

An action commenced in the District Court, dated April 22, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 30, 2009 in Book 20090430 as Document No. 01007 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND 587168, entitled, "WRG DESIGN, INC.'S AMENDED NOTICE OF LIS PENDENS", WRG DESIGN, INC., A DELAWARE CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00239 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01809 of Official Records.

122. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.  
Amount: \$159,478.55

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01814 of Official Records.

123. Intentionally omitted (Expunged A571228)

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

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

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

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

128. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded March 3, 2009 in Book 20090303 of Official Records as document number 00057.

Amount: \$79,420.00

An action commenced in the District Court, dated May 4, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", THE PRESSURE GROUT COMPANY, A CALIFORNIA CORPORATION -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; AND, GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I-X; AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 6, 2009 in Book 20090506 as Document No. 04009 of Official Records.

An action commenced in the District Court, dated April 15, 2010, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "THE PRESSURE GROUT COMPANY'S AMENDED NOTICE OF PENDENCY OF ACTION", THE PRESSURE GROUT COMPANY, A CALIFORNIA CORPORATION -vs- APCO CONSTRUCTION, A NEVADA CORPORATION; AND, GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I-X; AND, ROES XI-XX

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00985 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00986 of Official Records.

New Amount: \$79,420.61

129. A claim of Mechanic's Lien by CUSTOM SELECT BILLING, INC., recorded March 3, 2009 in Book 20090303 of Official Records as document number 03785.

Amount: \$153,765.25

The above lien was amended by Amended and Restated Notice of Lien recorded August 13, 2009 in Book 20090813 as Document No. 04380 of Official Records.

130. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded March 6, 2009 in Book 20090306 of Official Records as document number 0004245.

Amount: \$23,307.87

131. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.

Amount: \$212,444.00

132. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02343.

Amount: \$110,731.00

133. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.

Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE; ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records.

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

135. Intentionally omitted (Expunged A571228)

136. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.

Amount: \$496,043.86

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded April 8, 2009 in Book 20090408 as Document No. 03269 of Official Records.

The above lien was amended by Amended Notice and Claim of Lien recorded April 13, 2010 in Book 20100413 as Document No. 03544 of Official Records.

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

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

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

140. Intentionally omitted (Expunged A571228)

141. Intentionally omitted (Case 08-A571228-B)

142. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.  
Amount: \$245,971.07

An action commenced in the District Court, dated June 17, 2009, Case No. A-09-592826-E, entitled, "NOTICE OF LIS PENDENS", WISS, JANNEY, ELSTNER ASSOCIATES, INC., AN ILLINOIS CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED LIABILITY COMPANY; DOES I THROUGH X, INCLUSIVE; ROE CORPORATIONS I THROUGH X, INCLUSIVE; BOE BONDING COMPANIES I THROUGH X, AND LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 18, 2009 in Book 20090618 as Document No. 05917 of Official Records.

143. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.  
Amount: \$238,627.22

144. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.  
Amount: \$103,955.04

145. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded April 22, 2009 in Book 20090422 as Document No. 02306 of Official Records;  
Debtor: CONCRETE VISIONS, INC., A NEVADA CORPORATION;



SELINA CISNEROS, INDIVIDUALLY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, ROE CORPORATIONS I THROUGH X, INCLUSIVE

Creditor: AHERN RENTALS, INC., A NEVADA CORPORATION

Court: District

County: Clark

Case No.: A574792

Filing Date: April 14, 2009

Amount: \$66,140.04, plus costs and interest

Attorney for Plaintiff: D. Shane Clifford, Esq. and Anjuli B. Woods, Esq.

146. Intentionally omitted (Case 08-A571228-B)

147. Dedications and Easements as shown on the recorded Reversionary Map referred to herein, on file in Book 141 of Plats, Page 93, of Official Records.

148. An action commenced in the District Court, dated July 17, 2009, Case No. A-09-595552-C, entitled, "LIS PENDENS", CONTAINMENT SOLUTIONS, INC., A DELAWARE CORPORATION -vs- E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY; PLATTE RIVER INSURANCE COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 THROUGH 10, INCLUSIVE; AND ROE CORPORATIONS 1-10, INCLUSIVE

Notice of Pendency of said Action was recorded August 3, 2009 in Book 20090803 as Document No. 00902 of Official Records.

149. An action commenced in the District Court, dated August 26, 2009, Case No. A-09-598102-C, entitled, "LIS PENDENS", WADLEY CONSTRUCTION, INC. DBA IMPACT SAND & GRAVEL, A NEVADA CORPORATION -vs- LAS VEGAS PIPELINE, LLC, A NEVADA LIMITED LIABILITY COMPANY; WESTERN SURETY COMPANY, A SURETY; MARK LEE BLACKWELL, AN INDIVIDUAL; GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES 1 -- 10, INCLUSIVE; AND ROE CORPORATIONS 1 -- 10, INCLUSIVE

Notice of Pendency of said Action was recorded September 1, 2009 in Book 20090901 as Document No. 00252 of Official Records.

150. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.

Amount: \$121,063.00

151. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.

Amount: \$238,627.22

An action commenced in the District Court, dated April 1, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "CACTUS ROSE CONSTRUCTION'S NOTICE OF LIS PENDENS", CACTUS ROSE CONSTRUCTION, INC., AN ARIZONA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407 as Document No. 02810 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01816 of Official Records.

152. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official Records as document number 01085.

Amount: \$3,376,600.45

An action commenced in the District Court, dated April 5, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING & AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I

THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407  
as Document No. 02809 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book  
20120723 as Document No. 01811 of Official Records.

153. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded March 29, 2010 in Book 20100329 of Official  
Records as document number 01086.  
Amount: \$738,161.63

An action commenced in the District Court, dated April 5, 2010, Lead Case No.  
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,  
A584730 AND A587168, entitled, "INTERSTATE PLUMBING & AIR  
CONDITIONING'S NOTICE OF LIS PENDENS", INTERSTATE PLUMBING  
& AIR CONDITIONING, LLC, A NEVADA LIMITED-LIABILITY  
COMPANY -vs- ASPHALT PRODUCTS CORP., A NEVADA  
CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION;  
CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA  
CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA  
CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND;  
SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA  
CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I  
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 7, 2010 in Book 20100407  
as Document No. 02809 of Official Records.

154. A claim of Mechanic's Lien by S.R. BRAY CORP. D/B/A POWER PLUS!,  
recorded May 6, 2010 in Book 20100506 of Official Records as document  
number 03905.  
Amount: \$65,180.00

An action commenced in the District Court, dated May 7, 2010, Lead Case No.  
A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289,  
A584730 AND A587168, entitled, "S.R. BRAY CORP.'S NOTICE OF LIS  
PENDENS", S.R. BRAY CORP., A CALIFORNIA CORPORATION D/B/A  
POWER PLUS! -vs- GEMSTONE DEVELOPMENT WEST, INC., NEVADA  
CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH  
DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I  
THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE  
LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02297 of Official Records.

155. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.  
Amount: \$117,470.00

An action commenced in the District Court, dated May 10, 2010, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "SWPPP COMPLIANCE SOLUTIONS, LLC'S NOTICE OF LIS PENDENS", SWPPP COMPLIANCE SOLUTIONS, LLC, A NEVADA LIMITED-LIABILITY COMPANY -vs- CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded May 12, 2010 in Book 20100512 as Document No. 02296 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01810 of Official Records.

156. An Abstract of Judgment, for an amount hereinafter set out, plus interest and costs, if any, recorded September 22, 2010 in Book 20100922 as Document No. 02754 of Official Records;  
Debtor: GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; GEMSTONE DEVELOPMENT, LLC, A NEVADA LIMITED-LIABILITY COMPANY; GEMSTONE DEVELOPMENT WEST, LLC, A NEVADA LIMITED-LIABILITY COMPANY; DOES I THROUGH X, AND ROE BUSINESS ENTITIES XI THROUGH XX, INCLUSIVE  
Creditor: PCI GROUP, LLC, A NEVADA LIMITED-LIABILITY COMPANY  
Court: District  
County: Clark  
Case No.: A584960  
Filing Date: August 6, 2010  
Amount: \$34,729.09  
Attorney for Plaintiff: R. Christopher Reade, Esq. and Dana L. Howell, Esq.

157. Water rights, claims or title to water, whether or not shown by the public records.

158. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

159. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

160. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as disclosed by an inspection of said premises.

161. REQUIREMENT: In the event this file converts to a request for title insurance, please advise the Title Department at least one week prior to close of the transaction.

We reserve the right to make additional exceptions and/or requirements.

NOTE: This report is a preliminary investigation only of the property contained herein. This is not an abstract, it is a report derived from our review of various documents of record. No reliance should be placed on the contents hereof without first obtaining the approval of an Officer of the Company.

SB



SCHEDULE C  
OFFICE NOTES

1.

## SCHEDULE D

Privacy Notice (15 U.S.C. 6801 and 16 CFR Part 313): Nonpublic personal information about you is provided to us from information you submit on forms and documents and from others who are involved in your transaction. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. If you want a full page explanation of our privacy policy, or if you have questions, please contact us.

# Exhibit B

# Exhibit B

# EXHIBIT "B"

## A. Mechanics Liens

1. A claim of Mechanic's Lien by LAS VEGAS PIPELINE, LLC, recorded July 29, 2008 in Book 20080729 of Official Records as document number 01902.  
Amount: \$217,911.29
2. A claim of Mechanic's Lien by PATENT CONSTRUCTION SYSTEMS, recorded September 2, 2008 in Book 20080902 of Official Records as document number 03602.  
Amount: \$374,262.70  
  
The above lien was amended by Amended Notice of Lien recorded November 12, 2008 in Book 20081112 as Document No. 05538 of Official Records.
3. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded September 24, 2008 in Book 20080924 of Official Records as document number 04254.  
Amount: \$69,260.04
4. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded September 30, 2008 in Book 20080930 of Official Records as document number 00441.  
Amount: \$79,420.00
5. A claim of Mechanic's Lien by READY MIX, INC., recorded October 6, 2008 in Book 20081006 of Official Records as document number 05090.  
Amount: \$754,618.89
6. A claim of Mechanic's Lien by SIERRA REINFORCING, recorded October 14, 2008 in Book 20081014 of Official Records as document number 01768.  
Amount: \$420,157.90
7. A claim of Mechanic's Lien by APCO CONSTRUCTION, recorded November 6, 2008 in Book 20081106 of Official Records as document number 03327.  
Amount: \$20,782,659.95  
  
The above lien was amended by Amended Notice of Lien recorded February 11, 2009 in Book 20090211 as Document No. 04094 of Official Records.
8. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded November 14, 2008 in Book 20081114 of Official Records as document number 01275.  
Amount: \$161,000.00
9. A claim of Mechanic's Lien by NEVADA PREFAB ENGINEERS, INC., recorded November 21, 2008 in Book 20081121 of Official Records as document number 05199  
Amount: \$1,001,790.15

10. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04799.  
Amount: \$461,795.78
  11. A claim of Mechanic's Lien by TRI CITY DRYWALL INC., recorded November 26, 2008 in Book 20081126 of Official Records as document number 04802.  
Amount: \$586,642.07
  12. A claim of Mechanic's Lien by ARCH ALUMINUM AND GLASS CO., INC. – AZ, recorded December 1, 2008 in Book 20081201 of Official Records as document number 02051.  
Amount: \$30,383.68
  13. A claim of Mechanic's Lien by HYDROPRESSURE CLEANING, INC., recorded December 2, 2008 in Book 20081202 of Official Records as document number 04781.  
Amount: \$400,000.00
  14. A claim of Mechanic's Lien by ACCURACY GLASS & MIRROR COMPANY, INC., recorded December 5, 2008 in Book 20081205 of Official Records as document number 01947.  
Amount: \$1,956,902.53
  15. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.  
Amount: \$373,892.42
  16. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.  
Amount: \$641,748.33
- The above lien was amended by Amended Notice of Lien recorded February 3, 2009 in Book 20090203 as Document No. 00315 of Official Records.
17. A claim of Mechanic's Lien by FAST GLASS, recorded December 18, 2008 in Book 20081218 of Official Records as document number 01598.  
Amount: \$199,000.00
  18. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00972.  
Amount: \$57,611.11
  19. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$57,611.11
  20. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$85,260.82

21. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$63,362.02
22. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$3,685.15
23. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00973.  
Amount: \$3,257.73
24. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.  
Amount: \$788,405.41
25. A claim of Mechanic's Lien by HD SUPPLY WATERWORKS, LP, recorded December 29, 2008 in Book 20081229 of Official Records as document number 00767.  
Amount: \$25,441.40
26. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.  
Amount: \$50,000.00
27. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.  
Amount: \$95,659.36
28. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.  
Amount: \$77,220.70
29. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. – CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.  
Amount: \$5,868.00
30. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. – CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.  
Amount: \$62,250.50
31. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.  
Amount: \$4,300.00
32. A claim of Mechanic's Lien by AHERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document Number 02970.  
Amount: \$109,032.00



33. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.  
Amount: \$945,351.40
34. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.  
Amount: \$8,625.00
35. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.  
Amount: \$242,608.00
36. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.  
Amount: \$20,596.03
37. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.  
Amount: \$3,186.102.67
38. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.  
Amount: \$79,420.00
39. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official Records as document number 03919.  
Amount: \$3,376,600.45
40. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official Records as document number 00331.  
Amount: \$20,311,853.16
41. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official Records as document number 01512.  
Amount: \$783,161.63
42. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 20, 2009 in Book 20090120 of Official Records as document number 04864.  
Amount: \$9,494.23
43. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.  
Amount: \$22,176.01
44. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.  
Amount: \$20,156.25

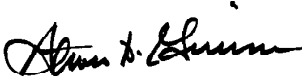
45. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.  
Amount: \$582,966.86
46. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC., recorded January 30, 2009 in Book 20090130 of Official Records as document number 0002909.  
Amount: \$89,474.70
47. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA, INC., recorded February 2, 2009 in Book 20090202 of Official Records as document number 03407.  
Amount: \$111,629.00
48. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded February 3, 2009 in Book 20090203 of Official Records as document number 00318.  
Amount: \$185,319.09
- The above lien was amended by Amended Notice of Lien recorded April 9, 2009 in Book 20090409 as Document No. 01355 of Official Records.
49. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.  
Amount: \$127,822.00
50. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.  
Amount: \$3,795,218.91
51. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC., recorded February 4, 2009 in Book 20090204 of Official Records as document number 02241.  
Amount: \$756,647.12
52. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC., recorded February 10, 2009 in Book 20090210 of Official Records as document number 02713.  
Amount: \$90,932.76
53. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04321.  
Amount: \$314,085.66
- The above lien was amended by Amended Notice of Lien recorded April 27, 2009 in Book 20090427 as Document No. 00107 of Official Records.
54. A claim of Mechanic's Lien by E & E FIRE PROTECTION, LLC AND/OR CAMCO PACIFIC CONSTRUCTION COMPANY, INC., recorded February 13, 2009 in Book 20090213 of Official Records as document number 04359.  
Amount: \$159,478.55
55. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded March 3, 2009 in Book 20090303 of Official Records as document number 00057.

