING VALLEY	163-32-112-178	\$ 2,582.41
9255 W RUSSELL RD 113	SPRING VALLEY	163-32-112-179	\$ 2,582.41
9255 W RUSSELL RD 114	SPRING VALLEY	163-32-112-180	\$ 2,582.41
9255 W RUSSELL RD 115	SPRING VALLEY	163-32-112-181	\$ 2,582.41
9255 W RUSSELL RD 116	SPRING VALLEY	163-32-112-182	\$ 2,582.41
9255 W RUSSELL RD 117	SPRING VALLEY	163-32-112-183	\$ 2,582.41
9255 W RUSSELL RD 118	SPRING VALLEY	163-32-112-184	\$ 2,582.41
9255 W RUSSELL RD 119	SPRING VALLEY	163-32-112-185	\$ 2,582.41
9255 W RUSSELL RD 120	SPRING VALLEY	163-32-112-186	\$ 2,582.41
9255 W RUSSELL RD 201	SPRING VALLEY	163-32-112-187	\$ 2,582.41
9255 W RUSSELL RD 202	SPRING VALLEY	163-32-112-188	\$ 2,582.41
9255 W RUSSELL RD 203	SPRING VALLEY	163-32-112-189	\$ 2,582.41
9255 W RUSSELL RD 204	SPRING VALLEY	163-32-112-190	\$ 2,582.41
9255 W RUSSELL RD 205	SPRING VALLEY	163-32-112-191	\$ 2,582.41
9255 W RUSSELL RD 206	SPRING VALLEY	163-32-112-192	\$ 2,582.41
9255 W RUSSELL RD 207	SPRING VALLEY	163-32-112-193	\$ 2,582.41
9255 W RUSSELL RD 208	SPRING VALLEY	163-32-112-194	\$ 2,582.41
9255 W RUSSELL RD 209	SPRING VALLEY	163-32-112-195	\$ 2,582.41
9255 W RUSSELL RD 210	SPRING VALLEY	163-32-112-196	\$ 2,582.41
9255 W RUSSELL RD 211	SPRING VALLEY	163-32-112-197	\$ 2,582.41
9255 W RUSSELL RD 212	SPRING VALLEY	163-32-112-198	\$ 2,582.41
9255 W RUSSELL RD 213	SPRING VALLEY	163-32-112-199	\$ 2,582.41
9255 W RUSSELL RD 214	SPRING VALLEY	163-32-112-200	\$ 2,582.41
9255 W RUSSELL RD 215	SPRING VALLEY	163-32-112-201	\$ 2,582.41
9255 W RUSSELL RD 216	SPRING VALLEY	163-32-112-202	\$ 2,582.41
9255 W RUSSELL RD 217	SPRING VALLEY	163-32-112-203	\$ 2,582.41
9255 W RUSSELL RD 218	SPRING VALLEY	163-32-112-204	\$ 2,582.41
9255 W RUSSELL RD 219	SPRING VALLEY	163-32-112-205	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9255 W RUSSELL RD 220	SPRING VALLEY	163-32-112-206	\$ 2,582.41
9255 W RUSSELL RD 301	SPRING VALLEY	163-32-112-207	\$ 2,582.41
9255 W RUSSELL RD 302	SPRING VALLEY	163-32-112-208	\$ 2,582.41
9255 W RUSSELL RD 303	SPRING VALLEY	163-32-112-209	\$ 2,582.41
9255 W RUSSELL RD 304	SPRING VALLEY	163-32-112-210	\$ 2,582.41
9255 W RUSSELL RD 305	SPRING VALLEY	163-32-112-211	\$ 2,582.41
9255 W RUSSELL RD 306	SPRING VALLEY	163-32-112-212	\$ 2,582.41
9255 W RUSSELL RD 307	SPRING VALLEY	163-32-112-213	\$ 2,582.41
9255 W RUSSELL RD 308	SPRING VALLEY	163-32-112-214	\$ 2,582.41
9255 W RUSSELL RD 309	SPRING VALLEY	163-32-112-215	\$ 2,582.41
9255 W RUSSELL RD 310	SPRING VALLEY	163-32-112-216	\$ 2,582.41
9255 W RUSSELL RD 311	SPRING VALLEY	163-32-112-217	\$ 2,582.41
9255 W RUSSELL RD 312	SPRING VALLEY	163-32-112-218	\$ 2,582.41
9255 W RUSSELL RD 313	SPRING VALLEY	163-32-112-219	\$ 2,582.41
9255 W RUSSELL RD 314	SPRING VALLEY	163-32-112-220	\$ 2,582.41
9255 W RUSSELL RD 315	SPRING VALLEY	163-32-112-221	\$ 2,582.41
9255 W RUSSELL RD 316	SPRING VALLEY	163-32-112-222	\$ 2,582.41
9255 W RUSSELL RD 317	SPRING VALLEY	163-32-112-223	\$ 2,582.41
9255 W RUSSELL RD 318	SPRING VALLEY	163-32-112-224	\$ 2,582.41
9255 W RUSSELL RD 319	SPRING VALLEY	163-32-112-225	\$ 2,582.41
9255 W RUSSELL RD 320	SPRING VALLEY	163-32-112-226	\$ 2,582.41
9255 W RUSSELL RD 401	SPRING VALLEY	163-32-112-227	\$ 2,582.41
9255 W RUSSELL RD 402	SPRING VALLEY	163-32-112-228	\$ 2,582.41
9255 W RUSSELL RD 403	SPRING VALLEY	163-32-112-229	\$ 2,582.41
9255 W RUSSELL RD 404	SPRING VALLEY	163-32-112-230	\$ 2,582.41
9255 W RUSSELL RD 405	SPRING VALLEY	163-32-112-231	\$ 2,582.41
9255 W RUSSELL RD 406	SPRING VALLEY	163-32-112-232	\$ 2,582.41
9255 W RUSSELL RD 407	SPRING VALLEY	163-32-112-233	\$ 2,582.41
9255 W RUSSELL RD 408	SPRING VALLEY	163-32-112-234	\$ 2,582.41
9255 W RUSSELL RD 409	SPRING VALLEY	163-32-112-235	\$ 2,582.41
9255 W RUSSELL RD 410	SPRING VALLEY	163-32-112-236	\$ 2,582.41
9255 W RUSSELL RD 411	SPRING VALLEY	163-32-112-237	\$ 2,582.41
9255 W RUSSELL RD 412	SPRING VALLEY	163-32-112-238	\$ 2,582.41
9255 W RUSSELL RD 413	SPRING VALLEY	163-32-112-239	\$ 2,582.41
9255 W RUSSELL RD 414	SPRING VALLEY	163-32-112-240	\$ 2,582.41
9255 W RUSSELL RD 415	SPRING VALLEY	163-32-112-241	\$ 2,582.41
9255 W RUSSELL RD 416	SPRING VALLEY	163-32-112-242	\$ 2,582.41
9255 W RUSSELL RD 417	SPRING VALLEY	163-32-112-243	\$ 2,582.41
9255 W RUSSELL RD 418	SPRING VALLEY	163-32-112-244	\$ 2,582.41
9255 W RUSSELL RD 419	SPRING VALLEY	163-32-112-245	\$ 2,582.41

EXHIBIT A

Physical Address		APN #	Lien Amount
9255 W RUSSELL RD 420	SPRING VALLEY	163-32-112-246	\$ 2,582.41
9265 W RUSSELL RD 101	SPRING VALLEY	163-32-112-087	\$ 2,582.41
9265 W RUSSELL RD 102	SPRING VALLEY	163-32-112-088	\$ 2,582.41
9265 W RUSSELL RD 103	SPRING VALLEY	163-32-112-089	\$ 2,582.41
9265 W RUSSELL RD 104	SPRING VALLEY	163-32-112-090	\$ 2,582.41
9265 W RUSSELL RD 105	SPRING VALLEY	163-32-112-091	\$ 2,582.41
9265 W RUSSELL RD 106	SPRING VALLEY	163-32-112-092	\$ 2,582.41
9265 W RUSSELL RD 107	SPRING VALLEY	163-32-112-093	\$ 2,582.41
9265 W RUSSELL RD 108	SPRING VALLEY	163-32-112-094	\$ 2,582.41
9265 W RUSSELL RD 109	SPRING VALLEY	163-32-112-095	\$ 2,582.41
9265 W RUSSELL RD 110	SPRING VALLEY	163-32-112-096	\$ 2,582.41
9265 W RUSSELL RD 111	SPRING VALLEY	163-32-112-097	\$ 2,582.41
9265 W RUSSELL RD 112	SPRING VALLEY	163-32-112-098	\$ 2,582.41
9265 W RUSSELL RD 113	SPRING VALLEY	163-32-112-099	\$ 2,582.41
9265 W RUSSELL RD 114	SPRING VALLEY	163-32-112-100	\$ 2,582.41
9265 W RUSSELL RD 115	SPRING VALLEY	163-32-112-101	\$ 2,582.41
9265 W RUSSELL RD 116	SPRING VALLEY	163-32-112-102	\$ 2,582.41
9265 W RUSSELL RD 117	SPRING VALLEY	163-32-112-103	\$ 2,582.41
9265 W RUSSELL RD 118	SPRING VALLEY	163-32-112-104	\$ 2,582.41
9265 W RUSSELL RD 119	SPRING VALLEY	163-32-112-105	\$ 2,582.41
9265 W RUSSELL RD 120	SPRING VALLEY	163-32-112-106	\$ 2,582.41
9265 W RUSSELL RD 201	SPRING VALLEY	163-32-112-107	\$ 2,582.41
9265 W RUSSELL RD 202	SPRING VALLEY	163-32-112-108	\$ 2,582.41
9265 W RUSSELL RD 203	SPRING VALLEY	163-32-112-109	\$ 2,582.41
9265 W RUSSELL RD 204	SPRING VALLEY	163-32-112-110	\$ 2,582.41
9265 W RUSSELL RD 205	SPRING VALLEY	163-32-112-111	\$ 2,582.41
9265 W RUSSELL RD 206	SPRING VALLEY	163-32-112-112	\$ 2,582.41
9265 W RUSSELL RD 207	SPRING VALLEY	163-32-112-113	\$ 2,582.41
9265 W RUSSELL RD 208	SPRING VALLEY	163-32-112-114	\$ 2,582.41
9265 W RUSSELL RD 209	SPRING VALLEY	163-32-112-115	\$ 2,582.41
9265 W RUSSELL RD 210	SPRING VALLEY	163-32-112-116	\$ 2,582.41
9265 W RUSSELL RD 211	SPRING VALLEY	163-32-112-117	\$ 2,582.41
9265 W RUSSELL RD 212	SPRING VALLEY	163-32-112-118	\$ 2,582.41
9265 W RUSSELL RD 213	SPRING VALLEY	163-32-112-119	\$ 2,582.41
9265 W RUSSELL RD 214	SPRING VALLEY	163-32-112-120	\$ 2,582.42
9265 W RUSSELL RD 215	SPRING VALLEY	163-32-112-121	\$ 2,582.42
9265 W RUSSELL RD 216	SPRING VALLEY	163-32-112-122	\$ 2,582.42
9265 W RUSSELL RD 217	SPRING VALLEY	163-32-112-123	\$ 2,582.42
9265 W RUSSELL RD 218	SPRING VALLEY	163-32-112-124	\$ 2,582.42
9265 W RUSSELL RD 219	SPRING VALLEY	163-32-112-125	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 220	SPRING VALLEY	163-32-112-126	\$ 2,582.42
9265 W RUSSELL RD 301	SPRING VALLEY	163-32-112-127	\$ 2,582.42
9265 W RUSSELL RD 302	SPRING VALLEY	163-32-112-128	\$ 2,582.42
9265 W RUSSELL RD 303	SPRING VALLEY	163-32-112-129	\$ 2,582.42
9265 W RUSSELL RD 304	SPRING VALLEY	163-32-112-130	\$ 2,582.42
9265 W RUSSELL RD 305	SPRING VALLEY	163-32-112-131	\$ 2,582.42
9265 W RUSSELL RD 306	SPRING VALLEY	163-32-112-132	\$ 2,582.42
9265 W RUSSELL RD 307	SPRING VALLEY	163-32-112-133	\$ 2,582.42
9265 W RUSSELL RD 308	SPRING VALLEY	163-32-112-134	\$ 2,582.42
9265 W RUSSELL RD 309	SPRING VALLEY	163-32-112-135	\$ 2,582.42
9265 W RUSSELL RD 310	SPRING VALLEY	163-32-112-136	\$ 2,582.42
9265 W RUSSELL RD 311	SPRING VALLEY	163-32-112-137	\$ 2,582.42
9265 W RUSSELL RD 312	SPRING VALLEY	163-32-112-138	\$ 2,582.42
9265 W RUSSELL RD 313	SPRING VALLEY	163-32-112-139	\$ 2,582.42
9265 W RUSSELL RD 314	SPRING VALLEY	163-32-112-140	\$ 2,582.42
9265 W RUSSELL RD 315	SPRING VALLEY	163-32-112-141	\$ 2,582.42
9265 W RUSSELL RD 316	SPRING VALLEY	163-32-112-142	\$ 2,582.42
9265 W RUSSELL RD 317	SPRING VALLEY	163-32-112-143	\$ 2,582.42
9265 W RUSSELL RD 318	SPRING VALLEY	163-32-112-144	\$ 2,582.42
9265 W RUSSELL RD 319	SPRING VALLEY	163-32-112-145	\$ 2,582.42
9265 W RUSSELL RD 320	SPRING VALLEY	163-32-112-146	\$ 2,582.42
9265 W RUSSELL RD 401	SPRING VALLEY	163-32-112-147	\$ 2,582.42
9265 W RUSSELL RD 402	SPRING VALLEY	163-32-112-148	\$ 2,582.42
9265 W RUSSELL RD 403	SPRING VALLEY	163-32-112-149	\$ 2,582.42
9265 W RUSSELL RD 404	SPRING VALLEY	163-32-112-150	\$ 2,582.42
9265 W RUSSELL RD 405	SPRING VALLEY	163-32-112-151	\$ 2,582.42
9265 W RUSSELL RD 406	SPRING VALLEY	163-32-112-152	\$ 2,582.42
9265 W RUSSELL RD 407	SPRING VALLEY	163-32-112-153	\$ 2,582.42
9265 W RUSSELL RD 408	SPRING VALLEY	163-32-112-154	\$ 2,582.42
9265 W RUSSELL RD 409	SPRING VALLEY	163-32-112-155	\$ 2,582.42
9265 W RUSSELL RD 410	SPRING VALLEY	163-32-112-156	\$ 2,582.42
9265 W RUSSELL RD 411	SPRING VALLEY	163-32-112-157	\$ 2,582.42
9265 W RUSSELL RD 412	SPRING VALLEY	163-32-112-158	\$ 2,582.42
9265 W RUSSELL RD 413	SPRING VALLEY	163-32-112-159	\$ 2,582.42
9265 W RUSSELL RD 414	SPRING VALLEY	163-32-112-160	\$ 2,582.42
9265 W RUSSELL RD 415	SPRING VALLEY	163-32-112-161	\$ 2,582.42
9265 W RUSSELL RD 416	SPRING VALLEY	163-32-112-162	\$ 2,582.42
9265 W RUSSELL RD 417	SPRING VALLEY	163-32-112-163	\$ 2,582.42
9265 W RUSSELL RD 418	SPRING VALLEY	163-32-112-164	\$ 2,582.42
9265 W RUSSELL RD 419	SPRING VALLEY	163-32-112-165	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 420	SPRING VALLEY	163-32-112-166	\$ 2,582.42
9265 W RUSSELL RD 214	SPRING VALLEY	163-32-112-120	\$ 2,582.42
9265 W RUSSELL RD 215	SPRING VALLEY	163-32-112-121	\$ 2,582.42
9265 W RUSSELL RD 216	SPRING VALLEY	163-32-112-122	\$ 2,582.42
9265 W RUSSELL RD 217	SPRING VALLEY	163-32-112-123	\$ 2,582.42
9265 W RUSSELL RD 218	SPRING VALLEY	163-32-112-124	\$ 2,582.42
9265 W RUSSELL RD 219	SPRING VALLEY	163-32-112-125	\$ 2,582.42
9265 W RUSSELL RD 220	SPRING VALLEY	163-32-112-126	\$ 2,582.42
9265 W RUSSELL RD 301	SPRING VALLEY	163-32-112-127	\$ 2,582.42
9265 W RUSSELL RD 302	SPRING VALLEY	163-32-112-128	\$ 2,582.42
9265 W RUSSELL RD 303	SPRING VALLEY	163-32-112-129	\$ 2,582.42
9265 W RUSSELL RD 304	SPRING VALLEY	163-32-112-130	\$ 2,582.42
9265 W RUSSELL RD 305	SPRING VALLEY	163-32-112-131	\$ 2,582.42
9265 W RUSSELL RD 306	SPRING VALLEY	163-32-112-132	\$ 2,582.42
9265 W RUSSELL RD 307	SPRING VALLEY	163-32-112-133	\$ 2,582.42
9265 W RUSSELL RD 308	SPRING VALLEY	163-32-112-134	\$ 2,582.42
9265 W RUSSELL RD 309	SPRING VALLEY	163-32-112-135	\$ 2,582.42
9265 W RUSSELL RD 310	SPRING VALLEY	163-32-112-136	\$ 2,582.42
9265 W RUSSELL RD 311	SPRING VALLEY	163-32-112-137	\$ 2,582.42
9265 W RUSSELL RD 312	SPRING VALLEY	163-32-112-138	\$ 2,582.42
9265 W RUSSELL RD 313	SPRING VALLEY	163-32-112-139	\$ 2,582.42
9265 W RUSSELL RD 314	SPRING VALLEY	163-32-112-140	\$ 2,582.42
9265 W RUSSELL RD 315	SPRING VALLEY	163-32-112-141	\$ 2,582.42
9265 W RUSSELL RD 316	SPRING VALLEY	163-32-112-142	\$ 2,582.42
9265 W RUSSELL RD 317	SPRING VALLEY	163-32-112-143	\$ 2,582.42
9265 W RUSSELL RD 318	SPRING VALLEY	163-32-112-144	\$ 2,582.42
9265 W RUSSELL RD 319	SPRING VALLEY	163-32-112-145	\$ 2,582.42
9265 W RUSSELL RD 320	SPRING VALLEY	163-32-112-146	\$ 2,582.42
9265 W RUSSELL RD 401	SPRING VALLEY	163-32-112-147	\$ 2,582.42
9265 W RUSSELL RD 402	SPRING VALLEY	163-32-112-148	\$ 2,582.42
9265 W RUSSELL RD 403	SPRING VALLEY	163-32-112-149	\$ 2,582.42
9265 W RUSSELL RD 404	SPRING VALLEY	163-32-112-150	\$ 2,582.42
9265 W RUSSELL RD 405	SPRING VALLEY	163-32-112-151	\$ 2,582.42
9265 W RUSSELL RD 406	SPRING VALLEY	163-32-112-152	\$ 2,582.42
9265 W RUSSELL RD 407	SPRING VALLEY	163-32-112-153	\$ 2,582.42
9265 W RUSSELL RD 408	SPRING VALLEY	163-32-112-154	\$ 2,582.42
9265 W RUSSELL RD 409	SPRING VALLEY	163-32-112-155	\$ 2,582.42
9265 W RUSSELL RD 410	SPRING VALLEY	163-32-112-156	\$ 2,582.42
9265 W RUSSELL RD 411	SPRING VALLEY	163-32-112-157	\$ 2,582.42
9265 W RUSSELL RD 412	SPRING VALLEY	163-32-112-158	\$ 2,582.42

EXHIBIT A

Physical Address		APN #	Lien Amount
9265 W RUSSELL RD 413	SPRING VALLEY	163-32-112-159	\$ 2,582.42
9265 W RUSSELL RD 414	SPRING VALLEY	163-32-112-160	\$ 2,582.42
9265 W RUSSELL RD 415	SPRING VALLEY	163-32-112-161	\$ 2,582.42
9265 W RUSSELL RD 416	SPRING VALLEY	163-32-112-162	\$ 2,582.42
9265 W RUSSELL RD 417	SPRING VALLEY	163-32-112-163	\$ 2,582.42
9265 W RUSSELL RD 418	SPRING VALLEY	163-32-112-164	\$ 2,582.42
9265 W RUSSELL RD 419	SPRING VALLEY	163-32-112-165	\$ 2,582.42
9265 W RUSSELL RD 420	SPRING VALLEY	163-32-112-166	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-001	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-002	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-003	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-004	\$ 2,582.42
9275 W RUSSELL RD	SPRING VALLEY	163-32-112-005	\$ 2,582.42
			\$ 756,647.12

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E. J. Smith
CLERK OF THE COURT

1 **COMP**
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3 Nevada Bar No. 006791
4 ANGELA H. DOWS, ESQ.
5 Nevada Bar No. 010339
6 READE & ASSOCIATES
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10 Facsimile: (702) 794-4421
11 E-Mail: creade@readelawfirm.com
12 Attorneys for Plaintiff PCI GROUP, LLC

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 PCI GROUP, LLC, a Nevada Limited-Liability
16 Company,

17 Plaintiff,

18 v.

19 GEMSTONE DEVELOPMENT WEST, INC.,
20 a Nevada Corporation; GEMSTONE
21 DEVELOPMENT, LLC, a Nevada Limited-
22 Liability Company; GEMSTONE
23 DEVELOPMENT WEST, LLC, a Nevada
24 Limited-Liability Company; DOES I through
25 X, and ROE BUSINESS ENTITIES XI
26 through XX, inclusive,

27 Defendants.

CASE NO.:
DEPT NO.:

1584960
XVII

COMPLAINT

28 COMES NOW Plaintiff PCI GROUP, LLC, by and through its attorneys of record, the
law firm of READE & ASSOCIATES, and files its Complaint against Defendant, and hereby
alleges and complains as follows:

JURISDICTION

1. Plaintiff PCI GROUP, LLC is and was at all times relevant hereto a Nevada
Limited-Liability Company, doing business in the State of Nevada under its managing member,
Hill International, Inc.

2. Upon information and belief, Defendant GEMSTONE DEVELOPMENT WEST,
INC. is and was at all times relevant hereto a Nevada Corporation, doing business in the State of

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1 Nevada, and is the purported owner of Manhattan West mixed use development located on or
2 near 9121 West Russell Road, Suite 117, Las Vegas, Nevada 89148, and/or the purported owner
3 of Clark County Assessor Parcel Numbers 163-32-101-003; 163-32-101-004; 163-32-101-005;
4 163-32-101-010; and 163-32-101-014.

5 3. Upon information and belief, Defendant GEMSTONE DEVELOPMENT, LLC is
6 and was at all times relevant hereto a Nevada Limited-Liability Company, doing business in the
7 State of Nevada, and is the purported owner of Manhattan West mixed use development located
8 on or near 9121 West Russell Road, Suite 117, Las Vegas, Nevada 89148, and/or the purported
9 owner of Clark County Assessor Parcel Numbers 163-32-101-003; 163-32-101-004; 163-32-
10 101-005; 163-32-101-010; and 163-32-101-014.

11 4. Upon information and belief, Defendant GEMSTONE DEVELOPMENT WEST,
12 LLC is and was at all times relevant hereto a Nevada Limited-Liability Company, doing business
13 in the State of Nevada, and is the purported owner of Manhattan West mixed use development
14 located on or near 9121 West Russell Road, Suite 117, Las Vegas, Nevada 89148, and/or the
15 purported owner of Clark County Assessor Parcel Numbers 163-32-101-003; 163-32-101-004;
16 163-32-101-005; 163-32-101-010; and 163-32-101-014.

17 5. That the true names and capacities of Defendants DOES I through X and ROE
18 BUSINESS ENTITIES XI through XX are unknown to Plaintiff who therefore sues said persons
19 by said fictitious names. Each of the parties designated as a DOE is responsible in some manner
20 for the events and happenings described in the Complaint which proximately caused the damages
21 as alleged herein. Each of the parties designated a ROE BUSINESS ENTITY is responsible in
22 some manner for the events and happenings described herein which proximately caused the
23 damages to Plaintiff as alleged herein. Plaintiff will ask leave of Court to amend the Complaint
24 to insert the true names and capacities of the DOES and/or ROE BUSINESS ENTITIES and
25 state appropriate charging allegations, when that information has been ascertained.
26
27
28

1 6. Pursuant to NRS 13.040, Defendant GEMSTONE DEVELOPMENT WEST,
2 INC. is a Nevada Corporation, located in Clark County, Nevada.

3 7. Pursuant to NRS 13.040, Defendant GEMSTONE DEVELOPMENT, LLC is a
4 Nevada Limited-Liability Company, located in Clark County, Nevada.

5 8. Pursuant to NRS 13.040, Defendant GEMSTONE DEVELOPMENT WEST,
6 LLC is a Nevada Limited-Liability Company, located in Clark County, Nevada.

7 **GENERAL ALLEGATIONS**

8
9 9. On or about August 22, 2008, one or more GEMSTONE Defendants and PCI
10 GROUP, LLC entered into a Sales Agreement for software and its related services and products,
11 in relation to one or more GEMSTONE Defendants' ongoing construction projects, including the
12 Manhattan West project.

13 10. The Sales Agreement was drafted by PCI GROUP, LLC, and signed by a agent
14 and/or representative and/or employee of one or more GEMSTONE Defendants.

15 11. On or about September 30, 2008, October 31, 2008, and December 29, 2008,
16 representatives from PCI GROUP, LLC traveled to Las Vegas to provide additional training and
17 consulting services related to the software Sales Agreement.

18 12. Pursuant to the Sales Agreement, PCI GROUP, LLC was to provide certain
19 software and products and services related thereto to one or more GEMSTONE Defendants,
20 including: support and maintenance, setup, consulting, configuration and training, and copies of
21 training manuals.

22 13. PCI GROUP, LLC performed its work, provided training and consulting, and
23 delivered its products, pursuant to the Sales Agreement and any related invoices thereto.

24 14. The balance due and owing by one or more GEMSTONE Defendants under the
25 Sales Agreement and any invoices related thereto is an amount in excess of Ten Thousand
26 Dollars (\$10,000.00).
27
28

1 15. Despite repeated requests, GEMSTONE Defendants, and each of them, have
2 failed to pay monies due and owing under the Sales Agreement, and any invoices related thereto,
3 to PCI GROUP, LLC, thus necessitating the current action.

4 **FIRST CLAIM FOR RELIEF**
5 **(Breach of Contract Against All Defendants)**

6 16. Plaintiff PCI GROUP, LLC hereby repeats and re-alleges the allegations of
7 Paragraphs 1 through 10 of its Complaint as though fully set forth herein.

8 17. There was a valid and enforceable contract between PCI GROUP, LLC and one
9 or more GEMSTONE Defendants.

10 18. PCI GROUP, LLC complied with the terms of the agreement.

11 19. One or more GEMSTONE Defendants materially breached the agreement by:
12 failing to perform under the agreement, failing to make payments due to PCI GROUP, LLC, and
13 otherwise breaching the terms of the agreement.
14

15 20. As a result of one or more of the GEMSTONE Defendant's material breaches of
16 the agreement, PCI GROUP, LLC has been damaged in an amount in excess of Ten Thousand
17 Dollars (\$10,000.00).

18 21. PCI GROUP, LLC is entitled to pre-judgment and post-judgment interest on all
19 amounts found due and owing.
20

21 22. PCI GROUP, LLC has been forced to retain the services of an attorney in this
22 matter, and PCI GROUP, LLC is entitled to an award of attorney's fees and costs incurred.

23 **SECOND CLAIM FOR RELIEF**
24 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants)**

25 23. Plaintiff PCI GROUP, LLC hereby repeats and re-alleges the allegations of
26 Paragraphs 1 through 17 of its Complaint as though fully set forth herein.

27 24. There is an implied covenant of good faith and fair dealing in all contracts in the
28 state of Nevada.

1 25. One or more GEMSTONE Defendants have breached the covenant of good faith
2 and fair dealing by performing in a manner that was unfaithful to the purpose of the contract by:
3 failing to perform under the agreement, failing to make payments due to PCI GROUP, LLC, and
4 otherwise breaching the terms of the agreement.

5 26. As a result of one or more of the GEMSTONE Defendant's breaches of the
6 implied covenant of good faith and fair dealing, PCI GROUP, LLC has been damaged in an
7 amount in excess of Ten Thousand Dollars (\$10,000.00).

8 27. PCI GROUP, LLC is entitled to pre-judgment and post-judgment interest on all
9 amounts found due and owing.
10

11 28. One or more of the GEMSTONE Defendant's actions were intentional and
12 malicious and evidence a wanton and reckless disregard of PCI GROUP, LLC's rights and PCI
13 GROUP, LLC is therefore entitled to punitive damages in an amount in excess of Ten Thousand
14 Dollars (\$10,000.00).

15 29. PCI GROUP, LLC has been forced to retain the services of an attorney in this
16 matter, and PCI GROUP, LLC is entitled to an award of attorney's fees and costs incurred.
17

18 **THIRD CLAIM FOR RELIEF**
19 **(Unjust Enrichment Against All Defendants)**

20 30. Plaintiff PCI GROUP, LLC hereby repeats and re-alleges the allegations of
21 Paragraphs 1 through 24 of its Complaint as though fully set forth herein.

22 31. PCI GROUP, LLC furnished work related to one or more of the GEMSTONE
23 Defendant's projects, including the Manhattan West project, and including software design and
24 implementation, support and maintenance, consulting, and training materials, for the benefit of
25 and at the specific instance and request of one or more GEMSTONE Defendants.

26 32. One or more GEMSTONE Defendants accepted, used and enjoyed the benefit of
27 the work that PCI GROUP, LLC provided.
28

33. One or more GEMSTONE Defendants knew or should have known that PCI GROUP, LLC expected to be paid for the work that PCI GROUP, LLC furnished.

34. PCI GROUP, LLC has demanded that one or more GEMSTONE Defendants pay the sums outstanding for the work furnished by PCI GROUP, LLC.

35. To date, one or more GEMSTONE Defendants have failed, neglected and refused to pay said sums to the detriment of PCI GROUP, LLC.

36. Unless payment is made to PCI GROUP, LLC for the work, one or more GEMSTONE Defendants will be unjustly enriched to the detriment of PCI GROUP, LLC.

37. As a result of one or more GEMSTONE Defendant's unjust enrichment, PCI GROUP, LLC has been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

38. PCI GROUP, LLC is entitled to pre-judgment and post-judgment interest on all amounts found due and owing.

39. PCI GROUP, LLC has been forced to retain the services of an attorney in this matter, and PCI GROUP, LLC is entitled to an award of attorney's fees and costs incurred.

FOURTH CLAIM FOR RELIEF
(Monies Due and Owing Against All Defendants)

40. Plaintiff PCI GROUP, LLC hereby repeats and re-alleges the allegations of Paragraphs 1 through 34 of its Complaint as though fully set forth herein.

41. PCI GROUP, LLC has performed all terms and conditions of the Sales Agreement executed between PCI GROUP, LLC and one or more GEMSTONE Defendants, and performed according to additional training and consulting agreements executed between the parties.

42. PCI GROUP, LLC has not been paid for all sums justly due and owing.

43. The monies due and owing to PCI GROUP, LLC by one or more GEMSTONE Defendants are in an amount in excess of Ten Thousand Dollars (\$10,000.00).

1 44. PCI GROUP, LLC is entitled to pre-judgment and post-judgment interest on all
2 amounts found due and owing.

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

5 WHEREFORE, Plaintiff PCI GROUP, LLC prays for relief against Defendants, and each
6 of them, as follows:

- 7
- 8 1. That PCI GROUP, LLC be awarded general and consequential damages in an
9 amount in excess of Ten Thousand Dollars (\$10,000.00);
 - 10 2. That PCI GROUP, LLC be awarded special and/or punitive and/or exemplary
11 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
 - 12 3. For an award of reasonable attorney's fees;
 - 13 4. For costs of suit incurred herein;
 - 14 5. That PCI GROUP, LLC be awarded pre-judgment interest on all amounts found
15 due and owing, as well as post-judgment interest on all amounts; and
 - 16 6. For such other and further relief as the Court deems just and proper.

17 DATED this 17th day of March, 2009.

18
19 READE & ASSOCIATES

20
21 By: 

22 R. Christopher Reade, Esq.
23 Nevada Bar No. 006791
24 Angela H. Dows, Esq.
25 Nevada Bar No. 010339
26 4560 South Decatur Boulevard, Suite 201
27 Las Vegas, Nevada 89103
28 (702) 794-4411
Attorneys for Plaintiff PCI GROUP, LLC

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HOWARD & HOWARD ATTORNEYS PLLC

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wbg@h2law.com
Attorneys for APCO Construction

DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED CASES AND
MATTERS.

CASE NO.: A571228
DEPT. NO.: XII

APCO CONSTRUCTION'S ANSWER TO
STEEL STRUCTURES, INC. AND
NEVADA PREFAB ENGINEERS, INC.'S
AMENDED STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION and
CROSS-CLAIM

APCO CONSTRUCTION ("APCO"), by and through its attorneys, Gwen Rutar Mullins, Esq. and Wade B. Gochmour of the law firm of Howard and Howard Attorneys PLLC, hereby files this Answer to Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Amended

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

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

3 **GENERAL ALLEGATIONS**

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

6 2. Answering Paragraphs 5, 10 and 11 of the Complaint in Intervention, APCO
7 does not have sufficient knowledge or information upon which to base a belief as to the truth of
8 the allegations contained therein, and upon said grounds, denies each and every allegation
9 contained therein.

10 3. Answering Paragraph 6 of the Complaint in Intervention, APCO admits that
11 APCO entered into an agreement with Gemstone for the construction of the Manhattan West
12 Project. APCO does not have sufficient knowledge or information upon which to base a belief
13 as to the truth of the remaining allegations contained therein, and upon said grounds denies
14 them.

15 4. Answering Paragraphs 7 and 8 of the Complaint in Intervention, APCO admits
16 that APCO entered into a subcontract with Nevada Prefab for provision of steel work for the
17 Manhattan West Project and that APCO issued a purchase order to Steel Structures for the
18 provision of materials for the construction of stairs and railings for the Manhattan West Project.
19 APCO does not have sufficient knowledge or information upon which to base a belief as to the
20 truth of the remaining allegations contained therein, and upon said grounds denies them.

21 5. Answering Paragraphs 9 and 12 of the Complaint in Intervention, APCO denies
22 the allegations contained therein.

23 **FIRST CLAIM FOR RELIEF**

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

25 6. Answering Paragraph 13 of the Complaint in Intervention, APCO repeats and
26 realleges each and every allegation contained in paragraphs 1 through 5 of this Answer to the
27 Complaint in Intervention as though fully set forth herein.

1 7. Answering Paragraph 14 of the Complaint in Intervention, APCO admits that
2 Nevada Prefab and Steel Structures provided labor and/or materials for the improvement of the
3 Manhattan West Project. APCO denies the remaining allegations of Paragraph 14 of the
4 Complaint in Intervention.

5 8. Answering Paragraphs 15, 16, 17, 18, 19, 20, 21, and 22 of the Complaint in
6 Intervention, APCO does not have sufficient knowledge or information upon which to base a
7 belief as to the truth of the allegations contained therein, and upon said grounds, denies each
8 and every allegation contained therein.

9 **SECOND CLAIM FOR RELIEF**

10 **(Breach of Contract)**

11 9. Answering Paragraph 23 of the Complaint in Intervention, APCO repeats and
12 realleges each and every allegation contained in paragraphs 1 through 8 of this Answer to the
13 Complaint in Intervention as though fully set forth herein.

14 10. Answering Paragraphs 24, 25, 26, 27, 28 and 29 of the Complaint in
15 Intervention, APCO denies all the allegations as they pertain to, or as they are alleged against,
16 APCO. With respect to any allegations that have been asserted against Gemstone, APCO does
17 not have sufficient knowledge or information upon which to base a belief as to the truth of the
18 allegations contained therein, and upon said grounds, denies each and every allegation
19 contained therein.

20 **THIRD CLAIM FOR RELIEF**

21 **(Unjust Enrichment)**

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

25 12. Answering Paragraphs 31, 32, and 33 of the Complaint in Intervention, APCO
26 denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect
27 to any allegations that have been asserted against Gemstone, APCO does not have sufficient
28

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

3 **FOURTH CLAIM FOR RELIEF**

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

5 13. Answering Paragraph 34 of the Complaint in Intervention, APCO repeats and
6 realleges each and every allegation contained in paragraphs 1 through 12 of this Answer to the
7 Complaint in Intervention as though fully set forth herein.

8 14. Answering Paragraphs 35, 36, 37 and 38 of the Complaint in Intervention,
9 APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With
10 respect to any allegations that have been asserted against Gemstone, 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 **FIFTH CLAIM FOR RELIEF**

15 **(Priority of Claim)**

16 15. Answering Paragraph 39 of the Complaint in Intervention, APCO repeats and
17 realleges each and every allegation contained in paragraphs 1 through 14 of this Answer to the
18 Complaint in Intervention as though fully set forth herein.

19 16. Answering Paragraph 40 of the Complaint in Intervention, APCO admits the
20 allegations set forth therein.

21 17. Answering Paragraphs 41 and 42 of the Complaint in Intervention, APCO
22 denies all the allegations as they pertain to, or as they are alleged against, APCO and APCO
23 specifically claims priority over Gemstone, any trust deeds holders as well as lien claimants,
24 including Plaintiffs/Intervenors. With respect to any allegations that have been asserted against
25 Gemstone, APCO does not have sufficient knowledge or information upon which to base a
26 belief as to the truth of the allegations contained therein, and upon said grounds, denies each
27 and every allegation contained therein.

28 ///

FIRST AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors have failed to state a claim against APCO upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The claims of the Plaintiffs/Intervenors have been waived as a result of their respective acts and conduct.

THIRD AFFIRMATIVE DEFENSE

No monies are due Plaintiffs/Intervenors at this time as APCO has not received payment for Plaintiffs/Intervenors' work from Gemstone, the developer of the Manhattan West Project.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

At the time and place under the circumstances alleged by the Plaintiffs/Intervenors, Plaintiffs/Intervenors had full and complete knowledge and information with regard to the conditions and circumstances then and there existing, and through Plaintiffs/Intervenors' 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 Plaintiffs/Intervenors, were caused in whole or in part or were contributed to by reason of Plaintiffs/Intervenors' own actions.

SEVENTH AFFIRMATIVE DEFENSE

The liability, if any, of APCO must be reduced by the percentage of fault of others, including the Plaintiffs/Intervenors.

///

EIGHTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiffs/Intervenors were caused by and arose out of the risk which Plaintiffs/Intervenors had knowledge and which Plaintiffs/Intervenors assumed.