Amount: \$79,420.00

56. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded March 6, 2009 in Book 20090306 of Official Records as document number 04245.  
Amount: \$23,307.87
57. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document number 02342.  
Amount: \$212,444.00
58. A claim of Mechanic's Lien by UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION & FIREPLACES, recorded March 10, 2009 in Book 20090310 of Official Records as document 02343.  
Amount: \$110,731.00
59. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER ASSOCIATES, INC., recorded March 10, 2009 in Book 20090310 of Official Records as document number 04306.  
Amount: \$245,971.07
60. A claim of Mechanic's Lien by ARCHITECTURE OF NEVADA, recorded March 24, 2009 in Book 20090324 of Official Records as document number 02032.  
Amount: \$496,043.86
61. A claim of Mechanic's Lien by WISS, JANNEY, ELSTNER & ASSOCIATES, INC., recorded March 31, 2009 in Book 20090331 of Official Records as document number 04999.  
Amount: \$245,971.07
62. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded April 15, 2009 in Book 20090415 of Official Records as document number 03770.  
Amount: \$238,627.22
63. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded April 17, 2009 in Book 20090417 of Official Records as document number 03822.  
Amount: \$103,955.04
64. A claim of Mechanic's Lien by PARAMOUNT SCAFFOLD INC., recorded October 21, 2009 in Book 20091021 of Official Records as document number 03569.  
Amount: \$121,063.00
65. A claim of Mechanic's Lien by CACTUS ROSE CONSTRUCTION, INC., recorded March 26, 2010 in Book 20100326 of Official Records as document number 00806.  
Amount: \$238,627.22
66. A claim of Mechanic's Lien by SWPPP COMPLIANCE SOLUTIONS, LLC, recorded May 10, 2010 in Book 20100510 of Official Records as document number 01654.  
Amount: \$117,470.00

67. A claim of Mechanic's Lien by SR BRAY, recorded May 6, 2010 in Book 20100506 of Official Records as document number 03905.  
Amount: \$65,180.00
68. A claim of Mechanic's Lien by CUSTOM SELECT, recorded August 13, 2009 in Book 20090813 of Official Records as document number 04380.  
Amount: \$153,765.25
- B. Deeds of Trust**
1. A First Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004264.  
Amount: \$15,000,000.00
2. A Junior Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004265.  
Amount: \$10,000,000.00
3. A Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded July 5, 2006 in Book 20060705 of Official Records as document number 0004266.  
Amount: \$13,000,000.00
4. A Junior Deed of Trust Amendment in favor of SCOTT FINANCIAL CORPORATION, recorded May 22, 2007 in Book 20070522 of Official Records as document number 0004011.  
Amount: \$8,000,000.00
5. An Amendment to Third Deed of Trust in favor of SCOTT FINANCIAL CORPORATION, recorded October 24, 2007 in Book 20071024 of Official Records as document number 0004182.  
Amount: \$10,000,000.00
6. A Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing in favor of SCOTT FINANCIAL CORPORATION, recorded February 7, 2008 in Book 20080207 of Official Records as document number 0001482.  
Amount: \$110,000,000.00

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CLERK OF THE COURT

**NEOJ**

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*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiffs,

v.

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

Defendants.

AND ALL RELATED CASES AND  
MATTERS

Case No.: A571228  
Dept. No.: XIII

**CONSOLIDATED CASES:**

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

**NOTICE OF ENTRY OF ORDER  
RELEASING SALE PROCEEDS  
FROM COURT-CONTROLLED  
ESCROW ACCOUNT**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that an Order  
Releasing Sale Proceeds from Court-Controlled Escrow Account was entered in the above-  
captioned matter on the 14th day of April, 2016.

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1 A copy of said Order is attached hereto.

2 DATED this 14th day of April, 2016.

3 GREENBERG TRAURIG, LLP

4  
5 /s/ Moorea L. Katz

6 MARK E. FERRARIO (NV Bar No. 1625)

7 MOOREA L. KATZ (NV Bar No. 12007)

8 3773 Howard Hughes Parkway

9 Suite 400 North

10 Las Vegas, Nevada 89169

11 *Attorneys for Defendants Club Vista Financial*  
12 *Services, LLC and Tharaldson Motels II, Inc.*



## CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2016, service of the foregoing was made by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system (Wiznet) and served on counsel electronically in accordance with the e-service list to the following email addresses:

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1 The date and time of the electronic proof of service is in place of the date and place of  
2 deposit in the U.S. Mail.

3  
4 /s/ Joyce Heilich  
5 An employee of Greenberg Traurig, LLP  
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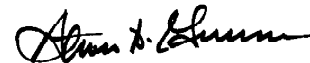
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6 *Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

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

9 APCO CONSTRUCTION, a Nevada  
10 corporation,

11 Plaintiffs,

12 v.

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

18 Defendants.

19 AND ALL RELATED CASES AND  
20 MATTERS

Case No.: A571228  
Dept. No.: XIII

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

**ORDER RELEASING SALE  
PROCEEDS FROM COURT-  
CONTROLLED ESCROW  
ACCOUNT**

21  
22 On or about April 23, 2013, the Court issued an Order Approving Sale of Property  
23 ("Sale Order"). Pursuant to the Sale Order, the Court approved the purchase and sale of the  
24 Manhattan West Property ("Property") free and clear of all liens and ordered that all liens on  
25 the Property identified in a title report attached to the Sale Order be transferred to the net  
26 proceeds from the sale. The Court further ordered that the net proceeds from the sale be  
27 transferred to an interest-bearing account "pending final resolution of the mechanic lien

Page 1

28 LV 420655574v1 133821.010100

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AA 001816

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1 claimants' Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the  
2 Supreme Court of Nevada on June 22, 2012, or upon resolution of any appeal brought with  
3 respect to the net proceeds from the sale." Id. Furthermore, the Court ordered that "[t]he  
4 contents of the Account are to remain subject to Court control until the Court orders the  
5 distribution of the contents to the party or parties the Nevada Supreme Court determines has a  
6 first priority lien on the proceeds or as may otherwise be agreed upon by the parties." Id.

7 The Joint Petition for Writ of Mandamus or, in the Alternative, Prohibition filed in the  
8 Supreme Court of Nevada on June 22, 2012 and referenced in the Sale Order was denied by the  
9 Supreme Court of Nevada on or about September 24, 2015 in 131 Nev. Adv. Op. 70.  
10 Specifically, the Supreme Court of Nevada determined that the mechanic liens on the  
11 Manhattan West Property remained junior to a lien against the Property securing construction  
12 financing and which was recorded against the Property prior to the attachment of the mechanic  
13 liens. Accordingly, the Supreme Court of Nevada determined that Scott Financial Corporation  
14 had a first priority lien against the Property to the extent of the \$38,000,000 initial financing.  
15 See *id.* at \*12-13. The parties all agree that the net proceeds from the sale are less than  
16 \$38,000,000.

17 On or about October 19, 2015, the mechanic lien claimants petitioned the Supreme  
18 Court of Nevada for rehearing, which the Supreme Court of Nevada denied on or about  
19 November 24, 2015.

20 On or about December 17, 2015, the mechanic lien claimants petitioned the Supreme  
21 Court of Nevada for en banc reconsideration, which the Supreme Court of Nevada denied on or  
22 about February 16, 2016.

23 ///

24 ///

25 ///

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Page 2

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AA 001817

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1           **ACCORDINGLY, IT IS HEREBY ORDERED** that the net proceeds from the sale,  
2 as defined in the Sale Order, shall be released from escrow and delivered to Scott Financial  
3 Corporation, or its designee, within five (5) business days from the notice of entry of this  
4 Order.

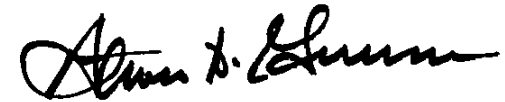
5  
6           DATED this 14<sup>th</sup> day of April, 2016.

7  
8  
9  
10             
11           DISTRICT COURT JUDGE

12  
13           Respectfully Submitted By:

14           **GREENBERG TRAURIG, LLP**

15  
16           By: Moorea L. Katz  
17           Mark E. Ferrario (Bar No. 1625)  
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22           Attorneys for Defendants Club Vista  
23           Financial Services, LLC  
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SMRO  
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Ph: (702) 457-5267  
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*Special Master*

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,	)	CASE NO. A571228
	)	DEPT NO. XIII
	)	
Plaintiff,	)	
	)	Consolidated with:
v.	)	
	)	A574391; A574792; A577623; A583289;
GEMSTONE DEVELOPMENT WEST, INC.,	)	A587168; A580889; A584730; A589195;
a Nevada corporation,	)	A595552; A597089; A592826; A589677;
	)	A596924; A584960; A608717; A608718;
Defendant.	)	and A590319
	)	
AND ALL RELATED MATTERS,	)	
	)	

SPECIAL MASTER REPORT REGARDING REMAINING PARTIES  
TO THE LITIGATION, SPECIAL MASTER RECOMMENDATION AND  
DISTRICT COURT ORDER AMENDING CASE AGENDA

APCO Construction filed a first Amended Complaint on December 8, 2008, seeking damages for construction services performed for the construction of the Manhattan West mixed use development project, located at 9205 W. Russell Road, Clark County, Nevada. The Amended Complaint, in addition to seeking monetary damages, sought a declaration from the Court ranking the priority of all lien claims and secured claims and other declaratory relief, including a requested foreclosure sale. Since that time, numerous lienclaimants have joined the litigation which has now been consolidated. A Special Master was appointed on June 9, 2016, by the District Court.

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Special Master Report:

Pursuant to a prior Special Master Order, the parties were required to complete Questionnaire by electronic service in this litigation by September 23, 2016. That Questionnaire, drafted by counsel in this litigation and approved by the Special Master, was to limit unnecessary discovery requests and to document what parties were remaining in this litigation. The September 1, 2016, Special Master Order indicated, "It will be assumed the parties that do not respond to the Questionnaire have abandoned any claim related to this litigation. The following parties provided a timely Questionnaire and have provided NRCP 16.1 documentation by September 23, 2016, or subsequently obtained approval of the Special Master to extend the deadline. It is being Recommended to the District Court that the only remaining parties that have claims in this consolidated litigation are the following parties which did provide the necessary NRCP 16.1 documents and a completed Questionnaire:

APCO Construction	Camco Pacific Construction Co.
Steel Structures, Inc.	Nevada Prefab Engineers, Inc.
Unitah Investments, LLC	Noorda Sheet Metal
E&E Fire Protection	Insulpro Projects, Inc.
SWPP Compliance Solutions, LLC	Interstate Plumbing and Air Conditioning, LLC
Helix Electric of Nevada, Inc.	Heinaman Contract Glazing, Inc.
Fast Glass, Inc.	Cardo WRG fka WRG Design, Inc.
Buchele, Inc.	Cactus Rose Construction, Inc.
Accuracy Glass & Mirror Co.	National Wood Products, Inc.
Zitting Brothers Construction, Inc.	United Subcontractors dba Sky Line Insulation

Due to the delay in completing the Questionnaire format, and obtaining response to the Questionnaire, it was agreed that the Case Agenda or discovery schedule submitted to the District Court on August 2, 2016, by the Special Master and approved by the District Court on August 4, 2016, required amendment. The parties also acknowledged that the designated depository for this litigation is Litigation Services, located at 3770 Howard Hughes Parkway, #300, Las Vegas, Nevada, 89169. Under the amended Case Agenda, initial expert disclosures will be required by January 9, 2017, with rebuttal expert disclosures to be deposited by February 13, 2017. The discovery cut-off date for the

1 litigation will be May 15, 2017, with the earliest trial date being July 10, 2017. There will be no Stay  
2 of discovery, however, the Special Master will consider requests to limit discovery requests to the  
3 parties.

4 IT IS RECOMMENDED that the Court enter the following Order:

5  
6 1. That the only remaining parties that have claims in this consolidated litigation are the parties  
7 listed in this Special Master Report as having responded to the Questionnaire and having provided  
8 NRCP 16.1 documents;

9 2. That the designated document depository for this litigation is Litigation Services, located at  
10 3770 Howard Hughes Parkway, #300, Las Vegas, Nevada, 89169;

11 3. The Court adopts and approves the Amended Case Agenda attached hereto as Exhibit "A."