NINTH AFFIRMATIVE DEFENSE

The alleged damages complained of by the Plaintiffs/Intervenors 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 Plaintiffs/Intervenors.

TENTH AFFIRMATIVE DEFENSE

APCO's obligations to Plaintiffs/Intervenors have been satisfied or excused.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors failed to perform their work in workmanlike manner thus causing damages in excess to the sums Plaintiffs/Intervenors claim are due under the subcontract and/or purchase order with APCO.

TWELFTH AFFIRMATIVE DEFENSE

The claim for breach of contract is barred as a result of Plaintiffs/Intervenors' failure to satisfy conditions precedent.

THIRTEENTH AFFIRMATIVE DEFENSE

The claims, and each of them, are premature.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors 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 Plaintiffs/Intervenors' improper workmanship on the Manhattan West Project, including, but not limited to, any damage amount and the attorney's fees and costs incurred by APCO relative thereto.

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FIFTEENTH AFFIRMATIVE DEFENSE

APCO is entitled to an offset or a setoff of any damages that APCO sustains as a result of Plaintiffs/Intervenors 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 and/or purchase order with Plaintiffs/Intervenors, if any, have been replaced, terminated, voided, cancelled or otherwise released by the ratification entered into between Plaintiffs/Intervenors, 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

The claims against APCO are barred as a result of Plaintiffs/Intervenors's failure to comply with the requirements of NRCP Rule 24 including, but not limited to, Plaintiffs/Intervenors having failed to timely apply to the Court to intervene in this action as required.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors have failed to comply with the requirements of NRS 624.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors have failed to promptly assert its respective claims against APCO and APCO reserves the right to request the Court to strike any improper pleadings filed against APCO.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs/Intervenors may have failed to comply with all requirements of NRS 108 to perfect its lien.

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///

HOWARD & HOWARD ATTORNEYS PLLC
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TWENTY-SECOND AFFIRMATIVE DEFENSE

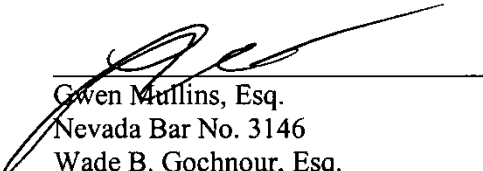
Pursuant to NRCP Rule 8 and 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to the Complaint in Intervention, and therefore, APCO reserves the right to amend their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

WHEREFORE, APCO prays for judgment as follows:

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

DATED this 27 day of February 2009.

HOWARD & HOWARD ATTORNEYS PLLC


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

CROSS-CLAIM

Plaintiff/Defendant in Intervention APCO CONSTRUCTION (hereinafter "APCO"), by and through its attorneys of record, Gwen Rutar Mullins, Esq., and Wade B. Gochnour, Esq. of the law firm of HOWARD & HOWARD ATTORNEYS PLLC, hereby assert the following Cross-Claim against Cross-Defendant GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone"):

GENERAL ALLEGATIONS

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

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

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

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

5. The Agreement was drafted by Gemstone.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Issue the change order; or

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

27. NRS 624.610(3) provides:

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

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

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

(c) The prime contractor may submit to the owner a bill or invoice for the labor, materials, equipment or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ///

27 ///

28 ///

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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

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

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

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

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

///

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

3 **SECOND CAUSE OF ACTION**

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **(Indemnification)**

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

19 58. The construction work performed by Steel Structures, Inc. and/or
20 Nevada Prefab Engineers, Inc. was performed on the Project being developed by Gemstone.

21 59. APCO has received claims and demands for other subcontractors and/or
22 suppliers who performed work or supplied materials to the Project, for which APCO has not
23 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 the Project, including that performed by Steel Structures, Inc. and Nevada
27 Prefab Engineers, Inc.

28 ///

1 61. Gemstone obtained any benefit that would have been conferred by the
2 construction work performed by Steel Structures, Inc., Nevada Prefab Engineers, Inc., and any
3 other subcontractor and/or supplier of APCO on the Project.

4 62. Gemstone should equitably, or otherwise, indemnify APCO for any and
5 all losses, damages or expenses APCO sustains as a result of the Complaint in Intervention
6 filed in the above action by Steel Structures, Inc., Nevada Prefab Engineers, Inc., and/or any
7 other subcontractor and/or supplier of APCO and for any monies that APCO is forced to
8 otherwise pay as a result of the action filed by Steel Structures, Inc., Nevada Prefab Engineers,
9 Inc., or any other subcontractor and/or supplier of APCO on the Project, including, but not
10 limited, any judgment award and the attorney's fees and costs incurred by APCO in defending
11 the action filed by Steel Structures, Inc., Nevada Prefab Engineers, Inc., and/or any other
12 subcontractor and/or supplier of APCO on the Project.

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

15 **FOURTH CAUSE OF ACTION**

16 **(Unjust Enrichment)**

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

19 65. If a judgment is obtained by Steel Structures, Inc., Nevada Prefab
20 Engineers, Inc., and/or any other subcontractor and/or supplier of APCO on the Project against
21 APCO and APCO is forced to pay any sums thereof to Steel Structures, Inc., Nevada Prefab
22 Engineers, Inc., and/or any other subcontractor of APCO on the Project, Gemstone will receive
23 a benefit.

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

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

FIFTH CAUSE OF ACTION

(Fraud)

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

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

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

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

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

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

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

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

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

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

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

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

3 **SIXTH CAUSE OF ACTION**
4 **(Negligent Misrepresentation Plead in the Alternative)**

5
6 80. APCO repeats and realleges each and every allegation contained in
7 paragraphs 1 through 79 of its Cross-Claim as though fully set forth herein.

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

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

12 83. As a direct, proximate and foreseeable result of APCO's reliance upon
13 Gemstone's negligent representations, APCO has been damaged in an amount in excess of
14 \$10,000.00.

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

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

- 18 1. For an award of damages in the sum in excess of \$10,000.00;
19 2. For an award of attorneys' fees and costs incurred herein by APCO;
20 3. That APCO be awarded special damages in excess of \$10,000;
21 4. That APCO be awarded punitive or exemplary damages in excess of
22 \$10,000;
23 5. That APCO be awarded pre-judgment on all amounts found due and
24 owing; and

25 ///

26 ///

27 ///

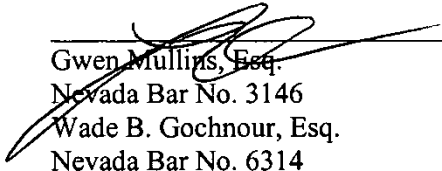
28 ///

HOWARD & HOWARD ATTORNEYS PLLC
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(702) 257-1483

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6. For such other and further relief as this Court may deem just and proper.
DATED this 27 day of February 2009.

HOWARD & HOWARD ATTORNEYS PLLC


Gwen Mullins, Esq.
Nevada Bar No. 3146
Wade B. Gochnour, Esq.
Nevada Bar No. 6314
3800 Howard Hughes Parkway
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Attorneys for APCO Construction

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CERTIFICATE OF MAILING

On the 12th day of March 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO STEEL STRUCTURES, INC. AND NEVADA PREFAB ENGINEERS, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION and CROSS-CLAIM, by U.S. Mail, postage prepaid, upon the following:

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

Marilyn Fine, Esq.
Meier & Fine
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Las Vegas, Nevada 89102
Attorneys for Scott Financial Corporation

Donald H. Williams, Esq.
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Las Vegas, Nevada 89101
Attorneys for Harsco Corporation

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

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Las Vegas, NV 89169
Attorneys for Steel Structures, Inc. and Nevada Prefab Engineers, Inc.

Justin L. Watkins, Esq.
WATT, TIEDER, HOFFAR & FITZGERALD, LLP
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Attorneys for Cabinetec, Inc.


An employee of Howard and Howard Attorneys PLLC

ORIGINAL

15

1 STMT
2 CHRISTOPHER R. McCULLOUGH, ESQ.
3 Nevada Bar #1138
4 McCULLOUGH, PEREZ & ASSOCIATES, LTD.
5 601 South Rancho Drive, #A-10
6 Las Vegas, Nevada 89106
7 (702) 385-7383
8 Attorneys for Lien Claimant
9 CELL-CRETE FIREPROOFING OF NEVADA, INC.

FILED

MAR 12 3 21 PM '09

Earl D. Smith
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

8 APCO CONSTRUCTION, a Nevada corporation,
9 Plaintiff,

CASE NO. A571228
DEPT. NO. XVI

10 v.

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

CELL-CRETE FIREPROOFING OF
NEVADA, INC.'S STATEMENT OF
FACTS CONSTITUTING LIEN AND
COMPLAINT IN INTERVENTION

21 Defendants.

22 CABINETEC, INC., a Nevada corporation,

23 Intervenor/Lien Claimant,

24 v.

25 CAMCO PACIFIC CONSTRUCTION
26 COMPANY, INC., a California corporation;
27 APCO CONSTRUCTION, a Nevada
28 corporation; GEMSTONE DEVELOPMENT
29 WEST, INC., a Nevada corporation; and DOES I
30 through X; and ROE CORPORATIONS I
31 through X, inclusive,

32 Defendants in Intervention.

33 Caption continued on next page

CLERK OF THE COURT

MAR 12 2009

RECEIVED

1 CELL-CRETE FIREPROOFING OF NEVADA,
2 INC., a Nevada corporation,

3 Intervenor/Lien Claimant,

4 v.

5 CAMCO PACIFIC CONSTRUCTION
6 COMPANY, INC., a California corporation;
7 APCO CONSTRUCTION, a Nevada corporation;
8 GEMSTONE DEVELOPMENT WEST, INC., a
9 Nevada corporation; NEVADA
10 CONSTRUCTION SERVICES, a Nevada
11 corporation; SCOTT FINANCIAL
12 CORPORATION, a North Dakota corporation;
13 COMMONWEALTH LAND TITLE
14 INSURANCE COMPANY, a Pennsylvania
15 corporation; FIRST AMERICAN TITLE
16 INSURANCE COMPANY, a foreign corporation;
17 FIDELITY AND DEPOSIT COMPANY OF
18 MARYLAND, in relation to contractor's
19 license bond number 8739721; and DOES I
20 through X, and DOES I through X; and ROE
21 CORPORATIONS I through X, inclusive,

22 Defendants in Intervention.

23 Intervenor/Lien Claimant, CELL-CRETE FIREPROOFING OF NEVADA, INC., (hereinafter
24 "Cell-Crete" or "Lien Claimant"), by and through its attorneys McCULLOUGH, PEREZ &
25 ASSOCIATES, LTD., complains and alleges as follows:

26 **STATEMENT OF FACTS CONSTITUTING LIEN**
27 **AND COMPLAINT**

28 1.

That at all times mentioned herein, Lien Claimant, CELL-CRETE, was and is a corporation
duly organized and existing under the laws of the State of Nevada, and a contractor licensed under the
laws of the State of Nevada.

2.

Upon information and belief, at all times mentioned herein, Defendant, GEMSTONE
DEVELOPMENT WEST ("Gemstone"), was a Nevada corporation duly authorized to do business in

1 the State of Nevada.

2 3.

3 Upon information and belief, at all times mentioned herein, Defendant, CAMCO PACIFIC
4 CONSTRUCTION COMPANY, INC. ("Camco"), was a Nevada corporation, organized and existing
5 under the laws of the State of Nevada and a contractor licensed under the laws of the State of Nevada.

6 4.

7 Upon information and belief, at all times mentioned herein, Defendant APCO
8 CONSTRUCTION ("Apco"), was a Nevada corporation, organized and existing under the laws of the
9 State of Nevada and a contractor licensed under the laws of the State of Nevada.

10 5.

11 The true names or capacities, whether individual, corporate, associate, or otherwise, of
12 Defendants named herein as DOES 1 through 10 are unknown to Lien Claimant, who therefore, sue said
13 Defendants by such fictitious names; Lien Claimant is informed and believes, and therein alleges, that
14 each of the Defendants designated herein as DOE is responsible in some manner for the events and
15 happenings referred to, and caused damages proximately to Lien Claimant, and Lien Claimant will ask
16 leave of the Court to amend the Complaint to insert the true names and capacities of DOES 1 through
17 10, inclusive, when the same have been ascertained, and to join such Defendants in this action.

18 6.

19 That at all times mentioned herein, Defendant, GEMSTONE, was the true and lawful owners
20 of that certain real property located in Clark County, Nevada, commonly known as the Manhattan West
21 Project, 9205 W. Russell Road, Las Vegas, Nevada, Assessor's Parcel Number: 163-32-101-019,
22 hereinafter referred to as the SUBJECT PROPERTY.

23 7.

24 That between August, 2008 thru December, 2008, at the specific insistence and request of
25 CAMCO PACIFIC, Lien Claimant furnished work, labor, materials and/or services to be used in the
26 construction of improvements on the SUBJECT PROPERTY hereinabove referenced.

1 8.

2 That the total work, labor, materials and/or services furnished by CELL-CRETE, which were
3 actually used in the construction of the aforementioned improvements, after deducting all just credits
4 and offsets is \$111,629.00, of which the entire amount remains unpaid.

5 9.

6 That in or about February 2, 2009, pursuant to N.R.S. 108.226, CELL-CRETE recorded a
7 Notice of Lien in the Office of the County Recorder, Clark County, Nevada, stating that the CELL-
8 CRETE had furnished work, labor, materials and/or services used in the construction of the
9 improvements on the real property known as Parcel No. 163-32-101-019.. The aforementioned Notice
10 of Lien recorded by CELL-CRETE on February 2, 2009, was recorded in Book No. 20090202 as
11 Instrument No. 0003407. A true and correct copy of the Notice of Lien is attached hereto as Exhibit "1,"
12 and incorporated herein by this reference.

13 10.

14 That there is now due and owing to CELL-CRETE from the Defendants, by or on account of
15 work, labor, materials and/or services furnished after allowing just credits and offsets, accruing
16 subsequent to the filing of the mechanic's lien, the sum of \$111,629.00, plus interest accruing at the
17 statutory rate from the filing of the lien.

18 11.

19 That Lien Claimant CELL-CRETE prays an Order of this Court foreclosing upon CELL-
20 CRETE's mechanic's lien and ordering the SUBJECT PROPERTY sold in accordance with the
21 provisions of Chapter 108 of Nevada Revised Statutes, and the proceeds of the sale paid to CELL-
22 CRETE in satisfaction of its lien.

23 12.

24 That Lien Claimant has been required to retain the services of an attorney to prosecute this
25 action and is entitled to an award of reasonable attorney's fees incurred herein.
26
27

28 -4-

1 **FIRST CAUSE OF ACTION**

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

3 13.

4 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
5 through 12, as if fully set forth herein.

6 14.

7 That in or about August, 2008, CELL-CRETE and Defendant CAMCO PACIFIC
8 CONSTRUCTION COMPANY entered into a written subcontract agreement for CELL-CRETE to
9 provide certain labor, materials and/or services to be used in the construction of improvements of the
10 aforementioned SUBJECT PROPERTY.

11 15.

12 The work, labor, materials and/or services furnished by CELL-CRETE, after allowing just
13 credits and offsets, the sum of \$111,629.00, remains due and owing.

14 16.

15 That CELL-CRETE has fully performed all the terms and conditions of the subcontract
16 agreement.

17 17.

18 CELL-CRETE has demanded payment from Defendants for the labor, materials and services
19 rendered pursuant to the contract, but the Defendants have failed, neglected and refused to pay same.
20

21 18.

22 That as a direct and proximate result of the actions of Defendant GEMSTONE, Defendants are
23 in breach of its contract with CELL-CRETE, and has caused CELL-CRETE damages in the amount of
24 \$111,629.00, plus interest accruing at the statutory rate from the filing of the lien.

25 19.

26 That CELL-CRETE has been required to retain the services of an attorney to prosecute this
27

1 action and is entitled to an award of reasonable attorney's fees incurred herein.

2 **SECOND CAUSE OF ACTION**

3 **(Unjust Enrichment)**

4 20.

5 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
6 through 19, as if fully set forth herein.

7 21.

8 That CELL-CRETE furnished Defendants with work, labor, materials and/or services used in
9 the construction of improvements to the SUBJECT PROPERTY.

10 22.

11 That Defendants have not paid for the work furnished by CELL-CRETE, including work, labor,
12 materials and/or services used in the construction of improvements to the SUBJECT PROPERTY, which
13 was the essence of CELL-CRETE's contract with Defendants.

14 23.

15 As a direct and proximate result of the actions of the Defendants as hereinabove alleged,
16 Defendants have been unjustly enriched by the retention of the benefits of the furnished work, labor,
17 materials and/or services provided by CELL-CRETE.

18 24.

19 That as a direct and proximate result of the actions of the Defendants as hereinabove alleged,
20 CELL-CRETE has been damaged in the amount of \$111,629.00, constituting the reasonable value of
21 the work, labor, materials and/or services supplied by CELL-CRETE in the construction of
22 improvements to the SUBJECT PROPERTY.

23 25.

24 That CELL-CRETE has been required to retain the services of an attorney to prosecute this
25 action and is entitled to an award of reasonable attorney's fees incurred herein.

1 **THIRD CAUSE OF ACTION**

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

3 26.

4 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
5 through 25, as if fully set forth herein.

6 27.

7 Upon information and belief, APCO, CAMCO and GEMSTONE violated NRS 624.609 by
8 improperly withholding payments due to CELL-CRETE.

9 28.

10 CELL-CRETE is entitled to pre-judgment and post-judgment interest on all amounts found due
11 and owing.

12 29.

13 CELL-CRETE has been required to retain the services of an attorney to prosecute this action
14 and is entitled to an award of reasonable attorney's fees incurred herein.

15 **FOURTH CAUSE OF ACTION**

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

17 30.

18 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
19 through 29, as if fully set forth herein.

20 31.

21 APCO and/or GEMSTONE owes CELL-CRETE the sum of \$111,629, together with interest
22 accruing thereon, for portions of the work, and although demand has been made upon APCO and
23 GEMSTONE for payment of said sum, APCO and GEMSTONE have failed, neglected and refused and
24 continue to fail, neglect and refuse to pay the same.

1 32.

2 CAMCO and/or GEMSTONE owes CELL-CRETE the sum of \$111,629, together with interest
3 accruing thereon, for portions of the work, and although demand has been made upon CAMCO and
4 GEMSTONE for payment of said sum, CAMCO and GEMSTONE have failed, neglected and refused
5 and continue to fail, neglect and refuse to pay the same.

6 33.

7 CELL-CRETE is entitled to judgment against APCO and/or GEMSTONE in the amount of
8 \$111,629, together with interest thereon at the highest legal rate until paid in full.

9 34.

10 CELL-CRETE is entitled to judgment against CAMCO and/or GEMSTONE in the amount of
11 \$111,629, together with interest thereon at the highest legal rate until paid in full.

12 35.

13 CELL-CRETE has been required to retain the services of an attorney to prosecute this action
14 and is entitled to an award of reasonable attorney's fees incurred herein.

15 **FIFTH CAUSE OF ACTION**

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

17 36.

18 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
19 through 35, as if fully set forth herein.

20 37.

21 CELL-CRETE performed the work.

22 38.

23 APCO, CAMCO and GEMSTONE had knowledge that CELL-CRETE was performing the
24 work.
25
26
27
28

1 39.

2 APCO, CAMCO and GEMSTONE accepted the benefits of the work, materials and
3 improvements, and expressly and impliedly promised to pay CELL-CRETE a reasonable compensation
4 therefore.

5 40.

6 The work has a reasonable value of \$111,629, but CELL-CRETE has not been paid this
7 amount. As a result, CELL-CRETE has sustained damages in the amount of \$111,629.

8 41.

9 CELL-CRETE has been required to retain the services of an attorney to prosecute this action
10 and is entitled to an award of reasonable attorney's fees incurred herein.

11 **SIXTH CAUSE OF ACTION**

12 **(Lien Foreclosure Against GEMSTONE)**

13 42.

14 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
15 through 41, as if fully set forth herein.

16 43.

17 CELL-CRETE is a licensed contractor in the State of Nevada, CELL-CRETE performed the
18 work at the request and special instance of APCO, CAMCO and GEMSTONE.

19 44,

20 CELL-CRETE demanded payment of all sums due and owing for the work. However, CELL-
21 CRETE has not received payment for its work and materials and as a result, the amount of \$111,629
22 remains past due and owing.

23 45.

24 On January 14, 2009, CELL-CRETE sent CAMCO and GEMSTONE, a Notice of Intent to
25 Lien and demanded payment.

1 46.

2 Having received no response to the Notice of Intent Lien, on February 2, 2009, CELL-CRETE
3 recorded a Mechanics Lien in Book No. 20090202, as Instrument No. 0003407.

4 47.

5 CELL-CRETE served the Lien via cerfield mail.

6 48.

7 CELL-CRETE is entitled to recover in this action the costs and fees incurred preparing,
8 recording, and serving its Notice of Intent to Lien and its Lien.

9 49.

10 CELL-CRETE's Lien is charged against the Property and has been properly perfected pursuant
11 to NRS 108, et seq. CELL-CRETE is therefore entitled to and Order from this Court directing that the
12 Subject Property be sold and foreclosed upon and that from the proceeds of the sale, CELL-CRETE be
13 paid the principal sum of \$111,629, together with interest accrued thereon, plus reimbursement of the
14 costs of suit and attorneys fees that CELL-CRETE has incurred and continues to incur in connection
15 with this action.

16
17 **SEVENTH CAUSE OF ACTION**

18 **(Breach of Duty-Violation of NRS 627)**

19 50.

20 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
21 through 49, as if fully set forth herein.

22 51.

23 Upon information and belief, Defendant Nevada Construction Services ("NCS") is a Nevada
24 corporation duly organized under the laws of this state, doing business as a construction control
25 company.

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52.

Upon information and belief, at all times relevant herein, NCS was and is the construction control company on the Project.

53.

NCS is and at all times mentioned herein was, engaged in the control or disbursement of funds payable or paid to laborers, materialmen, material suppliers, contractors, subcontractors, architects, engineers, or others, for the purpose of satisfying bills incurred in the construction, repair, alteration or improvement of the Subject Property, including CELL-CRETE's invoices for the work and materials furnished by CELL-CRETE and its subcontractors for the work of improvement of the Subject Property.

54.

Upon information and belief, Defendant Scott Financial Corporation ("SFC"), a North Dakota corporation duly qualified to do business in the State of Nevada provided monies to be used in the payment of the bills incurred in the construction, repair, alteration or improvement of the Subject Property.

55.

By providing the monies to be used in the payment of bills incurred in the construction, repair, alteration or improvement of the Subject Property, SFC acted as lender as defined in NRS Chapter 627.

56.

Upon information and belief, NCS and SFC have construction loan funds for the benefit of APCO and its subcontractors for the work performed on the Project.

57.

At all times relevant hereto, CELL-CRETE relied upon the control of NCS and SFC and based upon that reliance, furnished labor and materials for the improvement of the Subject Property.

58.

CELL-CRETE, in reliance upon NCS, executed vouchers and lien releases for payfrom for the

1 labor and materials, which vouchers were dishonored by NCS and SFC.

2 59.

3 NCS and SFC knew or should have known that CELL-CRETE relied upon NCS and SFC for
4 payment of the sums due.

5 60.

6 By refusing to pay the valid claims of CELL-CRETE, NCS and SFC violated the provision of
7 NRS Chapter 627 and CELL-CRETE has been damaged in excess of \$10,000.00.

8 61.

9 CELL-CRETE has been required to retain the services of an attorney to prosecute this action
10 and is entitled to an award of reasonable attorney's fees incurred herein.

11 **EIGHTH CAUSE OF ACTION**

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

13 62.

14 CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1
15 through 61, as if fully set forth herein.

16 63.

17 Gemstone Apache, LLC was the Trustor on the Deeds of Trust recorded on July 5, 2006 in
18 Book 20060705 as Instrument Nos. 04264, 04265 and 04266, in the office of the County Recorder for
19 Clark County, Nevada, as amended ("Mezzanine Deed of Trust").

20 64.

21 Defendant First American Title Insurance Company ("First American") is the trustee of the
22 Deeds of Trust recorded on July 5, 2006 in Book 20060705 as Instrument Nos. 04264, 04265 and 04266,
23 in the office of the County Recorder for Clark County, Nevada, as amended, on February 7, 2008 as
24 Instrument Nos. 01484, 01485 and the Second Amendments to Third Deed of Trust and Security
25 Agreement with Assignment of Rents and Fixture Filing Line of Credit, recorded on September 9, 2008
26

1 against the Subject Property, in Book 20080909 as Instrument No. 03943 of the Official Records of
2 Clark County, Nevada.

3 65.

4 GEMSTONE acquired the Property from Gemstone Apache, LLC on or around February 7,
5 2007 and assumed the Mezzanine Deeds of Trust, which have been amended to secure payment of the
6 restructured mezzanine note.

7 66.

8 GEMSTONE is the Trustor on the Senior Debt Deed of Trust, recorded on February 7, 2008
9 against the Subject Property, in Book No. 20080207 as Instruments Nos. 01482 ("Construction Deed
10 of Trust") as well as the Mezzanine Deed of Trust, as amended on February 7, 2008 by Instrument Nos..
11 01484, 01485 and the Second Amendments to Third Deed of Trust and Security Agreement with
12 Assignment of Rents and Fixture Filing Line of Credit, recorded on September 9, 2008 against the
13 Subject Property, in Book 20080909 as Instrument No. 03943 of the Official Records of Clark County,
14 Nevada.

15 67.

16 Defendant COMMONWEALTH LAND TITLE INSURANCE COMPANY ("Land Title") is
17 the trustee of the Construction Deed of Trust recorded on the Subject Property on February 7, 2008, in
18 Book No. 20080207 as Instrument No. 01482.

19 68.

20 Scott Financial Corporation, a North Dakota corporation, is the beneficiary on the Mezzanine
21 Deeds of Trust to the Construction Deed of Trust per the Mezzanine Deeds of Trust Subordination
22 Agreement which SFC signed and recorded on February 7, 2008 in Book No. 20080207 as Instrument
23 No. 001486 of the Official Records of Clark County, Nevada.

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69.

The work of improvement to the Subject Property commenced prior to the recording of the Deeds of Trust on the Subject Property.

70.

CELL-CRETE's claim is superior to the claims against the Property of Defendants GEMSTONE, SFC, Land Title and First American.

71.

CELL-CRETE has been required to retain the services of an attorney to prosecute this action and is entitled to an award of reasonable attorney's fees incurred herein.

NINTH CAUSE OF ACTION
(Claim on Bond)

72.

CELL-CRETE repeats and realleges each and every allegation contained in Paragraphs 1 through 71, as if fully set forth herein.

73.

That FIDELITY AND DEPOSIT COMPANY OF MARYLAND, on or about July 24, 2008, issued contractor's license bond number 8739721 in the amount of \$50,000.

74.

That the aforementioned contractor's license bond named as its principal, and was posted for the use and benefit of the citizens of the State of Nevada who are injured by certain actions or omissions committed by Defendant CAMCO.

75.

That Plaintiff is amongst a class of persons intended to be protected by the contractor's license bond and has standing to bring direct action on the bond.

1 76.

2 That upon the entry of a judgment against Defendants GEMSTONE and CAMCO, Plaintiff
3 prays the entry of judgment against FIDELITY AND DEPOSIT COMPANY OF MARYLAND, in
4 relation to the above referenced bond, in an amount up to the face amount of the bond, and in any event,
5 in excess of \$10,000.00.

6 77.

7 That Plaintiff has been required to retain the services of an attorney to prosecute this action and
8 entitled to an award of reasonable attorneys incurred herein.
9

10 WHEREFORE, CELL-CRETE prays for judgment as follows:

11 On Its First, Second, Third, Fourth, Fifth and Seventh Causes of Action:

- 12 1) For damages in excess of \$10,000;
13 2) For accrued interest at the statutory rate;
14 3) For attorney's fees incurred in the prosecution of this action;
15 6) For costs incurred in the prosecution of this action;
16 7) For such other and further relief as to the Court seems just and proper.
17

18 On Its Sixth Cause of Action:

19 1) For judgment ordering the mechanic's lien recorded by Plaintiff as herein
20 referenced, be foreclosed upon, and the real property which is the subject of that mechanic's lien,
21 be sold by sheriff's sale, at public auction, and the proceeds thereof be used to satisfy the
22 mechanic's lien;

23 2) For interest accruing at the statutory rate from the date of the recording of the
24 mechanic's lien until paid;

25 3) For attorney's fees incurred in the prosecution of this action;

26 4) For costs of preparation and recording the mechanic's lien together with costs of
27

1 suit incurred herein;

2 5) For other and further relief as to the Court seems just and proper.

3 On Its Eighth Cause of Action:

4 1) For a declaratory judgment declaring that Plaintiff, and other mechanic's lien
5 claimants holding valid mechanic's liens against the Subject Property are entitled to be paid from
6 the proceeds of the sale of the Subject Property, prior to any payment to the lender holding a
7 Deed of Trust against the Subject Property;

8 2) For a declaratory judgment declaring the respective rights and interests of the
9 parties in this action for attorney's fees and court costs incurred in the prosecution of this action;
10 and

11 3) For such other and further relief as to the Court seems just and proper.

12
13 On Its Ninth Cause of Action:

14 1) For damages up to the face amount of the bond, and in any event, in excess of
15 \$10,000.00;

16 2) For accrued interest at the statutory rate;


17 3) For attorney's fees incurred in the prosecution of this action;

18 4) For costs incurred in the prosecution of this action;

19 5) For such other and further relief as to the Court seems just and proper.

20 DATED this 12 day of March, 2009.

21
22 McCULLOUGH, PEREZ & ASSOCIATES, LTD.

23 By 
24 CHRISTOPHER R. McCULLOUGH, ESQ.
25 Nevada Bar #1138
26 601 S. Rancho Drive, #A-10
27 Las Vegas, Nevada 89106
28 Attorneys for Lien Claimant
CELL-CRETE FIREPROOFING OF NEVADA, INC.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 12 day of March, 2009, a true and correct copy of the above and foregoing CELL-CRETE FIREPROOFING OF NEVADA, INC.'S STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION, was served upon the following, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

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Attorney for Nevada Construction Services


Employee of McCULLOUGH, PEREZ & ASSOCIATES, LTD.

ORIGINAL

FILED

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E. J. Standish
CLERK OF THE COURT

STAT
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Nevada Bar No. 7067
CHRISTOPHER D. CRAFT, ESQ.
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Attorneys for Steel Structures, Inc.
Nevada Prefab Engineers, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST,
INC.; and DOES I through X,

Defendant.

STEEL STRUCTURES, INC., a Nevada
corporation; NEVADA PREFAB
ENGINEERS, INC., a Nevada corporation.

Plaintiff/Intervenor,

vs.

GEMSTONE DEVELOPMENT WEST,
INC., APCO CONSTRUCTION, CAMCO
PACIFIC CONSTRUCTION, FIDELITY
AND DEPOSIT COMPANY OF
MARYLAND; and DOES I through X,

Defendants.

Case No. A571228
Dept. No. X

**SECOND AMENDED STATEMENT
OF FACTS CONSTITUTING
LIEN AND COMPLAINT
IN INTERVENTION**

Plaintiff/Intervenor Nevada Prefab Engineers, Inc., by and through their attorneys, Jolley

S:\MAL\NV PreFab Engineers 214\Gemstone 20001\Pleadings\2nd Amended Statement of Facts.wpd

Page 1 of 10

JOLLEY URG A WIRTH
WOODBURY & STANDISH
ATTORNEYS AT LAW
3800 HOWARD HUGHES PARKWAY
SIXTEENTH FLOOR
WELLS FARGO TOWER
LAS VEGAS, NEVADA 89169
TELEPHONE (702) 699-7500

AA 000234

1 Urga Wirth Woodbury & Standish, hereby brings its Second Amended Statement of Facts
2 Constituting Lien and Complaint in Intervention ("Complaint") and complain and allege as follows:

3
4 **GENERAL ALLEGATIONS**

5 1. Steel Structures, Inc. ("Steel Structures") is a Nevada corporation which provides
6 structural steel and related materials for construction projects.

7 2. Nevada Prefab Engineers, Inc. ("Nevada Prefab") is a Nevada corporation which
8 does steel work for construction projects and is a licensed contractor.

9 3. Gemstone Development West, Inc. ("Gemstone") is a Nevada corporation and is the
10 owner of the Manhattan West mixed use development located at APN 163-32-101-019.

11 4. APCO Construction ("Apco") is a Nevada corporation and a licensed contractor
12 doing business in Clark County, Nevada.

13 5. Camco Pacific Construction Company ("Camco Pacific") is a California corporation
14 doing business as a general contractor in Clark County, Nevada.

15 6. Fidelity & Deposit Company of Maryland ("FDC") is a surety company which has
16 posted a Contractor's Licensing Bond in the amount of \$50,000, Surety Bond No. 8739721 on behalf
17 of Camco Pacific.

18 7. The true names or capacities, whether individual, corporate, associate, or otherwise
19 of Defendants Does 1 through X, are unknown to Plaintiffs/Intervenors, who therefore sues said
20 defendants by such fictitious names. Plaintiff/Intervenors is informed and believe and therefore
21 alleges that each of the defendants designated herein as a Doe is responsible in some manner for the
22 events and happenings herein referred to and caused injury and damages proximately thereby to
23 Intervenor as herein alleged, or is an insurer or lender or surety of one or more Defendants; that
24 Intervenor will ask leave of this Court to amend this Complaint to insert the true names and
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1 capacities of said Doe Defendants, when the same have been ascertained by Intervenor, together
2 with appropriate charging allegations, and to join such defendants in this action.

3
4 8. On September 6, 2007, APCO entered an agreement with Gemstone for the
5 construction of the project known as Manhattan West in Clark County, Nevada (the "Project").

6 9. On February 14, 2008, Nevada Prefab entered into a subcontract agreement with
7 APCO for the provision of steel work for the Manhattan West project.

8 10. On June 4, 2008, APCO issued a purchase order to Steel Structures for the provision
9 of materials for the construction of stairs and railings for the project.

10
11 11. Eventually, APCO ceased work on the project. After APCO's departure, Camco
12 Pacific was retained as the general contractor for the project. Camco Pacific ratified the APCO-
13 Nevada Prefab contract on September 4, 2008, and Nevada Prefab continued its work on behalf of
14 Camco Pacific.

15 12. Both Steel Structures and Nevada Prefab fulfilled their contractual obligations in a
16 competent and timely manner. However, Gemstone, APCO and Camco Pacific failed to fully pay
17 Nevada Prefab and Steel Structures the amounts due under their agreements.

18
19 13. Despite repeated demands from Intervenor, Gemstone, APCO, and Camco Pacific
20 have failed to pay all amounts due and owing to Plaintiffs/Intervenor for the materials and labor
21 provided. On November 14 and 21, 2008, Plaintiffs/Intervenor caused Mechanic's Liens to be
22 recorded against the Property. Copies of the Liens are attached hereto as Exhibit 1.

23
24 **FIRST CLAIM FOR RELIEF**

25 **(Foreclosure on Mechanic's Lien)**

26 14. Plaintiffs/Intervenor repeat and reallege each and every preceding paragraph of this
27 Complaint as though fully set forth herein.

1 15. Plaintiffs/Intervenors provided labor and/or materials for the improvement of the
2 Property pursuant to contracts with Defendants.

3
4 16. Plaintiffs/Intervenors have demanded payment of all sums due and owing on account
5 of the labor and materials provided, the total sum of which remains past due and owing to
6 Plaintiffs/Intervenors.

7
8 17. Plaintiffs/Intervenors have complied with the provisions of Chapter 108 of the
Nevada Revised Statutes.

18. On or about November 14, 2008, Steel Structures caused to be timely recorded a
mechanic's lien against the Property in Book 20081114 of Official Records of Clark County,
Nevada, as Instrument 0001275.

19. The Lien is valid and enforceable as against the Property.

20. Steel Structures is entitled to foreclose the Lien and be reimbursed for the expenses
incurred in preparing, recording, and enforcing the same.

21. On or about November 21, 2008, Nevada Prefab caused to be timely recorded a
mechanic's lien against the Property in Book 20081121 of Official Records of Clark County,
Nevada, as Instrument 0005199.

22. The Lien is valid and enforceable as against the Property.

23. Nevada Prefab is entitled to foreclose the Lien and be reimbursed for the expenses
incurred in preparing, recording, and enforcing the same.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

24. Plaintiffs/Intervenors repeat and reallege each and every preceding paragraph of this
Complaint as though fully set forth herein.

1
2 25. Plaintiffs/Intervenors have fully performed their obligations under their contracts with
3 Defendants including all conditions precedent except as have been excused by the respective
4 breaches by Defendants.

5 26. Defendants have failed to fully pay for the materials and services provided by
6 Plaintiffs/Intervenors under the Contract.

7 27. Plaintiffs/Intervenors have demanded that Defendants fulfill their obligations under
8 the contracts, but Defendants have refused.

9 28. The conduct of Defendants alleged in the foregoing paragraphs constitutes a breach
10 of contract.

11 29. As a result of Defendants' breach of contract, Plaintiffs/Intervenors have suffered
12 damages in excess of \$10,000.00 plus interest and any additional charges that may be proved at trial.

13 30. Plaintiffs/Intervenors have been required to retain the services of an attorney to
14 prosecute this action and has been damaged thereby. In addition to the amount specified in the
15 paragraph above, Steel Structures is entitled to recover its reasonable attorneys' fees and costs of
16 suit.
17

18
19 **THIRD CLAIM FOR RELIEF**

20 **(Unjust Enrichment)**

21 31. Plaintiffs/Intervenors repeat and reallege the allegations contained in each and every
22 preceding paragraph as though fully set forth herein.

23 32. Defendants have requested, obtained, accepted, and enjoyed the benefits of the
24 materials and labor provided by Plaintiffs/Intervenors under the contracts. Defendants knew, or
25 should have known, that Plaintiffs/Intervenors expected to be paid by Defendants as set forth in the
26 contracts.
27
28

1 33. Defendants have been unjustly enriched to the extent of Defendants' failure to make
2 payment to Plaintiffs/Intervenors, and Plaintiffs/Intervenors are entitled to damages in that amount
3 plus interest and any additional amounts proved at trial.
4

5 34. Plaintiffs/Intervenors have been required to retain the services of an attorney to
6 prosecute this action and Plaintiffs/Intervenors have been damaged thereby. In addition to the
7 amount specified in the paragraph above, Plaintiffs/Intervenors are entitled to recover its reasonable
8 attorneys' fees and costs of suit.
9

10 **FOURTH CLAIM FOR RELIEF**

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

12 35. Plaintiffs/Intervenors repeat and reallege the allegations contained in each and every
13 preceding paragraph as though fully set forth herein.
14

15 36. Implied in the contracts is a covenant of good faith and fair dealing between the
16 parties.
17

18 37. Defendants have breached the implied covenant of good faith and fair dealing by
19 failing to pay for materials provided by Plaintiffs/Intervenors under the contracts.
20

21 38. As a result of Defendants' breach of the implied covenant of good faith and fair
22 dealing, Plaintiffs/Intervenors have suffered damages in excess of \$10,000.00 plus interest and any
23 additional charges that may be proved at trial.
24

25 39. Plaintiffs/Intervenors have been required to retain the services of an attorney to
26 prosecute this action and Plaintiffs/Intervenors have been damaged thereby. In addition to the
27 amount specified in the paragraph above, Plaintiffs/Intervenors are entitled to recover its reasonable
28 attorneys' fees and costs of suit.

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FIFTH CLAIM FOR RELIEF

(Priority of Lien)

40. Plaintiffs/Intervenors repeats and realleges each and every preceding paragraph of this Complaint as though fully set forth herein.

41. Plaintiffs/Intervenors are informed and believe and thereupon allege that physical work of improvement to the Property commenced before the recording of all Doe Defendants' Deeds of Trust and/or Assignments of Deeds of Trust.

42. The Doe Defendants' interests in the Property were taken subject to Plaintiffs/Intervenors lien claims, and Plaintiffs/Intervenors lien claims are superior to the interests of the claims of the Doe Defendants against the Property.

43. Plaintiffs/Intervenors have been required to retain the services of attorneys to prosecute this action, and Plaintiffs/Intervenors have been damaged thereby. Therefore, Plaintiffs/Intervenors are entitled to recover reasonable attorney's fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(Claim on Bond)

44. Plaintiffs/Intervenors repeats and realleges each and every preceding paragraph of this Complaint as though fully set forth herein.

45. Plaintiffs/Intervenors are informed and believes that FDC posted a surety bond, Bond No. 8739721 for Camco in the amount of \$50,000.

46. As a direct result of Camco's failure to pay Plaintiffs/Intervenors, Plaintiffs/Intervenors have suffered damages in excess of \$10,000.

47. Based on the foregoing, FDC is obligated to pay to Plaintiffs/Intervenors the amount of damages Plaintiffs/Intervenors have suffered to the extent covered by the payment bond.

1 48. Plaintiffs/Intervenors has been required to retain the services of an attorney to
2 prosecute this action and Plaintiffs/Intervenors have been damaged thereby. In addition to the
3 amount specified above, Plaintiffs/Intervenors are entitled to recover its reasonable attorney's fees
4 and costs of suit.
5

6 WHEREFORE, Plaintiffs/Intervenors demand judgment against Defendants, jointly and
7 severally, in its favor as follows:

- 8 1. That the Lien be enforced against the Property according to law;
9
10 2. That the Court declare the rank and priority of all lien claims and secured claims, and
11 that Plaintiffs/Intervenors' liens be given priority and declared superior and ascertained and
12 adjudged as a valid lien;
13
14 3. That the Court direct the foreclosure sale of the Property;
15
16 4. That the Property be sold and the proceeds of sale be applied to the payment of the
17 sums due and owing to Plaintiffs/Intervenors; and
18
19 5. For reasonable attorney's fees and costs of suit incurred herein; and
20
21 6. For such other and further relief as the Court deems just and proper.

22 DATED this 20 day of March, 2009.

23 JOLLEY URG A WIRTH WOODBURY
24 & STANDISH

25 By: 

26 MARTIN A. LITTLE, ESQ., #7067
27 CHRISTOPHER D. CRAFT, ESQ., #7314
28 3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiffs/Intervenors

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CERTIFICATE OF SERVICE BY MAIL

My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard Hughes Parkway, Suite 1600, Las Vegas, Nevada 89169.

On this day I served the within SECOND AMENDED STATEMENT OF FACTS CONSTITUTING LIEN AND COMPLAINT IN INTERVENTION on the parties in said action or proceeding by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

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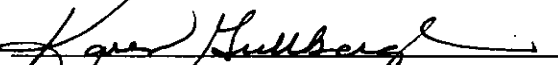
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8 Henderson, Nevada 89074
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11 3993 Howard Hughes Parkway, #400
12 Las Vegas, Nevada 89169
Attorney for Cabinetec, Inc.

13 and placing the envelope in the mail bin at the firm's office.

14 I am readily familiar with the firm's practice of collection and processing correspondence
15 for mailing. Under that practice it is deposited with the U. S. Postal Service on the same day it is
16 placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary
17 course of business.

18 I certify under penalty of perjury that the foregoing is true and correct, and that this
19 Certificate of Service by Mail was executed by me on March 20, 2009 at Las Vegas, Nevada.

20
21 
22 An employee of JOLLEY URGAS WIRTH
23 WOODBURY & STANDISH
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Appellant,

vs.

ZITTING BROTHERS CONSTRUCTION,
INC.,

Respondent.

Electronically Filed
Case No.: 75197 Apr 15 2019 02:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S APPENDIX
(Volume 1, Bates Nos. 1-243)

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Attorneys for Appellant, APCO Construction, Inc.

MAC:05161-019 3698575_1

INDEX TO APPELLANT'S APPENDIX

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
10/24/2008	Atlas Construction Supply, Inc.'s Complaint	1	AA 1–16
10/30/2008	Ahern Rentals, Inc.'s Complaint	1	AA 17–30
11/19/2008	Platte River Insurance Company's Answer and Crossclaim	1	AA 31–45
12/08/2008	APCO Construction's First Amended Complaint	1	AA 46–63
02/06/2009	Cabinetec's Statement and Complaint	1	AA 64–73
02/23/2009	Uintah's Complaint	1	AA 74–80
02/24/2009	Tri-City Drywall, Inc.'s Statement and Complaint	1	AA 81–88
03/02/2009	Noorda Sheet Metal Company's Statement and Complaint	1	AA 89–165
03/06/2009	Camco Pacific Construction Company's Answer and Counterclaim	1	AA 166–172
03/10/2009	The Masonry Group Nevada's Complaint	1	AA 173–189
03/11/2009	PCI Group, LLC Complaint	1	AA 190–196
03/12/2009	APCO Construction's Answer to Steel Structures, Inc, and Nevada Prefab Engineers, Inc.'s Amended Statement and Crossclaim	1	AA 197–216
03/12/2009	Cell-Crete Fireproofing of Nevada, Inc.'s Statement and Complaint	1	AA 217–233
03/20/2009	Steel Structures, Inc. and Nevada Prefab Engineers, Inc.'s Second Amended Statement and Complaint	1	AA 234–243
03/24/2009	Insulpro Projects, Inc.'s Statement	2	AA 244–264
03/26/2009	APCO Construction's Statement and Complaint	2	AA 265–278

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
03/27/2009	Dave Peterson Framing, Inc.'s Statement, Complaint, and Third-Party Complaint	2	AA 279–327
03/27/2009	E&E Fire Protection, LLC's Statement, Complaint, and Third-Party Complaint	2	AA 328–371
03/27/2009	Professional Doors and Millworks, LLC's Statement, Complaint, and Third-Party Complaint	2	AA 372–483
04/03/2009	Hydropressure Cleaning, Inc.'s Statement and Complaint	3	AA 484–498
04/03/2009	Ready Mix, Inc.'s Statement and First Amended Complaint	3	AA 499–510
04/06/2009	EZA P.C. dba Oz Architecture of Nevada, Inc.'s Statement	3	AA 511–514
04/07/2012	Accuracy Glass & Mirror Company, Inc.'s Complaint	3	AA 515–550
04/08/2009	John Deere Landscapes, Inc.'s Statement, Complaint, and Third-Party Complaint	3	AA 551–558
04/14/2009	Helix Electric of Nevada, LLC's Statement and Third-Party Complaint	3	AA 559–595
04/17/2009	Republic Crane Service, LLC's Complaint	3	AA 596–607
04/24/2019	Bruin Painting's Statement and Third-Party Complaint	3	AA 608–641
04/24/2009	HD Supply Waterworks, LP's Statement and Third-Party Complaint	3	AA 642–680
04/24/2009	The Pressure Grout Company's Statement and Complaint	3	AA 681–689
04/27/2009	Heinaman Contract Glazing's Complaint	3	AA 690–724
04/28/2009	WRG Design, Inc.'s Statement and Third-Party Complaint	4	AA 725–761

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
04/29/2009	APCO Construction's Answer to Cell-Crete Fireproofing of Nevada, Inc.'s Statement and Complaint and Crossclaim	4	AA 762-784
04/29/2009	Executive Plastering, Inc.'s Statement	4	AA 785-792
04/30/2009	Zitting Brothers Construction, Inc.'s Complaint Re: Foreclosure	4	AA 793-810
05/05/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Noorda Sheet Metal Company's Third-Party Complaint and Camco Pacific Construction's Counterclaim	4	AA 811-828
05/05/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Professional Doors and Millworks, LLC's Third-Party Complaint and Camco Pacific Construction's Counterclaim	4	AA 829-846
05/05/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to E&E Fire Protection, LLC's Third-Party Complaint and Camco Pacific Construction's Counterclaim	4	AA 847-864
05/05/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to The Masonry Group Nevada, Inc.'s Complaint and Camco Pacific Construction's Counterclaim	4	AA 865-882

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
05/05/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Cabinetec, Inc.'s Complaint and Camco Pacific Construction's Counterclaim	4	AA 883–899
05/05/2009	Graybar Electric Company, Inc.'s Complaint	4	AA 900–905
05/05/2009	Olson Precast Company's Complaint	4	AA 906–911
05/13/2009	Fast Glass, Inc.'s Statement	4	AA 912–957
05/14/2009	HD Supply Construction Supply, LP dba White Cap Construction Supply, Inc.'s Complaint	5	AA 958–981
05/15/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Insulpro Projects, Inc.'s Complaint and Camco Pacific Construction's Counterclaim	5	AA 982–999
05/19/2009	Terra South Corporation dba Mad Dog Heavy Equipment's Statement and Third-Party Complaint	5	AA 1000–1008
05/20/2009	Ahern Rental, Inc.'s Statement and Complaint	5	AA 1009–1018
05/20/2009	Southwest Air Conditioning, Inc.'s Statement	5	AA 1019–1024
05/27/2009	Ferguson Fire & Fabrication, Inc.'s Statement and Complaint	5	AA 1025–1033
05/27/2009	Republic Crane Service, LLC's Amended Statement	5	AA 1034–1044
05/29/2009	Pape Material Handling dba Pape Rents' Statement and Complaint	5	AA 1045–1057
05/29/2009	Selectbuild Nevada, Inc.'s Statement	5	AA 1058–1070

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
06/01/2009	Buchele, Inc.'s Statement	5	AA 1071–1082
06/01/2009	Renaissance Pools & Spas, Inc.'s Statement	5	AA 1083–1094
06/03/2009	Executive Plastering, Inc.'s First Amended Complaint	5	AA 1095–1105
06/10/2009	APCO Construction's Answer to Zitting Brothers Construction, Inc.'s Complaint	5	AA 1106–1117
06/12/2009	Supply Network dba Viking Supplynet's Statement and Complaint	5	AA 1118–1123
06/15/2009	Las Vegas Pipeline, LLC's Statement and Complaint	5	AA 1124–1130
06/16/2009	Creative Home Theatre, LLC's Statement	5	AA 1131–1138
06/23/2009	Inquipco's Statement and Complaint	5	AA 1139–1146
06/24/2009	Accuracy Glass & Mirror's First Amended Complaint	5	AA 1147–1161
06/24/2009	Bruin Painting's Amended Statement and Third-Party Complaint	5	AA 1162–1173
06/24/2009	HD Supply Waterworks' Amended Statement and Third-Party Complaint	5	AA 1174–1190
06/24/2009	Heinaman Contract Glazing's Amended Statement and Third-Party Complaint	5	AA 1191–1202
06/24/2009	Helix Electric of Nevada, LLC dba Helix Electric's Amended Statement and Third-Party Complaint	6	AA 1203–1217
06/24/2009	WRG Design, Inc.'s Amended Statement and Third-Party Complaint	6	AA 1218–1233
06/23/2009	Ahern Rentals, Inc.'s First Amended Statement and Complaint	6	AA 1234–1255
07/07/2009	The Masonry Group Nevada, Inc.'s Statement and Complaint	6	AA 1256–1273

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
07/09/2009	Northstar Concrete, Inc.'s Statement and Complaint	6	AA 1274–1288
07/10/2009	Camco Pacific Construction Company, Inc.'s Statement and Complaint	6	AA 1289–1310
7/22/2009	Granite Construction Company's Statement and Complaint	6	AA 1311–1318
08/10/2009	HA Fabricators, Inc.'s Complaint	6	AA 1319–1327
08/18/2009	Club Vista Financial Services, LLC and Tharaldson Motels II, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Statement and Complaint and Counterclaim	6	AA 1328–1416
08/28/2009	Custom Select Billing, Inc.'s Statement and Complaint	6	AA 1417–1443
09/09/2009	Camco Pacific Construction Company, Inc.'s Answer to Las Vegas Pipeline, LLC's Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	7	AA 1444–1460
09/10/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Dave Peterson Framing, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	7	AA 1461–1484
09/10/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Northstar Concrete, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	7	AA 1485–1505

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
09/10/2009	Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland's Answer to Tri-City Drywall, Inc.'s Statement and Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	7	AA 1506–1526
09/11/2009	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	7	AA 1527–1545
09/11/2009	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	7	AA 1546–1564
09/11/2009	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	7	AA 1565–1584
09/11/2009	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	7	AA 1585–1604

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
09/25/2009	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	7	AA 1605–1622
09/25/2009	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	7	AA 1623–1642
09/30/2009	Camco Pacific Construction Company, Inc. Answer to Executive Plastering, Inc.'s First Amended Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	7	AA 1643–1650
10/19/2009	APCO Construction's Answer to HA Fabricators, Inc.'s Answer, Counterclaim, and Third-Party Complaint	7	AA 1651–1673
11/13/2009	Stipulation and Order for Dismissal of Steel Structures, Inc.'s Complaint Against Camco Pacific Construction, and Camco's Counterclaim Against Steel Structures, Inc.	7	AA 1674–1675
12/23/2009	Harsco Corporation's Second Amended Complaint	7	AA 1676–1684
01/22/2010	United Subcontractors, Inc. dba Skyline Insulation's Complaint	7	AA 1685–1690
04/05/2010	Interstate Plumbing & Air Conditioning, LLC's Statement and Complaint	8	AA 1691–1721

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
04/13/2010	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	8	AA 1722–1738
07/01/2010	Stipulation and Order for Dismissal with Prejudice of Claims Asserted by Select Build Nevada, Inc. Against APCO Construction	8	AA 1739–1741
05/23/2013	Notice of Entry of Order Approving Sale of Property	8	AA 1742–1808
04/14/2016	Notice of Entry of Order Releasing Sale Proceeds from Court-Controlled Escrow Account	8	AA 1809–1818
10/07/2016	Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amending Case Agenda	8	AA 1819–1822
05/27/2017	Notice of Entry of Order	8	AA 1823–1830
07/31/2017	Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	8 9 10	AA 1831–1916 AA 1917–2166 AA 2167–2198
08/02/2017	Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements and Ex Pate Application for Order Shortening Time	10	AA 2199–2263
08/21/2017	APCO Construction's Opposition to Zitting Brothers Construction Inc.'s Partial Motion for Summary Judgment	10	AA 2264–2329

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
08/21/2017	APCO's opposition to Peel Brimley MSJ	10	AA 2330–2349
09/20/2017	Order Granting Plaintiff's Motion to Dismiss	10	AA 2350–2351
09/28/2017	Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based On Pay-If-Paid Agreements	10	AA 2352–2357
09/29/2017	Zitting Brothers Construction, Inc.'s Reply In Support of Motion for Partial Summary Judgment Against APCO Construction	10	AA 2358–2413
10/05/2017	Recorder's Transcript of Hearing RE: All Pending Motions	11	AA 2414–2433
11/06/2017	Zitting Brothers Construction, Inc.'s Motion in Limine to Limit the Defenses of APCO Construction to the Enforceability of Pay-If-Paid Provision	11	AA 2434–2627
11/06/2017	APCO's Supplemental Briefing in Opposition to Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction. Inc.	12	AA 2628–2789
11/14/2017	APCO Construction's Opposition to Zitting Brothers Construction, Inc.'s Motion in Limine to Limit the Defenses of APCO Construction to the Enforceability of a Pay-If-Paid Provision	12 13 14	AA 2790–2851 AA 2852–3053 AA 3054–3108
11/16/2017	Zitting Brothers Construction, Inc.'s Reply in Support of Motion in Limine to Limit the Defenses of APCO Construction ("APCO") to the Enforceability of Pay-If-Pay Provision	14	AA 3109–3160

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
11/16/2017	Recorder's Transcript of Hearing RE: All Pending Motions	14	AA 3161–3176
11/16/2017	Zitting Brothers Construction, Inc.'s Response to APCO Construction's Supplemental Opposition to Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment	14	AA 3177–3234
11/27/2017	Decision	14	AA 3235–3237
12/05/2017	Court Minutes Granting Zitting MIL	14	AA 3238
12/29/2017	Findings of Fact Conclusions of Law, and Granting Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	14	AA 3239–3249
01/02/2018	Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements	14	AA 3250–3255
01/02/2018	Notice of Entry of Order Granting Zitting Brothers Construction, Inc.'s MSJ	14	AA 3256–3268
01/03/2018	Notice of Entry of Order Granting Peel Brimley MSJ	14	AA 3269–3280
01/04/2018	Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay If Paid Provisions on an Order Shortening Time	15	AA 3281–3517
		16	AA 3518–3633

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
01/08/2018	Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment and Ex Parte Application for Order Shortening Time and to Exceed Page Limit	16 17 18 19	AA 3634–3763 AA 3764–4013 AA 4014–4253 AA 4254–4344
01/09/2018	Plaintiff in Intervention, National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Reconsideration of the Court's Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment to Preclude Defenses of Pay if Paid Provisions	19	AA 4345–4350
01/09/2018	Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements	19	AA 4351–4359
01/10/2018	APCO's Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-If-Paid Provisions on an Order Shortening Time	19	AA 4360–4372
01/10/2018	Zitting Brothers Construction, Inc. Opposition to APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction's Partial Motion for Summary Judgment	19	AA 4373–4445
01/11/2018	Recorder's Transcript of Hearing RE: All Pending Motions	19	AA 4446–4466

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
01/19/2018	Order Denying APCO Construction's Motion for Reconsideration of Court's Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements	19	AA 4467-4468
01/19/2018	Notice of Entry of Order Denying APCO's motion for reconsideration of Peel Brimley Order	19	AA 4469-4473
01/25/2018	Order Denying APCO Construction's Motion for Reconsideration of Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment	19	AA 4474-4475
01/29/2018	Memorandum in Support of APCO Construction, Inc.'s Payment of Attorney's Fees, Costs, and Interest to Zitting Brothers Construction, Inc.	19 20	AA 4476-4487 AA 4488-4689
01/31/2018	Notice of Entry of Order Denying APCO Construction, Inc.'s Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Summary Judgment	20	AA 4690-4693
02/05/2018	2018 Stipulation and Order to Dismiss Third Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	20	AA 4694-4695
02/16/2018	Notice of Appeal	20	AA 4696-4714

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
02/16/2018	APCO Construction, Inc.'s Opposition to Zitting Brothers, Inc.'s Memorandum in Support of APCO Construction Inc.'s Payment of Attorneys' Fees, Costs and Interest to Zitting Construction Brothers, Inc.	20 21	AA 4715–4726 4740
02/26/2018	Zitting Brothers Construction Inc.'s Reply in Support of its Memorandum in Support of APCO Construction, Inc.'s Payment of Attorneys' Fees, Costs, and Interest	21	AA 4741–4751
02/27/2018	Notice of Appeal	21 22 23	AA 4752–4976 AA 4977–5226 AA 5227–5288
05/04/2018	Order Regarding Plaintiff's Motion to Stay Pending Entry of Final Judgment Pursuant to NRCP 62(B) and 62(H) on Order Shortening Time	23	AA 5289–5290
05/08/2018	Order Determining Amount of Zitting Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interests	23	AA 5291–5293
05/11/2018	Notice of Entry of Order Determining Amount of Zitting Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interest	23	AA 5294–5298
05/23/2018	Judgment in Favor of Zitting Brothers Construction, Inc.	23	AA 5299–5300
05/24/2018	Notice of Entry of Judgment in Favor of Zitting Brothers Construction, Inc.	23	AA 5301–5304
06/08/2018	Amended Notice of Appeal	23 24 25	AA 5305–5476 AA 5477–5724 AA 5725–5871

<u>Date</u>	<u>DOCUMENT DESCRIPTION</u>	<u>Vol.</u>	<u>Bates Nos.</u>
06/08/2018	Plaintiff's Motion for 54(b) Certification and for Stay Pending Appeal on Order Shortening Time	25 26	AA 5872–5973 AA 5974–6038
06/19/2018	Zitting Brothers' Construction, Inc.'s Limited Opposition to APCO Construction, Inc.'s Motion for 54(b) Certification and for Stay Pending Appeal on Order Shortening Time	26	AA 6039–6046
06/26/2018	Recorder's Transcript of Hearing RE: Plaintiff's Motion for 54(b) Certification and for Stay Pending Appeal on Order Shortening Time	26	AA 6047–6051
07/30/2018	Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	26	AA 6052–6054
07/31/2018	Notice of Entry of Order	26	AA 6055–6063
08/08/2018	Second Amended Notice of Appeal	26 27 28 29	AA 6064–6180 AA 6181–6430 AA 6431–6679 AA 6680–6854
	Docket of District Court Case No. 08A571228	30	AA 6855–6941

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CLERK OF THE COURT

COMP

CRAIG S. NEWMAN, ESQ.
Nevada Bar No. 003780
DAVID W. DACHELET, ESQ.
Nevada Bar No. 006615
FENNEMORE CRAIG
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Attorneys for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

ATLAS CONSTRUCTION SUPPLY, INC.,

Case No.: **A574391**

Plaintiff,

Dept. No.: **III**

vs.

CONCRETE VISIONS, INC.; JUAN S.
PULIDO a/k/a JUAN SANCHEZ PULIDO,
an individual; GEMSTONE
DEVELOPMENT WEST, INC.; DOES 1
through 20, inclusive; and ROE ENTITIES
21 through 40, inclusive,

COMPLAINT

EXEMPT FROM ARBITRATION
- Concerning Title To Real Estate

Defendants.

FENNEMORE CRAIG
SUITE 1400
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 692-8000 FAX (702) 692-8099

Plaintiff, ATLAS CONSTRUCTION SUPPLY, INC., (hereinafter "Plaintiff" or
"Atlas"), by and through its undersigned counsel of record, FENNEMORE CRAIG, hereby
complains and alleges against Defendants as follows:

THE PARTIES

1. Upon information and belief, Defendant CONCRETE VISIONS, INC.
(hereinafter "Concrete Visions") is a Nevada corporation existing pursuant to the laws of
the State of Nevada and was, at all relevant times herein, duly licensed to perform certain
works of construction improvement within the State of Nevada.

2. Upon information and belief, Defendant JUAN S. PULIDO a/k/a JUAN
SANCHEZ PULIDO (hereinafter "Pulido") is a citizen of the State of Nevada, County of
Clark, and is an officer and director of Concrete Visions.

3. Upon information and belief, Defendant GEMSTONE DEVELOPMENT

CLERK OF THE COURT

1 WEST, INC. (hereinafter "Gemstone") is a Nevada limited liability company that was, at
2 all relevant times hereto, duly authorized to conduct business and/or hold real property with
3 in the State of Nevada.

4 4. Upon information and belief, Gemstone is the owner or reputed owner of that
5 certain real property located within the County of Clark, State of Nevada, commonly
6 known as the "Manhattan Condos" located at 9205 through and including 9255 W. Russell
7 Road, Las Vegas, Nevada, Assessor's Parcel Number 163-32-101-019 (hereinafter the
8 "Subject Premises").

9 5. Upon information and belief, at all times relevant hereto, the Defendants, and
10 each of them, were the agents, ostensible agents, servants, employees, employers, partners,
11 co-owners and/or joint venturers of each other and of their co-Defendants, and were acting
12 within the color, purpose, and scope of their employment, agency, ownership, and/or joint
13 ventures, and by reason of such relationships, the Defendants, and each of them, are jointly
14 and severally responsible and liable for the acts or omissions of their co-Defendants, as
15 alleged herein.

16 6. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of Counterdefendants DOE INDIVIDUALS 1 through 20, inclusive, and ROE
18 ENTITIES, 21 through 40, inclusive, are unknown to Atlas at this time, and who therefore
19 sues said DOE INDIVIDUALS and ROE ENTITIES by said names as Atlas believes that
20 said DOE INDIVIDUALS and/or ROE ENTITIES are in some way responsible for some or
21 all of Atlas's damages. Atlas requests leave of this Court to amend its Complaint when such
22 names and identities become known to it.

23 GENERAL ALLEGATIONS

24 7. Upon information and belief, nonparty APCO Construction ("APCO") was
25 hired by Gemstone to act as Gemstone's general contractor for the purpose of constructing
26 certain works of improvement on the Subject Premises.

27 8. Upon information and belief, APCO thereafter contracted with Defendant
28 Concrete Visions for the purpose of subcontracting with Concrete Visions to construct

1 certain improvements relating to concrete work on the Subject Premises.

2 9. In late August, 2007, Concrete Visions entered into a contract with Atlas
3 whereby Atlas agreed to supply certain rental equipment and materials to Concrete Visions
4 for use in its construction of its works of improvement on the Subject Premises.

5 10. At the time that Concrete Visions entered into its rental contract with Atlas
6 for the use of the rental equipment at issue, Defendant Pulido had delivered an executed
7 Continuing Guarantee Covering Present and Future Indebtedness (the "Guaranty") to Atlas
8 that Atlas maintained on file in order to guarantee and secure payment from Concrete
9 Visions for past, present and future rental equipment requests.

10 11. As requested from time to time, Atlas provided rental equipment and
11 materials to Concrete Visions on the terms and conditions agreed to by Concrete Visions
12 and Atlas.

13 12. Atlas performed all of its obligations under its contract with Concrete
14 Visions.

15 13. Despite the provision of said rental equipment and materials to
16 Concrete Visions as agreed in the contract, Concrete Visions has failed and/or refused to
17 pay Atlas the agreed-upon amounts for the rental equipment and materials requested by and
18 provided to Concrete Visions by Atlas.

19 14. In fact, to date neither Concrete Visions nor any other party had returned
20 numerous of the rental equipment items that were provided by Atlas to Concrete Visions
21 for use in furtherance of Gemstone's desired improvement to Subject Premises, which
22 causes further rental charges, fees and costs to accrue.

23 15. Upon information and belief, the improvements to the Subject Premises are
24 not yet complete, and no notice of completion has been received by Atlas from any party,
25 including Gemstone.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

(Foreclosure of Mechanic's Lien)

16. Atlas repeats and realleges paragraphs 1 through 15 as though fully restated herein.

17. As alleged above, at the specific request of Concrete Visions, Atlas provided rental materials and equipment to the Subject Premises for use and incorporation into the works of improvement being constructed by Concrete Visions on the Subject Premises.

18. As required by NRS 108.245, Atlas served a Notice of Right to Lien on both APCO, as the prime contractor, and on the owner or reputed owner of the Subject Premises, Gemstone. A true and correct copy of said notice is attached hereto as **Exhibit 1**.

19. Atlas fully performed all of its obligations, conditions and duties required of it under its contract with Concrete Visions for the provision of said materials and equipment.

20. After neither payment nor return of the rental materials and equipment that was requested, received and used by Concrete Visions on its works of improvement on the Subject Premises, on or about June 6, 2008 Atlas served APCO and Gemstone with a Notice of Intent to Lien as required by NRS 108.226(6). A true and correct copy of said Notice of Intent to Lien is attached hereto as **Exhibit 2**.

21. When said Notice of Intent to Lien did not cause payment and return of the rental materials and equipment, on or about July 15, 2008, Atlas timely recorded its Notice of Lien (the "Mechanic's Lien") against the Subject Premises, noting a then-current unpaid balance of \$123,412.47. A true and correct copy of said Notice of Lien is attached hereto as **Exhibit 3**.

22. At no time has Gemstone recorded or otherwise notice its claim for nonresponsibility for the works of improvement that were performed by APCO, Concrete Visions, or Atlas, as alleged herein.

///

23. Atlas had complied with the provisions of mechanic's lien statutes stated in Chapter 108 of the Nevada Revised Statutes and has, therefore, perfected its mechanic's lien rights against the Subject Premises.

24. Upon information and belief, the whole of the Subject Premises is reasonably necessary for the convenient use and occupation of the works of improvement that Atlas's rental materials and equipment were furnished for.

25. There may be lien claimants whose liens may be subordinate to the Mechanic's Lien, as may be amended from time to time, recorded by Atlas against the Subject Premises.

10 26. Atlas is entitled to foreclose on its mechanic's lien in the principal amount of
11 \$123,412.47.

27. It has been necessary for Atlas to retain counsel to prosecute this matter, and pursuant to Chapter 108 of the Nevada Revised Statutes, Atlas's reasonably expended attorneys' fees and costs of suit should be adjudged a part of Atlas's mechanic's lien against the Subject Premises.

SECOND CAUSE OF ACTION

(Breach of Contract against Defendant Concrete Visions)

18 28. Atlas repeats and realleges paragraphs 1 through 27 as though fully restated
19 herein.

20 29. As stated previously, Atlas entered into a contract with Concrete Visions
21 whereby Atlas was to provide certain construction rental equipment to Concrete Visions for
22 its use on the Subject Premises in exchange for Concrete Visions' payment of the rental
23 and other charges agreed to in said contract.

24 30. Atlas has performed all conditions, duties and obligations required of it under
25 the contract between the parties.

31. Pursuant to the contract between Atlas and Concrete Visions, Concrete Visions has failed and refused to pay the total principal amount due and owing under said contract of \$123,412.47.

1 32. Concrete Visions' failure to pay said sums after they have become due
2 constitutes a breach of the contract.

3 33. This breach of contract has caused Atlas damages in a principal amount in
4 excess of \$10,000.00, to be proven at the time of trial.

5 34. Further, Atlas is entitled to an award of interest on all sums from the date
6 they became due until paid in full as stated in the contract or as provided by Nevada law.

7 35. Atlas is entitled to an additional award against Concrete Visions of all
8 reasonably expended attorneys' fees and costs in prosecuting this matter.

9 **THIRD CAUSE OF ACTION**

10 **(Breach of Guaranty)**

11 36. Atlas repeats and realleges paragraphs 1 through 35 as though fully restated
12 herein.

13 37. Pursuant to the Guaranty executed by Pulido, Pulido agreed to pay all
14 indebtedness incurred by Concrete Visions which includes all indebtedness under Concrete
15 Visions' contract with Atlas, as alleged above.

16 38. Despite demand having been made to Pulido to honor his Guranty, neither
17 Pulido nor any other person has paid the indebtedness owed by Concrete Visions to Atlas
18 under their contract with one another.

19 39. Atlas has performed all conditions, duties and obligations required of it under
20 the Guaranty.

21 40. Pulido's failure to guarantee and pay the sums owed by Concrete Visions
22 constitutes a breach of the Guaranty contract.

23 41. This breach of the Guaranty has caused Atlas damages in a principal amount
24 in excess of \$10,000.00, to be proven at the time of trial.

25 42. Further, Atlas is entitled to an award of interest on all sums from the date
26 they became due until paid in full as stated in the contract or as provided by Nevada law.

27 43. Finally, Atlas is entitled to an additional award against Pulido of all
28 reasonably expended attorneys' fees and costs in prosecuting this matter.

FOURTH CAUSE OF ACTION

(Unjust Enrichment against all Defendants)

44. Atlas repeats and realleges paragraphs 1 through 43 as though fully restated herein.

45. Atlas performed works of improvement to the Subject Premises at the specific insistence and request and with the knowledge of each of the Defendants.

46. Defendants accepted, used and enjoyed the benefit of the materials provided by Atlas.

47. Defendants knew, or reasonably should have known, that Atlas expected to be paid for the value of the use of its rental construction equipment as well as for the value of the equipment itself.

48. Atlas alleges that the reasonable value of the use and damage to said rental construction materials, after deducting all just credits and offsets, was \$123,413.47 as of July 15, 2008.

49. To date, Defendants have each failed and refused to pay Atlas for the reasonable value of its construction rental materials and equipment.

50. As a result of the conduct of Defendants, Atlas has been damaged in a principal amount in excess of \$10,000.00, to be proven at the time of trial.

51. Atlas is entitled to an additional award of all reasonably expended attorneys' fees and costs in prosecuting this matter.

FIFTH CAUSE OF ACTION

(Conversion against all Defendants)

52. Atlas repeats and realleges paragraphs 1 through 51 as though fully restated herein.

53. Atlas is the owner of the rental equipment provided by Atlas to Concrete Visions to aid in improving the Subject Premises.

54. Upon information and belief, Concrete Visions, Gemstone, or their agents, have exerted dominion and control over said rental equipment so as to totally prevent Atlas

1 from enjoying the use and value of said rental equipment.

2 55. Upon information and belief, Defendants and their agents actions are willful,
3 wanton and malicious

4 56. As a result of the conduct of Defendants, Atlas has been damaged in a
5 principal amount in excess of \$10,000.00, to be proven at the time of trial.

6 57. Further, due to the willful, wanton and malicious nature of said Defendants'
7 actions, Atlas is entitled to an award of punitive damages against said Defendants, both
8 jointly and severally, in an amount in excess of \$10,000.00, to be proven at the time of
9 trial.

10 58. Atlas is entitled to an additional award of all reasonably expended attorneys'
11 fees and costs in prosecuting this matter.

12 **WHEREFORE**, Plaintiff Atlas Construction Supply, Inc. prays for judgment
13 against the Defendants as follows:

- 14 1. That the sum of \$123,412.47, together with interest thereon, attorneys' fees,
15 costs of suit, and costs of preparation and recording of the lien, as amended,
16 be adjudged and decreed to be a lien upon the Subject Premises and that the
17 Subject Premises be sold at an appropriate foreclosure sale to satisfy the
18 amount of Atlas's lien;
- 19 2. That the court adjudge and decree the priority and rights of all lien claimants
20 claiming an interest in the Subject Premises to the proceeds of said
21 foreclosure sale;
- 22 3. For an award of prejudgment and post-judgment interest on all sums
23 adjudged due and owing by Defendants as allowed by contract or pursuant to
24 the applicable contract and/or Nevada law;
- 25 4. For compensatory damages against Defendants, and each of them, in an
26 amount in excess of \$10,000.00, to be proven at the time of trial;
- 27 5. For punitive damages against Defendants, and each of them, in an amount in
28 excess of \$10,000.00, to be proven at the time of trial;

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SUITE 1400
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LAS VEGAS, NEVADA 89101
(702) 692-8000 FAX (702) 692-8099

- 1 6. For an award of all reasonably expended attorneys' fees against Defendants;
2 7. For an award of all taxable costs against Defendants; and
3 8. For such other and further relief as this Court deems just and appropriate.
4 DATED this 21 day of October, 2008.

5 FENNEMORE CRAIG

6
7 By: 

CRAIG S. NEWMAN, ESQ.
Nevada Bar No. 003780
DAVID W. DACHELET, ESQ.
Nevada Bar No. 006615
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101

Attorneys for Plaintiff

File:2025 [NV][PRIVATE][OWNER]
Recording Requested by and Return to:
ATLAS CONSTRUCTION SUPPLY

4640 BRINELL STREET
San Diego, CA 92111

Customer: CONCRETE VISIONS, INC.
P.O. #:
Project: JOB #1400
Rec ID: 2780G6MOF
Job #: 3408-1 CONCR
Cert No.: 7160 3901 9845 1906 3101

**NOTICE OF RIGHT TO LIEN AND REQUEST FOR
RECEIPT OF NOTICE OF COMPLETION**

(Nevada Revised Statutes)

TO: GENERAL CONTRACTOR
APCO CONSTRUCTION

3432 NORTH 5TH STREET
NORTH LAS VEGAS, NV 89032

TO: OWNER OR REPUTED OWNER
GEMSTONE DEVELOPMENT

7700 LAS VEGAS BLVD. #5
LAS VEGAS, NV 89123

The undersigned notifies you that he has supplied materials or performed work or services for improvement of your real property as follows: CONST. MATLS & SUPPLIES. The project is commonly known as: JOB #1400 MANHATTAN CONDOS. The project is located at: 215 & W. RUSSELL, LAS VEGAS, NV 89123.

The person contracting for said labor or materials is: CONCRETE VISIONS, INC., 4255 E. CHARLESTON BLVD. #D-331, LAS VEGAS, NV 89104.

Said labor, materials or services were first furnished or worked performed on 09/30/2007.

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE that the Owner or Public Entity, pursuant to Nevada's Mechanic's Lien Statutes serve on the Undersigned, by certified mail, a copy or copies of any and all Notices of Completion the Owner or Public Entity, its agents or its assigns, causes to be recorded with the County Recorder's Office where the property is located with respect to the improvements to be made.

I declare that I am authorized to file this claim on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed at SIGNAL HILL, California on 10/12/2007 for ATLAS CONSTRUCTION SUPPLY.

Prepared by: Deborah A. Lopez
DEBORAH A. LOPEZ, REGIONAL CREDIT MANAGER Phone: (562) 595-1006 Fax: (562) 595-4177

PROOF OF SERVICE BY MAIL AFFIDAVIT

I declare that I served a copy of the above document, and any related documents, by certified or registered mail, postage prepaid, or other certified delivery, addressed to the above named parties, at the addresses listed above, on 10/12/2007. I declare under penalty of perjury that the foregoing is true and correct. Executed at SIGNAL HILL, California on 10/12/2007.

Prepared by: Pat Kelley
PAT KELLEY, REGIONAL OFFICE MANAGER

CC: TO LENDER, SURETY OR BONDING CO.

File:2025 [NV][PRIVATE]

Recording Requested by and Return to: | Customer: CONCRETE VISIONS, INC.
ATLAS CONSTRUCTION SUPPLY | Project: JOB #1400
| Rec ID: 2780G6MOF
2745 RAYMOND AVE. | Job #: 3408-1
Signal Hill, CA 90755 | Cert No.: _____

NOTICE OF INTENT TO LIEN

TO THE OWNER OR REPUTED OWNER
GEMSTONE DEVELOPMENT

TO THE LENDER, SURETY OR BONDING CO.