12 RECOMMENDED this 4<sup>th</sup> day of October, 2016.

13  
14 By: 

15 FLOYD A. HALE, Esq.  
16 Nevada Bar No. 1873  
17 3800 Howard Hughes Pkwy, 11<sup>th</sup> Fl.  
Las Vegas, NV 89169  
Special Master

18 IT IS SO ORDERED this 6<sup>th</sup> day of October, 2016.

19  
20 By: 

DISTRICT COURT JUDGE

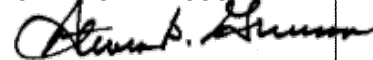
**APCO CONSTRUCTION v. GEMSTONE DEVELOPMENT**

**Case No. A571228**

**(Pursuant to September 29, 2016, Special Master Hearing)**

8/1/16 3:30 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
8/31/16	Parties to provide documents and all information required to be produced pursuant to NRS 16.1
9/29/16 4:00 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
1/9/17	Initial expert disclosures to be served
2/13/17	Rebuttal expert disclosures to be served
2/16/17 2:00 p.m.	Special Master Hearing, 3800 Howard Hughes Parkway, 11 <sup>th</sup> Floor, Las Vegas, Nevada
5/15/17	Discovery cut-off
7/10/17	Earliest date to schedule trial

**EXHIBIT "A"**

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jjuan@maclaw.com

cmounteer@maclaw.com

*Attorneys for APCO Construction***DISTRICT COURT****CLARK COUNTY, NEVADA**APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., A  
Nevada corporation,

Defendant.

Case No.: A571228

Dept. No.: 13

Consolidated with:A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

AND ALL RELATED MATTERS

**NOTICE OF ENTRY OF ORDER**PLEASE TAKE NOTICE that the Order was entered in the above captioned matter on  
May 25th, 2017, a copy of which is attached hereto.

Dated this 25th day of May, 2017.

MARQUIS AURBACH COFFING

By 

Jack Chen Min Juan, Esq.

Nevada State Bar No. 6367

Cody S. Mounteer, Esq.

Nevada State Bar No. 11220

10001 Park Run Drive

Las Vegas, Nevada 89145

Attorneys for APCO Construction

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 25th day of May, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

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<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



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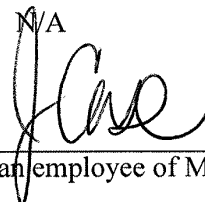
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an employee of Marquis Aurbach Coffing

Original

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Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

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DISTRICT COURT

CLARK COUNTY, NEVADA

13 APCO CONSTRUCTION, a Nevada  
14 corporation,

15 Plaintiff,

16 vs.

17 GEMSTONE DEVELOPMENT WEST, INC., A  
18 Nevada corporation,

19 Defendant.

Case No.: A571228

Dept. No.: 13

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718 and  
A590319

20 AND ALL RELATED MATTERS

ORDER

*Motion for Summary Judgment  
against UINTAH*

21 Plaintiff, APCO CONSTRUCTION ("APCO"), having come on for hearing before this  
22 court on May 15, 2017, Plaintiff being represented by and through its attorney of record, Jack  
23 Chen Min Juan, Esq. and Cody S. Munteer, Esq. of the law firm of Marquis Aurbach Coffing,  
24 and Lien Claimant, UINTAH INVESTMENTS LLC dba Sierra Reinforcing ("UINTAH"), by  
25 and through its attorney of record, Martin A. Little, Esq. of the law firm of Jolley Urga  
26 Woodbury & Little; the Court having reviewed the papers and pleadings on file herein, having  
27 heard arguments of both parties, and for good cause shown;

28 1. APCO's Motion for Summary Judgment against UINTAH dba Sierra Reinforcing  
29 is GRANTED, without prejudice; and

MARQUIS AURBACH COFFING

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(702) 382-0711 FAX: (702) 382-5816

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MAY 17 2017

DISTRICT COURT DEPT# 13

2. The party claiming to be a successor to UINTAH dba Sierra Reinforcing claims and positions in this lawsuit may file a Motion to substitute in or intervene, within 30 days of the entry of this Order.

## ORDER

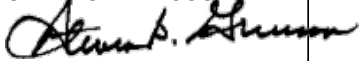
IT IS SO ORDERED.

Respectfully submitted by:

By

**MARQUIS AURBACH COFFING**

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13 *Attorneys for Lien Claimant,*  
14 *Zitting Brothers Construction, Inc.*

15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 APCO CONSTRUCTION, a Nevada  
18 corporation,

19 Plaintiff,

20 vs.

21 GEMSTONE DEVELOPMENT WEST, INC.,  
22 a Nevada corporation,

23 Defendant.

CASE NO. A571228  
DEPT. NO. XIII

Consolidated with:

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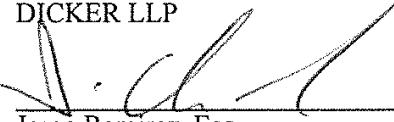
24 AND ALL RELATED MATTERS

25 **ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION FOR**  
26 **PARTIAL SUMMARY JUDGMENT AGAINST APCO CONSTRUCTION**

27 Under Nev. R. Civ. P. 56(b), Zitting Brothers Construction, Inc. ("Zitting"), a lien-claimant,  
28 respectfully requests that this Court grant summary judgment against APCO Construction ("APCO")  
on its breach of contract claim and claim under Chapter 108 of the Nevada Revised Statutes. The  
undisputed material facts show that APCO breached its contract with Zitting by refusing to pay the  
full amount owed for Zitting's work on the Manhattan West Condominiums (the "Project"). Zitting  
explains this further in the supporting memorandum of points and authorities, which is supported by  
the attached exhibits, the records of this Court, and any oral arguments that this Court may entertain  
at the hearing on this motion.

1 DATED this 31st day of July, 2017

2 WILSON ELSE MOSKOWITZ EDELMAN &  
3 DICKER LLP

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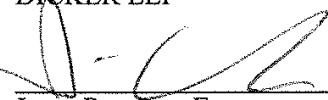
11 **NOTICE OF HEARING ON ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION**

12 **FOR PARTIAL SUMMARY JUDGMENT**

13 Please take notice that Zitting will bring its Motion for Partial Summary Judgment for  
14 September 5, 2017 at 9:00  
15 hearing in Department XIII of the above-captioned court on \_\_\_\_\_, at \_\_\_\_\_  
16 a.m., or as soon thereafter as this matter may be heard.

16 DATED this 31st day of July, 2017.

17 WILSON ELSE MOSKOWITZ EDELMAN &  
18 DICKER LLP

19   
20 Jorge Ramirez, Esq.  
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28 Attorneys for Lien Claimant,  
Zitting Brothers Construction, Inc.



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case involves the construction of the Project, which was owned and developed by  
4 Gemstone Development West, Inc. (“Gemstone”). Zitting was one of the many sub-contractors hired  
5 by APCO to provide material and labor for the Project. After Zitting completed its approved scope  
6 of work on two buildings for the Project, but before Zitting received full payment for that work,  
7 Gemstone stopped construction on the Project due to its purported loss of financing for the  
8 construction.

9 Although APCO does not dispute the unpaid balance owed for Zitting’s work on the Project,  
10 APCO has repeatedly refused to pay Zitting that balance. This refusal arises solely from APCO’s  
11 misplaced reliance on the “pay-if-paid” provisions in the subcontract between APCO and Zitting.  
12 Those provisions only require APCO’s payment to Zitting when APCO receives actual payment  
13 from Gemstone. The provisions relied upon by APCO, however, are void and unenforceable under  
14 Nevada law. Therefore, there is no triable issue of APCO’s breach of the subcontract, and Zitting is  
15 entitled to judgment on its breach of contract claim and claim under Chapter 108 of the Nevada  
16 Revised Statutes as a matter of law.

17 **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

18 On September 6, 2007, Gemstone entered into a written contract with APCO for APCO to  
19 serve as the prime contractor for the Project. (Ex. C at ZBCI002103.) About two months later,  
20 APCO and Zitting entered into a written subcontract for Zitting to provide framing materials and  
21 labor for the Project. (Ex. D at APCO00044592, APCO0044607.) Under the terms of the  
22 subcontract, APCO would pay Zitting 90% of the amount owed for satisfactory work completed on a  
23 periodic basis. (*Id.* at APCO00044593-APCO00044595.) The remaining 10% of the amount owed to  
24 Zitting would be withheld as the “retention amount.” (*Id.* at APCO00044595.) APCO would pay  
25 Zitting the retention amount for work on a building once the building is “complete.” (*Id.*) The  
26 subcontract deemed Zitting’s work on a building to be “complete” as soon as “drywall [for the  
27 building] is completed.” (*Id.*) Nevertheless, in the event that APCO’s contract with Gemstone is  
28 terminated, APCO would pay Zitting the entire amount owed for the work completed. (*Id.* at

1 APCO00044601.) APCO could only terminate its subcontract with Zitting for cause upon written  
2 notice. (*Id.* at APCO00044600.)

3 Zitting began its work under the subcontract around November 19, 2007, and continued its  
4 work until approximately December 15, 2008, when Zitting received notice that the Project was  
5 shutting down. (Ex. A (Zitting Decl.) at ¶ 6.) By the time the Project shut down, Zitting completed  
6 its contracted work that cost \$4,033,654.85, including \$423,654.85 in owner-requested change  
7 orders that was approved by operation of law. (*Id.* at ¶ 10.) The completed work included Zitting's  
8 entire scope of work for Buildings 8 and 9 of the Project. (*Id.* at ¶ 7.) The drywall was completed in  
9 those two buildings, and Zitting had submitted close-out documents for its work, including as-built  
10 drawings. (*Id.* at ¶¶ 7-8.)

11 To date, Zitting only received \$3,282,849.00 in payment. (*Id.* ¶ 14.) APCO refused to pay  
12 Zitting \$750,807.16 of the amount remaining owed for Zitting's work completed prior to APCO's  
13 departure from the Project, including \$347,441.67 in unpaid change orders and \$403,365.49 in  
14 unpaid retention amount. (*Id.* ¶¶ 12-13, 15; Ex. F at ZBCI002037; Ex. G at ZBCI002032.)

15 Gemstone had terminated its contract with APCO for cause in August 2008. (Ex. B (Benson  
16 Dep.) at 34:7-36:13.) Zitting never received a written notice of termination for cause from APCO.  
17 (Ex. A at ¶ 16.)

18 Zitting took steps to comply with all requirement of Chapter 108 of the Nevada Revised  
19 Statutes for the perfection of its lien:

- 20 ▪ On January 14, 2008, Zitting served its Notice of Right to Lien to APCO and Gemstone  
21 via certified mail. (Ex. J; Ex. U at 9:1-24.)
- 22 ▪ On December 4, 2008, Zitting served its Notice of Intent to Lien to APCO and Gemstone  
23 via certified mail. (Ex. K; Ex. U at 9:1-24.)
- 24 ▪ On December 23, 2008, Zitting recorded its Notice of Lien on the Project and served the  
25 document on APCO and Gemstone via certified mail on December 24, 2008. (Ex. L; Ex.  
26 U at 9:1-24.)

- 1       ▪ On April 30, 2009, Zitting filed its complaint for foreclosure and a Notice of Lis  
2       Pendens—approximately five months after recording the notice of lien. (Ex. M; Ex. N;  
3       Ex. U at 9:1-24.)
- 4       ▪ Around June 16, 2009, Zitting provided a Notice of Foreclosure, and this notice was  
5       published in accordance in accordance with Nev. Rev. Stat. 108.239. (Ex. O; Ex. U at  
6       9:1-24.)
- 7       ▪ On April 7, 2010, Zitting recorded its Amended Notice of Lien and served the same on  
8       APCO and Gemstone via certified mail. (Ex. P; Ex. U at 9:1-24.)

### 9   **III.   STANDARD FOR SUMMARY JUDGMENT**

10       Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and  
11       admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any  
12       material fact and that the moving party is entitled to a judgment as a matter of law” on any issues.  
13       Nev. R. Civ. P. 56(b), (c). The purpose of summary judgment is to obviate the need for trials when  
14       they would serve no useful purpose. *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 96, 378 P.2d 979, 980  
15       (1963). Similarly, the United States Supreme Court, citing Nev. R. Civ. P. 56’s federal equivalent,<sup>1</sup>  
16       has explained that “[s]ummary judgment procedure is properly regarded not as a disfavored  
17       procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed  
18       to secure the just, speedy and inexpensive determination of every action.” *Celotex Corp. v. Catrett*,  
19       477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986) (internal quotations omitted).

20       Once the moving party meets its burden of demonstrating an absence of evidence to support  
21       the non-moving party’s case, the burden shifts to the non-moving party to set forth specific facts  
22       demonstrating that there exists a genuine issue of material fact for trial. *Id.* at 325, 106 S. Ct. at  
23       2554. Moreover, the non-moving party must raise factual disputes which are material—defined as  
24       those required to prove a basic element of a claim. *Id.* A failure to show that a dispute of material  
25       fact exists as to any of the basic elements of the non-moving party’s claim effectively “renders all  
26       other facts immaterial.” *Id.* at 323, 106 S. Ct. at 2552.

---

27  
28       <sup>1</sup> The Nevada Supreme Court has adopted the federal standard for summary judgment as Nevada’s standard. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

1 A “genuine issue of material fact is one where the evidence is such that a reasonable jury  
2 could return a verdict for the non-moving party.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851  
3 P.2d 438, 441-42 (1993). But the non-moving party cannot build its case on “gossamer threads of  
4 whimsy, speculation and conjecture.” *Id.* at 452; *see also Garvey v. Clark County*, 91 Nev. 127, 130,  
5 532 P.2d 269, 271 (1975) (holding that mere allegations are insufficient to defeat summary  
6 judgment). Thus, “[a]lthough evidence presented in support of a motion for summary judgment is to  
7 be construed in the light most favorable to the nonmoving party, [the non-moving] party must set  
8 forth facts demonstrating the existence of a genuine issue in order to withstand a disfavorable  
9 summary judgment.” *Sustainable Growth Initiative Committee v. Jumpers, LLC*, 122 Nev. 53, 61,  
10 128 P.3d 452, 458 (2006).