7700 LAS VEGAS BLVD. #5
LAS VEGAS, NV 89123

TO THE ORIGINAL\REPUTED CONTRACTOR
APCO CONSTRUCTION

FROM THE LIEN OR STOP NOTICE CLAIMANT
ATLAS CONSTRUCTION SUPPLY

3432 NORTH 5TH STREET
NORTH LAS VEGAS, NV 89032

2745 RAYMOND AVE.
Signal Hill, CA 90755

PLEASE BE ADVISED THAT SHOULD THE AMOUNT DUE AND OWING TO THE UNDERSIGNED NOT BE PAID WITHIN 15 DAYS OF THIS NOTICE OF INTENT TO LIEN, THE UNDERSIGNED SHALL CAUSE A CLAIM OF LIEN TO BE RECORDED AGAINST THE RESIDENTIAL PROJECT SET FORTH BELOW IN THE AMOUNT OF \$46,807.01.

1. The amount of the original contract is: \$500,000.00.
2. The total amount of all changes and additions, if any, is: \$420,467.40.
3. The total amount of all payments received to date is: \$373,660.39.
4. The amount of the lien, after deducting all just credits and offsets, is: \$46,807.01.
5. The name of the owner, if known, of the property is: **GEMSTONE DEVELOPMENT, 7700 LAS VEGAS BLVD. #5, LAS VEGAS, NV 89123.**
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: **CONCRETE VISIONS, INC., 9775 SO. MARYLAND PKWY, STE #F-187, LAS VEGAS, NV 89183.**
7. A brief statement of this terms of payment of the lien claimant's contract is: **18 Ten Days - Net Thirty Days**
8. A description of the property to be charged with the lien is: **JOB #1400 MANHATTAN CONDOS project, located at 9205 - 9255 W. RUSSELL ROAD, LAS VEGAS, NV 89123.**

Unless we receive payment by 06/20/2008 a claim may be filed.

VERIFICATION

I declare that I am authorized to file this claim on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed at SIGNAL HILL, California on 06/05/2008 for ATLAS CONSTRUCTION SUPPLY.

Prepared by: Deborah A. Lopez
DEBORAH A. LOPEZ, REGIONAL CREDIT MANAGER Phone: (562) 595-1006 Fax: (562) 595-4177

****The unpaid amount does not include the value of rental material not yet returned.**

RECORDING REQUESTED BY AND RETURN TO:
ATLAS CONSTRUCTION SUPPLY

2745 RAYMOND AVENUE
SIGNAL HILL, CA 90755-

Telephone: (562) 595-1006

Fax: (562) 595-4177

APN # 163-32-101-019

20080715-0001031

Fee: \$15.00

N/C Fee: \$0.00

07/15/2008

09:50:26

T20080143152

Requestor:

ATLAS CONSTRUCTION SUPPLY

Debbie Conway

ARO

Clark County Recorder Pgs: 2

NOTICE OF LIEN

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

- 1) The amount of the original contract is: 497,072.86.
- 2) The total amount of all additional, or changed work, materials and equipment, if any, is: 5,000.00.
- 3) The total amount of all payments received to date is: 373,660.39.
- 4) The total amount of the lien, after deducting all just credits and offsets, is: 123,412.47.
- 5) The name of the owner(s) or reputed owner(s), if known, is GEMSTONE DEVELOPMENT, 9121 W. RUSSELL RD #117, LAS VEGAS, NV 89148-1238.
- 6) The name of the person by whom the claimant was employed, or to whom the claimant furnished the material, is CONCRETE VISIONS, INC., 9775 SO. MARYLAND PKWY, STE #F-187, LAS VEGAS, NV 89183.
- 7) A brief statement of the terms of payment of the lien claimant's contract is: 1% 10 DAYS OR NET 30 DAYS.
- 8) A description of the property and/or the improvements to be charged with the lien is the JOB #1400 MANHATTAN CONDOS project, located at 9205 - 9255 W. RUSSELL ROAD, LAS VEGAS, NV 89123, Assessors or Property Parcel Number: 163-32-101-019, in the County of CLARK.

VERIFICATION

I declare that I am authorized to file this MECHANICS LIEN (PRIVATE WORK) on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed at SIGNAL HILL, CA on 07/10/2008 for ATLAS CONSTRUCTION SUPPLY.

Prepared by: PAT KELLEY
PAT KELLEY, REGIONAL OFFICE MANAGER

*BREAKDOWN AS FOLLOWS: Unpaid invoices \$66,205.25, Service Charges \$3811.82, Value of Material/Equipment to be returned \$53,395.40

**Outstanding rent on equipment continues to accrue at the rate of \$2768.85 per month together with service charges and freight charges for return the rented equipment. There is also a contingent liability on the failure to return equipment; that contingent liability is based on the total value of equipment which remains on the site valued at \$53,395.40

JURAT

State of California

County of LOS ANGELES

Subscribed and sworn to (or affirmed) before me on

this 10TH **day of** JULY, 20 08,

by PAT KELLEY

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(seal)

Signature Deborah A. Lopez

ORIGINAL

FILED
OCT 30 4 36 PM '08
CLERK OF THE COURT

COMP

D. SHANE CLIFFORD, ESQ.
Nevada Bar No. 6602
ANJULI B. WOODS, ESQ.
Nevada Bar No. 10989
DIXON TRUMAN FISHER & CLIFFORD, P.C.
221 North Buffalo Drive, Suite A
Las Vegas, NV 89145
(702) 821-1821
Attorneys for Ahern Rentals, Inc.

DISTRICT COURT

CLARK COUNTY NEVADA

AHERN RENTALS, INC., a Nevada
corporation,

Plaintiff,

vs.

CONCRETE VISIONS, INC., a Nevada
corporation; SELINA CISNEROS,
individually; GEMSTONE
DEVELOPMENT WEST, INC., a Nevada
corporation; PLATTE RIVER INSURANCE
COMPANY, a foreign entity; DOES I
through X, ROE CORPORATIONS I
through X, inclusive,

Defendants.

CASE NO.: A574792

DEPT. NO.: XX

**Exempt from Arbitration – Involves Title
to Real Property**

AHERN RENTALS, INC.'S COMPLAINT

Plaintiff, AHERN RENTALS, INC., by and through counsel undersigned of the law
firm of Dixon, Truman, Fisher & Clifford, P.C., hereby complains against the above-named
Defendants as follows:

IDENTIFICATION OF PARTIES

1. Plaintiff, AHERN RENTALS, INC. (hereinafter "Plaintiff"), is a Nevada
corporation licensed and doing business in the State of Nevada.
2. Upon information and belief, Defendant CONCRETE VISIONS, INC.

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

RECEIVED
OCT 30 2008
CLERK OF THE COURT

1 (hereinafter referred to as "CONCRETE VISIONS") is and was at all times relevant a Nevada
2 corporation licensed and doing business in the State of Nevada.

3 3. Upon information and belief, Defendant SELINA CISNEROS (hereinafter
4 referred to as "SELENA") is and was at all times relevant hereto a resident of the State of
5 Nevada.

6 4. Upon information and belief, Defendant GEMSTONE DEVELOPMENT
7 WEST, INC. (hereinafter referred to as "GEMSTONE") is and was at all times relevant a
8 Nevada corporation licensed and doing business in the State of Nevada and the owner of the
9 real property located at 9205 West Russell Road, Spring Valley, APN 163-32-101-019.

10 5. Defendant PLATTE RIVER INSURANCE COMPANY, (hereinafter
11 "PLATTE"), is and was at all times relevant hereto a foreign entity licensed and doing business
12 in the State of Nevada.

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

7. The events which are the subject matter of this lawsuit occurred in the County of

Clark, State of Nevada.

FIRST CAUSE OF ACTION
Breach of Contract

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

9. On or about February 11, 2003, Defendant CONCRETE VISIONS entered into an Agreement/Credit Application (hereinafter "Agreement") with Plaintiff and/or Plaintiff's predecessor in interest by the terms of which Plaintiff agreed to provide equipment and miscellaneous materials to CONCRETE VISIONS for use in its business in and around Clark County, Nevada. The Agreement is attached hereto as Exhibit "A" and incorporated herein by this reference. Thereafter, CONCRETE VISIONS entered into a series of rental contracts pursuant to the Agreement for the provision of various equipment.

10. In consideration of the equipment and materials Plaintiff agreed to rent to CONCRETE VISIONS, CONCRETE VISIONS agreed to pay to Plaintiff the rental cost of the equipment and purchase cost of the materials.

11. Under the Agreement, CONCRETE VISIONS agreed to pay for equipment and materials within ten (10) days of invoicing. CONCRETE VISIONS further agreed to pay interest upon past due amounts and attorneys fees in the event of default.

12. Under the Agreement, CONCRETE VISIONS also agreed to be liable for all damage to or loss of such equipment.

13. Plaintiff supplied equipment and/or materials requested by CONCRETE VISIONS and/or by agents authorized to charge on behalf of CONCRETE VISIONS pursuant to the Agreement, and said equipment and/or materials were used in the course of CONCRETE VISIONS's business activities, and CONCRETE VISIONS accepted said equipment and/or

1 materials as satisfactory, completely and fully discharging the obligations of Plaintiff under the
2 Agreement.

3 14. All conditions precedent to Plaintiff's right to payment in full have been
4 performed and have occurred.

5 15. Notwithstanding Plaintiff's performance under the Agreement, CONCRETE
6 VISIONS has, without just cause or excuse and in violation of the Agreement, refused to pay
7 Plaintiff the balance of the amounts due and owing for the equipment and/or materials supplied
8 under the Agreement, to-wit: \$69,260.04, together with interest thereon.

9 16. Plaintiff has made demand for the amount due and owing, however
10 CONCRETE VISIONS has wholly failed, neglected and refused to pay the aforesaid sums. As
11 a result of CONCRETE VISIONS's refusal to pay the sums currently due and owing, Plaintiff
12 has been damaged in the amount of \$69,260.04, together with interest thereon, and Plaintiff is
13 entitled to judgment against CONCRETE VISIONS in the principal amount of \$69,260.04,
14 plus interest thereon, pursuant to the parties' Agreement and/or any applicable law until paid in
15 full.

16 17. Plaintiff has been compelled to retain the services of legal counsel and has had
17 to participate in these legal proceedings to collect said sums, and is therefore entitled to recover
18 from CONCRETE VISIONS, the attorneys' fees and costs incurred in connection with this
19 action.

20 **SECOND CAUSE OF ACTION**
21 **(Claim Against Personal Guarantor)**

18 18. Plaintiff repeats and realleges each and every allegation contained in the
19 preceding paragraphs as though fully set forth herein.

20 19. On or about June 20, 1984, Defendant SELINA, as part of the Credit
21

1 Application executed and submitted by CONCRETE VISIONS and SELINA, personally
2 guaranteed payment of the credit extended to CONCRETE VISIONS (See Exhibit "A").

3 20. Pursuant to that personal guarantee, SELINA guaranteed payment of all goods
4 sold or rented to CONCRETE VISIONS.

5 21. All conditions precedent to Plaintiff's right to payment in full from SELINA
6 has been performed and has occurred. SELINA's refusal to pay is a material breach of the
7 personal surety.

8 22. Notwithstanding Plaintiff's performance, SELINA has, without just cause or
9 excuse, and in violation of the personal guarantee, refused to pay Plaintiff the balance currently
10 due and owing for the materials supplied under the Agreement to CONCRETE VISIONS, in
11 the amount of \$69,260.04, together with interest thereon.

12 23. Plaintiff has made demand for the amount due and owing, but SELINA has
13 wholly failed, neglected, and refused to pay the aforesaid sums. As a result of SELINA's
14 refusal to pay the sums currently due and owing, Plaintiff has been damaged in the amount of
15 \$69,260.04, together with interest thereon.

16 24. Because of SELINA's failure to pay the sums due and owing to Plaintiff for the
17 rental of Plaintiff's equipment, Plaintiff, therefore, is entitled to judgment in the principal
18 amount of \$69,260.04, plus interest thereon pursuant to the parties' Agreement and/or any
19 applicable law until paid in full.

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

THIRD CAUSE OF ACTION

Unjust Enrichment

(Defendants CONCRETE VISIONS, SELINA, and GEMSTONE)

27. The reasonable value of the equipment Plaintiff provided to Defendants, CONCRETE VISIONS and SELINA, pursuant to the Agreement and subsequent rental contracts is \$69,260.04. This amount is now due and owing to Plaintiff by CONCRETE VISIONS and SELINA together with interest thereon.

28. Since Defendants have received the value of Plaintiff's equipment without paying for it, and since the value of the materials and services has been incorporated into the real property owned by GEMSTONE, the Defendants have been unjustly enriched in the principal amount of \$69,260.04.

29. Because of Defendants' wrongful refusal to pay the amounts due and owing and because Defendants has been unjustly enriched at Plaintiff's expense, Plaintiff is entitled to judgment against Defendants in the principal amount of \$69,260.04, plus interest thereon pursuant to the parties' Agreement and/or any applicable law until paid in full. Plaintiff is also entitled to recover from Defendants attorneys' fees and costs incurred in connection with this action.

FOURTH CAUSE OF ACTION
Monies Due and Owing
(Defendants CONCRETE VISIONS and SELINA)

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

31. Defendants, CONCRETE VISIONS and SELINA, owe to Plaintiff the principal balance of \$69,260.04, together with interest accruing thereon, for the equipment provided by Plaintiff. Although demand for payment has been made by Plaintiff, Defendants have failed and refused and continues to fail and refuse to pay for this equipment.

1 32. Plaintiff, therefore, is entitled to judgment against CONCRETE VISIONS and
2 SELINA in the principal amount of \$69,260.04, plus interest thereon pursuant to the parties'
3 Agreement and/or any applicable law until paid in full. Plaintiff is also entitled to recover from
4 CONCRETE VISIONS and SELINA attorneys' fees and costs incurred in connection with this
5 action.

6 **FIFTH CAUSE OF ACTION**
7 **Claim Against PLATTE**
8 **Bond No. 41014418**

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

11 34. On or about January 14, 2005, Defendant PLATTE provided to Defendant
12 CONCRETE VISIONS, for purposes of obtaining a C5 license, bond number 41014418, in the
13 amount of \$10,000.00 (hereinafter the "Bond").

14 35. One of the purposes of the Bond is to provide payment to claimants, such as
15 Plaintiff, who are not paid by CONCRETE VISIONS for work done under contract with
16 CONCRETE VISIONS.

17 36. Plaintiff performed the services and materials for which it was contracted, and
18 fulfilled each and every other obligation under the terms of the Agreement with CONCRETE
19 VISIONS.

20 37. Plaintiff is within the class of persons for whose benefit the Bonds were
21 provided. Plaintiff is therefore entitled to recover from PLATTE the amounts due and owing to
Plaintiff by CONCRETE VISIONS.

 38. PLATTE's refusal to pay the amounts due and owing by CONCRETE VISIONS
is a breach of PLATTE's contractual obligations to CONCRETE VISIONS and/or Plaintiff.

 39. By reason of HARTFORD's failure to pay the sums due and owing to Plaintiff

1 for the materials provided, Plaintiff, is entitled to judgment against PLATTE in the principal
2 amount of \$69,260.04, plus interest thereon pursuant to the parties' Agreement and/or any
3 applicable law until paid in full.

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

7 **SIXTH CAUSE OF ACTION**

8 **Lien Foreclosure**

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

11 42. Because Plaintiff was not paid for its labor and materials provided as described
12 herein, and in the amount of \$69,260.04, Plaintiff recorded a Mechanic's Lien on September
13 24, 2008 in Book 20080924 as Instrument No. 0004254, in the office of the county recorder of
14 Clark County, Nevada, which included the amount described herein. A true and correct copy
15 of Plaintiff's Lien is attached hereto as "Exhibit 2" and incorporated herein by this reference.

16 43. The Lien was served upon the Defendants to this Complaint and/or the owners
17 or reputed owners of the certain real properties described therein and, as required by law, are
18 charges against the Property described therein, and have been properly perfected pursuant to
19 Chapter 108 of the Nevada Revised Statutes.

20 44. Pursuant to Chapter 108 of the Nevada Revised Statutes, Plaintiff is entitled to
21 recover in this action the costs and fees it incurred in preparing, recording and serving its
Notice and Claim of Lien.

45. It has become necessary for Plaintiff to retain the services of an attorney to
commence this action, and Plaintiff is, therefore, entitled to reasonable attorney's fees for
litigating this action.

1 46. Pursuant to Chapter 108 of the Nevada Revised Statutes, Plaintiff is entitled to
2 an Order from this Court directing that the Property be sold and foreclosed upon, and that from
3 the proceeds of said sale, Plaintiff be paid the principal sum of \$69,260.04, together with the
4 interest accruing thereon, plus reimbursement of the costs and attorney's fees it has and is
5 continuing to incur in connection with this action pursuant to applicable law.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that judgment be entered against the Defendants as set
8 forth above and as follows:

9 1. That this Court enter Judgment against the Defendants, jointly and severally, in
10 an amount in excess of \$10,000.00, plus interest thereon until paid in full;

11 2. That the Court declare the rank and priority of all lien claims, secured claims,
12 and that Plaintiff's Lien be ascertained and adjudged as a valid Lien;

13 3. That the Lien be enforced according to law;

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

16 5. For reasonable attorneys' fees;

17 6. For costs of suit; and

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

19 DATED this 30th day of October, 2008.

20 **DIXON TRUMAN FISHER & CLIFFORD, P.C.**

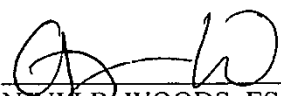
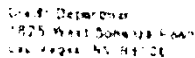
21 By: 
 ANJULA B. WOODS, ESQ.
 221 North Buffalo Drive, Suite A
 Las Vegas, NV 89145
 Attorneys for Plaintiff

EXHIBIT "A"



CREDIT APPLICATION

706 133 547 8120
 133 133 547 9886

By the Applicant, we hereby certify that Applicant understands that Applicant, for the purpose of obtaining rental assistance under services provided by Applicant, understands and explicitly agrees that the information provided on the front and back of the Credit Application and any financial statements provided to Applicant is being provided for the purpose of obtaining credit. Applicant further understands that Applicant, by providing the information Applicant certifies represents and warrants that the information provided is true and complete. Applicant further understands and agrees that Applicant has an ongoing affirmative duty to notify Applicant immediately of any material change in Applicant's financial status and of any change in the information previously stated.

Concrete Visions Inc. 1702 437-1041 1704 431 1478
4400 Roadstock Ln Las Vegas NV 89110
4255 E Charleston Blvd Ste D #331 Las Vegas NV 89104

COMPANY NAME NEW BUSINESS SECTOR NEW NUMBER OF EMPLOYEES 5 DESCRIPTION OF BUSINESS CONSTRUCTION
 OWNERSHIP: CORPORATION ☐ PARTNERSHIP ☒ SOLE PROPRIETOR ☐
 IF A PARTNERSHIP, NAME OF PARTNER: _____
 IF A CORPORATION, DATE OF INCORPORATION 10-24-01 AND STATE OF INCORPORATION 10-24-01

ISSUING AGENCY: California Highway Patrol SS221 State: Nevada Federal Tax No: 12-1558586
 INFORMATION: State Co. Tom Riolley Bond #: 1228024 AT: 10,000

COMPANY
NAME Delma Curren's president 1001 561-51-0186
RESPONSIBLE 1400 Treadstock in Las Vegas NV 89110 Dist. Secs
PRINCIPAL Las Vegas City State Zip
OF BUSINESS Wasspand
TRANSACTION

AS THE FORM OF ANY OTHERS HAS EVER BEEN HANDLED BY THE FBI

NAME(S) OF AUTHORIZED PERSONNEL AND CAN CHARGE ON ACCOUNT: Hector Cebrian
493-2282

AUTHORITY TO DISSEMINATE INFORMATION AND OBTAIN CREDIT REPORTS

Applicant hereby expressly authorizes Agent to contact any parties listed herein and to verify any information contained in this Credit Application. It is part of the information provided herein as believed by Agent to be true. Applicant hereby agrees that all of Applicant's obligations to Agent in regard to Agent's financial information are and payable to Agent without any notice or demand whatsoever from Agent being required. The undersigned hereby agrees to release all of Applicant's credit information rights or regulations. The undersigned hereby expressly consents to allow Agent to obtain personal credit reports as defined in the Fair Credit Reporting Act on the undersigned as deemed necessary by Agent and hereby expressly authorizes the credit reporting agency to provide Agent with a consumer report or reports on the undersigned. The undersigned acknowledges that Agent has a legitimate business need for the consumer report(s) as provided for in the Fair Credit Reporting Act, 15 U.S.C. 1681a-1, and Agent intends to use the information to, among other things, evaluate the credit worthiness of the undersigned, whether as a principal or a guarantor, and to evaluate the creditworthiness of any debt owed to Agent for the undersigned as a guarantor.

PERSONAL GUARANTEE AND AGREEMENT

I, undersigned, W. A. Auer, extending credit to the Applicant, the undersigned hereby, personally and unconditionally guarantees to Auer the prompt payment of any and all financial due and owing there by the Applicant and further, personally and unconditionally guarantees that all prompt and timely performance by Applicant of all and every covenant and condition of any agreement between Applicant and Auer to the fullest extent permitted, as the undersigned hereby, enters and releases all rights and remedies secured by Applicant, as a guarantor, and agrees not to seek to take advantage of any such rights or remedies. This guarantee is a continuing obligation of the undersigned and may be renewed for future indebtedness without notice, without writing, and without recording or registration.

THE UNDERSIGNED HEREBY AGREES TO THE FOLLOWING AND REPRESENTS AND WARRANTS THAT HE OR SHE IS MAJOR IN FULLY CAPABLE OF CONTRACTING AND THEREFORE BOUND TO ALL TERMS AND CONDITIONS INCLUSIVE THEREOF ON THE REVERSE SIDE HEREOF.

PLEASE GIVE REVENUE CODE FOR IMPORTANT INFORMATION REGARDING A-100'S POLICY ON DISCLOSURE OF NON-PUBLIC PERSONAL INFORMATION.

Helina Cisneros Helina Cisneros 7/14/03

THE APPLICANT HAS BEEN PROVIDED WITH SEVEN COPIES OF APPLICATIONS IN ORDER TO HAVE THE COPIES OF THE APPLICATIONS TO BE THE ORIGINALS AND ALL TERMS AND CONDITIONS WILL APPLY AS IF THE ORIGINALS WERE RETURNED. THE CREDIT APPLICATION MUST BE COMPLETED AND RETURNED TO THE LENDING AGENCY ABOVE. PLEASE USE ABOVE TO GET APPLICATIONS TO AGENCY TO BE USED FOR THE

EXHIBIT “B”

Receipt/Conformed Copy

Requestor:
DIXON TRUMAN ET AL
09/24/2008 13:19:59 T20080222018
Book/Instr: 20080924-0004254
Lien Page Count: 2
Fees: \$15.00 N/C Fee: \$0.00

APN: 163-32-101-019

When Recorded Return to:

Ahern Rentals, Inc. (Lien Claimant)
c/o Dixon, Truman Fisher & Clifford
221 North Buffalo Drive, Suite A
Las Vegas, NV 89145

Debbie Conway
Clark County Recorder

NOTICE OF LIEN

Lien Claimant, Ahern Rentals, Inc. claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The total amount of the original contracts is: \$69,260.04.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$0.00.
3. The total amount of all payments received to date is: \$0.00.
4. The amount of the lien, after deducting all just credits and offsets, is \$69,260.04, plus interest, attorney's fees, and costs pursuant to applicable law.
5. The name of the owner of the properties is:

GEMSTONE DEVELOPMENT WEST, INC.
9121 W Russell Road #117
Las Vegas, Nevada 89148-1238

6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:

CONCRETE VISIONS, INC.
9775 S. Maryland Parkway, Suite F 187
Las Vegas, Nevada 89103

19305

7. A brief statement of the terms of payment of the lien claimant's contract is: billed in four-week cycles, payment due net ten days, 18% per annum interest due on balances over thirty days.

8. A description of the properties to be charged with the lien is:
9205 W Russell Road
Spring Valley

PT NE4 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

APN 163-32-101-019

DATED this 23rd day of September, 2008.

AHERN RENTALS, INC.

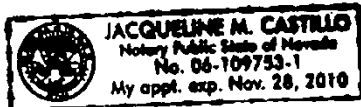
By

M.L. LITTLE
M.L. LITTLE/DIRECTOR OF CREDIT

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

M.L. LITTLE, being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.



Subscribed and Sworn to before me
this 23rd day of September 2008.

J. Castillo
NOTARY PUBLIC in and for
said County and State

M.L. LITTLE

M.L. Little/Director of Credit

ORIGINAL

FILED

Nov 19 3 55 PM '08

[Signature]
CLERK OF THE COURT

ANS
KURT C. FAUX, ESQ.
Nevada Bar No. 003407
WILLI H. SIEPMANN, ESQ.
Nevada Bar No. 002478
THE FAUX LAW GROUP
1540 W. Warm Springs Road, Suite 100
Henderson, Nevada 89014
(702) 458-5790
Attorneys for Platte River Insurance
Company

DISTRICT COURT

CLARK COUNTY, NEVADA

AHERN RENTALS, INC., a Nevada corporation,

Plaintiff,

vs.

CONCRETE VISIONS, INC., a Nevada corporation;
SELINA CISNEROS, individually; GEMSTONE
DEVELOPMENT WEST, INC., a Nevada
corporation; PLATTE RIVER INSURANCE
COMPANY, a foreign entity; DOES I through X,
ROE CORPORATIONS I through X, inclusive,

Defendants.

PLATTE RIVER INSURANCE COMPANY,

Crossclaimant,

vs.

CONCRETE VISIONS, INC., a Nevada corporation;
and SELINA CISNEROS, an individual,

Crossdefendants.

CASE NO. : A574792
DEPT. NO. : XX

PLATTE RIVER INSURANCE
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
CROSSCLAIM

ARBITRATION EXEMPTION
CLAIMED:
EQUITABLE AND
DECLARATORY RELIEF

PLATTE RIVER INSURANCE COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT AND CROSSCLAIM

Defendant, Platte River Insurance Company (hereinafter "Platte River"), by and through
its attorneys, Kurt C. Faux, Esq. and Willi H. Siepmann, Esq. of The Faux Law Group, hereby
answers Plaintiff's Complaint and admits, denies and alleges as follows:

IDENTIFICATION OF PARTIES

1. In answering Paragraphs 1, 2, 3, 4, 6 and 7 of Plaintiff's Complaint, Platte River is
AA 000031

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SUITE 100
HENDERSON, NEVADA 89014
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CLERK OF THE COURT

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1 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
2 such allegations contained therein, and accordingly, denies the same.

3 2. In answering Paragraph 5 of Plaintiff's Complaint, Platte River admits the
4 allegations contained therein.

5 **FIRST CAUSE OF ACTION**
6 **Breach of Contract**

7 3. In answering Paragraph 8 of Plaintiff's Complaint, Platte River repeats, realleges
8 and incorporates its answers to Paragraphs 1 through 7 of Plaintiff's Complaint as though more
9 fully set forth herein.

10 4. In answering Paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of Plaintiff's
11 Complaint, Platte River is without sufficient knowledge or information necessary to form a belief
12 as to the truth or falsity of such allegations contained therein, and accordingly, denies the same.

13 **SECOND CAUSE OF ACTION**
14 **(Claim Against Personal Guarantor)**

15 5. In answering Paragraph 18 of Plaintiff's Complaint, Platte River repeats,
16 realleges and incorporates its answers to Paragraphs 1 through 17 of Plaintiff's Complaint as
17 though more fully set forth herein.

18 6. In answering Paragraphs 19, 20, 21, 22, 23, 24 and 25 of Plaintiff's Complaint,
19 Platte River is without sufficient knowledge or information necessary to form a belief as to the
20 truth or falsity of such allegations contained therein, and accordingly, denies the same.

21 **THIRD CAUSE OF ACTION**
22 **Unjust Enrichment**
23 **(Defendants CONCRETE VISIONS, SELINA, and GEMSTONE)**

24 7. In answering Paragraph 26 of Plaintiff's Complaint, Platte River repeats,
25 realleges and incorporates its answers to Paragraphs 1 through 25 of Plaintiff's Complaint as
26 though more fully set forth herein.

27 8. In answering Paragraphs 27, 28 and 29 of Plaintiff's Complaint, Platte River is
28 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
such allegations contained therein, and accordingly, denies the same.

FOURTH CAUSE OF ACTION
Monies Due and Owing
(Defendants CONCRETE VISIONS and SELINA)

9. In answering Paragraph 30 of Plaintiff's Complaint, Platte River repeats, realleges and incorporates its answers to Paragraphs 1 through 29 of Plaintiff's Complaint as though more fully set forth herein.

10. In answering Paragraphs 31 and 32 of Plaintiff's Complaint, Platte River is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of such allegations contained therein, and accordingly, denies the same.

FIFTH CAUSE OF ACTION
Claim Against PLATTE
Bond No. 41014418

11. In answering Paragraph 33 of Plaintiff's Complaint, Platte River repeats, realleges and incorporates its answers to Paragraphs 1 through 32 of Plaintiff's Complaint as though more fully set forth herein.

12. In answering Paragraph 34 of Plaintiff's Complaint, Platte River admits that the bond speaks for itself; otherwise, denied.

13. In answering Paragraphs 35, 38, 39 and 40 of Plaintiff's Complaint, Platte River denies the allegations contained therein.

14. In answering Paragraphs 36 and 37 of Plaintiff's Complaint, Platte River is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of such allegations contained therein, and accordingly, denies the same.

SIXTH CAUSE OF ACTION
Lien Foreclosure

15. In answering Paragraph 41 of Plaintiff's Complaint, Platte River repeats, realleges and incorporates its answers to Paragraphs 1 through 40 of Plaintiff's Complaint as though more fully set forth herein.

16. In answering Paragraphs 42, 43, 44, 45 and 46 of Plaintiff's Complaint, Platte River is without sufficient knowledge or information necessary to form a belief as to the truth or

falsity of such allegations contained therein, and accordingly, denies the same.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Platte River's liability for payment pursuant to the license bond(s) is limited and specifically confined to the penal sum of the bond(s) by virtue of NRS Chapter 624 as well as Nevada case precedent.

THIRD AFFIRMATIVE DEFENSE

No claim may be made on the license bond(s) for any obligation which arose against the principal prior to the date of the execution of the surety bond(s).

FOURTH AFFIRMATIVE DEFENSE

No claim may be made on the bond(s) for any obligation incurred by an entity not named as the principal on the surety bond(s).

FIFTH AFFIRMATIVE DEFENSE

The surety's liability on a supporting bond(s) is limited to the principal's failure to perform a contract under a license bond for which a bond was issued.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff is not a person or entity for whose benefit the bond was posted pursuant to NRS 624.273.

SEVENTH AFFIRMATIVE DEFENSE

In the event the Plaintiff is a person or entity entitled to recover pursuant to the surety bond, the Plaintiff's right to recover on the bond is limited to the penal sum of the bond and the constraints set forth in NRS 624.273 regarding pro rata distribution and order of priority of payments.

EIGHTH AFFIRMATIVE DEFENSE

Platte River is entitled to assert all the affirmative defenses and claims of the principal.

NINTH AFFIRMATIVE DEFENSE

1 Plaintiff is not the beneficiary under the Platte River bond(s) at issue.

2 **TENTH AFFIRMATIVE DEFENSE**

3 Plaintiff has failed to mitigate its damages, if any.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claim is precluded by the applicable statute of limitations.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claim is precluded by the doctrine of laches.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 Pursuant to NRCP 11, Platte River reserves the right to amend this answer to assert
10 additional affirmative defenses should the facts so warrant.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 Platte River denies each and every allegation not specifically admitted in its Answer to
13 Plaintiff's Complaint.

14 **CROSSCLAIM**

15 Crossclaimant, Platte River Insurance Company (hereinafter "Platte River"), by and
16 through its attorneys, Kurt C. Faux, Esq. and Willi H. Siepmann, Esq., of The Faux Law Group,
17 for its Crossclaim alleges as follows:

18 **PARTIES, JURISDICTION, AND VENUE**

19 1. Jurisdiction is conferred over this action because the principal on the bond at issue
20 in this action was licensed in Nevada. Pursuant to Nevada Revised Statutes, the acts complained
21 of in this action were performed in the State of Nevada and the license bond at issue in this
22 action was issued and executed in the State of Nevada pursuant to Nevada Revised Statutes.

23 2. Platte River is a corporation duly licensed to do business in the State of Nevada
24 and has acted as a surety pursuant to the requirements of the State of Nevada.

25 3. Crossdefendant, Concrete Visions, Inc., a Nevada corporation, on information and
26 belief, at all times material herein, was licensed to do business in the State of Nevada.

27 ///

4. Crossdefendant, Selina Cisneros, individually; on information and belief, at all times material herein, was a resident of or was doing business in the State of Nevada.

GENERAL ALLEGATIONS

5. Platte River posted License Bond No. 41014418 (hereinafter "Bond") with the State Contractors Board of the State of Nevada pursuant to NRS 624, as surety for Concrete Visions, Inc. (hereinafter "Concrete"), as principal, in the sum of \$20,000.00. A copy of the Bond is attached hereto as Exhibit "1."

6. The Bond, as prescribed by NRS 624.273, are in favor of the State of Nevada for the payment of any person who:

- (a) As owner of the property to be improved entered into a construction contract with the contractor and is damaged by failure of the contractor to perform the contract or to remove liens filed against the property; or
- (b) As an employee of the contractor, performed labor on or about the site of the construction covered by the contract; or
- (c) As a supplier or materialman furnished materials or equipment for the construction covered by the contract; or
- (d) Is injured by the unlawful act or omission of the contractor in the performance of the contract.

7. Concrete was licensed pursuant to NRS 624 and was the principal on the Bond.

FIRST CAUSE OF ACTION

(Contractual Indemnity - Concrete Visions, Inc. and Selina Cisneros)

8. Platte River repeats and realleges each and every preceding paragraph as though fully set forth herein verbatim.

9. In consideration of the issuance of the Bond, Concrete and Selina Cisneros, individually (hereinafter collectively referred to as "Indemnitors"), agreed as follows:

- 2. I, individually, and jointly and severally with Principal and all other Indemnitors, agree to hold CIC and/or PR harmless from all Loss and to pay back or reimburse CIC and/or PR for all Loss.

10. In the event Platte River is required to pay as surety pursuant to the terms of the

1 Bond, Platte River is entitled to recover that sum from the Indemnitors pursuant to the General
2 Indemnity Agreement (hereinafter "GIA"). A copy of the GIA is attached hereto to as Exhibit
3 "2."

4 11. The Indemnitors are also obligated to reimburse Platte River for interest, attorneys'
5 fees and costs as set forth in the GIA.

6 12. It has been necessary for Platte River to obtain the services of an attorney to prosecute
7 its claim herein and it is entitled to recover the attorneys' fees and costs including those necessary
8 to enforce the terms of the GIA.

9 **SECOND CAUSE OF ACTION**

10 **(Equitable Indemnity - Concrete Visions, Inc. and Selina Cisneros)**

11 13. Platte River repeats and realleges each and every preceding paragraph as though
12 fully set forth herein verbatim.

13 14. The Indemnitors requested Platte River, as surety, to issue the Bond.

14 15. In consideration of the issuance of the Bond, the Indemnitors agreed to reimburse
15 Platte River, upon demand for all payments made for; and to fully indemnify and hold harmless
16 Platte River from and against any claims or demands or actions or legal expense of any kind or
17 nature, including attorneys' fees, for which Platte River shall become liable or shall become
18 contingently liable by reason of such suretyship, whether or not Platte River shall have paid same
19 at the time of demand.

20 16. If the Court does not find such contract enforceable, then Platte River asserts its
21 right of equitable indemnification. Platte River is entitled to recover against the Indemnitors all
22 monies paid, costs incurred and attorneys' fees expended as the result of the issuance of the
23 Bond.

24 17. It has been necessary for Platte River to obtain the services of an attorney to
25 prosecute its claim herein and it is entitled to recover the attorneys' fees and costs including
26 those necessary to enforce the terms of the GIA.

THIRD CAUSE OF ACTION

(Declaratory Relief - Concrete Visions, Inc. and Selina Cisneros)

18. Platte River repeats and realleges each and every preceding paragraph as though fully set forth herein verbatim.

19. An actual controversy has arisen and now exists between Platte River and the Indemnitors concerning their respective rights and duties under the GIA. Platte River contends that by virtue of this agreement, the Indemnitors are obligated to reimburse Platte River for any and all losses it has sustained or will sustain under the Bond, including attorney's fees, investigation costs, and other costs incurred, or which may be incurred as a result of the failure of the Indemnitors to pay the labor, service, and/or equipment bills, costs, and expenses incurred on the Bond. Platte River is informed and thereon alleges that the Indemnitors deny their obligations to honor their contractual obligation under the GIA and deny that they are obligated to reimburse Platte River for any costs, expenses or attorneys' fees incurred by Platte River herein.

20. Platte River desires a judicial determination of the respective rights and duties of Platte River, and the Indemnitors under the GIA, and a declaration that the Indemnitors are obligated to reimburse Platte River for all losses sustained by Platte River including attorneys' fees, investigation fees and costs and to hold Platte River harmless from all damages, losses, judgments or other expenses which Platte River may incur as a result of the default of the Indemnitors.

WHEREFORE, Platte River prays as follows:

1. That Plaintiff's Complaint be dismissed and that Platte River be awarded its costs and fees for responding to Plaintiff's Complaint;

2. That this Court order that the Indemnitors are obligated to reimburse Platte River for any and all losses it has sustained or will sustain under the Bond, including attorneys' fees, investigation costs, and other costs incurred, or which may be incurred as a result of the failure of the Indemnitors to pay the labor, service, and/or equipment bills, costs, and expenses incurred

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SUITE 100
HENDERSON, NEVADA 89014
TEL: (702) 458-5790
FAX: (702) 458-5794

1 on the Bond;

2 3. For any and all amounts the Indemnitors named herein are obligated to reimburse
3 Platte River under the General Indemnity Agreement;

4 4. For an award of attorneys' fees and costs incurred;

5 5. For Court costs and expenses to be expended herein; and

6 6. For such other and further relief as may be deemed just and reasonable by this Court
7 as shown by the evidence to be offered herein.

8 DATED this 19 day of November, 2008.

9 THE FAUX LAW GROUP

10

11

By: 

KURT C. FAUX, ESQ.

Nevada Bar No. 003407

WILLI H. SIEPMANN, ESQ.