#### 11 IV. ARGUMENT

##### 12 A. APCO breached its contract with Zitting by refusing to pay the full amount owed 13 for Zitting’s work on the Project.

14 There is no triable issue that APCO breached its contract with Zitting. To establish a breach  
15 of contract under Nevada law, there must be (1) the existence of a valid contract, (2) a breach by the  
16 defendant, and (3) damage as a result of the breach. *Richardson v. Jones*, 1 Nev. 405, 408 (1865). In  
17 this case, all of these elements are present.

##### 18 1. Zitting had a valid and enforceable contract with APCO from about November 19, 2007 to about December 15, 2008.

19 The undisputed evidence establishes a contract between APCO and Zitting. Exhibit D is the  
20 written subcontract executed by APCO and Zitting on November 17, 2007. (Ex. A at ¶ 5; Ex. D.)  
21 Under the subcontract, APCO could only terminate it for cause upon written notice. (Ex. D at  
22 APCO00044598-44601.) Prior to the Project’s shutdown, Zitting did not receive a written notice for  
23 termination of its contract for cause. (Ex. A at ¶ 16.) Although APCO’s contract with Gemstone  
24 ended around August 2008 and the Project completely shut down in December 2008, (*Id.*; Ex. B at  
25 34:7-36:13, 40:13-15), the subcontract between Zitting and APCO is still valid and enforceable.

26 //

27 //

28 //

1                   **2. APCO's failure to pay the amount owed for Zitting's work on the Project**  
2                   **constitutes a breach of contract.**

3           APCO breached its subcontract with Zitting by refusing to pay Zitting all amounts owed  
4           under the subcontract. Under the subcontract, Zitting was required to provide framing materials and  
5           labor for certain buildings of the Project, and APCO was required to pay Zitting on a periodic basis  
6           for satisfactory work. (Ex. D at APCO00044593-APCO00044595, APCO00044607.) Zitting  
7           completed its scope of work on two buildings—Buildings 8 and 9 of the Project—without any issues  
8           with the timing or quality of the work. (Ex. A at ¶¶ 7-9; Ex. B at 28:15-29:1.) However, as of today,  
9           APCO has not paid Zitting for the work completed on the owner-requested change orders before  
10          APCO left the Project and continues to withhold the retention amount. (Ex. A at ¶ 15; Ex. I.)

11          First, Zitting had requested payment of \$347,441.67 for satisfactory work on owner-  
12          requested change order completed before APCO left the Project. (Ex. A at ¶ 12; Ex. F.) This arose  
13          from Zitting's previous request for change orders from Gemstone and APCO to address owner-  
14          requested changes to the plans. (Ex. A at ¶¶ 10-12; Ex. E; Ex. F.) APCO and Gemstone failed to  
15          submit a written notice rejecting the change order after Zitting's request for the change orders. (Ex.  
16          A at ¶ 11; Ex. H at ZBCI001153.) As APCO must concede, by operation of law, its failure to reject  
17          the change order resulted in the approval of the change orders. (See Ex. H at ZBCI001153  
18          (discussing Nev. Rev. 624.626).) With statutory approval of the change orders, APCO owed Zitting  
19          \$347,441.67 for Zitting's completed work on the change orders.

20          Second, Zitting had requested payment of its retention amount—\$403,365.49—for its work  
21          on the completed Buildings 8 and 9. (Ex. A at ¶ 13; Ex. G.) Under Zitting's subcontract, Zitting  
22          would only receive 90% of the payment for its satisfactory work on the Project. (Ex. D at  
23          APCO00044594.) The subcontract called for the payment of the remaining 10%—the retention  
24          amount—upon completion of the building for which the work was done. (*Id.* at APCO00044595.)  
25          The contract considered work on a building to be “complete” as soon as “drywall [for the building]  
26          is completed.” (*Id.*)

27          Before the Project shut down, Zitting provided work that qualified for \$4,033,654.85 in  
28          payment, and \$403,365.49 of that amount was withheld as the retention amount for work on

1 Buildings 8 and 9 of the Project. (Ex. A at ¶ 10; Ex. G.) However, Zitting completed its scope of  
2 work on Buildings 8 and 9 and submitted its closeout documents to APCO. (Ex. A at ¶¶ 7-8.) The  
3 drywall was also completed for those buildings. (*Id.* at ¶ 7.) Zitting was therefore entitled to payment  
4 of the retention amount because they never received notice that the work done was not satisfactory.  
5 To the contrary, Zitting's "satisfactory" work was utilized for the completion of the drywall work.  
6 (*See* Ex. A at ¶¶ 5, 7.)

7 In any event, the termination of APCO's contract with Gemstone entitles Zitting to the  
8 payment of the retention amount. The contract was terminated in August 2008, and by that time,  
9 Zitting had completed its scope of work on Buildings 8 and 9. (Ex. A at ¶¶ 6-8.) Moreover, Section  
10 9.4 of Zitting's subcontract expressly requires payment for Zitting's completed work on the Project  
11 if there was a termination of the contract between Gemstone and APCO. (Ex. D at APCO00044601.)  
12 APCO therefore owes Zitting \$403,365.49 in retention amount.

13 **3. Zitting has suffered damages due to APCO's refusal to pay the amount owed**  
14 **under the contract.**

15 As a result of APCO's refusal to pay the amount owed for Zitting's work on the Project,  
16 Zitting has suffered damages. There is no dispute that \$750,807.16 remained unpaid for Zitting's  
17 work on the Project prior to APCO's departure from the Project. (Ex. A at ¶¶ 6-15; Ex. I.) APCO  
18 has compounded Zitting's damages by forcing Zitting to commence this action to recover the  
19 amount owed. Now, the damages suffered include attorney fees, cost, and interest.

20 **4. APCO's attempt to use the "pay-if-paid" provision of its contract with**  
21 **Zitting is disingenuous because it because it violates Nevada law.**

22 APCO relies on the "pay-if-paid" provision in its subcontract with Zitting as the sole basis  
23 for refusing to pay the amount owed for Zitting's work on the Project. (Ex. B at 40:16-41:4; Ex. T  
24 at 10:14-11:5.) This provision conditions APCO's payments to Zitting only "upon receipt of the  
25 actual payments by [APCO] from [Gemstone]." (Ex. D at APCO00044594.) But this provision is  
26 void by operation of Nevada law.

27 Nevada Supreme Court has held that "pay-if-paid" provisions are valid and "enforceable only  
28 in [the] limited circumstances" set forth in Nev. Rev. Stat. 624.624 through 624.626. *Lehrer*  
*McGovern Bovis v. Bullock Insulation, Inc.* ("Lehrer II"), 124 Nev. 1102, 1117 n. 50, 197 P.3d 1032,

1 1042 n. 50 (2008). This restriction arises from the strong public policy favoring “securing payment  
2 for labor and material contractors.” *Id.* at 1117, 197 P.3d at 1042. “Because a pay-if-paid provision  
3 limits a subcontractor’s ability to be paid for work already performed, such a provision impairs the  
4 subcontractor’s statutory right to place a mechanic’s lien on the construction project” and therefore  
5 violate public policy. *Id.* at 1117-18, 197 P.3d at 1042.

6 For a “written agreement with a lower-tiered subcontractor that does not contain a schedule  
7 for payments,” Nev. Rev. Stat. 624.626 requires the “higher-tiered contractor” to pay the “lower-  
8 tiered subcontractor”

9 (1) [w]ithin 30 days after the date the lower-tiered subcontractor  
10 submits a request for payment; or

11 (2) [w]ithin 10 days after the date the higher-tiered contractor receives  
12 payment for all or a portion of the work, labor, materials, equipment or  
services described in a request for payment submitted by the lower-  
tiered subcontractor, *whichever is earlier.*

13 Nev. Rev. Stat. 624.626(1)(b) (emphasis added). Any attempts to impair or waive such rights “is  
14 void and unenforceable.” Nev. Rev. Stat. 624.628(3).

15 Here, because APCO’s “pay-if-paid” provision fails to provide payment within the statutory  
16 period after a request for payment, the provision violates Nev. Rev. Stat. 624.624. This Court must  
17 therefore void the provision. Contrary to the contractual provision, APCO should have paid Zitting  
18 no later than 30 days after Zitting’s request for payment. *See* Nev. Rev. Stat. 624.624(1)(b). Since  
19 Zitting has yet to receive the payment owed, it is entitled to summary judgment on its breach of  
20 contract claim.

21 **B. Zitting is entitled to summary judgment on its claim under Chapter 108 of the**  
22 **Nevada Revised Statutes.**

23 Zitting’s claim under Chapter 108 of the Nevada Revised Statutes seeks to foreclose on  
24 Zitting’s lien against the Property and to recover “reasonable attorney’s fees, costs[,] and interest on  
25 the unpaid amount owed for Zitting’s work on the improvement to the Property. (Ex. M at ¶¶ 28-35.)  
26 APCO does not dispute that Zitting complied with all requirements to create, perfect, and foreclose  
27 on its lien under Chapter 108. (*See* Ex. Q at 4:19-8:8.) APCO only disputes that the Property subject  
28

1 to the lien has already been foreclosed upon and therefore Chapter 108 is inapplicable. This  
2 argument is misguided and falls short of a comprehensible reading of lien foreclosure law.

3 This Court previously ordered the sale of the Property, which precludes Zitting from  
4 continuing its foreclosure of the Property, and the distribution of the entire proceeds from the sale to  
5 Scott Financial Corporation. (*See* Ex. R at 3:18-20, 4:10-19; Ex. S at 2:7-16, 3:1-4.) In other words,  
6 Zitting did not receive any of the sale proceeds, so it cannot apply such proceeds towards the amount  
7 owed under its contract with APCO. Nevertheless, Nev. Rev. Stat. 108.239(12) allows Zitting to  
8 pursue a “personal judgment for the residue against the party legally liable for it.” Therefore, Zitting  
9 is entitled to a personal judgment against APCO under Chapter 108 for the residual amount owed  
10 including those statutory provisions granting attorney fees, costs and interest.

11 **C. Zitting is entitled to judgment against APCO in the amount of the unpaid balance of**  
12 **\$750,807.16, interest, attorney’s fees, and costs incurred to obtain the amount owed.**

13 This Court should award Zitting the amount owed for its completed work on the Project in  
14 the amount of \$750,807.16 plus interest, attorney’s fees, and costs incurred to obtain the amount  
15 owed. Both Zitting’s contract and Nevada law allow an award of interest and reasonable attorney’s  
16 fees and costs in addition to the \$750,807.16 in unpaid work. Under the contract, “the prevailing  
17 party [in a lawsuit for any cause arising out of the subcontract is] entitled to all costs, attorney’s  
18 fees[,] and any other reasonable expenses incurred therein.” (Ex. D at APCO00044606.) Likewise,  
19 Nev. Rev. Stat. 108.237(1) awards the prevailing lien claimant “the cost of preparing and recording  
20 the notice of lien” and “the costs of the proceedings,” including attorney’s fees and interest. Courts  
21 calculate the interest based on

22 (a) The rate of interest agreed upon in the lien claimant’s contract; or

23 (b) If a rate of interest is not provided in the lien claimant’s contract,  
24 interest at a rate equal to the prime rate at the largest bank in Nevada,  
25 as ascertained by the Commissioner of Financial Institutions, on  
26 January 1 or July 1, as the case may be, immediately preceding the  
27 date of judgment, plus 4 percent, on the amount of the lien found  
28 payable. The rate of interest must be adjusted accordingly on each  
January 1 and July 1 thereafter until the amount of the lien is paid.  
Interest is payable from the date on which the payment is found to  
have been due, as determined by the court.

Nev. Rev. Stat. 108.237(2).




1 Although Zitting can successfully argue that the amount owed by APCO was due by the time  
2 APCO departed the Project, it is indisputable that the full unpaid balance—the lien amount—was  
3 due by the Project's shutdown date of December 15, 2008. Consequently, in order to simplify the  
4 analysis, Zitting uses this date by which interest is calculated under the statute. Judicial notice is  
5 requested of the fact that the prime rate has as determined by the Commissioner of Financial  
6 Institutions for the time period from December 15, 2008, to the present to be 3.75%.<sup>2</sup> See Nev. Rev.  
7 Stat. 47.130, 47.140, 47.170. As such, the rate to be used for the calculation of the applicable interest  
8 is 4% plus 7.75% or 7.75%. Based on this rate, the amount of interest accrued per day on the  
9 \$750,807.16 due to Zitting is \$159.31. Additionally, Zitting has incurred attorney's fees and costs.  
10 Thus, Zitting hereby requests a judgment against APCO in this amount plus \$159.31 per day in  
11 interest from December 15, 2008 until the lien is paid as well as all attorney's fees and costs incurred  
12 after that date.<sup>3</sup>

13 **V. CONCLUSION**

14 For the foregoing reasons, this Court should grant Zitting's motion in its entirety and enter  
15 summary judgment in Zitting's favor on its breach of contract claim and Chapter 108 claim.

16 DATED this 31st day of July, 2017

17 WILSON ELSER MOSKOWITZ EDELMAN &  
18 DICKER LLP

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26 <sup>2</sup> See This Nevada State Bar Website at  
27 [http://fid.nv.gov/uploadedFiles/fidnv.gov/content/Resources/Prime%20Interest%20Rate%20January%201,%202017-](http://fid.nv.gov/uploadedFiles/fidnv.gov/content/Resources/Prime%20Interest%20Rate%20January%201,%202017-PDF.pdf)  
28 PDF.pdf

28 <sup>3</sup> Zitting requests leave to submit a memorandum of fees and costs if this Court grants summary judgment in favor of  
Zitting.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 31st day of July, 2017, I served a true and correct copy of the foregoing **ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST APCO CONSTRUCTION** document as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

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BY

  
An Employee of WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP

# EXHIBIT A



1 **DECL**

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5 Nevada Bar No. 12247

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11 Jorge.Ramirez@wilsonelser.com

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13 Attorneys for Lien Clamant,

14 Zitting Brothers Construction, Inc.

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 APCO CONSTRUCTION, a Nevada  
18 corporation,

19 Plaintiff,

20 vs.

21 GEMSTONE DEVELOPMENT WEST, INC.,  
22 a Nevada corporation.

23 Defendant.

CASE NO. A571228

DEPT. NO. XIII

Consolidated with:

A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

24 AND ALL RELATED MATTERS

25 **DECLARATION OF SAM ZITTING IN SUPPORT OF ZITTING BROTHERS**  
26 **CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT**  
27 **AGAINST APCO CONSTRUCTION**

28 I, Sam Zitting, declare as follows:

1. I am over eighteen years of age and competent to testify in a court of law.

2. I am the President of Zitting Brothers Construction, Inc. ("Zitting").

3. I have personal knowledge of the facts set forth below, unless otherwise stated. If  
called upon to testify, I will do so truthfully.

4. I make this declaration in support of Zitting's Motion for Partial Summary Judgment  
against APCO Construction (the "Motion").

1           5.       Around November 17, 2007, I signed a written contract with APCO ("Subcontract")  
2 to provide framing materials and labor for the Manhattan West Condominiums (the "Project"). A  
3 representative of APCO had also signed this contract. Both parties had approved handwritten  
4 changes to the contract. Attached as Exhibit "D" to the Motion is a true and correct copy of the  
5 Subcontract executed by the APCO and Zitting.

6           6.       Zitting began its work on the Project around November 19, 2007 and continued its  
7 work until approximately December 15, 2008. That was approximately the date that I received notice  
8 that the Project was shutting down. APCO had left the Project sometime in August or September  
9 2008.

10          7.       By the time the Project shut down, Zitting had completed its scope of work for two  
11 buildings of the Project—Buildings 8 and 9. The drywall was completed for those two buildings.

12          8.       Zitting had submitted close-out documents for its scope of work, including as-built  
13 drawings and releases of claims for Zitting's vendors.

14          9.       I am not aware of any complaints with the timing or quality of Zitting's work on the  
15 Project. As far as I am aware, Gemstone Development West, Inc., the owner of the Project, has  
16 approved of the timing and quality of Zitting's work.

17          10.       The completed work on the Project amounted to \$4,033,654.85. This amount  
18 included

19               a.     \$423,654.85 in owner-requested change orders (the "Change Orders"); and

20               b.     \$403,365.49 in the withheld retention amount for its work on the completed  
21               Buildings 8 and 9.

22          11.       The Change Orders were either approved or never disapproved in writing despite a  
23 written request for those change orders. Attached as Exhibit "E" to the Motion is a true and correct  
24 copy of Zitting's Change Order Summary Log indicating the change orders.

25          12.       Zitting had submitted a payment application to APCO for \$347,441.67 ("Change  
26 Order Payment Application"). This application sought the unpaid balanced owed for Zitting's  
27 satisfactory work on owner-requested change orders prior to APCO's departure from the Project.  
28 Attached as Exhibit "F" to the Motion is a true and correct copy of the payment application.

13. Zitting had also submitted a payment application to APCO for the retention amount ("Retention Payment Application"). Attached as Exhibit "G" to the Motion is a true and correct copy of the payment application.


14. To date, Zitting had only received \$3,282,849.00 for its work on the Project.

15. APCO had refused to pay any of the amount owed under the Change Order Payment Application and the Retention Payment Application. \$750,807.16 remained owed for those applications. Attached as Exhibit "I" to the Motion is a true and correct copy of the statement of account indicating the amount owed for those two applications.

16. Before the shutdown of the Project, I have not received a written notice of termination of the subcontract for cause from APCO.

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

Executed on July 31, 2017 in Las Vegas, Nevada.

  
\_\_\_\_\_  
SAM ZITTING

# EXHIBIT B

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DISTRICT COURT  
  
CLARK COUNTY, NEVADA  
  
APCO CONSTRUCTION, a Nevada  
corporation,  
  
Plaintiff,  
  
vs.  
  
CASE NO. A571228  
DEPT. NO. XIII  
  
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 MATTERS.  
  
-----  
  
THE DEPOSITION OF  
  
BRIAN DAVID BENSON  
  
PMK on behalf of APCO Construction  
  
Monday, June 5, 2017  
  
9:07 a.m.  
  
2300 West Sahara Avenue, Suite 770  
  
Las Vegas, Nevada  
  
June W. Seid, CCR No. 485

Deposition of BRIAN DAVID BENSON

June 5, 2017

(Prior to the commencement of the deposition, all of the parties present agreed to waive the statements by the court reporter pursuant to Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

Thereupon--

BRIAN DAVID BENSON,  
was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LAI:

Q. Good morning. Is it Mr. Benson?

A. Yes, sir.

Q. My name is I-Che Lai, and I'm one the attorneys for Zitting Brothers Construction. For shorthand I'll refer to them as Zitting; is that okay?

A. Sure.

Q. Can you state your name for the record.

A. Brian Daniel Benson.

Q. Is that B-e-n-s-o-n?

A. Yes.

Q. Have you ever had your deposition taken before?



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1 condominium project, which I'll refer to as "the  
2 project," as shorthand today. Were you involved in the  
3 project?

4 A. Yes.

5 Q. What was your involvement with the project?

6 A. I was the general superintendent.

7 Q. Does that involve any oversight over Zitting  
8 Brothers?

9 A. Yes.

10 Q. And briefly for the record, can you describe  
11 the project?

12 A. It's a multi-use condominium project with  
13 multiple buildings.

14 Q. That's in Las Vegas, Nevada?

15 A. Yes, sir.

16 Q. What was APCO's role with respect to the  
17 project?

18 A. APCO is a general contractor hired by  
19 Gemstone to manage the project.

20 Q. And on September 6, 2007, APCO entered into a  
21 contract with Gemstone to be the general contractor,  
22 correct?

23 A. Yes.

24 MR. LAI: Let's mark this as Benson 4.

25 (Exhibit 4 marked

1 for identification.)

2 BY MR. LAI:

3 Q. Mr. Benson, the court reporter has handed you  
4 documents marked as Exhibit Benson 4. Have you ever  
5 seen this document before?

6 A. Yes.

7 Q. What is Exhibit Benson 4?

8 A. The agreement between Gemstone Development  
9 and APCO Construction.

10 Q. Do you know who prepared this contract?

11 A. I do not.

12 Q. Did APCO have any input in creating this  
13 contract?

14 A. I don't know.

15 Q. Do you know whether or not Gemstone had any  
16 input in creating this contract?

17 A. I don't know.

18 Q. Do you know whether Zitting Brothers  
19 Construction had any input in preparing this contract?

20 A. I don't know.

21 Q. Let's go through -- turning your attention to  
22 page 39. At the bottom it should say ZBCI002141, it's  
23 the last page. Do you recognize the signature on this  
24 page for Randy Nickerl?

25 A. Yes.



1 Q. Who is Randy Nickerl?

2 A. Randy Nickerl was the division manager for  
3 APCO at the time.

4 Q. Do you have any reason to dispute that this  
5 is his signature on this contract?

6 A. No.

7 Q. In the previous pages on Exhibit Benson 4, I  
8 see quite a few notations on the bottom right of those  
9 pages. Do you see those?

10 A. Do you have a specific page in mind?

11 Q. Turn to ZBCI0002114, it's page 12 of the  
12 contract. At the bottom right do you see a little R  
13 with a circle around it?

14 A. Yes, I do.

15 Q. Do you believe that to be the initial of  
16 Randy's?

17 A. I would assume so.

18 Q. Do you believe that the Exhibit Benson 4 is a  
19 true and correct copy of the contract between Gemstone  
20 and APCO for the project?

21 A. As I wasn't there when it was signed and  
22 presented, I can't say for sure. But of what I've seen  
23 represented, yes.

24 Q. No reason to dispute that?

25 A. No.

1 Q. As the general contractor for the project,  
2 APCO hired subcontractors to construct the project,  
3 right?

4 A. Yes.

5 Q. And these hired subcontractors included  
6 Zitting Brothers, correct?

7 A. Yes.

8 Q. Why did APCO hire Zitting Brothers for the  
9 project?

10 A. I believe Zitting Brothers was one of the  
11 contractors that APCO was requested to use since they  
12 did ManhattanEast for Mr. Edelstein.

13 Q. When you say requested to use, was that by  
14 Mr. Edelstein directly?

15 A. Yes.

16 Q. Did he explain why he requested to use  
17 Zitting Brothers?

18 A. I wasn't there for those conversations.

19 Q. Now, is it fair to say that Gemstone  
20 obviously approved the hiring of Zitting Brothers; is  
21 that correct?

22 A. Yes.

23 Q. On April 17, 2007 APCO entered into a  
24 subcontract with Zitting Brothers for the project,  
25 correct?



1 A. That sounds about correct.

2 MR. LAI: Benson 5.

3 (Exhibit 5 marked  
4 for identification.)

5 BY MR. LAI:

6 Q. Mr. Benson, the court reporter has handed you  
7 a document marked as Benson 5. Have you seen this  
8 document before?

9 A. Yes.

10 Q. What is this?

11 A. Subcontract agreement between Zitting  
12 Brothers and APCO Construction.

13 Q. Do you know who prepared this subcontract?

14 A. I believe it was Sean Bowen.

15 Q. Who is Sean Bowen?

16 A. He was one of the senior project managers for  
17 the project at the time.

18 Q. Is he still with APCO?

19 A. No, sir.

20 Q. Did Zitting Brothers have any input into the  
21 language for this subcontract?

22 A. I don't know about the language, but I know  
23 there are multiple notes throughout where they show  
24 their input.

25 Q. Can you give me an example of the notes

1 you're referring to?

2 A. If you go to page 10 where they voided out  
3 bonds, page 11 where they voided out the comprehensive  
4 liability.

5 Q. Is it fair to say that any time where we see  
6 handwritten changes to the typed language in the  
7 subcontract, you take that to mean those are input from  
8 Zitting Brothers?

9 A. It could be from either party actually.  
10 Generally when we do these subcontracts, when they do  
11 sit-down review, both parties sort of go back and forth  
12 on what changes they want and generally initialed by  
13 whose changes they are.

14 Q. Are all the handwritten changes to the typed  
15 language in the subcontract approved by APCO?

16 A. I would say yes, by the signature on the  
17 contract itself.

18 Q. So nobody is going to dispute that then?

19 A. No, sir.

20 Q. Did Gemstone have any input into the creation  
21 of this subcontract?

22 A. Not that I'm aware of.

23 Q. So is it fair to say that the creation of the  
24 subcontract, including the handwritten changes, is a  
25 joint effort between APCO and Zitting Brothers?

1 A. Yes, sir.

2 Q. Will you turn your attention to APCO  
3 00044606. At the bottom do you see where it says APCO  
4 Construction and it has a signature?

5 A. Yes.

6 Q. Do you know whose signature that is?

7 A. I believe it to be Sean Bowen.

8 Q. Let me direct you to the next page, APCO  
9 00044607. Do you believe that to be Sean Bowen's  
10 signature as well?

11 A. Yes.

12 Q. Do you believe that Exhibit Benson 5 is a  
13 true and correct copy of the subcontract between APCO  
14 and Zitting Brothers for the project?

15 A. That's been represented to me, yes.

16 Q. When you say it's been represented to you,  
17 who presented to you?

18 A. Well, what I'm saying is I wasn't there when  
19 they executed it, so from what I've seen presented to  
20 me, I would say yes.

21 Q. So no reason to dispute that?

22 A. No.

23 Q. Did Gemstone, OZ Architecture, Redwine  
24 Engineering, Jordan & Skala Engineers and WRG  
25 Engineering approve the subcontractor between APCO and



1 Zitting Brothers?

2 A. Not that I'm aware of.

3 Q. Can you explain Zitting Brothers' scope of  
4 work for the project briefly?

5 A. Basically the wood framing for buildings 8  
6 and 9, on drywall, the design, of those structures for  
7 their work specifically.

8 Q. So is safe to say that Zitting Brothers' work  
9 dealt mainly with the wood framing for the project?

10 A. Yes.

11 Q. Did Zitting Brothers provide this type of  
12 work on a per building basis?

13 A. From the -- what's in the subcontract, it  
14 looks as if so, yes.

15 Q. And they would be paid on a per building  
16 basis?

17 A. They would be paid per building, yes.

18 Q. Before Zitting Brothers could begin any work  
19 for the project, including changed and revised work,  
20 APCO and Gemstone had to approve the work, correct?

21 A. APCO verified the work being completed,  
22 Gemstone did all the reviews as it pertained to any  
23 type of pay apps.

24 Q. I'm talking about before that, before they  
25 can even begin to work on the project, they have to get



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1 inspection would take place, for example, on a daily  
2 basis or monthly -- or a weekly basis, like that?