Nevada Bar No. 002478

1540 W. Warm Springs Road, Suite 100

Henderson, Nevada 89014

(702) 458-5790

Attorneys for Platte River Insurance

Company

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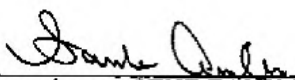
THE FAUX LAW GROUP

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HENDERSON, NEVADA 89014
TEL: (702) 438-5790
FAX: (702) 438-5794

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of November, 2008, I served a true and correct copy of **PLATTE RIVER INSURANCE COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT AND CROSSCLAIM**, by depositing a copy of same in the United States mail, Las Vegas, Nevada, postage fully prepaid, and addressed to the following:

D. Shane Clifford, Esq.
Anjuli B. Woods, Esq.
Dixon Truman Fisher & Clifford, P.C.
221 North Buffalo Drive, Suite A
Las Vegas, NV 89145
Attorneys for Plaintiff


An employee of THE FAUX LAW GROUP

T:\Data\Office\Construction\Cases\CIC\Platte Concrete Vision\PMGs\are to Altern Rentals compli crsclan.wpd -

EXHIBIT 1



NEVADA STATE CONTRACTORS' BOARD

6070 GATEWAY DRIVE, SUITE 100, RENO, NEVADA, 89511 (775) 688-1141 FAX (775) 688-1221, INVESTIGATIONS (775) 688-1166
 3310 CORPORATE CIRCLE, SUITE 200, HENDERSON, NEVADA, 89014 (702) 486-1100 FAX (702) 486-1160, INVESTIGATIONS (702) 486-1110
 www.nscb.state.nv.us

LICENSE BOND NO. 61014418

KNOW BY ALL MEN THESE PRESENTS:

THAT Concrete Visions, Inc., having a principal place of business in the City of Las Vegas, in the State of Nevada, as principal (hereinafter "Principal"), and Platte River Insurance Company, a corporation licensed to execute surety bonds under the provisions of the Nevada Insurance Code, and whose long-term obligations are rated "A" or better by a nationally recognized rating agency, as surety (hereinafter "Surety"), are held and firmly bound to the State of Nevada, in the full and just sum of Ten Thousand and no/100 Dollars (\$10,000.00) for which payment well and truly to be made, the Principal and Surety bind themselves, their respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the principal has applied for or holds a contractor's license with the Nevada State Contractors' Board pursuant to Chapter 624, Nevada Revised Statutes.

NOW THEREFORE, this bond is made in favor of the State of Nevada for the benefit of any person having a valid claim who:

1. As owner of the property to be improved entered into a construction contract with the contractor and is damaged by failure of the contractor to perform the contract, or to remove liens filed against the property; or
2. As an employee of the contractor performed labor on or about the site of the construction covered by the contract; or
3. As a supplier or materialman furnished materials or equipment for the construction covered by the contract; or
4. Is injured by any unlawful act or omission of the contractor in the performance of a contract.

If an action is commenced on this bond, the Surety shall notify the Board of the action within 30 days after (a) being served with a complaint and summons; or (b) the action is commenced, whichever occurs first. The total aggregate liability of the Surety for all claims shall be limited to the face amount of the bond, irrespective of the number of years the bond is in force or the number of claims filed. The Surety shall have the right to terminate its suretyship under this obligation by serving written notice of its election so to do upon the State Contractors' Board, at its office in Reno, Nevada, by certified mail at least sixty (60) days prior to the date of termination of suretyship. Thereafter the Surety shall be discharged from any liability hereunder for any default of the Principal occurring after the date of termination. The liability of the Surety shall be confined to acts, omissions or defaults of the principal occurring subsequent to the effective date hereof; the Surety shall not be liable for labor and material bills incurred by the Principal prior to the date hereof.

NO ACTION MAY BE COMMENCED on this bond after the expiration of TWO (2) YEARS following the commission of the act upon which the action is based.

IN THE EVENT the surety shall make any payments hereunder, without awaiting court action, the bond amount shall be reduced to the extent of any payment made by surety in good faith under the bond, provided, the surety shall notify the board in writing within (10) days of any payments made hereunder.

IN WITNESS WHEREOF, the Principal and said Surety have executed this instrument on the date below, to be effective on the 14th day of January, 2005.

Signed this 14th day of January, 2005. Signed this 14th day of January, 2005.
 BY: Melinda Eley (NEVADA AGENT SIGNATURE) BY: [Signature] (PRINCIPAL)
 Concrete Visions, Inc.

TYPE OR PRINT (Nevada Agent Information)

Melinda Eley 173806
 (AGENT/AGENTS INSURANCE LICENSE NO.)

Edwards & Holmes Inc.
 (AGENCY/AGENCIES INSURANCE LICENSE NO.)

4110 S. Maryland Pkwy., #17
 (ADDRESS)

Las Vegas, NV 89119 702-735-7303
 (CITY, STATE, ZIP CODE/PHONE NUMBER)

Platte River Insurance Company
 (SURETY)

Melinda Eley
 (ATTORNEY-IN-FACT SIGNATURE/PHONE NO.)
 Melinda Eley 702-735-7303

POWER OF ATTORNEY REQUIRED



Nevada State Contractors' Bond Form
 Revised 7/01

PLATTE RIVER INSURANCE COMPANY
POWER OF ATTORNEY

41014418

KNOW ALL MEN BY THESE PRESENTS, That the PLATTE RIVER INSURANCE COMPANY, a corporation of the State of Nebraska, having its principal offices in the City of Madison, Wisconsin, does make, constitute and appoint

MICHAEL B. EDWARDS OR MELINDA BLEY OF LAS VEGAS, NV

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED \$150,000.00

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PLATTE RIVER INSURANCE COMPANY at a meeting duly called and held on the 8th day of January, 2002.

"RESOLVED, that the President, and Executive Vice-President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purpose only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointee to have the powers and duties usual in such offices in the business of the Corporation; the signature of such officers and seal of the Corporation may be affixed to such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time."

IN WITNESS WHEREOF, the PLATTE RIVER INSURANCE COMPANY has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested by its Treasurer, this 8th day of January, 2002.

Attest:

Thomas K. Munson

Thomas K. Munson
Treasurer



PLATTE RIVER INSURANCE COMPANY

David F. Parly

David F. Parly
President and CEO

STATE OF WISCONSIN } S.S.
COUNTY OF DANE

On the 8th day of January, 2002 before me personally came David F. Parly, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Dodge, State of Wisconsin; that he is President and CEO of PLATTE RIVER INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



CERTIFICATE

Kathleen A. Paulson

Kathleen A. Paulson
Notary Public, Dane Co., WI
My Commission Expires 10-15-2006

STATE OF WISCONSIN } S.S.
COUNTY OF DANE

I, the undersigned, duly elected to the office stated below, now the incumbent in PLATTE RIVER INSURANCE COMPANY, a Nebraska Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Madison, State of Wisconsin this

14th

day of

January, 2005



James W. Smirz

James W. Smirz
Assistant Secretary

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON GREEN SHADED BACKGROUND WITH A RED SERIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE ANY QUESTIONS CONCERNING THE AUTHENTICITY OF THIS DOCUMENT CALL 800-475-4450.

(12-00) (112-03)

EXHIBIT 2

GENERAL INDEMNITY AGREEMENT

I request that Capitol Indemnity Corporation and/or Platte River Insurance Company, hereinafter known as CIC and/or PR, execute a bond and consider executing future bonds for the above named company and/or Individual (Principal). I authorize CIC and/or PR or its agents to investigate my credit and Principal's credit, now and at any time in the future, with any creditor, supplier, customer, financial institution, or other person or entity. I make the following promises so that CIC and/or PR will execute a Bond and consider executing future bonds:

1. I agree that the following definitions apply: (a) Bond means (i.) any surety bond, undertaking, or other express or implied obligation of guaranty or suretyship, signed or committed to by CIC and/or PR at the request of Principal, or any of the Indemnitors (regardless of what business entity is named on the Bond), on, before, or after the date of the agreement pursuant to which CIC and/or PR is or may be made liable for Loss, whether or not Principal is also Liable, and (ii.) all riders, endorsements, continuations, renewals, substitutions, modifications, extensions, replacements and reinstatements thereto; and changes in the penal sum thereto; and (b) Loss means any payment or expense either incurred or anticipated by CIC and/or PR in connection with any Bond or this agreement, including: payment of bond proceeds or any other expense in connection with claims, potential claims, or demands; claim fees, penalties; interest; court costs; collection agency fees; costs related to taking, protecting, administering, realizing upon, or releasing collateral; and attorney's fees (including but not limited to those incurred in defense of bond claims or pursuing any rights of indemnification or subrogation and in obtaining and enforcing any judgment arising from those rights).
2. I, individually, and jointly and severally with Principal and all other Indemnitors, agree to hold CIC and/or PR harmless from all Loss and to pay back or reimburse CIC and/or PR for all Loss.
3. I agree to pay CIC and/or PR each annual premium due according to the rates in effect when each payment is due.
4. I agree that premium for a Bond is fully earned upon execution of a Bond and is not refundable.
5. I agree that a facsimile copy of this agreement shall be considered an original and shall be admissible in a court of law to the same extent as the original agreement.
6. I agree that CIC and/or PR may obtain a release from its obligations as surety on a Bond whenever any such release is authorized by law.
7. I agree that CIC and/or PR have the exclusive right to decide whether to pay, compromise, or appeal any claim against a Bond.
8. I agree that I cannot terminate my liability to CIC and/or PR created by this agreement except by sending written notice of intent to terminate to CIC and/or PR. Written notice to terminate shall be sent to CIC and/or PR at its service office, P.O. Box 5500 Madison, WI 53705-0900. I agree that the termination will be effective thirty working days after actual receipt of such notice by CIC and/or PR, but only for Bonds signed or committed to by CIC and/or PR after the effective date. Thus, I agree that I will remain liable to CIC and/or PR for Loss on Bonds signed or committed to by CIC and/or PR prior to the effective date of termination.
9. I agree that CIC and/or PR can bring any legal action arising out of or in any way related to any Bond or this agreement in Dane County, Wisconsin and the Wisconsin law shall apply where CIC and/or PR makes such election.
10. I agree that with my signature below, I am representing myself as both Principal and Indemnitor as used above.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

Signed and dated this 23rd day of June 2005.

Company Name (if Applicable):	Concrete Visions Inc
Corporate Officer/Member/Partner Signature:	Selina Cisneros President

Principal/Indemnitor's Signature:	Principal/Indemnitor's Name (Print):	Social Security Number:
	Selina Cisneros	
Principal/Indemnitor's Spouse's Signature:	Principal/Indemnitor's Spouse's Name (Print):	Social Security Number:
N/A		

Principal/Indemnitor's Signature:	Principal/Indemnitor's Name (Print):	Social Security Number:
N/A		
Principal/Indemnitor's Spouse's Signature:	Principal/Indemnitor's Spouse's Name (Print):	Social Security Number:
N/A		

ORIGINAL

FILED

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CLERK OF THE COURT

ACOM
HOWARD & HOWARD, P.C.
Gwen Mullins, Esq.
Nevada Bar No. 3146
Wade B. Gochnour, Esq.
Nevada Bar No. 6314
3800 Howard Hughes Parkway
Suite 1400
Las Vegas, NV 89169
(702) 257-1483
Attorneys for APCO Construction

DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A571228
DEPT. NO.: XVI

FIRST AMENDED COMPLAINT

Arbitration Exemption:
Involves Title to Property; seeking
Declaratory Relief

APCO CONSTRUCTION ("APCO"), by and through its attorneys, the law firm of
Howard and Howard Attorneys P.C., and hereby alleges as follows:

1. Upon information and belief, Defendant GEMSTONE DEVELOPMENT
WEST, INC. ("Gemstone") is a Nevada corporation, and is the owner of the ManhattanWest
mixed use development Project, commonly referred to as 9205 W. Russell Road, Clark County,
Nevada, described in the contract with APCO and Gemstone as being located on Assessor's
Parcel Numbers: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010 and 163-
32-101-014 but listed by the Clark County Assessors Office as APN #163-32-101-019, and

#454498-v1

- 1 -

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1 further described as PT NE4 NW4 SEC 32 21 60, SEC 32 TWP 21 RNG 60 and more fully
2 described in that certain Grant Bargain Sale Deed recorded on February 7, 2008 in Book
3 20080207 as Instrument No. 01481 of the Official Records of Clark County Recorder (the
4 "Property").

5 2. That the true names and capacities, whether individual, corporate, associate or
6 otherwise of those Defendants named herein as Does I through X, are Defendants presently
7 unknown to APCO, who therefore sues said Defendants by such fictitious names and APCO
8 will seek leave to amend this Complaint to show their true names and capacities when the same
9 has been ascertained. APCO believes that the Doe Defendants are individuals or entities within
10 the jurisdiction of this Court, who may be holders of promissory notes secured by deeds of trust
11 recorded against the subject property, an ownership or leasehold interest of the property, may
12 be responsible for monies due and owing to APCO, may be interfering with payments due to
13 APCO, or are otherwise negligent or responsible in some manner for events referred to in this
14 Complaint, and caused damages approximately thereby to APCO as alleged herein.

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

17 4. The Agreement was drafted by Gemstone.

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

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

23 7. APCO performed its work on the Project pursuant to the Agreement.

24 8. Almost from the beginning of the Project, APCO had difficulty obtaining
25 required information from Gemstone.

26 9. Gemstone also began making changes to the plans and specifications from the
27 beginning of APCO's work on the Project.

1 10. During the course of the construction of the Project, Gemstone continued to
2 make changes in the plans and specifications, including changes to the electrical, plumbing and
3 HVAC plans.

4 11. As changes were made, APCO would submit requests for change orders to
5 Gemstone.

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

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

11 14. This included a refusal to approve requests for extensions of the Agreement
12 schedule.

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

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

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

21 18. On or about July 8, 2008, APCO provided Gemstone its written notice of
22 APCO's dispute of the intended withholding.

23 19. As of July 17, 2008, Gemstone still had not paid APCO any sums due for the
24 May Application.

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

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

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

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

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

11 25. NRS 624.610(1)(d) provides:

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

14 (1) Issue the change order; or

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

19 26. NRS 624.610(3) provides:

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

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

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

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

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

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

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

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

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

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

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

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

22 34. The Termination Letter actually set out what Gemstone stated were "Immediate
23 Termination Breaches" and the "Curable Breaches."

24 35. As part of the "Immediate Termination Breaches," Gemstone included several
25 items of work that had been completed by APCO months before, as Gemstone's grounds for
26 termination of the Agreement. More specifically, Gemstone claimed APCO to be in breach for
27 failure to supply rebar and concrete workers for concrete work. APCO and its subcontractors
28 completed this work months before the Gemstone's notice.

1 36. APCO, through its counsel, responded to each of the alleged grounds for
2 termination on August 15, 2008, the same day that APCO received the Termination Letter, and
3 noted that APCO would continue to work on the Project.

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

8 38. On Monday, August 18, 2008, while at the Project site, Gemstone's CEO, Alex
9 Edelstein, asked the APCO site personnel why they were still on the Project since they had
10 been terminated.

11 39. As a result of these statements, APCO asked for written confirmation of
12 Gemstone's position, and noted that APCO intended to continue to work on the Project until
13 Gemstone no longer allowed APCO on the Project site, or until the deadline for APCO's stop
14 work notice had run.

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

18 41. Gemstone, without valid cause or reason, informed APCO that is was
19 proceeding with its improper termination and ordered APCO off of the Project by Saturday,
20 August 23, 2008.

21 42. Since payment for the June Application was not made in full by Gemstone, the
22 Agreement terminated pursuant to APCO's notice of termination on September 5, 2008,
23 pursuant to NRS 624.610.

24 43. After improperly removing APCO from the Project, Gemstone agreed to issue
25 joint checks to some of the subcontractors in an effort to induce the subcontractors to return to
26 work on the Project for the replacement General Contractor.

27 44. Gemstone has further notified APCO of Gemstone's intent to withhold any
28 further payment to APCO.

FIRST CAUSE OF ACTION
(Breach of Contract against Gemstone Only)

45. APCO repeats and realleges each and every allegation contained in paragraphs 1 through 44 as though fully set forth herein.

46. There was a valid and enforceable contract between APCO and Gemstone.

47. APCO complied with the material terms of the Agreement.

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

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

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

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

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

SECOND CAUSE OF ACTION
(Breach of the Duty of Good Faith and Fair Dealing against Gemstone Only)

52. APCO repeats and realleges each and every allegation contained in paragraphs 1 through 51 as though fully set forth herein.

53. There is an implied duty of good faith and fair dealing implied in all contracts in the state of Nevada.

1 54. Gemstone has breached the duty of good faith and fair dealing by performing in
2 a manner that was unfaithful to the purpose of the contract by among other things:

- 3 a. Refusing to consider change order requests seeking additional time due
4 to Gemstone's changes of the Project plans and specifications;
5
6 b. Insisting that the despite the many changes made by Gemstone that the
7 original schedule be followed, and by attempting to use the original
8 schedule to justify withholding sums due to APCO;
9
10 c. Creating a pretext for the alleged termination of APCO for cause after
11 receiving APCO's notice of intent to stop work for non-payment;
12
13 d. Citing items of work that had been completed for months as a basis for
14 the alleged termination of the contract; and
15
16 e. Employing another General Contractor and notifying APCO's
17 subcontractors of Gemstone's intent to replace APCO on the same day
18 that Gemstone provided APCO notice of its right to cure the alleged
19 breaches of the Agreement.

19 55. As a result of Gemstone's breach of the duty of good faith and fair dealing,
20 APCO has been damaged in an amount in excess of \$10,000.

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

23 57. Gemstone's actions were intentional and malicious and evidence a wanton and
24 reckless disregard of APCO's rights and APCO is therefore entitled to punitive damages in
25 excess of \$10,000.

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

28 ///

THIRD CAUSE OF ACTION
(Violation of NRS 624 Prompt Payment Act against Gemstone Only)

59. APCO repeats and realleges each and every allegation contained in paragraphs 1 through 58 as though fully set forth herein.

60. Gemstone violated NRS 624.609 by improperly withholding payments due to APCO.

61. Gemstone violated NRS 624.610 by failing to approve or give written notice of the reasons why change order requests were not being approved within 30 days.

62. Gemstone further violated NRS 624.610 by failing to pay for change order requests that were deemed approved pursuant to the statute.

63. APCO provided Gemstone with written notice of APCO's intent to stop work if payment was not made, and stopped work after payment was not made.

64. After stopping work, APCO provided Gemstone with written notice of APCO's intent to terminate the Agreement.

65. APCO has now terminated the Agreement in accordance with the terms of NRS 624.610.

66. APCO is entitled to the remedies set forth in NRS 624.610.

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

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

FOURTH CAUSE OF ACTION
(Defamation against Gemstone Only)

69. APCO repeats and realleges each and every allegation contained in paragraphs 1 through 68 as though fully set forth herein.

1 70. Gemstone has made false and defamatory statements about APCO, including,
2 but not limited to:

- 3 a. That Gemstone has "recorded Over (sic) 60 distinct contract breaches"
4 by APCO;
5 b. That subcontractor change orders were not being approved because
6 APCO commingled the subcontractor change order with illegitimate
7 change order requests from APCO;
8 c. That APCO owes Gemstone a great deal of damages;
9 d. That APCO "squandered" time on the Project; and
10 e. That APCO was more interested in "CYA activities and unjustified
11 change order requests" than the Project schedule.
12

13
14 71. Gemstone published these and other false and defamatory statements to third
15 parties.
16

17 72. The publication by Gemstone was not privileged.

18 73. Gemstone knew, or should have known that the statements were false and
19 defamatory.

20 74. The statements by Gemstone would tend to injure APCO in its trade, business
21 and/or profession, and therefore are defamation *per se*.
22

23 75. As a result of Gemstone's defamatory statements, APCO has been damaged in
24 an amount to be determined at trial, which sum is in excess of \$10,000.00.

25 76. Gemstone's actions were intentional and malicious and evidence a wanton and
26 reckless disregard of APCO, and APCO is therefore entitled to punitive damages in excess of
27 \$10,000.
28

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

3 **FIFTH CAUSE OF ACTION**
4 **(Declaratory Relief against Gemstone Only)**

5 78. APCO repeats and realleges each and every allegation contained in paragraphs 1
6 through 77 as though fully set forth herein.

7 79. There exists a justiciable controversy between APCO and Gemstone as to the
8 terms of the Agreement, the effect of Gemstone's purported termination of the Agreement,
9 APCO's termination of the Agreement, and the legal rights and remedies of the parties.

10 80. The interests of APCO and Gemstone are adverse.

11 81. APCO has a legally protectible interest in the controversy between itself and
12 Gemstone.

13 82. The issues are ripe for judicial determination.

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

16 **SIXTH CAUSE OF ACTION**
17 **(Unjust Enrichment against All Defendants)**

18 84. APCO repeats and realleges each and every allegation contained in paragraphs 1
19 through 83 as though fully set forth herein.

20 85. APCO furnished work on the Project for the benefit of the Defendants, the
21 owners, reputed owners or those parties that may have an interest in the Property at the specific
22 instance and request of Defendant Gemstone.

23 86. Defendants, owners, reputed owners and those parties that may have an interest
24 in the Property accepted, used and enjoyed the benefit of the work that APCO provided on the
25 Project.

26 87. Defendants, owners, reputed owners and those parties that may have an interest
27 in the Property knew or should have known that APCO expected to be paid for the work that
28 APCO furnished on the Project.

1 88. APCO has demanded that Gemstone pay the sums outstanding for the Work
2 furnished by APCO on the Project through the date of termination in the total sum of
3 20,782,659.95.

4 89. To date, Gemstone, owners, reputed owners and those parties that may have an
5 interest in the Property, and each of them, have failed, neglected and refused to pay said sums
6 to the detriment of APCO.

7 90. Defendants, owners, reputed owners and those parties that may have an interest
8 in the Property have been unjustly enriched to the detriment of APCO.

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

11 **SEVENTH CAUSE OF ACTION**
12 **(Monies Due and Owing Against Gemstone Only)**

13 92. APCO repeats and realleges each and every allegation contained in paragraphs 1
14 through 91 as though fully set forth herein.

15 93. Up to the date of termination by APCO for Gemstone's failure to pay, APCO
16 has performed all terms and conditions of the agreement executed between the parties and has
17 not been paid for all sums justly due and owing.

18 94. The monies due and owing to APCO by Gemstone are in excess of \$10,000.00
19 according to proof at trial.

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

22 **EIGHTH CAUSE OF ACTION**
23 **(Interference with Contractual Relations against Gemstone Only)**

24 96. APCO repeats and realleges each and every allegation contained in paragraphs 1
25 through 95 as though fully set forth herein.

26 97. There exists a valid contract between APCO and its subcontractors for the work
27 on the Project.

28 98. Gemstone knew of the contracts between APCO and subcontractors.

1 99. Gemstone committed intentional acts intended or designed to disrupt or interfere
2 with the contractual relationship that existed between APCO and its subcontractors.

3 100. Gemstone caused substantial interference and delay in APCO's ability to
4 perform under the contacts between APCO and its subcontractors.

5 101. There was an actual disruption of the contracts.

6 102. As a result of Gemstone's interference with APCO's contractual relations with
7 its subcontractors and disruption of APCO's ability to perform thereunder, APCO has suffered
8 substantial damages, in an amount in excess of \$10,000.00.

9 103. Gemstone's actions were intentional and malicious and evidence a wanton and
10 reckless disregard of APCO and APCO is therefore entitled to exemplary and/or punitive
11 damages in excess of \$10,000.

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

14 **NINTH CAUSE OF ACTION**
15 **(Lien Foreclosure)**

16 105. APCO repeats and realleges each and every allegation contained in paragraphs 1
17 through 104 as though fully set forth herein.

18 106. The whole of the property of the Project is reasonably necessary for the
19 convenient use and occupation of all of the improvements made by APCO.

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

23 108. Gemstone failed to pay APCO for the labor and materials furnished on the
24 Project causing APCO to terminate its contract with Gemstone as allowed under Nevada law
25 and further recording a Notice and Claim of Lien on November 6, 2008, in the office of the
26 Clark County Recorder, in Book 20081106, as Instrument No. 003327 (the "Lien").

27 109. Lien was duly recorded in the official records of Clark County.
28

1 monies to be used in the payment of the bills incurred in the construction, repair, alteration or
2 improvement of the Property.

3 120. By providing the monies to be used in the payment of bills incurred in the
4 construction, repair, alteration or improvement of the Property, SFC acted as lender as defined
5 in NRS Chapter 627.

6 121. Upon information and belief, NCS and SFC have construction loan funds for the
7 benefit of APCO and its subcontractors for the work performed on the Project.

8 122. At all times relevant hereto, APCO relied upon the construction control of NCS
9 and SFC and based upon that reliance, furnished labor and materials for the improvement of the
10 Property.

11 123. APCO, in reliance upon NCS, executed vouchers and lien releases for payment
12 for the labor and materials, which vouchers were dishonored by NCS and SFC.

13 124. NCS knew or should have known that APCO relied upon NCS and SFC for
14 payment of the sums due APCO.

15 125. APCO performed all conditions required of APCO and submitted requests for
16 payment to NCS and SFC.

17 126. By refusing to pay the valid claims of APCO, NCS and SFC violated the
18 provisions of NRS Chapter 627 and APCO has been damaged in excess of \$10,000.00.

19 127. It has been necessary for APCO to engage the services of an attorney, and
20 pursuant to NRS 627.200(2), APCO is entitled to reasonable attorneys' fees and costs as
21 damages.

22 **ELEVENTH CAUSE OF ACTION**
23 **(Priority over Deeds of Trust)**

24 128. APCO repeats and realleges each and every allegation contained in paragraphs 1
25 through 127 as though fully set forth herein.

26 129. Gemstone Apache, LLC was the Trustor on the Deeds of Trust recorded on July
27 5, 2006 in Book 20060705 as Instrument Nos. 04264, 04265 and 04266, in the office of the
28 County Recorder for Clark County, Nevada, as amended ("Mezzanine Deed of Trust").

1 130. Defendant First American Title Insurance Company ("First American") is the
2 trustee of the Deeds of Trust recorded on July 5, 2006 in Book 20060705 as Instrument Nos.
3 04264, 04265 and 04266, in the office of the County Recorder for Clark County, Nevada, as
4 amended, on February 7, 2008 as Instruments Nos. 01484 and 01485 and the Second
5 Amendment to Third Deed of Trust and Security Agreement with Assignment of Rents and
6 Fixture Filing Line of Credit, recorded on September 9, 2008 against the Property, in Book
7 20080909 as Instrument No. 03943 of the Official Records of Clark County Nevada.

8 131. Gemstone acquired the Property from Gemstone Apache, LLC on or around
9 February 7, 2007 and assumed the Mezzanine Deeds of Trust, which have been amended to
10 secure payment of the restructured mezzanine note.

11 132. Gemstone is the Trustor on the Senior Debt Deed of Trust, recorded on February
12 7, 2008 against the Property, in Book No. 20080207 as Instruments No. 01482 ("Construction
13 Deed of Trust") as well as the Mezzanine Deed of Trust, as amended on February 7, 2008 by
14 Instruments Nos. 01484 and 01485 and the Second Amendment to Third Deed of Trust and
15 Security Agreement with Assignment of Rents and Fixture Filing Line of Credit, recorded on
16 September 9, 2008 against the Property, in Book 20080909 as Instrument No. 03943 of the
17 Official Records of Clark County Nevada.

18 133. Defendant Commonwealth Land Title Insurance Company ("Land Title") is the
19 trustee of the Construction Deed of Trust recorded on the Property on February 7, 2008 the
20 Property, in Book No. 20080207 as Instrument No. 01482.

21 134. SFC is the beneficiary on the Mezzanine Deed of Trust, as amended, and the
22 Construction Deed of Trust.

23 135. SFC subordinated the Mezzanine Deeds of Trust to the Construction Deed of
24 Trust per the Mezzanine Deeds of Trust Subordination Agreement which SFC signed and
25 recorded on February 7, 2008 in Book No. 20080207 as Instrument No. 001486 of the Official
26 Records of Clark County Nevada.

27 136. The work of improvement to the Property commenced prior to the recording of
28 the Construction Deed of Trust, which is the senior deed of trust on the Property.

1 137. APCO's claim is superior to the claims against the Property of Defendants
2 Gemstone, SFC, Land Title and First American.

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

5 **WHEREFORE**, APCO prays for the following relief:

6 1. That APCO be awarded general and consequential damages in excess of
7 \$10,000;

8 2. That APCO be awarded special damages in excess of \$10,000;

9 3. That APCO be awarded punitive or exemplary damages in excess of \$10,000;

10 4. That APCO be awarded pre-judgment on all amounts found due and owing;

11 5. For a reasonable sum as and for the costs of preparation, verification, service
12 and recording of the Lien;

13 6. For an award of reasonable attorneys fees;

14 7. For costs of suit;

15 8. That the Court declare the rank and priority of all lien claims and secured
16 claims, including those of SFC, Land Title and First American and that APCO's Lien be
17 ascertained and adjudged as a valid lien having priority over the deeds of trust, including those
18 of SFC, Land Title and First American;

19 9. That APCO's Lien be enforced according to Nevada law;

20 10. That the Court direct a foreclosure sale of the Property;

21 11. That the Property be sold and the proceeds be applied to the payments of the
22 sums found due to APCO;

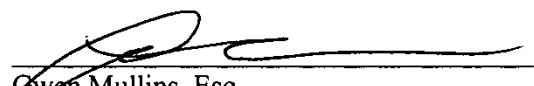
23 12. That the Court enter such deficiency judgment against Defendants as the Court
24 deems proper in the premises;

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13. That APCO be awarded post-judgment interest on all amounts; and
14. For such other and further relief as the Court deems just and proper.

DATED this 8th day of December 2008.

HOWARD & HOWARD


Owen Mullins, Esq.
Nevada Bar No. 3146
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3800 Howard Hughes Parkway
The Wells Fargo Tower, Ste. 1400
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Attorneys for APCO Construction

ORIGINAL

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E. J. [Signature]
CLERK OF THE COURT

COMP

JUSTIN L. WATKINS

Nevada Bar No. 009217

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

3993 Howard Hughes Parkway, Suite 400

Las Vegas, NV 89169

Telephone: 702-789-3100

Facsimile: 702-822-2650

Attorneys for Intervenor/Lien Claimant

DISTRICT COURT

CLARK COUNTY, NEVADA

**APCO CONSTRUCTION, a Nevada
corporation,**

Plaintiff,

vs.

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

Defendants.

CASE NO.: A571228

DEPT. NO.: XVI

**CABINETEC, INC.'S STATEMENT OF
FACTS CONSTITUTING LIEN CLAIM
AND COMPLAINT IN INTERVENTION**

**(Exempt from Arbitration Pursuant to
NAR 3(A) - Mechanic's Lien Foreclosure)**

CABINETEC, INC., a Nevada corporation,

Intervenor/Lien Claimant,

vs.

**CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation;
APCO CONSTRUCTION, a Nevada
corporation; GEMSTONE DEVELOPMENT
WEST, INC., a Nevada corporation and;
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,**

Defendants in Intervention.

LASVEGAS 7140.1 102734.003

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CE27

1 COMES NOW, CABINETEC, INC., a Nevada corporation, by and through its counsel,
2 JUSTIN L. WATKINS, ESQ. of the law firm WATT, TIEDER, HOFFAR & FITZGERALD,
3 L.L.P., and for its Statement of Facts Constituting Lien and Complaint in Intervention, complains
4 and alleges as follows:

5 **GENERAL ALLEGATIONS**

6 1. CABINETEC, INC. ("CABINETEC") is a Nevada corporation duly authorized
7 and qualified to do business in Clark County, Nevada. CABINETEC holds a Nevada State
8 Contractor's License No. 0027189, Classification C-3 Carpentry.

9 2. Upon information and belief, Defendant/Defendant in Intervention GEMSTONE
10 DEVELOPMENT WEST, INC. ("GEMSTONE") is a Nevada corporation, and is the owner of
11 9205 W. Russell Road, Clark County, Nevada, described as Clark County Assessor's Number
12 163-32-101-019, further described as PT NE4 NW4 SEC 32 31 60, SEC 32 TWP 21 RNG 60,
13 and more fully described in that certain Grant Bargain Sale Deed recorded on February 7, 2008 in
14 Book 20080207 as Instrument No. 01481 of the Official Records of Clark County (the
15 "Property"), and commonly known as the ManhattanWest mix-use development project (the
16 "Project").

17 3. Upon information and belief, Plaintiff/Defendant in Intervention APCO
18 Construction ("APCO") is a Nevada corporation, and at all times relevant herein was duly
19 authorized and qualified to conduct business in Clark County, Nevada.

20 4. Upon information and belief, Defendant in Intervention CAMCO PACIFIC
21 CONSTRUCTION COMPANY, INC. ("CAMCO") is a California corporation, and at all times
22 relevant herein was duly authorized and qualified to conduct business in Clark County, Nevada.

23 5. The true names and capacities, whether individual, corporate, associate, or
24 otherwise of Defendants In Intervention Does I through X, inclusive, and Roe Corporations I
25 through X, inclusive, are unknown to CABINETEC who therefore sues those Defendants by such
26 fictitious names, but are believed to be agents, contractors, servants, employees, representatives,
27 affiliates, bond companies, successors or assigns of the other Defendants in Intervention named in
28

1 this Complaint in Intervention. Defendants in Intervention Does I through X, inclusive, Roe
2 Corporations I through X, inclusive, Plaintiff/Defendant in Intervention APCO,
3 Defendant/Defendant in Intervention GEMSTONE, Defendant in Intervention CAMCO will be
4 collectively referred to herein as "All Defendants in Intervention".

5 6. CABINETEC is informed and believes, and thereupon alleges that each of the
6 Defendants in Intervention Does I through X, inclusive, and Roe Corporations I through X,
7 inclusive is a party claiming an interest in the Property and/or is liability for CABINETEC's
8 accounts stated. CABINETEC asks leave of this Court to amend this Complaint in Intervention
9 and insert the true names and capacities of said Does I through X and Roe Corporations I through
10 X, inclusive, when the same have been ascertained by CABINETEC, together with the
11 appropriate charging allegations, and to join these Defendants in this action.

12 7. Upon information and belief, APCO and GEMSTONE entered into the
13 ManhattanWest General Construction Agreement for GMP, dated September 6, 2007 (the "Prime
14 Contract").

15 8. Pursuant to the Prime Contract, APCO was to act as the general contractor the
16 construction of the Project.

17 9. On or about April 28, 2008, APCO and CABINETEC entered into a Subcontract
18 Agreement, whereby CABINETEC would supply and install kitchen and bath cabinets for
19 buildings 8 & 9 of the Project (the "APCO Subcontract").

20 10. On or about August 26, 2008, pursuant to Gemstone's request CABINETEC
21 entered into a Ratification and Amendment of Subcontract Agreement (the "Ratification") with
22 CAMCO, whereby CAMCO agreed to the terms of the APCO Subcontract and to replace APCO
23 as the "Contractor" under the APCO Contract.

24 11. CABINETEC performed its work on the Project pursuant to the APCO
25 Subcontract.

26 ...

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1 accruing thereon, for which judgment should now be entered against CAMCO in favor of
2 CABINETEC.

3 20. CABINETEC has been required to engage the services of an attorney to prosecute
4 this matter and is entitled to payment of attorneys' fees and costs.

5 **SECOND CAUSE OF ACTION**

6 **(Breach of the Implied Covenant of Good Faith and Fair Dealing against**

7 **All Defendants in Intervention, DOES and ROES)**

8 21. CABINETEC repeats and realleges each and every allegation contained in
9 paragraphs 1 through 20 of this Complaint in Intervention as though fully set forth herein.

10 22. The Subcontract between APCO and CABINETEC contained an implied covenant
11 of good faith and fair dealing.

12 23. The agreement between GEMSTONE and CABINETEC contained an implied
13 covenant of good faith and fair dealing.

14 24. The Ratification between CAMCO and CABINETEC contained an implied
15 covenant of good faith and fair dealing.

16 25. APCO, GEMSTONE and CAMCO breached the covenant of good faith and fair
17 dealing by refusing to pay money owed to CABINETEC for the Work. As a result of the breach,
18 CABINETEC has sustained damages in an amount in excess of \$10,000.00.

19 26. CABINETEC has been required to engage the services of an attorney to prosecute
20 this matter and is entitled to payment of attorneys' fees and costs.

21 **THIRD CAUSE OF ACTION**

22 **(Unjust Enrichment against All Defendants in Intervention, DOES and ROES)**

23 27. CABINETEC repeats and realleges each and every allegation contained in
24 paragraphs 1 through 26 of this Complaint in Intervention as though fully set forth herein.

25 28. As a result of the Work as set forth above, APCO, CAMCO and GEMSTONE
26 have been unjustly enriched all to the detriment of CABINETEC, and this Court should grant
27 judgment to CABINETEC against APCO, CAMCO and GEMSTONE, jointly and severally, in
28

1 an amount in excess of \$10,000.00, together with interest accruing thereon, costs and attorney's
2 fees incurred herein.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of NRS 624 against All Defendants in Intervention, DOES and ROES)**

5 29. CABINETEC repeats and realleges each and every allegation contained in
6 paragraphs 1 through 28 of this Complaint in Intervention as though fully set forth herein.

7 30. Upon information and belief, APCO, CAMCO and GEMSTONE violated NRS
8 624.609 by improperly withholding payments due to CABINETEC.

9 31. CABINETEC is entitled to the remedies set forth in NRS 624.610.

10 32. CABINETEC is entitled to pre-judgment and post-judgment interest on all
11 amounts found due and owing.

12 33. CABINETEC has been required to engage the services of an attorney to prosecute
13 this matter and is entitled to payment of attorneys' fees and costs.

14 **FIFTH CAUSE OF ACTION**

15 **(Monies Due and Owing against All Defendants in Intervention, DOES and ROES)**

16 34. CABINETEC repeats and realleges each and every allegation contained in
17 paragraphs 1 through 33 of this Complaint in Intervention as though fully set forth herein.

18 35. APCO and/or GEMSTONE owes CABINETEC the sum of \$19,547.00, together
19 with interest accruing thereon, for portions of the Work, and although demand has been made
20 upon APCO and GEMSTONE for payment of said sum, APCO and GEMSTONE have failed,
21 neglected and refused and continue to fail, neglect and refuse to pay the same.

22 36. CAMCO and/or GEMSTONE owes CABINETEC the sum of \$730,555.00,
23 together with interest accruing thereon, for portions of the Work, and although demand has been
24 made upon CAMCO and GEMSTONE for payment of said sum, CAMCO and GEMSTONE
25 have failed, neglected and refused and continue to fail, neglect and refuse to pay the same.

26 37. CABINETEC is entitled to judgment against APCO and/or GEMSTONE in the
27 amount of \$19,547.00, together with interest thereon at the highest legal rate until paid in full.

28

1 38. CABINETEC is entitled to judgment against CAMCO and/or GEMSTONE in the
2 amount of \$730,555.00, together with interest thereon at the highest legal rate until paid in full.

3 39. CABINETEC has been required to engage the services of an attorney to prosecute
4 this matter and is entitled to payment of attorneys' fees and costs.

5 **SIXTH CAUSE OF ACTION**

6 **(Quantum Meruit against All Defendants in Intervention, DOES and ROES)**

7 40. CABINETEC repeats and realleges each and every allegation contained in
8 paragraphs 1 through 39 of this Complaint in Intervention as though fully set forth herein.

9 41. CABINETEC performed the Work.

10 42. APCO, CAMCO and GEMSTONE had knowledge that CABINETEC was
11 performing the Work.

12 43. APCO, CAMCO and GEMSTONE accepted the benefits of the Work, materials
13 and improvements, and expressly and impliedly promised to pay CABINETEC a reasonable
14 compensation therefore.

15 44. The Work has a reasonable value of \$750,102.00, but CABINETEC has not been
16 paid this amount. As a result, CABINETEC has sustained damages in the amount of
17 \$750,102.00.

18 45. CABINETEC has been required to engage the services of an attorney to prosecute
19 this matter and is entitled to payment of attorneys' fees and costs.

20 **SEVENTH CAUSE OF ACTION**

21 **(Account Stated against All Defendants in Intervention, DOES and ROES)**

22 46. CABINETEC repeats and realleges each and every allegation contained in
23 paragraphs 1 through 45 of this Complaint in Intervention as though fully set forth herein.

24 47. There was, and has been, an account stated by APCO setting forth the sums due
25 and owing to CABINETEC, which account as stated by APCO is the amount of \$19,547.00.

26 48. There was, and has been, an account stated by CAMCO setting forth the sums due
27 and owing to CABINETEC, which account as stated by CAMCO is the amount of \$730,555.00.
28

49. Despite CABINETEC's demands for payment, and APCO's and CAMCO's failure to dispute the amounts owing, APCO and CAMCO have refused to pay the account as required under the Subcontract and the Ratification, respectively.

50. As a result of the foregoing, and in accordance with the principles of equity and common law, CABINETEC is entitled to judgment in its favor, and against APCO in the amount of \$19,547.00, together with interest thereon at the highest legal rate.

51. As a result of the foregoing, and in accordance with the principles of equity and common law, CABINETEC is entitled to judgment in its favor, and against CAMCO in the amount of \$730,555.00, together with interest thereon at the highest legal rate.

52. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

(Lien Foreclosure against GEMSTONE, DOES and ROES)

53. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 52 of this Complaint in Intervention as though fully set forth herein.

54. CABINETEC is a licensed contractor in the State of Nevada. CABINETEC performed the Work at the request and special instance of APCO, CAMCO and GEMSTONE.

55. CABINETEC demanded payment of all sums due and owing for the Work. However, CABINETEC has not received payment for its work and materials and as a result, the amount of \$750,102.00 remains past due and owing.

56. On January 12, 2009, CABINETEC sent APCO, CAMCO and GEMSTONE a Notice of Intent to Lien and demanded payment.

57. Having received no response to the Notice of Intent to Lien, on February 2, 2009, CABINETEC recorded a Mechanics Lien in Book Number 20090202 as Instrument Number 0001657.

58. CABINETEC served the Lien via certified mail.

59. CABINETEC is entitled to recover in this action the costs and fees incurred in

1 preparing, recording, and serving its Notice of Intent to Lien and its Lien.

2 60. CABINETEC's Lien is charged against the Property and has been properly
3 perfected pursuant to NRS 108, et seq. CABINETEC is therefore entitled to an Order from this
4 Court directing that the Property be sold and foreclosed upon and that from the proceeds of the
5 sale, CABINETEC be paid the principal sum of \$750,102.00, together with interest accrued
6 thereon, plus reimbursement of the costs of suit and attorneys fees that CABINETEC has incurred
7 and continues to incur in connection with this action.

8 **NINTH CAUSE OF ACTION**

9 **(Negligent Misrepresentation against GEMSTONE, DOES and ROES)**

10 61. CABINETEC repeats and realleges each and every allegation contained in
11 paragraphs 1 through 60 of this Complaint in Intervention as though fully set forth herein.

12 62. GEMSTONE, in the course of an action in which it had a pecuniary interest, failed
13 to exercise reasonable care or competence in obtaining or communicating information to
14 CABINETEC.

15 63. CABINETEC justifiably relied on this information.

16 64. CABINETEC suffered damages as a result of GEMSTONE's misrepresentation.

17 65. CABINETEC has been required to engage the services of an attorney to prosecute
18 this matter and is entitled to payment of attorneys' fees and costs.

19 WHEREFORE, CABINETEC prays as follows:

20 1. That this Court enter a Judgment in favor of CABINETEC and against Defendants,
21 jointly and severally, in the amount of \$750,102.00, plus interest thereon at the highest legal rate
22 from the date the amount became due until paid;

23 2. That this Court enter judgment against the Defendants, jointly and severally, for a
24 reasonably sum as and for the costs of preparing, verifying, serving, and filing of CABINETEC's
25 Lien;

26 3. That the Lien be enforced according to law;

27 4. That the Court direct a foreclosure sale of the Property;
28

1 5. That the Property be sold and the proceeds be applied to the payment of sums
2 found due to CABINETEC;


3 6. That the Court enter such deficiency judgment against the Defendants, jointly and
4 severally, as may be proper in the premises;

5 7. That the Court enter judgment in favor of CABINETEC and against Defendants,
6 jointly and severally, for reasonable attorney's fees and costs of suit incurred herein; and

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

8
9 Dated: February 6, 2009

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

10
11 
12 JUSTIN L. WATKINS
13 Nevada Bar No. 009217
14 3993 Howard Hughes Parkway, Suite 400
15 Las Vegas, Nevada 89169

Attorneys for Intervenor/Lien Claimant

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1 **COMP**

2 JOSEPH G. WENT, ESQ.

3 Nevada Bar No. 009220

4 GEORLEN K. SPANGLER, ESQ.

5 Nevada Bar No. 003818

6 **KOLESAR & LEATHAM, CHTD.**

7 3320 W. Sahara Avenue, Suite 380

8 Las Vegas, Nevada 89102

9 Telephone: (702) 362-7800

10 Facsimile: (702) 362-9472

11 E-Mail: jwent@klnevada.com

gspangler@klnevada.com

12 Attorneys for Plaintiff,

13 **UINTAH INVESTMENTS, LLC,**

14 **d/b/a/ SIERRA REINFORCING**

FILED

2009 FEB 23 P 3:31

[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

15 **UINTAH INVESTMENTS, LLC, a Nevada**
16 **limited liability company, d/b/a SIERRA**
17 **REINFORCING,**

18 **Plaintiff,**

19 **vs.**

20 **APCO CONSTRUCTION, a Nevada**
21 **corporation; GEMSTONE DEVELOPMENT**
22 **WEST, INC., a Nevada corporation; and DOES**
23 **I through X,**

24 **Defendants.**

CASE NO.

DEPT NO.

A583289
XXIII

AUTOMATIC EXEMPTION FROM
ARBITRATION: CONCERNING
TITLE TO REAL ESTATE

COMPLAINT

25 Plaintiff UINTAH INVESTMENTS, LLC d/b/a SIERRA REINFORCING ("Sierra" or
26 "Plaintiff"), by and through its attorneys of Kolesar & Leatham, Chtd., hereby submits its
27 Complaint against APCO CONSTRUCTION, a Nevada corporation ("APCO"), and
28 GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation ("Gemstone") and
29 respectfully alleges as follows:

466438.doc (7490-5)

Page 1 of 5

KOLESAR & LEATHAM, CHTD.

3320 West Sahara Avenue, Suite 380

Las Vegas, Nevada 89102

Tel: (702) 362-7800 / Fax: (702) 362-9472

CLERK OF THE COURT

FEB 23 2009

RECEIVED

AA 000074

GENERAL ALLEGATIONS

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

5 2. Plaintiff is informed and believes and therefore alleges that Defendant APCO is
6 and/or was doing business as a licensed contractor authorized to conduct business in Clark
7 County, Nevada and contracted to act as the general contractor, a subcontractor, and/or
8 construction manager for the subject project.

9 3. Plaintiff is informed and believes and therefore alleges that Gemstone is a Nevada
10 corporation and that it owns the property located at 9205 W. Russell Road, Las Vegas, Nevada
11 89148, formerly known as Assessor's Parcel Number 163-32-101-019 that is the subject of this
12 Complaint (the "Property").

13 4. The true names and capacities of Doe Defendants I through X, inclusive, whether
14 individual, corporate, associate or otherwise are unknown to Plaintiff, and as such, Plaintiff sues
15 said Defendants by such fictitious names. Said Doe Defendants claim an interest in some or all
16 of the real property described herein, including but not limited to, ownership interest, leasehold
17 interest, financial stake or priority claim which may affect this action. The true names and
18 capacities of the Doe Defendants are presently unknown. When ascertained, Plaintiff will amend
19 this pleading to substitute their true names and capacities.

20 **FIRST CAUSE OF ACTION**

21 **(Breach of Contract – APCO)**

22 5. Plaintiff repeats and realleges each and every allegation contained in the
23 preceding paragraphs of this Complaint.

24 6. Plaintiff contracted with APCO (the "Contract") to furnish labor, materials, and
25 equipment for steel related work (the "Work and Materials") for the improvement of the subject
26 Property.

27 7. The Work and Materials were provided for and at the request of APCO.
28 ...

1 8. Pursuant to the Contract, APCO agreed to pay to Plaintiff and amount in excess of
2 \$10,000.00 for the Work and Materials pursuant to the terms of the Contract, together with
3 interest and reasonable attorneys' fees incurred in collection.

4 9. By entering into the Contract, APCO expressly or impliedly warranted or
5 represented, among other things, that it would:

6 a. Promptly and properly pay Plaintiff all monies due and owing for the
7 Work and Materials in accordance with the Contract and Nevada law;

8 b. Equitably adjust the price to account for extra or changed work;

9 c. Not prevent, obstruct, hinder or interfere in any way with the Work and
10 Materials.

11 10. Plaintiff duly performed the Work and provided the Materials and performed all
12 other terms, conditions, covenants and promises required to be performed on its part under the
13 terms of the Contract.

14 11. Plaintiff demanded payment from APCO for the Work and Materials furnished in
15 the contract amount, exclusive of accrued and accruing interest and associated costs, and APCO
16 has failed, neglected and refused to pay Plaintiff the sums due and owing; to date, the principal
17 sum remains past due, owing, and outstanding to Plaintiff on account of the Work and Materials
18 furnished to APCO under the Contract.

19 12. APCO breached the terms of the Contract by failing, neglecting, and refusing to
20 pay to Plaintiff the sums due and owing.

21 13. As a result of APCO's breach of the Contract, Plaintiff has been damaged in the
22 principal amount set forth above, together with attorneys' fees, costs, and interest thereon
23 pursuant to the contract and other damages according to proof.

24 **SECOND CAUSE OF ACTION**

25 **(For Materials Furnished – APCO)**

26 14. Plaintiff hereby realleges and incorporates by reference all of the allegations
27 contained in the preceding paragraphs of this Complaint, as though fully set forth herein.

28 ...

1 15. Within the last two (2) years, APCO became indebted to Plaintiff for the
2 reasonable value of the Work and Materials Plaintiff furnished to APCO at the specific instance
3 and request of APCO.

4 16. There is now due and owing to Plaintiff the principal sum set forth above,
5 together with accrued and accruing interest, costs, and fees thereon.

6 17. The actions of APCO in refusing to pay, have directly and proximately caused
7 damages to Plaintiff and have necessitated this action, and Plaintiff is entitled to attorneys' fees
8 and costs incurred in pursuing this action.

9 **THIRD CAUSE OF ACTION**

10 **(Foreclosure of Mechanic's Lien – All Defendants)**

11 18. Plaintiff repeats and realleges each and every allegation contained in the
12 preceding paragraphs as though set forth in full herein.

13 19. At the request of Defendants, and each of them, Plaintiff provided Work and
14 Materials necessary for the construction of the improvements on the Property.

15 20. Plaintiff has complied with all applicable preliminary notice requirements
16 required under Nevada Revised Statute § 108.245.

17 21. Plaintiff demanded payment in excess of Ten Thousand Dollars (\$10,000),
18 representing the reasonable value of the Work and Materials on the Property, for which Plaintiff
19 was not paid.

20 22. A mechanic's lien (the "Lien") was timely recorded by Plaintiff on October 14,
21 2008 as Book/Instrument 20081014-0001768 in the official records of the Clark County
22 Recorder's Office. A true and correct copy of the Lien recorded by Plaintiff is attached hereto as
23 **Exhibit 1** and incorporated herein by this reference.

24 23. The Lien is in writing and was recorded against the Property.

25 24. The Lien was served and perfected by Plaintiff in accordance with Nevada law.

26 25. Plaintiff is entitled to reasonable attorneys' fees, costs and interest as provided for
27 in NRS Chapter 108.

28 **WHEREFORE**, Plaintiff prays for the following:

1. For judgment in favor of Plaintiff and against Defendants on all counts asserted herein;

2. That the amount claimed on Plaintiff's Lien be adjudged a lien upon the Property and, and that the Court enter an Order that the Property and improvements, or such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Plaintiff herein;

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

4. That the Court enter any deficiency judgment against Defendants, and each of them, as may be proper;

5. For pre- and post-judgment interest;

6. For an award of attorneys' fees and court costs incurred herein; and

7. For such further relief as the Court may grant.

DATED this 23 day of February, 2009.

KOLESAR & LEATHAM, CHTD.

By

JOSEPH G. WENT, ESQ.

GEORLEN K. SPANGLER, ESQ.

Nevada Bar No. 005146

3320 W. Sahara Avenue, Suite 380

Las Vegas, Nevada 89102

Attorneys for Plaintiff

UINTAH INVESTMENTS, LLC d/b/a

SIERRA REINFORCING

EXHIBIT 1

EXHIBIT 1

20081014-0001768

ASSESSOR'S PARCEL NUMBER: 163-32-101-019
PROPERTY LOCATION: 9205 W. RUSSELL ROAD
LAS VEGAS, NEVADA, 89148

RECORDING REQUESTED BY AND RETURN TO LIEN CLAIMANT:
SIERRA REINFORCING
3111 S. VALLEY VIEW, SUITE B-118
LAS VEGAS, NEVADA 89102
702-248-0622

Fee: \$14.00
N/C Fee: \$0.00
10/14/2008 09:15:29
T20080243127

Requestor:
SIERRA REINFORCING

Debbie Conway JLB
Clark County Recorder Pgs: 1

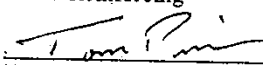
NOTICE OF LIEN
Nevada Revised Statutes Section 108.226

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

1. The amount of the original contract: \$836,877.50
2. The total amount of change orders: \$488,062.00
3. The total amount of payments to date: \$904,782.00
4. The amount of the intent to lien: \$420,157.90
5. The name of the owner of the property: GEMSTONE DEVELOPMENT
9121 WEST RUSSELL ROAD, #117
LAS VEGAS, NV, 89148
6. The name of the General Contractor the notice of lien claimant to whom the claimant furnished work and materials: APCO CONSTRUCTION
3432 NORTH 5TH STREET
LAS VEGAS, NV 89148
7. Brief statement of payment terms per contract: APCO CONSTRUCTION agrees to pay SIERRA REINFORCING on a monthly basis in accordance with the contract documents. On or before the 25th day of month, SIERRA REINFORCING submitted invoices on APCO CONSTRUCTION'S Company's forms, for work projected through the end of the month. APCO CONSTRUCTION was to pay 90%, 10% being held out as "retention". Retention to be paid 30 days after the project is complete, and the last payment is received by Owner.
8. Description of the property: Project: MANHATTAN WEST CONDOMINIUMS
Supply and install structural steel, which included: Complete Metal Deck System, comprised of structural steel wide flange, cold formed steel tubing, steel pipe, unfinished thread fasteners, bars, plates, channels, angles, anchor bars, & other steel and labor as directed by Contractor.

Mailed via Certified Mail on October 10, 2008 to General Contractor and Owner(s).

Sierra Reinforcing


Tom Prince - President

State of Nevada)

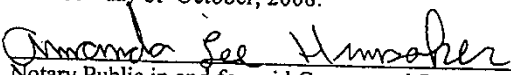
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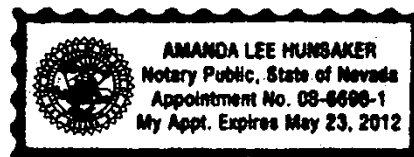
County of Clark)

Tom Prince, President of Sierra Reinforcing, being first duly sworn on oath according to law, deposes and says: I have read the foregoing notice of lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

Subscribed and sworn to before me

This 10th day of October, 2008.


Notary Public in and for said County and State



ORIGINAL

FILED

FEB 24 4 43 PM '09

E. J. Robinson
CLERK OF THE COURT

1 **COMP**

2 Jennifer R. Lloyd-Robinson, Esq.
3 Nevada State Bar No. 9617

4 **PEZZILLO ROBINSON**

5 6750 Via Austi Parkway, Suite 170

6 Las Vegas, Nevada 89119

7 Tel: 702 233-4225

8 *Attorneys for Plaintiff-in-Intervention,*

9 *Tri-City Drywall, Inc.*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada
13 corporation,

14 Plaintiff,

15 vs.

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

25 Defendants.

CASE NO.: A571228
DEPT.: XII

**STATEMENT OF FACTS
CONSTITUTING LIEN AND
COMPLAINT-IN-INTERVENTION**

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

Pezzillo Robinson
6750 VIA AUSTI PARKWAY, SUITE 170
LAS VEGAS, NEVADA 89119
TEL. 702 233-4225

RECEIVED
FEB 24 2009
CLERK OF THE COURT

CE27

1 TRI-CITY DRYWALL, INC., a Nevada
2 corporation,

3 Plaintiff-in-Intervention,

4 vs.

5 APCO CONSTRUCTION, a Nevada
6 corporation; CAMCO PACIFIC
7 CONSTRUCTION COMPANY, INC., a
8 California corporation; FIDELITY AND
9 DEPOSIT COMPANY OF MARYLAND, a
10 surety; GEMSTONE DEVELOPMENT WEST,
11 INC., a Nevada corporation; MOES 1 - 10,
12 inclusive; and ZOE CORPORATIONS 1 - 10,
13 inclusive;

14 Defendants-in-Intervention.

15 Plaintiff-in-Intervention, TRI-CITY DRYWALL, INC. (hereinafter "Tri-City") by and
16 through the undersigned counsel, in support of its Statement of Facts Constituting Lien and
17 Complaint-in-Intervention against the Defendants-in-Intervention stated and named herein, alleges as
18 follows:

19 **PARTIES, JURISDICTION AND VENUE**

20 1. Plaintiff-in-Intervention, Tri-City, is a Nevada corporation duly authorized to conduct
21 business and conducting business within the State of Nevada, as a licensed contractor, license no.
22 0029962.

23 2. Plaintiff is informed and believes and based thereon alleges that Defendant-in-
24 Intervention APCO CONSTRUCTION ("Apco") is a Nevada corporation duly authorized to conduct
25 business and conducting business as a licensed contractor, license number 0014563.

26 3. Plaintiff is informed and believes and based thereon alleges that Defendant-in-
27 Intervention CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco") is a California
28 corporation, which was at all times relevant, duly authorized to conduct business and conducting

1 business as a licensed contractor, license number 0037507.

2 4. Plaintiff is informed and believes and based thereon alleges that Defendant-in-
3 Intervention, FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity"), is a contractor's
4 bond surety, authorized to conduct business in the State of Nevada, that issued a contractor's license
5 bond to Defendant Camco in the amount of \$50,000.00, bond number 8739721, for benefit of various
6 public members injured by Camco's actions as a contractor, including Plaintiff.

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

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

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

20 8. The obligations sued upon herein were performed in Clark County, Nevada.

21
22 **FIRST CAUSE OF ACTION**
23 **(Breach of Contract against Apco,**
24 **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

25 9. Plaintiff repeats with the same force and effect paragraphs 1 through 8, as if set forth in
26 full.

27 10. Plaintiff and Defendant entered into an agreement whereby Plaintiff agreed to provide
28 labor and materials to be incorporated into and for the improvement of the Project. The terms and

1 conditions are contained in writings used to confirm the agreement between Plaintiff and Defendant
2 ("the Contract").

3 11. Plaintiff provided labor and materials to Defendant. Defendant agreed to pay Plaintiff
4 for the labor and materials provided pursuant to the terms of the Contract.

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

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

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

13
14 **SECOND CAUSE OF ACTION**
15 **(Breach of Contract against Camco,**
16 **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

17 15. Plaintiff repeats with the same force and effect paragraphs 1 through 14, as if set forth
18 in full.

19 16. Plaintiff and Defendant entered into an agreement whereby Plaintiff agreed to provide
20 labor and materials to be incorporated into and for the improvement of the Project. The terms and
21 conditions are contained in writings used to confirm the agreement between Plaintiff and Defendant
22 ("the Contract").

23 17. Plaintiff provided labor and materials to Defendant. Defendant agreed to pay Plaintiff
24 for the labor and materials provided pursuant to the terms of the Contract.

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

27 19. Plaintiff has performed all conditions and promises required on its part to be performed
28 under the Contract, except as said performance has been waived, excused or prevented by Defendant's

1 breach of the Contract.

2 20. Based on Defendant's breach of the Contract as described above, Plaintiff has been
3 damaged in a sum in excess of \$10,000.00, together with fees, costs, and interest thereon as provided
4 in the Contract until paid in full and other such damage according to proof.

5
6 **THIRD CAUSE OF ACTION**
7 **(For a Claim against Contractor's License Bond against Camco, Fidelity,**
8 **MOES 1-10, and ZOE CORPORATIONS 1-10, inclusive)**

9 21. Plaintiff repeats with the same force and effect paragraphs 1 through 20, as if set forth
10 in full.

11 22. Plaintiff is informed and believes and based thereon alleges that Defendant Camco, as
12 principal, and Defendant Fidelity, as surety, issued a contractor's license bond in accordance with the
13 provisions of Chapter 624 of the Nevada Revised Statutes. Said bond is in the amount of \$50,000.00,
14 and is conditioned upon full compliance by Camco with all of the provisions of Chapter 624 of the
15 Nevada Revised Statutes and inures to the benefit of all persons, including Plaintiff, damaged as a
16 result of a violation of any requirements of said chapter by Camco.

17 23. Plaintiff is informed and believes and based thereon alleges that the damages it has
18 suffered are a direct and proximate result of violations of one or more of the following sections of
19 Chapter 624 of Nevada Revised Statutes by Camco:

20 (a) Section 624.3012(1) in that Camco diverted funds which were received for a
21 specific purpose in the prosecution of the construction of the Project and thereby deprived Plaintiff of
22 payment to which it was entitled;

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

27 24. In light of Camco's willful and deliberate failure to pay Plaintiff for the labor and
28 materials Plaintiff provided to Camco, Camco violated Chapter 624 of the Nevada Revised Statutes

1 and Plaintiff is entitled to recover against the license bond issued by Defendant Fidelity.

2
3 **FOURTH CAUSE OF ACTION**
4 **(Foreclosure of Lien against Gemstone, MOES 1-10, and**
5 **ZOE CORPORATIONS 1-10, inclusive)**

6 25. Plaintiff repeats with the same force and effect paragraphs 1 through 24, as if set forth
7 in full.

8 26. Within 31 days of first supplying labor and materials to the Property, Plaintiff served
9 via certified mail, return receipt requested, a certain Notice to Owner of Right to Lien upon
10 Defendants or their successors in interest, as required by NRS 108.245, or was exempt from the
11 obligation to serve said Notice. Within 90 days of actual completion of the Project, and within 40
12 days of the recordation of any valid Notice of Completion on the Property, Plaintiff caused to be
13 recorded two mechanic's liens on the Project, one in the amount of \$461,795.78 for work provided
14 pursuant to Plaintiff's agreement with Apco, and another in the amount of \$586,642.07 for work
15 provided pursuant to Plaintiff's agreement with Camco, both in compliance with the requirements of
16 NRS 108.226 and served upon the record owner in compliance with the provisions of NRS 108.227.

17 27. Plaintiff's liens are valid liens upon the Project.

18 28. There may be other lien claimants whose liens may be subordinate to Plaintiff's Notices
19 and Claims of Lien.

20 29. Plaintiff was required to retain the undersigned firm of attorneys to prosecute this
21 action, and as a result has incurred and will continue to incur costs and attorneys fees in preparing,
22 recording and foreclosing its lien, which Plaintiff is entitled to recover from said Defendants.

23 **FIFTH CAUSE OF ACTION**
24 **(Unjust Enrichment against Apco, Camco, Gemstone,**
25 **DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)**

26 27. Plaintiff repeats with the same force and effect paragraphs 1 through 29, as if set forth
27 in full.
28

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

5 29. As such, said Defendants have been unjustly enriched to the detriment and damage of
6 Plaintiff in a sum in excess of \$10,000.00.

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

9
10 WHEREFORE, Plaintiff prays for relief as follows:

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

14 2. For judgment declaring that Plaintiff has a claim in excess of \$10,000.00 against
15 Camco's contractor's license bond, issued by Fidelity, plus interest thereon at the contractual rate from
16 the date the amounts became due until paid, and that Plaintiff's claim has priority over every other
17 claim of interest on the bond;

18 3. For judgment declaring that Plaintiff has valid liens on the Project for an amount in
19 excess of \$10,000.00, plus interest from the date the amounts became due until paid in full, costs and
20 fees, that Plaintiff's liens have priority over every other lien or claim of interest on the Project, and
21 that the Project be sold and proceeds from the sale be applied to satisfy Plaintiff's liens, together with
22 the expenses of sale and the costs and disbursements in this action;

23 3. For reasonable attorneys fees and costs; and
24
25 ///

26 ///

27 ///

28

1 4. For such other and further relief as this Court deems just and proper.
2
3

4 DATED: February 23, 2009

PEZZILLO ROBINSON

5
6 By: _____

Jennifer R. Lloyd-Robinson, Esq.
Nevada State Bar No. 9617
6750 Via Austi Parkway, Suite 170
Las Vegas, Nevada 89119
Attorneys for Plaintiff,
Tri-City Drywall, Inc.

1 **ASTAT**

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

FILED

MAR 2 4 01 PM '09

E. J. Dixon
CLERK OF THE COURT

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

9 **APCO CONSTRUCTION, a Nevada**
10 **corporation,**

11 **Plaintiff,**

12 **vs.**

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

22 **Defendants.**

23 **HARSCO CORPORATION, a foreign**
24 **corporation,**

25 **Plaintiff,**

26 **vs.**

27 **GEMSTONE DEVELOPMENT WEST,**
28 **INC., a Nevada corporation; CONCRETE**
29 **VISIONS, INC., a Nevada corporation;**
30 **PLATTE RIVER INSURANCE COMPANY,**
31 **a surety; COMMON WEALTH LAND TITLE**
32 **INSURANCE COMPANY; FIRST**
33 **AMERICAN TITLE INSURANCE**
34 **COMPANY; and DOES I through X,**

35 **Defendants.**

36 **NOORDA SHEET METAL COMPANY, a**
37 **Nevada corporation,**

38 **Lien Claimant,**

Case No. A571228
Dept. No. XII

**NOORDA SHEET METAL COMPANY'S
AMENDED STATEMENT OF FACTS
CONSTITUTING LIEN CLAIM,
COMPLAINT AND THIRD PARTY
COMPLAINT**

1 vs.

2 GEMSTONE DEVELOPMENT WEST,
3 INC., a Nevada corporation; DOES I through
4 X, inclusive; and ROE CORPORATIONS I
5 through X, inclusive;

6 Defendants.

7 NOORDA SHEET METAL COMPANY, a
8 Nevada corporation,

9 Lien Claimant,

10 vs.

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

15 Third Party Defendants.
16 /

17 Lien Claimant, NOORDA SHEET METAL COMPANY, a Nevada corporation ("Noorda"),
18 by and through its attorneys, the law offices of T. James Truman & Associates, and for its Statement
19 of Facts Constituting Lien Claim and Complaint and Third Party Complaint against the Defendants
20 and Third Party Defendants GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation
21 ("Gemstone"); CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; a foreign corporation
22 ("CAMCO"); FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity"); DOES I
23 through X, inclusive, and ROE CORPORATIONS I through X, inclusive, alleges and states as
24 follows:

25 **GENERAL ALLEGATIONS**

26 1. Plaintiff Noorda is and was at all times relevant hereto, a Nevada corporation
27 authorized to do business in the County of Clark, State of Nevada and licensed by the Nevada State
28 Contractor's Board under license number 0034891A.

2. Noorda is informed and believes, and therefore alleges, Defendant Gemstone is a
Nevada corporation, licensed to and doing business in the County of Clark, State of Nevada.
Plaintiff is informed and believes, and therefore alleges that Gemstone is the owner of the Manhattan

1 West Project located at 9205 W. Russell Road, Las Vegas, NV, Assessor's Parcel Number 163-32-
2 101-019 (the "Project").

3 3. Noorda is informed and believes, and therefore alleges, Defendant APCO is a Nevada
4 corporation authorized to do business in the County of Clark, State of Nevada.

5 4. Noorda is informed and believes, and therefore alleges, Third Party Defendant
6 CAMCO is a Foreign corporation which was active and authorized to and doing business in the State
7 of Nevada, Clark County during the time of the allegations set forth below, was authorized to do
8 business in the County of Clark, State of Nevada, and is licensed by the Nevada State Contractors
9 Board under license number 0037507, but was cancelled on February 1, 2009.

10 5. Noorda is informed and believes, and therefore alleges that Third Party Defendant
11 Fidelity provided bond number 8739721 in the amount of \$50,000.00 on behalf of Defendant
12 CAMCO, for the purpose of allowing CAMCO to be licensed by the Nevada State Contractors
13 Board. One of the purposes of the bond is to pay those laborers and suppliers of material who are
14 not paid by CAMCO. Noorda is within the class of persons for whose benefit the bond was
15 provided.

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

23 7. Noorda is informed and believes, and therefore alleges, Defendant APCO is the
24 General Contractor for the Project. Defendant APCO awarded Noorda a contract to perform and
25 provide labor, material, equipment and services for the Project.

26 8. APCO Construction ("APCO") subcontracted with Noorda to perform certain of the
27 work required by the Sub-Contract Agreement ("Subcontract"). A true and correct copy of the
28 Subcontract is attached hereto as **Exhibit "1."**

1 9. Noorda and CAMCO subsequently entered into a "Ratification and Amendment of
2 Subcontract Agreement" wherein CAMCO agreed to replace APCO as the Contractor under the
3 Subcontract ("Ratification"). A true and correct copy of the Ratification is attached hereto as
4 **Exhibit "2."**

5 10. Noorda performed the work as required under the Subcontract and Ratification
6 (hereinafter jointly referred to as "Agreements").

7 11. The original sum of the Subcontract was \$2,318,018.00. After payments received by
8 CAMCO and or APCO to Noorda in the amount of \$1,177,157.70, Noorda is still owed the amount
9 of \$945,351.40.

10 12. CAMCO has not paid Noorda for the outstanding balance on the Agreements,
11 leaving the amount of \$945,351.40 due and owing to Noorda.

12 13. Noorda performed the work as required under the Agreements.

13 14. Because it was not paid the balance due of \$945,351.40 for the aforementioned work,
14 Noorda recorded a Notice of Lien on January 8, 2009 in the office of the Clark County Recorder in
15 Book No. 20090108 as Instrument No. 0000267 (the "Lien"). A copy of said lien is attached as
16 **Exhibit "3."**

17 15. Defendant CAMCO has failed and refused and continues to fail and refuses to pay
18 the balance of \$945,351.40, together with interest accruing thereon, costs and attorney's fees incurred
19 in these proceedings. Judgment should now be entered against all Defendants in the amount of
20 \$945,351.40, jointly and severally, and in favor of Plaintiff, together with interest, costs, and
21 attorneys fees incurred herein.

22 **FIRST CLAIM FOR RELIEF**

23 **(Lien Foreclosure)**

24 16. Noorda repeats, realleges, and incorporates each and every paragraph contained above
25 as though fully set forth herein.

26 17. Noorda entered into agreements with CAMCO for Noorda to provide various work,
27 labor, and materials toward the construction and improvement of the Project and that CAMCO
28 would fully pay Noorda for its work, labor, and supplied materials pursuant to the Agreements.

1 18. Noorda provided the agreed upon work, labor, and materials toward the construction
2 and improvements of the Project. However, Noorda has not been fully paid for its work, labor, and
3 materials.

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

6 20. Noorda is entitled to recover in this action the costs and fees incurred in preparing,
7 recording, and serving its Lien.

8 21. Noorda's Lien is charged against the Property where the Agreements is located and
9 has been properly perfected pursuant to NRS Chapter 108. Noorda is therefore entitled to an Order
10 from this Court directing that the subject Property be sold and foreclosed upon and that from the
11 proceeds of the sale, Noorda be paid the principal sum of \$945,351.40, together with interest accrued
12 thereon, plus reimbursement of the cost of suit and attorneys fees that Noorda has incurred and
13 continues to incur in connection with this action.

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

17 **SECOND CAUSE OF ACTION**

18 **(Breach of Contract against CAMCO)**

19 23. Noorda repeats, realleges, and incorporates each and every paragraph contained above
20 as though fully set forth herein.

21 24. The Defendant failed to and refused to pay Noorda for its work, labor, and materials
22 supplied to the Project.

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

25 26. As a direct and proximate result of CAMCO's breach of the Agreements, there is
26 now due and owing to Noorda the sum of \$945,351.40, together with interest accruing thereon at the
27 highest legal rate, costs and attorney's fees in these proceedings for which judgment should now be
28 entered against the Defendant CAMCO, and in favor of Noorda.

THIRD CAUSE OF ACTION

(Unjust Enrichment against CAMCO, and Gemstone)

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

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

29. The reasonable value of the work, labor, and materials that Noorda completed, at the request of the Defendants is \$945,351.40, not including interest, fees, and costs. This amount is now due and owing to Noorda by the Defendants CAMCO, and Gemstone, jointly and severally, together with the interest thereon.

FOURTH CAUSE OF ACTION

(Breach of Good Faith and Fair Dealing against CAMCO)

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

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

32. The Defendant CAMCO agreed and promised to fully pay Noorda for its work, labor, and materials supplied to the Project.

33. The Defendant has failed and refused to pay Noorda for its work, labor, and materials supplied to the Project.

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

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

FIFTH CLAIM FOR RELIEF

(Monies Due and Owing against CAMCO)

36. Noorda repeats, realleges, and incorporates each and every paragraph contained above

as though fully set forth herein.

37. CAMCO owes to Noorda the sum of \$945,351.40, together with interest, attorneys' fees and costs accruing thereon, for work, labor, and materials supplied to the Project by Noorda, and although demand has been made upon CAMCO for payment of said sum, CAMCO has failed, neglected and refused, and continues to fail, neglect and refuses to pay the same.

38. Noorda is entitled to judgment against CAMCO, in the amount of \$945,351.40, together with interest thereon at the highest legal rate until paid in full and Noorda's reasonable costs and attorney's fees incurred herein.

SIXTH CLAIM FOR RELIEF

(Bond Claim against Fidelity)

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

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

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

WHEREFORE, Noorda prays for the following:

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

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

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

4. That the Court declare the rank and priority of the lien claims and secured claims and that the Lien recorded by Noorda be ascertained and adjudged as a valid lien with priority over all the claims;
5. That the Lien be enforced according to law;
6. That the Court direct a foreclosure sale of the subject Property;
7. That the Property be sold and the proceeds be applied to the payment of sums found due to Noorda;
8. That the Court enter such deficiency Judgment against the Defendants and Third Party Defendants CAMCO, and Gemstone, jointly and severally, as may be proper on the premises; and
9. For such other and further relief as the Court may deem just and proper.

DATED this 21 day of February, 2009.

T. JAMES TRUMAN & ASSOCIATES

By: _____

T. James Truman, Esq.
Nevada State Bar No. 003620
Stephen M. Dixon, Esq.
Nevada State Bar No. 10025
3654 N. Rancho Dr.
Las Vegas, Nevada 89130
Attorneys for Lien Claimant
Noorda Sheet Metal

CERTIFICATE OF SERVICE

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

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

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

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

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

Nik Skrinjaric, Esq.
Nevada Title Company
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Las Vegas, NV 89128
Attorney for Nevada Construction Services

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Watt, Tieder, Hoffar & Fitzgerald
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Las Vegas, NV 89169
Attorneys for Cabinetec, Inc.

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

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

Donald H. Williams, Esq.
Williams & Wiese Law Offices
501 S. Rancho Drive, Suite D-22
Las Vegas, Nevada 89106
Attorneys for Harsco Corporation

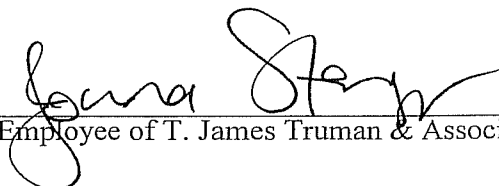

An Employee of T. James Truman & Associates

EXHIBIT "1"

SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-43 APCO Construction Project No. 168
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, (303) 861-5704 3012 Huron Street, Denver, CO. 80202. Redwine Engineering (303) 575-9510 700 17th Street, Denver, CO 80202. Jordan & Skala Engineers, (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702) 990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 16th day of July, 2008, between:

APCO Construction, (hereinafter called the "Contractor") 3432 N. Fifth Street, North Las Vegas, Nevada 89032.
Office: (702) 734-0198, Fax: (702) 734-0396. Nevada Contractors License No. 14563.

And Noorda Sheet Metal Company
4250 Production Court
Las Vegas, NV 89115 P 702-651-1955 F (702) 651-1956

(Hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 34891A

Limit: \$3,200,000.00

Contractor and Subcontractor agree as follows:

1. Contract Documents

- 1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, 3012 Huron Street, Denver, CO. 80202 and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").
- 1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Additional copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.
- 1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and

APCO Construction _____
Subcontractor *Amr*

all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work

2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 Equal Opportunity Clause

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.

2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. Contract Price and Payments

3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantiles and schedules as is more fully described in Exhibit "A": Subcontractor's Scope of Work.

3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and

the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

- 3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 20th of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 20th of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.
- 3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (**Forms attached**) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.
- 3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it appears that labor, material or other costs incurred in the performance of the Subcontract Work are not

being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.

3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.

3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for it's scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, (**Forms attached**). If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.

3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.

3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

4. Prosecution of Work

4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.

(a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size 24"x36" including one (1) sepia & five (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled "The Manhattanwest Condominiums". Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

- (b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.
- (c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

- 4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
- 4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined \$500.00 plus the cost for clean-up.
- 4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other than the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time-extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have its workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.
- 4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.

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4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.

4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.

5. Changes and Claims

5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to a flat 15% overhead and profit in addition to the actual/direct cost of the work. No markup shall be allowed on over time of work acceleration.