3 A. For the sake of pay applications it would be  
4 more of a monthly basis.

5 Q. Briefly can you describe the inspection  
6 process that would take place?

7 A. Generally you would go out and walk the  
8 building and check for the percentage of what they had  
9 completed on what they had on their pay app. You would  
10 walk the building and make sure that, for example, if  
11 they said they had a hundred percent of the framing  
12 done, you would walk the rooms against the plans and  
13 make sure a hundred percent of the framing is indeed  
14 done. Same thing with any sheathing, so forth.

15 Q. With respect to Zitting Brothers' work only,  
16 did Zitting Brothers' timely and satisfactorily  
17 complete its work, based on your inspections or APCO's  
18 inspections?

19 A. During those pay periods, yes.

20 Q. In other words, you're not aware of any  
21 issues with the quality and timing of Zitting Brothers'  
22 work based on APCO's inspections?

23 A. No issues with the quality, no.

24 Q. Has anyone ever complained about the timing  
25 or quality of Zitting Brothers' work?

1 A. Not that I was made aware of.

2 Q. Is it fair to say that before APCO left the  
3 project, as far as you know Gemstone did approve of all  
4 the work done by Zitting Brothers, other than the  
5 change order we mentioned earlier?

6 A. All the work that was on change order -- on  
7 pay applications that were submitted, yes.

8 Q. Has APCO ever declared a Zitting Brothers  
9 default under the subcontract?

10 MR. CHEN: Objection. Calls for a legal  
11 conclusion.

12 BY MR. LAI:

13 Q. You can answer.

14 A. Not that I'm aware of.

15 Q. Did APCO stop work on the project?

16 A. Yes, we did.

17 Q. When did APCO stop work?

18 A. August 21st, 2008.

19 Q. What was the reason for stopping work?

20 A. Failure for payment from Gemstone.

21 Q. Did this failure to pay include the amount  
22 owed to Zitting Brothers?

23 A. Yes, sir.

24 Q. Did APCO tell anyone it was stopping work on  
25 the project?





1 A. Yes, we did.

2 Q. Who did APCO tell?

3 A. All the subcontractors and the owner.

4 Q. When did this take place?

5 A. I believe there was an e-mail sent out by our  
6 counsel on August 20th.

7 Q. How was it conveyed?

8 A. Through e-mail and through faxes, is my  
9 understanding.

10 Q. Do you recall specifically what APCO said  
11 about stopping work?

12 A. Basically due to failure of payment by  
13 Gemstone, APCO was going to be pulling off the project.  
14 There's a brief summary of it, it was a two-page  
15 letter.

16 MR. LAI: Benson 7.

17 (Exhibit 7 marked  
18 for identification.)

19 BY MR. LAI:

20 Q. Mr. Benson, the court reporter has handed you  
21 a document marked as Exhibit Benson 7. Have you ever  
22 seen this document before?

23 A. Yes, sir.

24 Q. What is Exhibit Benson 7?

25 A. This was the notice from Mr. Edelstein to our



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1 subcontractor saying that APCO was off the job, I  
2 believe.

3 Q. Let me clarify. Are you saying this letter  
4 came from your subcontractor?

5 A. I'm sorry, I stand corrected. I read through  
6 it too quickly. This was a letter Mr. Barker sent out  
7 terminating our agreement with Gemstone.

8 Q. Mr. Barker is with APCO, correct?

9 A. He's with our parent company, Las Vegas  
10 Paving.

11 Q. But for the purposes of this letter, APCO  
12 sent this letter that's marked Exhibit Benson 7,  
13 correct?

14 A. Correct.

15 Q. I see that the date on this letter is July  
16 18, 2008, correct?

17 A. Yes, sir.

18 Q. Did this go out on July 18, 2008?

19 A. I believe so, but this was for a prior notice  
20 of shutdown prior to the final actual shutdown.

21 Q. In the subject line I see where it says,  
22 "Deadline: Close of business Monday, July 28, 2008";  
23 do you see that?

24 A. Yes, sir.

25 Q. Now, you testified previously that APCO

1 A. Yes, sir.

2 Q. Did he ever fund the June draw?

3 A. No, sir.

4 Q. In the June draw would have included payments  
5 due to Zitting Brothers?

6 A. As well as others.

7 Q. Did APCO terminate its prime contract with  
8 Gemstone?

9 A. Yes, sir.

10 Q. When?

11 A. I believe it was August 21st of 2008.

12 Q. And the reason being is Gemstone did not make  
13 due on its payment owed to APCO and its subcontractors?

14 A. Yes, sir.

15 Q. How did APCO terminate the prime contract  
16 with Gemstone?

17 A. Based on the letter I discussed earlier that  
18 Mr. Barker sent.

19 Q. Let me direct your attention back to Benson  
20 6, Exhibit Benson 6. Let me direct you to the second  
21 page of the letter Bates stamped CAMCO-MW0030. Let me  
22 direct your specific attention to the fifth paragraph  
23 where it says APCO was terminated by Gemstone for cause  
24 in 2008.

25 A. Yes, sir.

1 Q. Do you have any reason why Scott Financial  
2 Corporation would state that APCO was terminated by  
3 Gemstone and not the other way around?

4 A. Because they were directly tied in with  
5 Gemstone.

6 Q. Did APCO ever receive any written  
7 communications, or any communications at all from  
8 Gemstone indicating that Gemstone was terminating its  
9 contract with APCO?

10 A. Yes, we did.

11 Q. And do you recall whether -- the reasons  
12 given for the termination of APCO?

13 A. I believe they listed delay of schedule and  
14 hold-ups to them.

15 Q. And did APCO ever address that concern with  
16 Gemstone or anyone?

17 A. Yes, sir.

18 Q. And what was the response to that, to the  
19 termination for delay of schedule?

20 A. We laid out on how that -- they were  
21 incorrect, on how they were actually responsible for  
22 holding up the project and delaying the schedule.

23 Q. Do you recall when that discussion took  
24 place?

25 A. There was multiple letters through this time

1 period back and forth.

2 Q. Was it in August of 2008?

3 A. I believe even before August. I think some  
4 of them were in July.

5 Q. Have you actually ever seen a communication  
6 from Gemstone that it was, in fact, terminating the  
7 prime contract with APCO?

8 A. Yes, sir.

9 Q. Do you recall when that letter was received?

10 A. I do not.

11 Q. Was it before or after APCO terminated the  
12 contract on August 21st?

13 A. I don't recall.

14 Q. When APCO left the project how much work had  
15 Zitting Brothers complete?

16 A. I would say about 80 percent of the contract.

17 Q. Do you know how many buildings they  
18 completed?

19 A. Well, they were only 80 completed of the  
20 total, so that's buildings 8 and 9 specifically.

21 (Exhibit 9 marked  
22 for identification.)

23 (Exhibit 10 marked  
24 for identification.)

25 BY MR. LAI:



1 A. I believe so.

2 Q. Do you recall what the communication was  
3 about?

4 A. I believe it was between the attorneys, just  
5 discussing our actions against Gemstone.

6 Q. Other than the lawsuit -- sorry, scratch  
7 that.

8 With respect to the construction of the  
9 project itself and not about the lawsuit, were there  
10 any communications between APCO and Zitting Brothers  
11 after APCO left?

12 A. Not that I was personally aware.

13 Q. Did the project close around December 15,  
14 2008?

15 A. Yes, sir.

16 Q. Let's talk about the lawsuit between APCO and  
17 Zitting Brothers. What is APCO's position that it did  
18 not need to pay any of the unpaid balance owed to  
19 Zitting Brothers under the subcontract?

20 A. Throughout our contract it's stated that if  
21 the owner were to fail or go defunct, that as a group  
22 we would all -- for lack of a better word, suffer, I  
23 guess. Probably not a good word.

24 Q. Let me see if I can make it a little easier  
25 to say then. Is it fair to say that the only reason



1 that APCO claimed it did not need to pay Zitting  
2 Brothers was the fact that unless Gemstone pays APCO,  
3 Zitting Brothers would not get paid?

4 A. Yes.

5 Q. Does APCO have any bond or insurance that  
6 would cover payments for the unpaid balance allegedly  
7 owed to its subcontractors on the project?

8 A. I can't speak to that.

9 MR. LAI: I'll pass the witness.

10 (Whereupon, a recess was taken.)

11 EXAMINATION

12 BY MR. TAYLOR:

13 Q. All right, my name is John Taylor. I  
14 represent National Wood Products, Inc. They were a  
15 supplier to Cabinetec. First question would be  
16 relating to National Wood Products, have you ever had  
17 any dealings with National Wood Products?

18 A. No.

19 Q. Were you aware that National Wood Products  
20 was a supplier to Cabinetec?

21 A. No.

22 Q. With regard to Cabinetec, do you know how  
23 they were selected to be a subcontractor on this  
24 project?

25 A. I do not.



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CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

I, June W. Seid, a Certified Court Reporter  
licensed by the State of Nevada, certify: That I  
reported the deposition of BRIAN DAVID BENSON, on  
Monday, June 5, 2017, at 9:07 a.m.;

That prior to being deposed, the witness was  
duly sworn by me to testify to the truth. That I  
thereafter transcribed my said stenographic notes via  
computer-aided transcription into written form, and  
that the typewritten transcript is a complete, true and  
accurate transcription of my said stenographic notes.  
That review of the transcript was requested.

I further certify that I am not a relative,  
employee or independent contractor of counsel or of any  
of the parties involved in the proceeding; nor a person  
financially interested in the proceeding; nor do I have  
any other relationship that may reasonably cause my  
impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
15th day of June, 2017.

*June W. Seid*

JUNE W. SEID, CCR NO. 485



# EXHIBIT C

ManhattanWest  
General Construction Agreement for GMP

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**ManhattanWest**  
**General Construction Agreement for GMP**

This General Construction Agreement for GMP (the "Agreement") is made as of September 6, 2007 (the "Effective Date") between Gemstone Development West, Inc. ("Developer") and Asphalt Products Corporation, (dba APCO Construction, "General Contractor") for the ManhattanWest mixed-use development project described in the Contract Documents (the "Project") and located at the following Assessors Parcel Numbers: 163-32-101-003, 163-32-101-004, 163-32-101-005, 163-32-101-010, and 163-32-101-014 (the "Project Site").

Developer and General Contractor hereby agree as set forth below.

**ARTICLE I**  
**GENERAL PROVISIONS**

**1.01 Contract Documents.** General Contractor has received the list of exclusions, express inclusions, and documents set forth on Exhibit A attached to this Agreement, and such exclusions, express inclusions, documents are hereby incorporated into this Agreement (the "Contract Documents"). The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by General Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Upon delivery to General Contractor of any updates to the Contract Documents, such updates shall be automatically incorporated into this Agreement.

**1.02 Defined Terms.** Unless otherwise defined in this Agreement, all capitalized terms contained in this Agreement are defined in the Glossary of Defined Terms attached to this Agreement as Exhibit B.

**1.03 Schedule of Values.** Within 10 days of the Effective Date, General Contractor shall submit the Schedule of Values to Developer for approval. Upon receipt of the Schedule of Values, Developer shall either request revisions to its allocations or approve it in writing.

**ARTICLE II**  
**GENERAL CONTRACTOR RESPONSIBILITIES**

In exchange for the consideration to be provided to General Contractor pursuant to Article V, General Contractor shall provide the following services (the "Services").

**2.01 General.**

(a) General Contractor agrees to (i) complete the Work, (ii) furnish efficient business administration and superintendence, and (iii) use its best

efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of Developer.

(b) Developer maintains the right to perform work related to the Project and to award separate contracts in connection with other work at the Project Site, and General Contractor agrees to cooperate with such efforts. If part of the Work depends for proper execution upon the construction or operations by Developer or a separate contractor, General Contractor shall, prior to the point at which it would cause a delay, report to Developer apparent discrepancies or defects in such other construction or operations that would render it unsuitable for such proper execution and results.

## **2.02 Third-Party Service Providers.**

(a) General Contractor shall engage contractors, subcontractors, sub-subcontractors, service providers, professionals, engineers, agents, vendors and suppliers (the "Third-Party Service Providers") to perform the Work. General Contractor shall incorporate the terms and obligations of this Agreement into its contracts, purchases orders, and other agreements with any Third-Party Service Providers (the "Third-Party Agreements").

(b) Within 10 days of the execution of any Third-Party Agreement, General Contractor shall furnish to Developer copies of such Third-Party Agreement and the company name, company principal's name, billing address, contact information, project manager's name, superintendent's name, and contractor license number of each Third-Party Service Provider.

(c) General Contractor shall propose only Third-Party Service Providers who have demonstrated the ability to provide good workmanship and have provided evidence of being in a financially stable position. Developer may require the replacement of any Third-Party Service Provider that will not provide Upgrades at a reasonable price, as determined by Developer in its sole discretion.

(d) General Contractor shall afford Developer's separate contractors reasonable opportunity for introduction and storage of their materials and equipment for the execution of their work. General Contractor shall incorporate and coordinate the Work with the work of Developer's separate contractors.

(e) Provided that all undisputed outstanding invoices have been paid by Developer, final unconditional waivers shall be obtained by General Contractor from all Third-Party Service Providers and from all other persons or entities that could possibly have any right to make a lien against the Project or the Project Site.

✓ @

(f) General Contractor shall conduct a weekly safety meeting and a weekly coordination meeting with all of the Third-Party Service Providers and invite Developer to attend such meetings. Notwithstanding any provision of this Agreement, upon receipt of a written request from Developer to meet with any Third-Party Service Provider, General Contractor will immediately schedule, hold, and attend such meeting or meetings with Developer and such Third-Party Service Provider.

(g) Nothing contained in this Agreement shall create a contractual relationship between any Third-Party Service Provider and Developer, except that it is understood and agreed that Developer is an intended third-party beneficiary of all Third-Party Agreements.

#### **2.03 Pre-Construction Coordination.**

(a) General Contractor shall review the Contract Documents in a timely and comprehensive manner to ascertain the requirements of the Project and shall review such requirements with Developer.