5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.

5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.

5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

6. Assignments

6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

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7. Taxes

- 7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.
- 7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or to become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. Default and Termination

- 8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating to the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.
- 8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/or appliances shall be returned to Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of

Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

- 8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

- 8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor - At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Contraction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

- 8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.

- 8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. Termination for Convenience

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- 9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.
- 9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.
- 9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:
- A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.
 - B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.
 - C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.
 - D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.
 - E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.
 - F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not Required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.
 - G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.
 - H. Take any other action toward termination as directed by the General Contractor.
- 9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.
- 9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:
- A. The direct cost of the work performed by Subcontractor prior to termination.
 - B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.

C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.

9.6 Items Not Compensated. The Subcontractor shall not be compensated for.

A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.

B. Unabsorbed overhead and anticipated lost profits.

9.7 Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.

9.8 Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of \$100.00 for its undertaking an obligation to perform.

9.9 Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

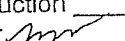
10. Bonds

10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligatee, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

11. Indemnity and Insurance -

11.1 INSURANCE REQUIREMENTS - Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - \$1,000,000 each accident; Bodily injury by disease- \$1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.
2. **Commercial Auto Coverage:** Auto liability limits of not less than \$1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.
3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only.** "Claims Made" is not acceptable. The limits of liability shall not be less than:

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- a) Comprehensive General Liability: \$1,000,000 combined single limit bodily/property damage per occurrence or,
 - b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - \$1,000,000; Personal Injury limit - \$1,000,000; Products Completed Operations Aggregate Limit - \$5,000,000; General Aggregate Limit (other than products-completed operations).
4. Excess Liability: Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.
 5. The Project is covered by an OCIP. Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than \$20,000 for light hazard trade contractors, \$25,000 for medium hazard trade contractors and \$75,000 for high hazard trade contractors.
 6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.
 7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming APCO Construction, Gemstone LVS, LLC. and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."
 8. Other Requirements: (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of Insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; (see attached samples) (d) If the Subcontractor fails to secure and maintain the required insurance, APCO Construction shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to APCO Construction, its officers, employees and volunteers.

11.2 INDEMNIFICATION

- a) General Indemnity: All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, its insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss,

APCO Construction _____
 Subcontractor *Amr*

damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons; injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.

- b) Indemnity Not Limited: In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

12. Warranty and Guarantee

- 12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

13. Patents

- 13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

14. Compliance with Regulations, Applicable Law and Safety

- 14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.
- 14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.
- 14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.
- 14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to

promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.

15. Damage to Work

- 15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.

16. Inspection and Approvals

- 16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.
- 16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.
- 16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.
- 16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with a request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

17. Arbitration

APCO Construction _____
Subcontractor Am

- 17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.
- 17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.
- 17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.
- 17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.
- 17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.
- 17.7 This Agreement to arbitrate shall not apply to any claim of contribution or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.
- 17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.
18. Miscellaneous
- 18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.
- 18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.
- 18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.

APCO Construction _____
Subcontractor

- 18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.
- 18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.
- 18.6 All sections and headings are descriptive only and are not controlling.
- 18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

Noorda Sheet Metal Company

Maile Waite

General Manager
TITLE

APCO CONSTRUCTION

Project Manager
TITLE

APCO Construction _____
Subcontractor Am

EXHIBIT 'A'
Subcontractor Scope of Work
APCO Contract No. 0168-043

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) 0 through 5. Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.

The Scope of Work shall specifically include but not be limited to the following list of bid items:

ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL
--------	-------------	------	-----	-------	-------

Ornamental Metals, Ornamental Railings, Sheet Metal Flashing and Trim for Bldg's 2,3,8,9: Complete work per governing codes, furnish and install all necessary Labor, Split Shifts, Field Measurements, Material, Equipment, Freight, Hoisting, Design, Shop Drawings, Attachments, Supervision, Taxes and necessary insurance to complete the Ornamental metals, railings & sheet metal flashing and trim, shown on drawings by OZ Architecture (see attached Project Drawing List), Noorda proposal dated 6/4/08 revised 8/5/08 (attached) in the amount of **Two Million Three Hundred Eighteen Thousand Eighteen dollars and no/100, (\$2,318,018.00).**

	Ornamental Metals	Ornamental Railings	Sheet Metal Flashing
Bldg 2:	\$343,070.00	\$0	\$32,702.00
Bldg 3:	\$343,070.00	\$0	\$32,702.00
Bldg 8:	\$375,494.00	\$367,752.00	\$39,991.00
Bldg 9:	\$375,494.00	\$367,752.00	\$39,991.00

Our understanding of the clarifications / qualifications associated with your bid is as follows: Your proposal is hereby amended to reflect the terms and conditions of this subcontract. APCO Construction may at its option exercise its right to choose any or all alternate/option items of work as shown on your proposal at the stated option price during the course of construction.

Noorda Sheet Metal Company

Mark Waite
General Manager
TITLE

APCO CONSTRUCTION

Project Manager
TITLE

APCO Construction _____
Subcontractor *MR*

SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

- (a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander in or around the Buildings while on duty. No parking of private vehicles will be allowed in work areas. NO EXCEPTIONS.
- (b) The Contractor will provide an adequate temporary construction area for staging.
- (c) The Contractor will provide reasonable access to all working areas.
- (d) The Subcontractor shall be responsible for the cleaning of his work area and removing its debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.
- (e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.
- (f) Subcontractor must submit a "Daily Work Report" (see attached Appendix 'C') prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.
- (g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.
- (h) The Subcontractor is required to prepare and attend weekly site progress meetings and to participate in the preparation of updates of the Project schedule.
- (i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.
- (j) The Subcontractor shall provide drinking water for its own employee's.
- (k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.
- (l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project.

APCO Construction _____
Subcontractor mm

August 5, 2008

Randy Nickerl
Apco Construction
3432 North Fifth Street
North Las Vegas, Nevada 89032

RE: Manhattan West Project

Randy,

We have revised our proposal to reflect changes discussed in our several meetings which include the following:

We have excluded all balcony railings that are made with the GFRC balusters on buildings 8 and 9.

We have excluded all general sheet metal flashings and trim that has been deemed unnecessary or by others in our meeting with Joe DeHaas and Charlie. We have kept the flashing at the parapet wall caps and at the foundation wall and all flashing required by our wall panels. We have excluded all flashing contiguous with the window system and all balcony deck areas.

Revised Pricing

Building#	Exterior Ornamental Metal	Balcony Railings	General Sheet Metal
2	\$ 343,070.00	N/A	\$ 32,702.00
3	\$ 343,070.00	N/A	\$ 32,702.00
8	\$ 375,494.00	\$ 367,752.00	\$ 39,991.00
9	\$ 375,494.00	\$ 367,752.00	\$ 39,991.00

Original Pricing (for reference)

Building#	Exterior Ornamental Metal	Balcony Railings	General Sheet Metal
2	\$ 343,070.00	N/A	\$ 56,046.00
3	\$ 343,070.00	N/A	\$ 56,046.00
8	\$ 375,494.00	\$ 464,238.00	\$ 68,949.00
9	\$ 375,494.00	\$ 464,238.00	\$ 68,949.00

We have specifically excluded any work at pool area buildings, and entry gates, all handrails and guardrails at stairs, all interior work, scaffolding.

Thank you again for the chance to bid this with you and please call if you need anything further.

Sincerely,

LaMar Noorda

Activity ID		Activity Description		Orig Dur	Early Start	Early Finish	2009															
							AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	
MANHATTAN WEST CONSTRUCTION SCHEDULE																						
PROJECT OVERVIEW																						
PHASE 1																						
PHASE 1		PHASE 1 COMPLETE		0		12/26/08 22:59																
BUILDING 2																						
B2-2320		Roofing Complete		0		09/03/08 14:59																
B2-2340		Building Dry In		0		09/10/08 22:59																
B2-2330		Building Engergized		40	09/18/08 15:00	09/22/08 22:59																
B2-2300		HVAC test and balance		40	09/25/08 15:00	09/29/08 22:59																
B2-2360		Fire/Life/Safety		40	10/15/08 15:00	10/17/08 22:59																
B2-2370		Building 2 Sub. Completion		0		10/17/08 22:59																
B2-2380		Building 2 Turnover		40	10/20/08 07:00	10/22/08 14:59																
BUILDING 3																						
B3-2200		Building Dry In		0		09/05/08 22:59																
B3-2180		Roofing Complete		0		09/15/08 14:59																
B3-2190		Building Engergized		40	09/24/08 15:00	09/26/08 22:59																
B3-2210		HVAC test and balance		40	09/29/08 15:00	10/01/08 22:59																
B3-2240		Fire/Life/Safety		40	10/13/08 15:00	10/15/08 22:59																
B3-2250		Building 3 Sub. Completion		0		10/20/08 14:59																
B3-2260		Building 3 Turnover		40	10/20/08 15:00	10/22/08 22:59																
BUILDING 7																						
B7-6540		Roofing Complete		0		10/13/08 22:59																
B7-6550		Building Dry In		0		10/16/08 14:59																
B7-6560		Building Engergized		40	12/02/08 07:00	12/04/08 14:59																
B7-1180		HVAC Test & Balance		40	12/04/08 15:00	12/08/08 22:59																
B7-6580		Building Completion		8	12/18/08 15:00	12/18/08 22:59																
B7-6590		Fire/Life/Safety		40	12/19/08 07:00	12/23/08 14:59																
B7-6600		Building 7 Sub. Completion		0		12/23/08 14:59																
B7-6610		Building 7 Turnover		40	12/23/08 15:00	12/26/08 22:59																
Start Date 08/01/07 07:00 NS01																						
Finish Date 12/26/08 22:59																						
Data Date 08/19/08 03:00																						
Run Date 08/22/08 15:36																						
MANHATTAN WEST																						
CAMCO PACIFIC SCHEDULE																						
© Primavera Systems, Inc.																						
Sheet 1 of 36																						

Activity ID			Activity Description		Orig Dur	Early Start	Early Finish	2008 AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT												
BUILDING 8																				
B8-1670	Roofing Complete				0		09/12/08 14:59													
B8-1700	HVAC test and balance				40	09/29/08 07:00	10/03/08 14:59													
B8-1690	Building Dry In				0		10/03/08 07:59													
B8-1680	Building Energized				40	10/24/08 07:00	10/30/08 14:59													
B8-1720	Building Completion				8	11/04/08 07:00	11/04/08 14:59													
B8-1730	Fire/Life/Safety				40	11/05/08 07:00	11/11/08 14:59													
B8-1740	Building 8 Sub. Completion				0		11/19/08 14:59													
B8-1750	Building 8 Turnover				40	11/20/08 07:00	11/26/08 14:59													
BUILDING 9																				
B9-1615	Roofing Complete				0		09/25/08 14:59													
B9-1611	Building Energized				40	10/15/08 07:00	10/21/08 14:59													
B9-1614	Testing & Balancing				40	10/22/08 07:00	10/28/08 14:59													
B9-1612	Building Dry In				0		10/28/08 07:59													
B9-1625	Building Completion				8	10/28/08 08:00	10/29/08 07:59													
B9-1616	Fire/Life/Safety				40	10/29/08 08:00	11/05/08 07:59													
B9-1617	Building 9 Sub. Completion				0		11/18/08 14:59													
B9-1618	Building 9 Turnover				40	11/19/08 07:00	11/25/08 14:59													
PERMITTING																				
POOLS																				
270	Ground Level Pool Design & Layout				312	04/14/08 07:00A	08/25/08 14:59													
290	Roof Level Spa Design & Layout				152	08/25/08 15:00	09/08/08 22:59													
280	Submit Ground Level Pool Design to S.N.H.D.				464	08/25/08 15:00	10/06/08 14:59													
300	Submit Roof Level Pool Design to S.N.H.D.				464	09/09/08 07:00	10/17/08 22:59													
310	Ground Level Pool Design to Clark City - Bldg Pmt				8	10/06/08 15:00	10/06/08 22:59													
320	Roof Level Pool Design to Clark City - Bldg Pmt				8	10/20/08 07:00	10/20/08 14:59													
BUILDING 2																				
STRUCTURE																				
B2-10	Form upper ramp				40	08/19/08 07:00	08/21/08 14:59													
B2-70	Install roof joist members				56	08/19/08 07:00	08/22/08 14:59													
B2-20	Install rebar				32	08/21/08 15:00	08/25/08 14:59													
B2-80	Built up roofing				32	08/22/08 15:00	08/26/08 14:59													
B2-90	Detail Trellis Steel				72	08/22/08 15:00	08/28/08 22:59													
B2-30	Place concrete ramp				8	08/25/08 15:00	08/25/08 22:59													

			2009														
			AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
Activity ID	Activity Description	Orig Dur	Early Start	Early Finish													
INTERIOR																	
B2-1525	Install Elevator Rails	120	08/26/08 07:00	09/05/08 14:59													
B2-1526	Build Elevator Cars	0	09/09/08 15:00	09/09/08 14:59													
B2-1527	Elevator Pre-Test	24	09/09/08 15:00	09/10/08 22:59													
B2-1510	Tie into Riser	16	09/09/08 15:00	09/10/08 14:59													
B2-1500	Sprinkler leak test	8	09/10/08 15:00	09/10/08 22:59													
B2-1528	Elevator Test with State of Nevada for Temp. Use	24	09/11/08 07:00	09/12/08 14:59													
B2-1529	Elevator Final Test	24	09/12/08 15:00	09/15/08 22:59													
INTERIOR - 1ST FLOOR:																	
B2-1010	OH Mechanical Rough 1st Floor	40	08/25/08 07:00*	08/27/08 14:59													
B2-1060	MEP Inspections 1st Floor	24	08/26/08 07:00	08/27/08 14:59													
B2-1070	Drywall/Insul/Tape 1st Floor	40	08/27/08 15:00	08/29/08 22:59													
B2-1080	Paint RRoom/BOH Rooms 1st Floor	24	09/02/08 07:00	09/03/08 14:59													
B2-1090	Ceramic tile 1st Floor	24	09/03/08 15:00	09/04/08 22:59													
B2-1100	Trim 1st Floor	24	09/05/08 07:00	09/08/08 14:59													
B2-1110	Final MEP Inspection 1st Floor	24	09/08/08 15:00	09/09/08 22:59													
B2-2190	Pre-punch walk 1st Floor	16	09/10/08 07:00	09/10/08 22:59													
B2-2210	Punch list 1st Floor	8	09/11/08 07:00	09/11/08 14:59													
B2-2230	Final clean 1st Floor	24	09/11/08 15:00	09/12/08 22:59													
INTERIOR - 2ND FLOOR																	
B2-1160	OH Fire Sprinkler Rough 2nd Floor	40	08/27/08 15:00	08/29/08 22:59													
B2-1130	OH Mechanical Rough 2nd Floor	40	09/02/08 07:00	09/04/08 14:59													
B2-1170	In-wall MEP Rough 2nd Floor	24	09/03/08 07:00	09/04/08 14:59													
B2-1180	MEP Inspections 2nd Floor	24	09/03/08 07:00	09/04/08 14:59													
B2-1190	Drywall/Insul/Tape 2nd Floor	40	09/04/08 15:00	09/08/08 22:59													
B2-1200	Paint RRoom/BOH Rooms 2nd Floor	24	09/09/08 07:00	09/10/08 14:59													
B2-1210	Ceramic tile 2nd Floor	24	09/10/08 15:00	09/11/08 22:59													
B2-1220	Trim 2nd Floor	24	09/12/08 07:00	09/15/08 14:59													
B2-1230	Final MEP 2nd Floor	24	09/15/08 15:00	09/16/08 22:59													
B2-2180	Pre-punch walk 2nd Floor	16	09/17/08 07:00	09/17/08 22:59													
B2-2200	Punch list 2nd Floor	8	09/18/08 07:00	09/18/08 14:59													
B2-2220	Final clean 2nd Floor	24	09/18/08 15:00	09/19/08 22:59													
INTERIOR - 3RD FLOOR																	
B2-1280	OH Fire Sprinkler Rough 3rd Floor	40	09/02/08 07:00	09/04/08 14:59													

Install Elevator Rails																	
Build Elevator Cars																	
Elevator Pre-Test																	
Tie into Riser																	
Sprinkler leak test																	
Elevator Test with State of Nevada for Temp. Use																	
Elevator Final Test																	
OH Mechanical Rough 1st Floor																	
MEP Inspections 1st Floor																	
Drywall/Insul/Tape 1st Floor																	
Paint RRoom/BOH Rooms 1st Floor																	
Ceramic tile 1st Floor																	
Trim 1st Floor																	
Final MEP Inspection 1st Floor																	
Pre-punch walk 1st Floor																	
Punch list 1st Floor																	
Final clean 1st Floor																	
OH Fire Sprinkler Rough 2nd Floor																	
OH Mechanical Rough 2nd Floor																	
In-wall MEP Rough 2nd Floor																	
MEP Inspections 2nd Floor																	
Drywall/Insul/Tape 2nd Floor																	
Paint RRoom/BOH Rooms 2nd Floor																	
Ceramic tile 2nd Floor																	
Trim 2nd Floor																	
Final MEP 2nd Floor																	
Pre-punch walk 2nd Floor																	
Punch list 2nd Floor																	
Final clean 2nd Floor																	
OH Fire Sprinkler Rough 3rd Floor																	

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2008											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B3-30	Install stairs and handrails	56	08/26/08 15:00	08/29/08 22:59												
B3-60	Deck/MEP/Pour 4th floor	24	08/26/08 15:00	08/27/08 22:59												
B3-80	Fireproof beams/columns 4th floor	40	08/28/08 07:00	09/02/08 14:59												
B3-50	Built up roofing	40	09/02/08 15:00	09/04/08 22:59												
B3-60	Detail Trellis Steel	64	09/05/08 07:00	09/10/08 22:59												
INTERIOR																
B3-1040	Tie into Riser	16	09/12/08 07:00	09/12/08 22:59												
B3-1050	Sprinkler leak test	8	09/12/08 15:00	09/12/08 22:59												
B3-1066	Install Elevator Rails	168	09/15/08 07:00	09/29/08 14:59												
B3-1067	Build Elevator Cars	112	09/18/08 15:00	09/29/08 14:59												
B3-1085	Elevator Pre-Test	24	09/29/08 15:00	09/30/08 22:59												
B3-1095	Elevator Test with State of Nevada for Temp. Use	24	10/01/08 07:00	10/02/08 14:59												
B3-1105	Elevator Final Test	24	10/02/08 15:00	10/03/08 22:59												
INTERIOR - 1ST FLOOR																
B3-1000	Frame 1st floor	80	08/22/08 07:00	08/28/08 22:59												
B3-1020	OH Electrical Rough 1st Floor	40	08/26/08 07:00	08/28/08 14:59												
B3-1030	OH Plumbing Rough 1st Floor	40	08/26/08 07:00	08/28/08 14:59												
B3-1045	OH Fire Sprinkler Rough 1st Floor	40	08/26/08 15:00	08/28/08 22:59												
B3-1005	In-wall MEP Rough 1st Floor	40	08/27/08 07:00	08/29/08 14:59												
B3-1010	OH Mechanical Rough 1st Floor	40	08/27/08 15:00	08/29/08 22:59												
B3-1025	MEP Inspections 1st Floor	24	09/02/08 07:00	09/03/08 14:59												
B3-1055	Drywall/Insul/Tape 1st floor	40	09/03/08 15:00	09/05/08 22:59												
B3-1065	Paint RRoom/BOH Rooms 1st floor	24	09/08/08 07:00	09/09/08 14:59												
B3-1075	Ceramic tile 1st floor	24	09/09/08 15:00	09/10/08 22:59												
B3-1080	Trim 1st floor	24	09/11/08 07:00	09/12/08 14:59												
B3-1015	Final MEP Inspection 1st Floor	24	09/12/08 15:00	09/15/08 22:59												
B3-1090	Pre-punch walk 1st floor	16	09/16/08 07:00	09/16/08 22:59												
B3-1100	Punch list 1st floor	8	09/17/08 07:00	09/17/08 14:59												
B3-1110	Final clean 1st floor	24	09/17/08 15:00	09/18/08 22:59												
INTERIOR - 2ND FLOOR																
B3-1300	Frame 2nd floor	80	05/26/08 07:00A	08/21/08 22:59												
B3-1310	OH Mechanical Rough 2nd Floor	40	09/02/08 07:00	09/04/08 14:59												
B3-1350	In-wall MEP Rough 2nd Floor	40	09/02/08 07:00	09/04/08 14:59												
B3-1320	OH Electrical Rough 2nd Floor	40	09/02/08 07:00	09/04/08 14:59												

Activity ID		Activity Description	Orig Dur	Early Start	Early Finish	2009 AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT											
B3-1330		OH Plumbing Rough 2nd Floor	40	09/02/08 07:00	09/04/08 14:59												
B3-1340		OH Fire Sprinkler Rough 2nd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1360		MEP Inspections 2nd Floor	24	09/09/08 07:00	09/10/08 14:59												
B3-1370		Drywall/Insul/Tape 2nd floor	40	09/10/08 15:00	09/12/08 22:59												
B3-1380		Paint RRoom/BOH Rooms 2nd floor	24	09/15/08 07:00	09/16/08 14:59												
B3-1390		Ceramic tile 2nd floor	24	09/16/08 15:00	09/17/08 22:59												
B3-1400		Trim 2nd floor	24	09/18/08 07:00	09/19/08 14:59												
B3-1410		Final MEP Inspection 2nd Floor	24	09/19/08 15:00	09/22/08 22:59												
B3-1420		Pre-punch walk 2nd floor	16	09/23/08 07:00	09/23/08 22:59												
B3-1430		Punch list 2nd floor	8	09/24/08 07:00	09/24/08 14:59												
B3-1440		Final clean 2nd floor	24	09/24/08 15:00	09/25/08 22:59												
INTERIOR - 3RD FLOOR																	
B3-1500		Frame 3rd floor	80	09/20/08 07:00	09/26/08 22:59												
B3-1510		OH Mechanical Rough 3rd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1520		OH Electrical Rough 3rd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1550		In-wall MEP Rough 3rd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1530		OH Plumbing Rough 3rd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1540		OH Fire Sprinkler Rough 3rd Floor	40	09/04/08 15:00	09/08/08 22:59												
B3-1560		MEP Inspections 3rd Floor	24	09/09/08 07:00	09/10/08 14:59												
B3-1570		Drywall/Insul/Tape 3rd floor	40	09/10/08 15:00	09/12/08 22:59												
B3-1580		Paint RRoom/BOH Rooms 3rd floor	24	09/15/08 07:00	09/16/08 14:59												
B3-1590		Ceramic tile 3rd floor	24	09/15/08 15:00	09/16/08 22:59												
B3-1600		Trim 3rd floor	24	09/16/08 07:00	09/17/08 14:59												
B3-1610		Final MEP Inspection 3rd Floor	24	09/17/08 15:00	09/18/08 22:59												
B3-1620		Pre-punch walk 3rd floor	16	09/19/08 07:00	09/19/08 22:59												
B3-1630		Punch list 3rd floor	8	09/22/08 07:00	09/22/08 14:59												
B3-1640		Final clean 3rd floor	24	09/22/08 15:00	09/23/08 22:59												
INTERIOR - 4TH FLOOR																	
B3-1650		Frame 4th floor	56	09/08/08 15:00	09/11/08 22:59												
B3-1660		OH Mechanical Rough 4th Floor	40	09/09/08 07:00	09/11/08 14:59												
B3-1670		OH Electrical Rough 4th Floor	40	09/09/08 15:00	09/11/08 22:59												
B3-1680		OH Plumbing Rough 4th Floor	40	09/09/08 15:00	09/11/08 22:59												
B3-1690		In-wall MEP Rough 4th Floor	40	09/10/08 07:00	09/12/08 14:59												

					2009														
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
Activity ID	Activity Description	Orig Dur	Early Start	Early Finish															
B3-1700	OH Fire Sprinkler Rough 4th Floor	40	09/10/08 07:00	09/12/08 14:59															
B3-1710	MEP Inspections 4th Floor	24	09/12/08 15:00	09/15/08 22:59															
B3-1720	Drywall/Insul/Tape 4th floor	40	09/16/08 07:00	09/18/08 14:59															
B3-1730	Paint RRoom/BOH Rooms 4th floor	24	09/18/08 15:00	09/19/08 22:59															
B3-1740	Ceramic tile 4th floor	24	09/19/08 07:00	09/22/08 14:59															
B3-1750	Trim 4th floor	24	09/19/08 15:00	09/22/08 22:59															
B3-1760	Final MEP Inspection 4th Floor	24	09/23/08 07:00	09/24/08 14:59															
B3-1770	Pre-punch walk 4th floor	16	09/24/08 15:00	09/25/08 14:59															
B3-1780	Punch list 4th floor	8	09/25/08 15:00	09/25/08 22:59															
B3-1790	Final clean 4th floor	24	09/26/08 07:00	09/29/08 14:59															
EXTERIOR																			
B3-2000	Install storefront	80	08/28/08 07:00	09/04/08 22:59															
B3-2020	Scaffold / Lathing	80	09/05/08 07:00	09/11/08 22:59															
B3-2010	Install roofing membrane	40	09/11/08 07:00	09/15/08 14:59															
B3-2030	Lathing Inspection	8	09/12/08 07:00	09/12/08 14:59															
B3-2040	Install base coat stucco	64	09/12/08 15:00	09/18/08 14:59															
B3-2270	Install Roof-Top Equipment	80	09/15/08 07:00	09/19/08 22:59															
B3-2050	Base Coat Inspection	8	09/18/08 15:00	09/18/08 22:59															
B3-2060	Install brown coat stucco	64	09/19/08 07:00	09/24/08 22:59															
B3-2070	Install Exterior Brick and Stone	112	09/23/08 07:00	10/01/08 22:59															
B3-2080	Install final coat stucco	56	09/25/08 07:00	09/30/08 14:59															
B3-2090	Paint stucco	72	09/30/08 15:00	10/06/08 22:59															
EXTERIOR - 1ST FLOOR																			
B3-2100	Stud and sheath 1st floor	40	08/21/08 07:00	08/25/08 14:59															
B3-2110	Install windows 1st floor	40	08/25/08 15:00	08/27/08 22:59															
EXTERIOR - 2ND FLOOR																			
B3-2120	Stud and sheath 2nd floor	40	08/25/08 15:00	08/27/08 22:59															
B3-2140	Install windows 2nd floor	40	08/28/08 07:00	09/02/08 14:59															
EXTERIOR - 3RD FLOOR																			
B3-2130	Stud and sheath 3rd floor	40	08/25/08 15:00	08/27/08 22:59															
B3-2150	Install windows 3rd floor	40	08/28/08 07:00	09/02/08 14:59															
EXTERIOR - 4TH FLOOR																			
B3-2160	Stud and sheath 4th floor/Parapets	40	08/29/08 07:00	09/03/08 14:59															
B3-2170	Install windows 4th floor	40	09/03/08 15:00	09/05/08 22:59															
					[OH] Fire Sprinkler Rough 4th Floor														
					[MEP] Inspections 4th Floor														
					[Drywall/Insul/Tape] 4th floor														
					[Paint] RRoom/BOH Rooms 4th floor														
					[Ceramic tile] 4th floor														
					[Trim] 4th floor														
					[Final MEP Inspection] 4th Floor														
					[Pre-punch walk] 4th floor														
					[Punch list] 4th floor														
					[Final clean] 4th floor														
					[Install storefront]														
					[Scaffold / Lathing]														
					[Install roofing membrane]														
					[Lathing Inspection]														
					[Install base coat stucco]														
					[Install Roof-Top Equipment]														
					[Base Coat Inspection]														
					[Install brown coat stucco]														
					[Install Exterior Brick and Stone]														
					[Install final coat stucco]														
					[Paint stucco]														
					[Stud and sheath] 1st floor														
					[Install windows] 1st floor														
					[Stud and sheath] 2nd floor														
					[Install windows] 2nd floor														
					[Stud and sheath] 3rd floor														
					[Install windows] 3rd floor														
					[Stud and sheath] 4th floor/Parapets														
					[Install windows] 4th floor														

Activity ID		Activity Description	Orig Dur	Early Start	Early Finish	2008												2009											
TESTING & CLOSE-OUT																													
B3-2280		HVAC Commissioning	32	09/17/08 07:00	09/22/08 14:59																								
B3-2195		Smoke and Comfort Test	56	09/17/08 07:00	09/25/08 14:59																								
B3-2185		Fire Alarm Pre-Test	40	09/25/08 07:00	10/01/08 14:59																								
B3-2125		Stair Pressurization Test	32	09/26/08 07:00	10/01/08 14:59																								
B3-2115		Fire Alarm Final Test	64	10/02/08 07:00	10/13/08 14:59																								
B3-2220		All Systems Test	40	10/14/08 07:00	10/20/08 14:59																								
BUILDING 7																													
PARKING GARAGE																													
B7-30		Form Ramp	40	10/11/08 15:00	10/14/08 22:59																								
B7-40		Install Rebar	24	10/15/08 07:00	10/16/08 14:59																								
B7-50		Pour Ramp	8	10/16/08 15:00	10/16/08 22:59																								
STRUCTURE																													
B7-1080		Install 8th floor beams	48	05/22/08 07:00A	08/22/08 22:59																								
B7-1010		Install Stairs	160	07/07/08 07:00A	08/28/08 22:59																								
B7-1090		Erect columns 9th to roof	40	08/29/08 07:00	09/02/08 14:59																								
B7-1105		Install 9th floor/roof members	64	09/02/08 15:00	09/06/08 14:59																								
B7-1115		Deck/MEP/Pour 7th floor deck	48	09/06/08 15:00	09/10/08 14:59																								
B7-1120		Deck/MEP/Pour 8th floor deck	48	09/10/08 15:00	09/13/08 14:59																								
B7-1125		Fireproof beams/columns 7th floor	40	09/10/08 17:00	09/13/08 08:59																								
B7-1130		Deck/MEP/Pour 9th floor/roof deck	48	09/13/08 15:00	09/17/08 14:59																								
B7-1135		Fireproof beams/columns 8th floor	40	09/15/08 15:00	09/17/08 22:59																								
B7-1140		Fireproof beams/columns 9th floor	40	09/18/08 07:00	09/20/08 14:59																								
INTERIOR																													
B7-1155		Install Elevator Rails	272	08/19/08 07:00	09/08/08 22:59																								
B7-1156		Build Elevator Cars	144	08/30/08 15:00	09/11/08 14:59																								
B7-1157		Elevator Pre-Test	24	09/11/08 15:00	09/12/08 22:59																								
B7-1158		Elevator Test with State of Nevada for Temp. Use	24	09/13/08 07:00	09/15/08 14:59																								
B7-1159		Elevator Final Test	24	09/15/08 15:00	09/16/08 22:59																								
B7-1160		Riser Tie In	16	10/03/08 07:00	10/03/08 22:59																								
B7-1170		Sprinkler Leak Test	24	10/04/08 07:00	10/06/08 14:59																								
INTERIOR - 1ST FLOOR																													
B7-1220		OH Rough Electric	80	09/08/08 07:00*	09/12/08 22:59																								
B7-1200		OH Rough HVAC	40	09/10/08 15:00	09/12/08 22:59																								

Activity ID		Activity Description	Orig Dur	Early Start	Early Finish	2008 AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																								
B7-1230		Rough Framing	40	09/13/08 07:00	09/16/08 14:59																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									

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Activity ID		Activity Description	Orig Dur	Early Start	Early Finish	<div>2008</div> <div> AUG SEP OCT NOV DEC JAN FEB MAR APR MAY JUN JUL AUG SEP OCT </div>											
B7-1820	Second Side Drywall		32	10/09/08 15:00	10/11/08 14:59												
B7-1830	Drywall Inspection		8	10/11/08 15:00	10/11/08 22:59												
B7-1840	Tape bed / Texture		32	10/13/08 07:00	10/14/08 22:59												
B7-1850	Doors & Trim		40	10/15/08 07:00	10/17/08 14:59												
B7-1860	Paint		40	10/17/08 15:00	10/20/08 22:59												
B7-1870	Cabinets		40	10/21/08 07:00	10/23/08 14:59												
B7-1880	Door Hardware		40	10/23/08 15:00	10/25/08 22:59												
B7-1890	Counter tops		80	10/27/08 07:00	10/31/08 22:59												
B7-1900	Mirrors/ Med Cabinets		32	11/01/08 07:00	11/03/08 22:59												
B7-1910	Shower Surrounds		40	11/04/08 07:00	11/06/08 14:59												
B7-1920	MEP Trim		56	11/06/08 15:00	11/10/08 22:59												
B7-1930	Flooring hard surface/ Set toilets		40	11/11/08 07:00	11/13/08 14:59												
B7-1940	Final MEP Inspection		24	11/11/08 07:00	11/12/08 14:59												
B7-1950	Install Appliances		40	11/13/08 15:00	11/15/08 22:59												
B7-1960	Touch up paint		40	11/17/08 07:00	11/19/08 14:59												
B7-1970	Install Carpet/ Hardwoods		40	11/19/08 15:00	11/21/08 22:59												
B7-6320	Pre punch 3rd floor		24	11/22/08 07:00	11/24/08 14:59												
B7-6340	Punchlist 3rd floor		48	11/24/08 15:00	11/28/08 14:59												
B7-6350	Final clean 3rd floor		32	11/28/08 15:00	12/01/08 14:59												
INTERIOR - 4TH FLOOR																	
B7-1980	OH Rough HVAC		40	09/19/08 07:00	09/22/08 14:59												
B7-1990	OH Rough Plumbing and Fire Sprinkler		32	09/22/08 15:00	09/24/08 14:59												
B7-2000	OH Rough Electric		40	09/24/08 15:00	09/26/08 22:59												
B7-2010	Rough Framing		40	09/27/08 07:00	09/30/08 14:59												
B7-2020	One side drywall		32	09/30/08 15:00	10/02/08 14:59												
B7-2030	In-wall MEP Rough		80	10/02/08 15:00	10/08/08 14:59												
B7-2040	Rough HVAC Inspection		8	10/08/08 15:00	10/08/08 22:59												
B7-2050	Rough Plumb Inspection		8	10/09/08 07:00	10/09/08 14:59												
B7-2060	Rough Elec Inspection		8	10/09/08 15:00	10/09/08 22:59												
B7-2070	Insulation / Inspection		32	10/10/08 07:00	10/11/08 22:59												
B7-2080	Second Side Drywall		32	10/13/08 07:00	10/14/08 22:59												
B7-2090	Drywall Inspection		8	10/15/08 07:00	10/15/08 14:59												
B7-2100	Tape bed / Texture		32	10/15/08 15:00	10/17/08 14:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-2110	Doors & Trim	40	10/17/08 15:00	10/20/08 22:59												
B7-2120	Paint	40	10/21/08 07:00	10/23/08 14:59												
B7-2130	Cabinets	40	10/23/08 15:00	10/25/08 22:59												
B7-2140	Door Hardware	40	10/27/08 07:00	10/29/08 14:59												
B7-2150	Counter tops	80	10/29/08 15:00	11/04/08 14:59												
B7-2160	Mirrors/ Med Cabinets	32	11/04/08 15:00	11/08/08 14:59												
B7-2170	Shower Surrounds	40	11/08/08 15:00	11/08/08 22:59												
B7-2180	MEP Trim	56	11/10/08 07:00	11/13/08 14:59												
B7-2190	Flooring hard surface/ Set toilets	40	11/13/08 15:00	11/15/08 22:59												
B7-2200	Final MEP Inspection	24	11/13/08 15:00	11/14/08 22:59												
B7-2210	Install Appliances	40	11/17/08 07:00	11/19/08 14:59												
B7-2220	Touch up paint	40	11/19/08 15:00	11/21/08 22:59												
B7-2230	Install Carpet/ Hardwoods	40	11/22/08 07:00	11/25/08 14:59												
B7-6360	Pre punch 4th floor	24	11/25/08 15:00	11/28/08 22:59												
B7-6370	Punchlist 4th floor	48	11/28/08 07:00	12/01/08 22:59												
B7-6390	Final clean 4th floor	32	12/02/08 07:00	12/03/08 22:59												
INTERIOR - 5TH FLOOR																
B7-2240	OH Rough HVAC	40	09/22/08 15:00	09/24/08 22:59												
B7-2250	OH Rough Plumbing and Fire Sprinkler	32	09/25/08 07:00	09/26/08 22:59												
B7-2260	OH Rough Electric	40	09/27/08 07:00	09/30/08 14:59												
B7-2270	Rough Framing	40	09/30/08 15:00	10/02/08 22:59												
B7-2280	One side drywall	32	10/03/08 07:00	10/04/08 22:59												
B7-2290	In-wall MEP Rough	80	10/06/08 07:00	10/10/08 22:59												
B7-2300	Rough HVAC Inspection	8	10/11/08 07:00	10/11/08 14:59												
B7-2310	Rough Plumb Inspection	8	10/11/08 15:00	10/11/08 22:59												
B7-2320	Rough Elec Inspection	8	10/13/08 07:00	10/13/08 14:59												
B7-2330	Insulation / Inspection	32	10/13/08 15:00	10/15/08 14:59												
B7-2340	Second Side Drywall	32	10/15/08 15:00	10/17/08 14:59												
B7-2350	Drywall Inspection	8	10/17/08 15:00	10/17/08 22:59												
B7-2360	Tape bed / Texture	32	10/18/08 07:00	10/20/08 22:59												
B7-2370	Doors & Trim	40	10/21/08 07:00	10/23/08 14:59												
B7-2380	Paint	40	10/23/08 15:00	10/25/08 22:59												
B7-2390	Cabinets	40	10/27/08 07:00	10/29/08 14:59												