(b) General Contractor shall review with Developer alternative approaches to design and construction of the Project and shall use its best efforts to establish, in consultation with Developer, the most cost-effective and time-effective approach to the Project.

#### **2.04 Construction Coordination.**

(a) Before starting the Work, General Contractor shall review the Contract Documents to insure that the Contract Documents are consistent with each other and adequately describe the Work, but General Contractor shall not be responsible for the design of the Project. If General Contractor observes that portions of the Contract Documents are at variance therewith, subject to Section 2.05(c), General Contractor shall promptly make all necessary changes to correct such variance at no cost to Developer. Developer shall not be liable for any additional costs or project delays for any such changes; provided however, that such additional costs, delays or changes have not been clarified by General Contractor pursuant to the review to be conducted by General Contractor pursuant to this Section 2.04(a). In the event that during the course of the Work, previously undetectable inconsistencies among the Contract Documents are discovered and General Contractor can demonstrate that such (i) inconsistencies were undetectable and (ii) the correction of such previously undetectable inconsistencies has been the sole cause of a delay in the Work, General Contractor may submit a Change Order requesting an adjustment to the Required Completion Dates for the directly affected Buildings, and Developer will consider such adjustment request in good faith.

(b) At all times, General Contractor shall be responsible for distributing current and coordinated Contract Documents to all of the Third-Party



Service Providers. Developer shall not be responsible for any additional costs which result from General Contractor's failure to provide current and coordinated Contract Documents to the Third-Party Service Providers; provided however, that General Contractor has received the most current version of the Contract Documents.

(c) Prior to commencing the Work, General Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to General Contractor with the Contract Documents. Errors, omissions, discrepancies and inconsistencies shall be corrected immediately. The failure to take field measurements or verify field conditions shall not relieve General Contractor from the responsibility to perform the required Work without additional cost to Developer.

(d) General Contractor shall verify all information supplied by Developer to General Contractor. If the information provided by Developer is not sufficient, Developer shall furnish the services necessary to gather such additional necessary information. In the event that (i) Developer or the Architect makes a change to the Contract Documents and Developer or the Architect fail to provide General Contractor with such revised version of the Contract Documents prior to the commencement of the Work directly involving such change and (ii) it was not reasonably possible for General Contractor to notice the failure in advance, the resulting Change Order shall make provisions for adjusting the applicable Required Completion Date(s) and GMP to accommodate General Contractor for the lost time and costs associated with such failure.

#### 2.05 Construction Changes.

(a) Within 72 hours of discovery, General Contractor will deliver to Developer written notice of anything which would impact any Completion Period or the Contract Sum.

(b) Any contemplated change by General Contractor of any Third-Party Service Provider after the Effective Date, must first be communicated in writing to Developer.

(c) General Contractor shall not make changes in the design or construction of the Project without the prior written consent of Developer. Any changes to the design of the Project shall be shown on the as-built drawings provided by General Contractor at Final Completion. Any savings derived from value engineering changes approved by Developer shall be distributed as follows:

Source of Savings	Developer	General Contractor
-------------------	-----------	--------------------

Any Changes Instigated or Provided by Developer	100%	0%
Changes in Material Instigated by General Contractor	75%	25%
Changes in Construction Methods Instigated by General Contractor	50%	50%

Developer's share of any such savings are due as a credit against the Progress Payment immediately following the approval of the corresponding change by Developer.

#### **2.06 Permitting, Regulation and Documentation.**

(a) Subject to Section 3.02, General Contractor shall be solely responsible for obtaining any and all approvals, permits, fees, bonds, licenses, and inspections of the various government agencies, utility providers, or any other third-parties including, without limitation, the Certificate of Occupancy for each Building. General Contractor shall investigate the requirements, develop the necessary contacts and develop a professional relationship with the required governmental agencies so as not to delay any approval, permits, licenses and inspections. Failure of General Contractor to comply with these requirements shall not entitle General Contractor to any adjustment in the Contract Sum or any Completion Period; provided however, that if (i) such failure can be specifically and clearly traced to an action by Developer (that was not approved by General Contractor) or an inaction by Developer (that was requested in-advance and in writing by General Contractor) that materially damaged the professional relationship between General Contractor and the government agencies responsible for regulating the Project and (ii) such damage negatively impacted the Work or the Schedule, the resulting Change Order shall make reasonable provisions for adjusting the applicable Required Completion Date(s) and GMP to accommodate General Contractor for the lost time and costs associated with such damage, and Developer will consider such adjustment request in good faith. Inspection delays or, in the opinion of General Contractor, "unreasonable" code interpretations or requirements by inspectors, shall not be justification for any adjustment to the Contract Sum or any Completion Period.

(b) Subject to Section 3.02, General Contractor shall perform and coordinate all of the services required to obtain the ordering, coordination, construction, hook-up, installation, inspection, and commencement of any utility services required by the Project pursuant to the Schedule. Furthermore, General Contractor shall perform the Work in any order reasonably requested by Developer, or as required, to allow for the installation of permanent electrical power services from Nevada Power and permanent gas services from Southwest Gas as early as possible.

(c) General Contractor shall order, coordinate, and install all signage (i) set forth in the Contract Documents or (ii) necessary for the issuance of any Certificate of Occupancy.

(d) General Contractor shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

(e) General Contractor shall maintain, in good order, at the Project Site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, marked currently to record changes made during construction. These documents shall be delivered to Developer at Final Completion prior to the Final Payment. In addition, General Contractor shall develop and turn over to Developer one complete set of as-built drawings at Final Completion prior to the Final Payment.

(f) Subject to Section 3.02, tests, inspections and approvals of portions of the Work required by the Contract Documents or governing municipalities, laws, rules, regulations and ordinances shall be made at an appropriate time. General Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory acceptable to Developer. General Contractor shall inform Developer, in a timely manner, when tests will be conducted. General Contractor shall submit one copy of all test results to Developer.

(g) General Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to Developer. Provided that Developer executes General Contractor's standard non-disclosure agreement, Developer and Developer's accountants shall be afforded access to, and shall be permitted to audit and copy, General Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract Documents. General Contractor shall preserve these documents for a period of three years after Final Payment, or for such longer period as may be required by law. Developer shall ensure the confidentiality of all records obtained from General Contractor pursuant to this Section 2.06(g).

## 2.07 Construction.

(a) General Contractor shall perform or have performed the Work necessary to construct the Project pursuant to the Contract Documents and the Schedule.

(b) General Contractor shall furnish at all times an adequate supply of workers and materials to complete the Work pursuant to the Schedule.

(c) General Contractor shall provide, or cause to be provided, and shall pay for engineering, labor, materials, equipment, tools, cartage, construction services and Work, construction equipment and machinery, water, heat, utilities, transportation, safety precautions and programs, and other facilities and services necessary for proper construction, execution and completion of the Work, whether temporary or permanent. Notwithstanding the previous provisions of this Section 2.07(c), (i) upon issuance of the Certificate of Occupancy for a Building, the account with Nevada Power for the electrical power for such Building and the account with Southwest Gas for the gas service for such Building shall be established in the name of Developer; (ii) after Building Completion of such Building, the cost of the electrical power and gas for such Building shall be paid by Developer; and (iii) during the period of time between the Certificate of Occupancy for a Building and the Building Completion of such Building, the cost of the electrical power and gas for such Building shall be divided between Developer and General Contractor as follows:

Party	Portion of Electrical Cost
Developer	75%
General Contractor	25%

(d) General Contractor shall provide its own onsite trailer which shall be shared by General Contractor and Developer's representatives. The costs of such trailer shall be shared pro rata by the parties based on the number of General Contractor and Developer employees assigned to and primarily located at the Project Site.

(e) Services shall only be performed by General Contractor and qualified Third-Party Service Providers.

(f) General Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

(g) The compensation provided to General Contractor herein shall include, and General Contractor shall pay for, all sales, consumer, use and similar taxes in effect during the Project.

(h) General Contractor shall review, approve, and submit to Developer for approval, Final Working Drawings, product data, samples and similar submittals required by the Project or Contract Documents with reasonable promptness and in such sequence as to avoid delay in the Work or in the activities of Developer or any Third-Party Service Provider. Upon receipt of such documents and a written notice from General Contractor that the rapid resolution of the issues presented in such documents is essential to avoid delays

in the Project, Developer will use its best efforts to respond, or have its third-party service providers respond, within five business days.

(i) General Contractor shall perform no portion of the Work requiring submittal and review of Final Working Drawings, shop drawings, project data, samples or similar submittals until the respective submittal has been approved by Developer. Such Work shall be in accordance with approved submittals.

(j) General Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by General Contractor's operations and shall keep the Project Site neat, organized, clean and safe. Prior to Final Completion, General Contractor shall remove from and about the Project Site General Contractor's tools, equipment, machinery, surplus materials, waste materials and rubbish. In the event that General Contractor fails to perform pursuant to this Section 2.07(j), Developer may have the work performed at the sole cost of General Contractor.

(k) General Contractor shall provide adequate security to the Project Site to avoid theft and vandalism.

(l) During construction of a Building, upon receipt of a written request from Developer, General Contractor will provide Developer with any requested keys for such Building. No later than 24 hours after the receipt of the Certificate of Occupancy for a Building, General Contractor will deliver to Developer a complete set of keys for each lock in such Building.

(m) Developer shall have unlimited access to the Project Site, subject only to standard applicable safety policies. Developer may expel General Contractor, any Third-Party Service Providers, and any other third-party from the Project Site with reasonable cause.

(n) By 10:00 a.m. each morning, General Contractor shall provide Developer with access to copies of its daily reports from the previous day and such other reports as shall be requested by Developer. Such daily reports shall (i) be presented in a format to be approved by Developer; (ii) include, without limitation, the outside air temperature, weather conditions, Project Site conditions, construction progress, material deliveries, inspection schedule and results, accidents, and a count of each individual that was working on the Project that day broken out by trade and applicable Third-Party Service Provider; and (iii) be on a time-lapsed basis; and (iv) be subsequently typed and delivered to Developer at the subsequent Monthly Review.

(o) Upon receipt of a written request from Developer, General Contractor shall, within 24 hours, provide Developer a copy of any correspondence or agreements with any Third-Party Service Provider.

(p) Within 24 hours of receipt by General Contractor, General Contractor shall deliver to Developer copies of any correspondence from any government or regulatory authority or any submittals or requests for information from any Third-Party Service Providers.

(q) General Contractor shall take adequate steps to prevent the Work from unduly disturbing the neighbors surrounding the Project.

(r) General Contractor shall be responsible for any cutting, fitting or patching required to complete the Work or to make its parts fit together properly. General Contractor shall not damage or endanger any portion of the Work or fully or partially completed construction of Developer or separate contractors by cutting, patching or otherwise altering such construction, or by excavation.

(s) General Contractor shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unduly encumber the Project Site with materials or equipment.

(t) For Buildings 2 and 3, General Contractor shall coordinate the integration of the tenant/buyer improvements into such buildings and their respective systems.

(u) For Buildings 2 and 3, General Contractor will construct the improvements of any gray shell spaces at an aggregate price for all materials and labor that is equal to \$70 per square foot for basic office space to be built pursuant to the Office Space Specifications. To the extent necessary, General Contractor shall allow for adjustments to the Office Space Specifications by individual buyers and negotiate, in good faith and pursuant to local market prices, any corresponding adjustment to the price per square foot.

#### **2.08 Quality Control Corrective Work, and Warranty.**

(a) General Contractor shall keep Developer informed, on a regular and consistent basis, of the progress and quality of the Work and shall inform Developer within 48 hours of General Contractor's discovery of any fault or defect in the Work.

(b) General Contractor shall be responsible to Developer for acts, errors and omissions of General Contractor's employees, and parties in privity of contract with General Contractor, who perform a portion of the Work, including the Third-Party Service Providers and those in privity of contract with such parties.

(c) General Contractor warrants to Developer that all materials and equipment incorporated in the Work will be new, unless otherwise specified.

and that the Work will be good quality, free from faults and defects, and in conformance with the Contract Documents.

(d) Whether observed before or after Final Completion General Contractor shall correct (i) Work reasonably rejected by Developer, (ii) Work known to be defective, (iii) Work failing to conform to the Contract Documents or (iv) defective Work resulting from defective materials, defective construction or craftsmanship, or defective design documents generated by General Contractor. All corrections to the above inadequate or defective Work shall commence within 72 hours; provided however, that in an emergency situation, such corrections shall commence immediately. All corrections to the above inadequate or defective Work shall be corrected by the end of the shorter of the following time periods: (A) within 30 calendar days or (B) within the amount of time necessary to prevent a delay to any applicable Required Completion Date. The cost of correcting such Work shall be paid by General Contractor, including, without limitation, any additional testing, inspections, and compensation for the Architect's and engineers' services and expenses made necessary thereby. General Contractor shall not be responsible for repairing any damage caused by Developer or individual buyers during the move-in process; provided however, that until Building Completion, it shall be assumed that any damage, for which the cause cannot be clearly determined, was caused by the Third-Party Service Providers and not Developer or individual buyers. To the extent that corrective work is requested by an individual buyer or an owners association, all deadlines in this Section 2.08(a) are subject to any stricter deadlines that are set forth in Section 2.12.

(e) General Contractor shall ensure that a properly factory authorized qualified representative is present when systems, materials or equipment are installed for which a warranty is to be issued by the manufacturer, distributor, insurer or other named party as provided in the Contract Documents. For example, this requirement shall specifically apply to roofing, exterior coatings, and below grade waterproofing.