					2008														
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
Activity ID	Activity Description	Orig Dur	Early Start	Early Finish															
B7-2400	Door Hardware	40	10/29/08 15:00	10/31/08 22:59	<div>Door Hardware</div> <div>Counter tops</div> <div>Mirrors/ Med Cabinets</div> <div>Shower Surrounds</div>														
B7-2410	Counter tops	80	11/01/08 07:00	11/06/08 22:59															
B7-2420	Mirrors/ Med Cabinets	32	11/07/08 07:00	11/08/08 22:59															
B7-2430	Shower Surrounds	40	11/10/08 07:00	11/12/08 14:59															
B7-2440	MEP Trim	56	11/12/08 15:00	11/15/08 22:59	<div>MEP Trim</div> <div>Flooring hard surface/ Set toilets</div> <div>Final MEP Inspection</div> <div>Install Appliances</div> <div>Touch up paint</div>														
B7-2450	Flooring hard surface/ Set toilets	40	11/17/08 07:00	11/19/08 14:59															
B7-2460	Final MEP Inspection	24	11/17/08 07:00	11/18/08 14:59															
B7-2470	Install Appliances	40	11/19/08 15:00	11/21/08 22:59															
B7-2480	Touch up paint	40	11/22/08 07:00	11/25/08 14:59	<div>Install Carpet/ Hardwoods</div> <div>Pre punch 5th floor</div> <div>Punchlist 5th floor</div> <div>Final clean 5th floor</div>														
B7-2490	Install Carpet/ Hardwoods	40	11/25/08 15:00	11/28/08 22:59															
B7-6380	Pre punch 5th floor	24	11/29/08 07:00	12/01/08 14:59															
B7-6400	Punchlist 5th floor	40	12/01/08 15:00	12/03/08 22:59															
B7-6410	Final clean 5th floor	32	12/04/08 07:00	12/05/08 22:59															
INTERIOR - 6TH FLOOR																			
B7-2500	OH Rough HVAC	40	09/25/08 07:00	09/27/08 14:59	<div>OH Rough HVAC</div> <div>OH Rough Plumbing and Fire Sprinkler</div> <div>OH Rough Electric</div> <div>Rough Framing</div> <div>One side drywall</div>														
B7-2510	OH Rough Plumbing and Fire Sprinkler	32	09/27/08 15:00	09/30/08 14:59															
B7-2520	OH Rough Electric	40	09/30/08 15:00	10/02/08 22:59															
B7-2530	Rough Framing	40	10/03/08 07:00	10/06/08 14:59															
B7-2540	One side drywall	32	10/06/08 15:00	10/08/08 14:59	<div>In-wall MEP Rough</div> <div>Rough HVAC Inspection</div> <div>Rough Plumb Inspection</div> <div>Rough Elec Inspection</div> <div>Insulation / Inspection</div>														
B7-2550	In-wall MEP Rough	80	10/08/08 15:00	10/14/08 14:59															
B7-2560	Rough HVAC Inspection	8	10/14/08 15:00	10/14/08 22:59															
B7-2570	Rough Plumb Inspection	8	10/15/08 07:00	10/15/08 14:59															
B7-2580	Rough Elec Inspection	8	10/15/08 15:00	10/15/08 22:59	<div>Insulation / Inspection</div> <div>Second Side Drywall</div> <div>Drywall Inspection</div> <div>Tape bed / Texture</div> <div>Doors & Trim</div> <div>Paint</div>														
B7-2590	Insulation / Inspection	32	10/16/08 07:00	10/17/08 22:59															
B7-2600	Second Side Drywall	32	10/18/08 07:00	10/20/08 22:59															
B7-2610	Drywall Inspection	8	10/21/08 07:00	10/21/08 14:59															
B7-2620	Tape bed / Texture	32	10/21/08 15:00	10/23/08 14:59	<div>Doors & Trim</div> <div>Paint</div> <div>Cabinets</div> <div>Door Hardware</div> <div>Counter tops</div> <div>Mirrors/ Med Cabinets</div>														
B7-2630	Doors & Trim	40	10/23/08 15:00	10/25/08 22:59															
B7-2640	Paint	40	10/27/08 07:00	10/29/08 14:59															
B7-2650	Cabinets	40	10/29/08 15:00	10/31/08 22:59															
B7-2660	Door Hardware	40	11/01/08 07:00	11/04/08 14:59	<div>Cabinets</div> <div>Door Hardware</div> <div>Counter tops</div> <div>Mirrors/ Med Cabinets</div>														
B7-2670	Counter tops	80	11/04/08 15:00	11/10/08 14:59															
B7-2680	Mirrors/ Med Cabinets	32	11/10/08 15:00	11/12/08 14:59															

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2008											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-2980	Final MEP Inspection	24	11/22/08 07:00	11/24/08 14:59												
B7-2990	Install Appliances	40	11/25/08 15:00	11/28/08 22:59												
B7-3000	Touch up paint	40	11/29/08 07:00	12/02/08 14:59												
B7-3010	Install Carpet/ Hardwoods	40	12/02/08 15:00	12/04/08 22:59												
B7-3440	Pre punch 7th floor	24	12/05/08 07:00	12/06/08 14:59												
B7-3460	Punchlist 7th floor	48	12/06/08 15:00	12/10/08 14:59												
B7-3490	Final clean 7th floor	32	12/10/08 15:00	12/12/08 14:59												
INTERIOR - 8TH FLOOR																
B7-3020	OH Rough HVAC	40	10/01/08 07:00	10/03/08 14:59												
B7-3030	OH Rough Plumbing and Fire Sprinkler	32	10/03/08 15:00	10/06/08 14:59												
B7-3040	OH Rough Electric	40	10/06/08 15:00	10/08/08 22:59												
B7-3050	Rough Framing	40	10/09/08 07:00	10/11/08 14:59												
B7-3060	One side drywall	32	10/11/08 15:00	10/14/08 14:59												
B7-3070	In-wall MEP Rough	80	10/14/08 15:00	10/20/08 14:59												
B7-3080	Rough HVAC Inspection	8	10/20/08 15:00	10/20/08 22:59												
B7-3090	Rough Plumb Inspection	8	10/21/08 07:00	10/21/08 14:59												
B7-3100	Rough Elec Inspection	8	10/21/08 15:00	10/21/08 22:59												
B7-3110	Insulation / Inspection	32	10/22/08 07:00	10/23/08 22:59												
B7-3120	Second Side Drywall	32	10/24/08 07:00	10/25/08 22:59												
B7-3130	Drywall Inspection	8	10/27/08 07:00	10/27/08 14:59												
B7-3140	Tape bed / Texture	32	10/27/08 15:00	10/29/08 14:59												
B7-3150	Doors & Trim	40	10/29/08 15:00	10/31/08 22:59												
B7-3160	Paint	40	11/01/08 07:00	11/04/08 14:59												
B7-3170	Cabinets	40	11/04/08 15:00	11/06/08 22:59												
B7-3180	Door Hardware	40	11/07/08 07:00	11/10/08 14:59												
B7-3190	Counter tops	80	11/10/08 15:00	11/15/08 14:59												
B7-3200	Mirrors/ Med Cabinets	32	11/15/08 15:00	11/18/08 14:59												
B7-3210	Shower Surrounds	40	11/18/08 15:00	11/20/08 22:59												
B7-3220	MEP Trim	56	11/21/08 07:00	11/25/08 14:59												
B7-3230	Flooring hard surface/ Set toilets	40	11/25/08 15:00	11/28/08 22:59												
B7-3240	Final MEP Inspection	24	11/25/08 15:00	11/26/08 22:59												
B7-3250	Install Appliances	40	11/29/08 07:00	12/02/08 14:59												
B7-3260	Touch up paint	40	12/02/08 15:00	12/04/08 22:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-3840	Touch up paint	40	10/15/08 07:00	10/17/08 14:59												
B7-3850	Install Carpet/ Hardwoods	40	10/17/08 15:00	10/20/08 22:59												
CORRIDORS & VESTIBULE 3rd FLOOR																
B7-3860	Corridor OH Rough HVAC	32	09/18/08 07:00	09/19/08 22:59												
B7-3870	Corridor OH Rough Plumbing	32	09/20/08 07:00	09/22/08 22:59												
B7-3880	Corridor OH Rough Electric	32	09/23/08 07:00	09/24/08 22:59												
B7-3890	Corridor Rough Framing	40	09/27/08 07:00	09/30/08 14:59												
B7-3900	Corridor One side drywall	32	09/30/08 15:00	10/02/08 14:59												
B7-3910	Corridor In Wall Rough Plumbing	40	10/02/08 15:00	10/04/08 22:59												
B7-3920	Corridor In Wall Rough Electric	40	10/02/08 15:00	10/04/08 22:59												
B7-3930	Corridor MEP Inspections	8	10/06/08 07:00	10/06/08 14:59												
B7-3940	Insulation / Inspection	32	10/06/08 15:00	10/08/08 14:59												
B7-3950	Second Side Drywall	32	10/08/08 15:00	10/10/08 14:59												
B7-3960	Drywall Inspection	8	10/10/08 15:00	10/10/08 22:59												
B7-3970	Tape bed / Texture	32	10/11/08 07:00	10/13/08 22:59												
B7-3980	Doors & Trim	40	10/14/08 07:00	10/16/08 14:59												
B7-3990	Paint	40	10/16/08 15:00	10/18/08 22:59												
B7-4000	Touch up paint	40	10/20/08 07:00	10/22/08 14:59												
B7-4010	Install Carpet/ Hardwoods	40	10/22/08 15:00	10/24/08 22:59												
CORRIDORS & VESTIBULE 4th FLOOR																
B7-4020	Corridor OH Rough HVAC	32	09/20/08 07:00	09/22/08 22:59												
B7-4030	Corridor OH Rough Plumbing	32	09/23/08 07:00	09/24/08 22:59												
B7-4040	Corridor OH Rough Electric	32	09/25/08 07:00	09/26/08 22:59												
B7-4050	Corridor Rough Framing	40	09/30/08 15:00	10/02/08 22:59												
B7-4060	Corridor One side drywall	32	10/03/08 07:00	10/04/08 22:59												
B7-4070	Corridor In Wall Rough Plumbing	40	10/06/08 07:00	10/08/08 14:59												
B7-4080	Corridor In Wall Rough Electric	40	10/06/08 07:00	10/08/08 14:59												
B7-4090	Corridor MEP Inspections	8	10/08/08 15:00	10/08/08 22:59												
B7-4100	Insulation / Inspection	32	10/09/08 07:00	10/10/08 22:59												
B7-4110	Second Side Drywall	32	10/11/08 07:00	10/13/08 22:59												
B7-4120	Drywall Inspection	8	10/14/08 07:00	10/14/08 14:59												
B7-4130	Tape bed / Texture	32	10/14/08 15:00	10/16/08 14:59												
B7-4140	Doors & Trim	40	10/16/08 15:00	10/18/08 22:59												

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B7-4460	Doors & Trim			40	10/22/08 15:00	10/24/08 22:59																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											</

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Activity ID	Activity Description	Orig Dur	Early Start	Early Finish									
B7-4770	Tape bed / Texture	32	10/25/08 15:00	10/28/08 14:59									
B7-4780	Doors & Trim	40	10/29/08 15:00	10/30/08 22:59									
B7-4790	Paint	40	10/31/08 07:00	11/03/08 14:59									
B7-4800	Touch up paint	40	11/03/08 15:00	11/05/08 22:59									
B7-4810	Install Carpet/ Hardwoods	40	11/05/08 07:00	11/08/08 14:59									
CORRIDORS & VESTIBULE 9th FLOOR													
B7-4820	Corridor OH Rough HVAC	32	10/04/08 07:00	10/06/08 22:59									
B7-4830	Corridor OH Rough Plumbing	32	10/07/08 07:00	10/08/08 22:59									
B7-4840	Corridor OH Rough Electric	32	10/09/08 07:00	10/10/08 22:59									
B7-4850	Corridor Rough Framing	40	10/15/08 07:00	10/17/08 14:59									
B7-4860	Corridor One side drywall	32	10/17/08 15:00	10/20/08 14:59									
B7-4870	Corridor In Wall Rough Plumbing	40	10/20/08 15:00	10/22/08 22:59									
B7-4880	Corridor In Wall Rough Electric	40	10/20/08 15:00	10/22/08 22:59									
B7-4890	Corridor MEP Inspections	8	10/23/08 07:00	10/23/08 14:59									
B7-4900	Insulation / Inspection	32	10/23/08 15:00	10/25/08 14:59									
B7-4910	Second Side Drywall	32	10/25/08 15:00	10/28/08 14:59									
B7-4920	Drywall Inspection	8	10/28/08 15:00	10/28/08 22:59									
B7-4930	Tape bed / Texture	32	10/29/08 07:00	10/30/08 22:59									
B7-4940	Doors & Trim	40	10/31/08 07:00	11/03/08 14:59									
B7-4950	Paint	40	11/03/08 15:00	11/05/08 22:59									
B7-4960	Touch up paint	40	11/06/08 07:00	11/08/08 14:59									
B7-4970	Install Carpet/ Hardwoods	40	11/08/08 15:00	11/11/08 22:59									
ELEVATOR LOBBY 1st FLOOR													
B7-4980	Framing	16	09/20/08 15:00	09/22/08 14:59									
B7-4990	Mechanical Rough Ceiling	24	09/22/08 15:00	09/23/08 22:59									
B7-5000	Electrical Rough Ceiling	24	09/22/08 15:00	09/23/08 22:59									
B7-5010	Fire Sprinkler Rough Ceiling	24	09/22/08 15:00	09/23/08 22:59									
B7-5020	Ceilings	24	09/24/08 07:00	09/25/08 14:59									
B7-5030	Inspections	24	09/25/08 15:00	09/26/08 22:59									
B7-5040	Drywall	24	09/27/08 07:00	09/29/08 14:59									
B7-5050	Millwork - Base	40	09/29/08 15:00	10/01/08 22:59									
B7-5060	Final Paint	16	10/02/08 07:00	10/02/08 22:59									
B7-5065	Paint - Stairwells	16	10/03/08 07:00	10/03/08 22:59									

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-5070	Wallcovering	16	10/03/08 07:00	10/03/08 22:59					Wallcovering							
B7-5075	MEP Finish - Stairwells	16	10/04/08 07:00	10/04/08 22:59					MEP Finish - Stairwells							
B7-5080	Carpet	16	10/04/08 07:00	10/04/08 22:59					Carpet							
B7-5085	Fire Sprinkler Trim - Stairwells	16	10/06/08 07:00	10/06/08 22:59					Fire Sprinkler Trim - Stairwells							
B7-5090	Punch / Final Clean	8	10/06/08 07:00	10/06/08 14:59					Punch / Final Clean							
B7-5095	Punch / Final Clean - Stairwells	8	10/07/08 07:00	10/07/08 14:59					Punch / Final Clean - Stairwells							
ELEVATOR LOBBY 2nd FLOOR																
B7-5100	Framing	16	09/23/08 07:00	09/23/08 22:59					Framing							
B7-5110	Mechanical Rough Ceiling	24	09/24/08 07:00	09/25/08 14:59					Mechanical Rough Ceiling							
B7-5120	Electrical Rough Ceiling	24	09/24/08 07:00	09/25/08 14:59					Electrical Rough Ceiling							
B7-5130	Fire Sprinkler Rough Ceiling	24	09/24/08 07:00	09/25/08 14:59					Fire Sprinkler Rough Ceiling							
B7-5140	Ceilings	24	09/25/08 15:00	09/26/08 22:59					Ceilings							
B7-5150	Inspections	24	09/27/08 07:00	09/29/08 14:59					Inspections							
B7-5160	Drywall	24	09/29/08 15:00	09/30/08 22:59					Drywall							
B7-5170	Millwork - Base	40	10/01/08 07:00	10/03/08 14:59					Millwork - Base							
B7-5180	Final Paint	16	10/03/08 15:00	10/04/08 14:59					Final Paint							
B7-5185	Paint - Stairwells	16	10/04/08 15:00	10/06/08 14:59					Paint - Stairwells							
B7-5190	Wallcovering	16	10/04/08 15:00	10/06/08 14:59					Wallcovering							
B7-5195	MEP Finish - Stairwells	16	10/06/08 15:00	10/07/08 14:59					MEP Finish - Stairwells							
B7-5200	Carpet	16	10/06/08 15:00	10/07/08 14:59					Carpet							
B7-5205	Fire Sprinkler Trim - Stairwells	16	10/07/08 15:00	10/08/08 14:59					Fire Sprinkler Trim - Stairwells							
B7-5210	Punch / Final Clean	8	10/07/08 15:00	10/07/08 22:59					Punch / Final Clean							
B7-5215	Punch / Final Clean - Stairwells	8	10/08/08 15:00	10/08/08 22:59					Punch / Final Clean - Stairwells							
ELEVATOR LOBBY 3rd FLOOR																
B7-5220	Framing	16	09/27/08 07:00	09/27/08 22:59					Framing							
B7-5230	Mechanical Rough Ceiling	24	09/29/08 07:00	09/30/08 14:59					Mechanical Rough Ceiling							
B7-5240	Electrical Rough Ceiling	24	09/29/08 07:00	09/30/08 14:59					Electrical Rough Ceiling							
B7-5250	Fire Sprinkler Rough Ceiling	24	09/29/08 07:00	09/30/08 14:59					Fire Sprinkler Rough Ceiling							
B7-5260	Ceilings	24	09/30/08 15:00	10/01/08 22:59					Ceilings							
B7-5270	Inspections	24	10/02/08 07:00	10/03/08 14:59					Inspections							
B7-5280	Drywall	24	10/03/08 15:00	10/04/08 22:59					Drywall							
B7-5290	Millwork - Base	40	10/06/08 07:00	10/08/08 14:59					Millwork - Base							
B7-5300	Final Paint	16	10/08/08 15:00	10/09/08 14:59					Final Paint							

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-5305	Paint - Stairwells	16	10/09/08 15:00	10/10/08 14:59					Paint - Stairwells							
B7-5310	Wallcovering	16	10/09/08 15:00	10/10/08 14:59					Wallcovering							
B7-5315	MEP Finish - Stairwells	16	10/10/08 15:00	10/11/08 14:59					MEP Finish - Stairwells							
B7-5320	Carpet	16	10/10/08 15:00	10/11/08 14:59					Carpet							
B7-5325	Fire Sprinkler Trim - Stairwells	16	10/11/08 15:00	10/13/08 14:59					Fire Sprinkler Trim - Stairwells							
B7-5330	Punch / Final Clean	8	10/11/08 15:00	10/11/08 22:59					Punch / Final Clean							
B7-5335	Punch / Final Clean - Stairwells	8	10/13/08 15:00	10/13/08 22:59					Punch / Final Clean - Stairwells							
ELEVATOR LOBBY 4th FLOOR																
B7-5340	Framing	16	09/30/08 15:00	10/01/08 14:59					Framing							
B7-5350	Mechanical Rough Ceiling	24	10/01/08 15:00	10/02/08 22:59					Mechanical Rough Ceiling							
B7-5360	Electrical Rough Ceiling	24	10/01/08 15:00	10/02/08 22:59					Electrical Rough Ceiling							
B7-5370	Fire Sprinkler Rough Ceiling	24	10/01/08 15:00	10/02/08 22:59					Fire Sprinkler Rough Ceiling							
B7-5380	Ceilings	24	10/03/08 07:00	10/04/08 14:59					Ceilings							
B7-5390	Inspections	24	10/04/08 15:00	10/06/08 22:59					Inspections							
B7-5400	Drywall	24	10/07/08 07:00	10/08/08 14:59					Drywall							
B7-5410	Millwork - Base	40	10/08/08 15:00	10/10/08 22:59					Millwork - Base							
B7-5420	Final Paint	16	10/11/08 07:00	10/11/08 22:59					Final Paint							
B7-5425	Paint - Stairwells	16	10/13/08 07:00	10/13/08 22:59					Paint - Stairwells							
B7-5430	Wallcovering	16	10/13/08 07:00	10/13/08 22:59					Wallcovering							
B7-5435	MEP Finish - Stairwells	16	10/14/08 07:00	10/14/08 22:59					MEP Finish - Stairwells							
B7-5440	Carpet	16	10/14/08 07:00	10/14/08 22:59					Carpet							
B7-5445	Fire Sprinkler Trim - Stairwells	16	10/15/08 07:00	10/15/08 22:59					Fire Sprinkler Trim - Stairwells							
B7-5450	Punch / Final Clean	8	10/15/08 07:00	10/15/08 14:59					Punch / Final Clean							
B7-5455	Punch / Final Clean - Stairwells	8	10/16/08 07:00	10/16/08 14:59					Punch / Final Clean - Stairwells							
ELEVATOR LOBBY 5th FLOOR																
B7-5460	Framing	16	10/03/08 07:00	10/03/08 22:59					Framing							
B7-5470	Mechanical Rough Ceiling	24	10/04/08 07:00	10/06/08 14:59					Mechanical Rough Ceiling							
B7-5480	Electrical Rough Ceiling	24	10/04/08 07:00	10/06/08 14:59					Electrical Rough Ceiling							
B7-5490	Fire Sprinkler Rough Ceiling	24	10/04/08 07:00	10/06/08 14:59					Fire Sprinkler Rough Ceiling							
B7-5500	Ceilings	24	10/06/08 15:00	10/07/08 22:59					Ceilings							
B7-5510	Inspections	24	10/08/08 07:00	10/09/08 14:59					Inspections							
B7-5520	Drywall	24	10/09/08 15:00	10/10/08 22:59					Drywall							
B7-5530	Millwork - Base	40	10/11/08 07:00	10/14/08 14:59					Millwork - Base							

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-5540	Final Paint	16	10/14/08 15:00	10/15/08 14:59												
B7-5545	Paint - Stairwells	16	10/15/08 15:00	10/16/08 14:59												
B7-5550	Wallcovering	16	10/15/08 15:00	10/16/08 14:59												
B7-5555	MEP Finish - Stairwells	16	10/16/08 15:00	10/17/08 14:59												
B7-5560	Carpet	16	10/16/08 15:00	10/17/08 14:59												
B7-5565	Fire Sprinkler Trim - Stairwells	16	10/17/08 15:00	10/18/08 14:59												
B7-5570	Punch / Final Clean	8	10/17/08 15:00	10/17/08 22:59												
B7-5575	Punch / Final Clean - Stairwells	8	10/18/08 15:00	10/18/08 22:59												
ELEVATOR LOBBY 6th FLOOR																
B7-5580	Framing	16	10/06/08 15:00	10/07/08 14:59												
B7-5590	Mechanical Rough Ceiling	24	10/07/08 15:00	10/08/08 22:59												
B7-5600	Electrical Rough Ceiling	24	10/07/08 15:00	10/08/08 22:59												
B7-5610	Fire Sprinkler Rough Ceiling	24	10/07/08 15:00	10/08/08 22:59												
B7-5620	Ceilings	24	10/09/08 07:00	10/10/08 14:59												
B7-5630	Inspections	24	10/10/08 15:00	10/11/08 22:59												
B7-5640	Drywall	24	10/13/08 07:00	10/14/08 14:59												
B7-5650	Millwork - Base	40	10/14/08 15:00	10/16/08 22:59												
B7-5660	Final Paint	16	10/17/08 07:00	10/17/08 22:59												
B7-5665	Paint - Stairwells	16	10/18/08 07:00	10/18/08 22:59												
B7-5670	Wallcovering	16	10/18/08 07:00	10/18/08 22:59												
B7-5675	MEP Finish - Stairwells	16	10/20/08 07:00	10/20/08 22:59												
B7-5680	Carpet	16	10/20/08 07:00	10/20/08 22:59												
B7-5685	Fire Sprinkler Trim - Stairwells	16	10/21/08 07:00	10/21/08 22:59												
B7-5690	Punch / Final Clean	8	10/21/08 07:00	10/21/08 14:59												
B7-5695	Punch / Final Clean - Stairwells	8	10/22/08 07:00	10/22/08 14:59												
ELEVATOR LOBBY 7th FLOOR																
B7-5700	Framing	16	10/09/08 07:00	10/09/08 22:59												
B7-5710	Mechanical Rough Ceiling	24	10/10/08 07:00	10/11/08 14:59												
B7-5720	Electrical Rough Ceiling	24	10/10/08 07:00	10/11/08 14:59												
B7-5730	Fire Sprinkler Rough Ceiling	24	10/10/08 07:00	10/11/08 14:59												
B7-5740	Ceilings	24	10/11/08 15:00	10/13/08 22:59												
B7-5750	Inspections	24	10/14/08 07:00	10/15/08 14:59												
B7-5760	Drywall	24	10/15/08 15:00	10/16/08 22:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2008											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-5770	Millwork - Base	40	10/17/08 07:00	10/20/08 14:59												
B7-5780	Final Paint	16	10/20/08 15:00	10/21/08 14:59												
B7-5785	Paint - Stairwells	16	10/21/08 15:00	10/22/08 14:59												
B7-5790	Wallcovering	16	10/21/08 15:00	10/22/08 14:59												
B7-5795	MEP Finish - Stairwells	16	10/22/08 15:00	10/23/08 14:59												
B7-5800	Carpet	16	10/22/08 15:00	10/23/08 14:59												
B7-5805	Fire Sprinkler Trim - Stairwells	16	10/23/08 15:00	10/24/08 14:59												
B7-5810	Punch / Final Clean	8	10/23/08 15:00	10/23/08 22:59												
B7-5815	Punch / Final Clean - Stairwells	8	10/24/08 15:00	10/24/08 22:59												
ELEVATOR LOBBY 8th FLOOR																
B7-5830	Framing	16	10/11/08 15:00	10/13/08 14:59												
B7-5840	Mechanical Rough Ceiling	24	10/13/08 15:00	10/14/08 22:59												
B7-5850	Electrical Rough Ceiling	24	10/13/08 15:00	10/14/08 22:59												
B7-5860	Fire Sprinkler Rough Ceiling	24	10/13/08 15:00	10/14/08 22:59												
B7-5870	Ceilings	24	10/15/08 07:00	10/16/08 14:59												
B7-5880	Inspections	24	10/16/08 15:00	10/17/08 22:59												
B7-5890	Drywall	24	10/18/08 07:00	10/20/08 14:59												
B7-5900	Millwork - Base	40	10/20/08 15:00	10/22/08 22:59												
B7-5910	Final Paint	16	10/23/08 07:00	10/23/08 22:59												
B7-5915	Paint - Stairwells	16	10/24/08 07:00	10/24/08 22:59												
B7-5920	Wallcovering	16	10/24/08 07:00	10/24/08 22:59												
B7-5925	MEP Finish - Stairwells	16	10/25/08 07:00	10/25/08 22:59												
B7-5930	Carpet	16	10/25/08 07:00	10/25/08 22:59												
B7-5935	Fire Sprinkler Trim - Stairwells	16	10/27/08 07:00	10/27/08 22:59												
B7-5940	Punch / Final Clean	8	10/27/08 07:00	10/27/08 14:59												
B7-5945	Punch / Final Clean - Stairwells	8	10/28/08 07:00	10/28/08 14:59												
ELEVATOR LOBBY 9th FLOOR																
B7-5950	Framing	16	10/15/08 07:00	10/15/08 22:59												
B7-5960	Mechanical Rough Ceiling	24	10/16/08 07:00	10/17/08 14:59												
B7-5970	Electrical Rough Ceiling	24	10/16/08 07:00	10/17/08 14:59												
B7-5980	Fire Sprinkler Rough Ceiling	24	10/16/08 07:00	10/17/08 14:59												
B7-5990	Ceilings	24	10/17/08 15:00	10/18/08 22:59												
B7-6000	Inspections	24	10/20/08 07:00	10/21/08 14:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B7-6010	Drywall	24	10/21/08 15:00	10/22/08 22:59												
B7-6020	Millwork - Base	40	10/23/08 07:00	10/25/08 14:59												
B7-6030	Final Paint	16	10/25/08 15:00	10/27/08 14:59												
B7-6035	Paint - Stairwells	16	10/27/08 15:00	10/28/08 14:59												
B7-6040	Wallcovering	16	10/27/08 15:00	10/28/08 14:59												
B7-6045	MEP Finish - Stairwells	16	10/28/08 15:00	10/29/08 14:59												
B7-6050	Carpet	16	10/28/08 15:00	10/29/08 14:59												
B7-6055	Fire Sprinkler Trim - Stairwells	16	10/29/08 15:00	10/30/08 14:59												
B7-6060	Punch / Final Clean	8	10/29/08 15:00	10/29/08 22:59												
B7-6065	Punch / Final Clean - Stairwells	8	10/30/08 15:00	10/30/08 22:59												
EXTERIOR																
B7-6070	Install roofing membrane	24	10/11/08 15:00	10/13/08 22:59												
B7-6570	Install Roof Top Equipment	80	10/13/08 15:00	10/18/08 14:59												
EXTERIOR - 1ST FLOOR																
B7-6090	Aluminum frame curtainwall 1st floor	32	09/05/08 15:00	09/09/08 14:59												
B7-6100	Install 1st floor curtainwall	40	09/08/08 15:00	09/10/08 22:59												
EXTERIOR - 2ND FLOOR																
B7-6110	Aluminum frame curtainwall 2nd floor	32	09/09/08 15:00	09/11/08 14:59												
B7-6150	Install 2nd floor curtainwall	40	09/18/08 15:00	09/20/08 22:59												
EXTERIOR - 3RD FLOOR																
B7-6120	Aluminum frame curtainwall 3rd floor	32	09/11/08 15:00	09/13/08 14:59												
B7-6180	Install 3rd floor curtainwall	40	09/22/08 07:00	09/24/08 14:59												
EXTERIOR - 4TH FLOOR																
B7-6130	Aluminum frame curtainwall 4th floor	32	09/13/08 15:00	09/16/08 14:59												
B7-6200	Install 4th floor curtainwall	40	09/24/08 15:00	09/26/08 22:59												
EXTERIOR - 5TH FLOOR																
B7-6140	Aluminum frame curtainwall 5th floor	32	09/16/08 15:00	09/18/08 14:59												
B7-6220	Install 5th floor curtainwall	40	09/27/08 07:00	09/30/08 14:59												
EXTERIOR - 6TH FLOOR																
B7-6160	Aluminum frame curtainwall 6th floor	32	09/18/08 15:00	09/20/08 14:59												
B7-6230	Install 6th floor curtainwall	40	09/30/08 15:00	10/02/08 22:59												
EXTERIOR - 7TH FLOOR																
B7-6170	Aluminum frame curtainwall 7th floor	32	09/20/08 15:00	09/23/08 14:59												
B7-6240	Install 7th floor curtainwall	40	10/03/08 07:00	10/06/08 14:59												

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2008	2009
EXTERIOR - 8TH FLOOR						
B7-6190	Aluminum frame curtainwall 8th floor	32	09/23/08 15:00	09/25/08 14:59		
B7-6250	Install 8th floor curtainwall	40	10/06/08 15:00	10/08/08 22:59		
EXTERIOR - 9TH FLOOR						
B7-6210	Aluminum frame curtainwall 9th floor	32	09/25/08 15:00	09/27/08 14:59		
B7-6260	Install 9th floor/parapet curtainwall	40	10/09/08 07:00	10/11/08 14:59		
TESTING & CLOSE-OUT						
B7-6545	HVAC Commissioning	32	10/20/08 07:00	10/23/08 14:59		
B7-6535	Smoke and Comfort Test	48	10/20/08 07:00	10/27/08 14:59		
B7-6565	Stair Pressurization Test	32	10/24/08 07:00	10/29/08 14:59		
B7-6555	Fire Alarm Pre-Test	40	12/02/08 07:00	12/08/08 14:59		
B7-6575	Fire Alarm Final Test	48	12/09/08 07:00	12/16/08 14:59		
B7-6585	All Systems Test	40	12/17/08 07:00	12/23/08 14:59		
POOLS & SPAS						
POOLS						
PL-10	Set Pools	56	10/07/08 07:00	10/10/08 14:59		
PL-150	Set Pool Equipment	56	10/10/08 15:00	10/15/08 22:59		
PL-30	Tie In Pools	80	10/16/08 07:00	10/22/08 22:59		
PL-50	Health Dept Inspections - Pools	0		10/22/08 22:59		
SPAS						
PL-20	Install Structural Supports	40	09/30/08 15:00	10/02/08 22:59		
PL-180	Set Spas	24	10/20/08 15:00	10/21/08 22:59		
PL-190	Install Spa Equipment and Tie into Spas	80	10/22/08 07:00	10/28/08 22:59		
PL-200	Health Dept. Inspections - Spas	0		10/28/08 22:59		
WATER FEATURE - 2nd FLOOR						
PL-170	2nd Floor Waterfall Feature	96	10/07/08 07:00	10/14/08 22:59		
BUILDING 8 STRUCTURE						
B8-40	Detailed Punch and Shear Dwgs Appr by ENGR/CCBD	160	03/24/08 07:00A	08/20/08 22:59		
B8-970	Podium Column Fix	280	05/08/08 07:00A	08/27/08 22:59		
B8-10	Install Stairs	160	08/19/08 07:00	09/02/08 22:59		
INTERIOR						
B8-45	Install Elevator Rails	304	08/19/08 07:00	09/15/08 22:59		
B8-20	Tie into riser	8	08/19/08 07:00	08/19/08 14:59		
B8-55	Build Elevator Cars	112	09/09/08 15:00	09/18/08 14:59		

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009																
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
INTERIOR - 2ND FLOOR																					
B8-440	Rough HVAC 2nd Floor to Fire Lid	16	09/12/08 07:00	09/12/08 22:59																	
B8-450	HVAC Inspection	8	09/15/08 07:00	09/15/08 14:59																	
B8-460	Framing Inspection	8	09/15/08 15:00	09/15/08 22:59																	
B8-470	Insulate 2nd floor	32	09/16/08 07:00	09/17/08 22:59																	
B8-480	Insulation Inspection	8	09/16/08 07:00	09/16/08 14:59																	
B8-490	Drywall	56	09/18/08 15:00	09/23/08 22:59																	
B8-500	Fire Lid 2nd floor	56	09/18/08 15:00	09/23/08 22:59																	
B8-510	Drywall Inspection	8	09/24/08 07:00	09/24/08 14:59																	
B8-520	Fire Lid Inspection	8	09/24/08 07:00	09/24/08 14:59																	
B8-530	Frame Soffits, Cans, Drywall	56	09/24/08 15:00	09/29/08 22:59																	
B8-540	Tape / Texture	40	09/30/08 07:00	10/02/08 14:59																	
B8-550	Light Weight Concrete 2nd Floor	40	10/01/08 07:00	10/03/08 14:59																	
B8-560	Install Trim & Doors 2nd floor	80	10/03/08 15:00	10/10/08 14:59																	
B8-570	Paint 2nd floor	56	10/08/08 07:00	10/13/08 14:59																	
B8-580	MEP & Fire Sprinkler Trim 2nd floor	72	10/09/08 15:00	10/15/08 22:59																	
B8-600	Install tile 2nd floor	64	10/10/08 15:00	10/16/08 14:59																	
B8-590	Install cabinets/countertops 2nd floor	56	10/10/08 15:00	10/15/08 22:59																	
B8-630	Install carpet 2nd floor	40	10/15/08 07:00	10/17/08 14:59																	
B8-610	Hardware Trim	24	10/16/08 07:00	10/17/08 14:59																	
B8-1550	Pre punch 2nd floor	32	10/17/08 15:00	10/21/08 14:59																	
B8-620	Final MEP Inspection	24	10/17/08 15:00	10/20/08 22:59																	
B8-1570	Punchlist 2nd floor	32	10/21/08 15:00	10/23/08 14:59																	
B8-1600	Final clean 2nd floor	32	10/23/08 15:00	10/27/08 14:59																	
INTERIOR - 3RD FLOOR																					
B8-770	Rough HVAC 3rd Floor to Fire Lid	16	09/15/08 07:00	09/15/08 22:59																	
B8-780	HVAC Inspection	8	09/16/08 07:00	09/16/08 14:59																	
B8-790	Framing Inspection	8	09/16/08 15:00	09/16/08 22:59																	
B8-800	Insulate 3rd floor	40	09/17/08 07:00	09/19/08 14:59																	
B8-810	Insulation Inspection	8	09/19/08 15:00	09/19/08 22:59																	
B8-820	Drywall	56	09/22/08 07:00	09/25/08 14:59																	
B8-830	Fire Lid 3rd floor	64	09/22/08 07:00	09/25/08 22:59																	
B8-840	Drywall Inspection	8	09/25/08 15:00	09/25/08 22:59																	

Activity ID	Activity Description	Orig Dur	Early Start	Early Finish	2009											
					AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL
B8-860	Frame Soffits, Cans, Drywall	64	09/26/08 07:00	10/01/08 22:59												
B8-850	Fire Lid Inspection	8	09/26/08 07:00	09/26/08 14:59												
B8-870	Tape / Texture	40	10/02/08 07:00	10/09/08 14:59												
B8-880	Light Weight Concrete 3rd Floor	40	10/03/08 07:00	10/07/08 14:59												
B8-890	Install Trim & Doors 3rd floor	72	10/07/08 15:00	10/13/08 22:59												
B8-900	Paint 3rd floor	56	10/10/08 07:00	10/15/08 14:59												
B8-910	Install cabinets/countertops 3rd floor	56	10/14/08 07:00	10/17/08 14:59												
B8-920	MEP & Fire Sprinkler Trim 3rd floor	72	10/15/08 15:00	10/21/08 22:59												
B8-930	Install tile 3rd floor	56	10/16/08 15:00	10/21/08 22:59												
B8-940	Hardware Trim	24	10/17/08 15:00	10/20/08 22:59												
B8-950	Install carpet 3rd floor	40	10/20/08 07:00	10/22/08 14:59												
B8-960	Final MEP Inspection	24	10/22/08 15:00	10/23/08 22:59												
B8-1580	Pre punch 3rd floor	16	10/24/08 07:00	10/24/08 22:59												
B8-1620	Punchlist 3rd floor	24	10/27/08 07:00	10/28/08 14:59												
B8-1640	Final clean 3rd floor	16	10/28/08 15:00	10/29/08 14:59												
INTERIOR - 4TH FLOOR																
B8-1130	Rough HVAC 4th Floor to Fire Lid	16	09/16/08 07:00	09/16/08 22:59												
B8-1140	HVAC Inspection	8	09/17/08 07:00	09/17/08 14:59												
B8-1150	Framing Inspection	8	09/17/08 15:00	09/17/08 22:59												
B8-1160	Insulate 4th floor	40	09/18/08 07:00	09/22/08 14:59												
B8-1170	Insulation Inspection	8	09/22/08 15:00	09/22/08 22:59												
B8-1180	Drywall	56	09/23/08 07:00	09/26/08 14:59												
B8-1190	Fire Lid 4th floor	56	09/23/08 07:00	09/26/08 14:59												
B8-1200	Drywall Inspection	8	09/26/08 15:00	09/26/08 22:59												
B8-1210	Fire Lid Inspection	8	09/26/08 15:00	09/26/08 22:59												
B8-1220	Frame Soffits, Cans, Drywall	56	09/29/08 07:00	10/02/08 14:59												
B8-1230	Tape / Texture	40	10/01/08 15:00	10/03/08 22:59												
B8-1240	Light Weight Concrete 4th Floor	40	10/02/08 15:00	10/06/08 22:59												
B8-1250	Install Trim & Doors 4th floor	72	10/07/08 07:00	10/13/08 14:59												
B8-1260	Paint 4th floor	48	10/09/08 07:00	10/13/08 22:59												
B8-1280	MEP & Fire Sprinkler Trim 4th floor	72	10/13/08 15:00	10/17/08 22:59												
B8-1270	Install cabinets/countertops 4th floor	56	10/13/08 15:00	10/16/08 22:59												
B8-1290	Install tile 4th floor	56	10/15/08 07:00	10/20/08 14:59												