(f) General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Developer's approval of Final Working Drawings, shop drawings, product data, samples or similar submittals unless General Contractor has specifically informed Developer in writing of such deviation at the time of submittal and Developer has given written approval to the specific deviation. General Contractor shall not be relieved of responsibility for errors or omissions in Final Working Drawings, shop drawings, product data, samples or similar submittals by Developer's approval thereof. The limitations on liability set forth in this Section 2.08(f) apply only to Developer and shall not be construed to limit the Architect's liability.

## 2.09 Inspections and Punch Lists.

(a) General Contractor shall inspect the Work daily for quality assurance purposes. In addition, at each of the following construction stages, General Contractor shall inspect and approve in writing, the work as of such stage, and such written approvals shall be delivered to Developer prior to commencement of the subsequent construction stage:

(i) Upon completion of the installation of the mechanical, electrical, and plumbing systems, and prior to the hanging of any drywall;

(ii) Upon completion of the drywall, tape, and texturing, and prior to the application of paint to the walls and trim; and

(iii) Upon completion of the Work, but prior to the joint General Contractor-Developer inspections set forth in Section 2.09(b).

(b) As soon as reasonably possible but no later than 60 days prior to the Required Completion Date for a given Building, General Contractor will determine the actual date that the Certificate of Occupancy will be attained (the "Estimated Certificate of Occupancy Date") and notify Developer of such date. Approximately 30 days prior to the Estimated Certificate of Occupancy Date, General Contractor and Developer will begin inspecting such Building and the Corresponding Common Area and creating lists of items to be corrected in each unit and the Corresponding Common Area (the "Developer Punch Lists"). Developer reserves the right to submit additional Punch Lists until Final Completion. General Contractor will have 15 days from the issuance of a Developer Punch List to make the required corrections and obtain written approval of such corrections from Developer (the "First Correction Period"). In the event that any items on a Developer Punch List are not corrected prior to the expiration of the First Correction Period, General Contractor shall pay as liquidated damages (and not as a penalty) \$500 for each unit that contains any such uncorrected Developer Punch List items.

(c) Upon receipt of written notice from Developer that an individual purchaser is available for an inspection, General Contractor, Developer, and such individual purchaser will schedule and conduct an inspection of the corresponding unit within the Building and create a list of items to be corrected (the "Buyer Punch Lists"). In the event that a given residential unit is not under contract for purchase after the end of the First Correction Period, Developer has the right to conduct additional purchaser inspections and submit additional Buyer Punch Lists until the earlier of the following (i) the completion of all of the other requirements for the corresponding Building Completion and (ii) the close of escrow on the purchase of such unit. General Contractor will have 15 days from the issuance of a given Buyer Punch List to make the required corrections and obtain written approval of such corrections from Developer and Buyer (the "Second Correction Period"). In the event that any items on a Buyer Punch List are not corrected prior to the expiration of the



Second Correction Period, General Contractor shall pay as liquidated damages (and not as a penalty) \$500 for each unit that contains any such uncorrected Buyer Punch List items.

(d) General Contractor and Developer shall schedule a follow-up walk-through prior to the expiration of the Express Warranty period to review and document any deficient or defective items that were not caused by the occupants of the Project. Such deficient or defective items shall be corrected within five business days of such walk-through. Upon completion of such corrections, Developer will sign off on the Express Warranty.

#### **2.10 Completion.**

(a) The Work within or related to each Building shall be deemed completed upon the (i) completion of the Work in such Building and the Corresponding Common Area; (ii) issuance of the Certificate of Occupancy for such Building; (iii) completion of any corrections that are requested by Developer, set forth on a Developer Punch List or Buyer Punch List, or required by the Clark County Building Department; and (iv) delivery of the applicable Completion Documents (collectively, a "Building Completion"). The Project shall be deemed completed upon the Building Completion of each Building (collectively "Final Completion"). Notwithstanding the previous provisions of this Section 2.10(a), in the event that, because a given residential unit is not under contract for purchase by a buyer or a given buyer fails to submit a Buyer Punch List upon request, the corresponding Buyer Punch List for such residential unit is not available on the date that the other requirements of Sections 2.10(a)-(iv) are met by General Contractor, Building Completion will be deemed attained without regard to such non-existent Buyer Punch List; provided however, that upon the sale of such unit, the eventual buyer may submit a Buyer Punch List that shall be completed by General Contractor within 30 days.

(b) Once Building Completion is attained and the Architect has executed a written document stating that such Building and the Corresponding Common Area has been completed per the Contract Documents, Developer shall assume responsibility for such Building and the Corresponding Common Area's security, maintenance, heating, utilities, and insurance as well as any subsequent damage to such buildings or areas.

**2.11 Developer Acceptance.** If Developer prefers to accept Work which is defective or deficient and is not in accordance with the requirements of the Contract Documents, Developer may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be incorporated into a Change Order and shall be effective whether or not Payment has been made.

#### **2.12 Warranty.**

(a) In addition to performing any of the corrective work pursuant to this Article II, General Contractor shall extend to Developer such warranties as are customary in the industry within Nevada. In addition, General Contractor shall, for no less than two years from the date of the applicable Certificate of Occupancy, correct any Work that (i) does not conform to the Contract Documents or applicable industry standards, (ii) is not of good and workmanlike quality and free from faults and defects, and (iii) is not suitable for the use for which it is intended due to defects in construction (collectively, the "Express Warranty"); provided however, that such Express Warranty shall only apply to Buildings 2 and 3 for a period of one year instead of the two year period that applies to the other Buildings. To partially offset the potential cost of honoring the second year of the Express Warranty, Developer shall allow for a \$180,000 allowance to be added to the GMP via a Change Order. Such allowance shall only be used to cover the cost of Express Warranty items during the second year of the Express Warranty, and if such amount is not used, any remaining balance shall be returned to Developer at the end of the Express Warranty for the final Building. It is expressly understood that (i) such allowance is merely intended as a contribution and (ii) General Contractor is solely responsible for all other costs associated with honoring the Express Warranty.

(b) General Contractor will cooperate with Developer's customer service policies and representatives to the extent that such cooperation is required for the servicing of the Express Warranty. Upon receipt of a non-Emergency warranty complaint from Developer, any of the Project's owners associations, or an individual homeowner, at a minimum, General Contractor will (i) respond to every such complaint placed during working days within 24 hours, (ii) respond to every such complaint placed on weekends and holidays within 60 hours, (iii) begin work to correct the problem underlying such complaint within 24 hours, and (iv) to the extent reasonably possible, correct the problem underlying such complaint within five days but in no event later than 30 days. Upon receipt of any Emergency warranty item, General Contractor shall respond immediately to such inquiry and correct such Emergency problem within an additional eight hours.

(c) The Express Warranty relates only to specific obligations of General Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish General Contractor's liability with respect to General Contractor's obligations other than specifically to correct the Work.

(d) As between Developer and General Contractor, any applicable statute of limitation shall not commence to run prior to the applicable Building Completion even if the underlying actions took place prior to the underlying Building Completion.

(e) To further enhance General Contractor's commitment to the Project and the Express Warranty, within 10 days of the Effective Date, General Contractor shall enter into a standard purchase agreement with Developer and deliver the corresponding purchase deposit for the purchase of one residential unit from among the options presented by Developer and at a purchase price that is discounted by 2.5% for the first unit and 5% for any subsequent units.

#### 2.13 General Contractor Staffing.

(a) General Contractor shall provide the levels of on-site and off-site staffing necessary to furnish efficient business administration and supervision for the Project. Notwithstanding the previous sentence, for the construction of Buildings 2, 3, 7, 8, and 9 ("Phase I"), General Contractor shall provide, at a minimum, the following level of fulltime staffing for the Project:

- (i) One Project Manager
- (ii) One Project Supervisor
- (iii) Three Supervisors (one for each building type)
- (iv) Two Assistant Supervisors
- (v) Two Project Engineers
- (vi) One Project Administrator
- (vii) One Accountant

(b) Notwithstanding the final sentence of Section 2.13(a), (i) General Contractor may provide lower levels of staffing for Phase I if the only Work in progress is the foundations for Phase I and (ii) General Contractor will not be required to fill the positions set forth in Section 2.13(a)(iv) and (v); provided, however, that if at any Monthly Review, a Recovery Schedule is required, General Contractor must, within 30 days, strictly comply with the staffing requirements set forth in the final sentence of Section 2.13(a) for the remainder of the Project. In the event that the Work on additional buildings is commenced prior to the completion of Phase I, additional staffing must be added. Furthermore, for each phase after Phase I, General Contractor must maintain a level of staffing that is commensurate with the level of staffing set forth in the final sentence of Section 2.13(a), as adjusted for the number of buildings then under construction.

(c) Each of the individuals serving in the above positions must have the level of skill and experience commensurate with such position as determined by General Contractor.

(d) Upon the written request of Developer, General Contractor shall provide the resumes of any General Contractor employee associated with the Project. Furthermore, Developer may, by providing a reasonable written explanation, require the removal of any General Contractor employee or affiliate associated with the Project.

(e) Primary communication must take place between Developer's authorized representative and General Contractor's Project Manager. All requests, directives, orders and/or changes must go through such team members before implementation can occur.

#### 2.14 Upgrades Coordination.

(a) Developer will sell upgrades to various units within the Project (the "Upgrades") to be installed by Third-Party Service Providers to be selected by Developer and General Contractor (the "Upgrade Vendors"). General Contractor shall be responsible for the proper installation of such Upgrades as if they were incorporated into the Contract Documents as part of the Project.

(b) General Contractor shall execute independent agreements with each Upgrade Vendor.

(c) General Contractor will not be entitled to any extension of any Completion Period as a result of problems that arise in connection with the installation of the Upgrades unless a Change Order is executed by Developer expressly allowing such extension. If a fixture or appliance that is necessary for a given Upgrade is not available at the time that it must be installed, upon receipt of written notice of such unavailability from General Contractor, Developer will, within five business days, provide to General Contractor direction regarding an alternative fixture or appliance, as applicable. If Developer fails to provide such direction within such five business days, General Contractor may submit, and Developer will execute, a Change Order whereby the applicable Required Completion Dates are extended by the number of days equal to each day between the expiration of such five business day deadline and the date that the requested direction is actually provided, but only to the extent that such delay actually causes a delay to the Work.

(d) General Contractor understands that the Upgrades are subject to change, but the Schedule includes, or will include, dates after which no additional changes to the Upgrades will be allowed without the express written consent of General Contractor.

#### 2.15 Framing and Drywall Minimums.

(a) There shall be a minimum of 50 (i) adequately trained drywall hangers working on each eight-hour shift for each individual Type I, Type IV, and Type V Building at anytime that the Schedule calls for the hanging of drywall in such Building and (ii) adequately trained framers working on each eight-hour shift for each individual Type I, Type IV, and Type V Building at anytime that the Schedule calls for the construction of framing in such Building; provided however, that such number of framers may be reduced to 40 during the framing of the first floor of such Building.

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(b) At anytime that the Schedule calls for the hanging of drywall or the construction of framing, the Work shall be performed by the corresponding drywall hangers or framers in two separate eight-hour shifts per day. The number of members for each shift shall be subject to the minimums set forth in Section 2.15(a), and each of the 50 man crews for each such shift must be comprised of different individuals.

(c) It is the intent of Sections 2.15(a) and (b) that there will be 800 framing man-hours and 800 drywall hanging man-hours per day whenever framing and/or drywall hanging is called for by the Schedule. Notwithstanding Section 2.15(a) and (b), to the extent that there is insufficient daylight to allow for two eight-hour shifts of framers per day, General Contractor may reduce the length of the second shift; provided however, that the number of framers working during the first shift must be increased to maintain a minimum of 800 framing man-hours per day.

(d) The minimums set forth in Sections 2.15(a), (b), and (c) shall be maintained by General Contractor at no additional cost to Developer.

**2.16 Failure to Perform.** Notwithstanding any provision of this Agreement, in the event that General Contractor defaults or neglects to provide the Services or comply with any provision of this Article II, after providing 48 hours notice, Developer may, without prejudice to any other remedies, correct such deficiencies and charge all reasonable and related costs to General Contractor. Notwithstanding any provision of this Agreement, the cost of any dispute arising out of this Section 2.16, including reasonable legal fees and expenses, shall be solely borne by General Contractor.

### ARTICLE III OWNER RESPONSIBILITIES

**3.01 Contract Documents.** Developer shall provide General Contractor with the current Contract Documents.

**3.02 Fees.** Developer shall pay the fees required to obtain such permits, entitlements, approvals, licenses, and inspections required by Sections 2.06 (a), (b), and (f); provided however, that if the Work does not meet the requirements of any inspection, General Contractor will pay the fees required to have such Work re-inspected, including any overtime fees requested by Developer and agreed to by the relevant inspectors.

**3.03 Representative.** Developer shall designate a qualified representative authorized to act on Developer's behalf with respect to the Project. Such representative will be employed fulltime and shall have the level of skill and experience commensurate with such position. Developer shall provide written notice if its designated representative is changed.

**3.04 Responsiveness.** Developer shall render decisions and furnish required information and services to General Contractor with reasonable promptness in order to avoid delay in the orderly progress of the Services.

**3.05 Developer Observers.** Solely at its discretion, Developer may appoint additional on-site project representatives to observe the Work and to have such other responsibilities as Developer may determine in its sole discretion.

#### ARTICLE IV TIME

##### **4.01 Project Schedule.**

(a) Attached as **Exhibit C** to this Agreement is the schedule for the Work (the "Schedule") separately setting forth the time period between the Authorized Start Date and the Required Completion Date for each Building Type (each referred to as a "Completion Period"). The "Authorized Start Date" is the date that Developer authorizes General Contractor, in writing, to begin the Work on a given Building and the Corresponding Common Areas. The "Required Completion Date" is the date that a given Building Completion must be attained based on the corresponding Authorized Start Date and Completion Period for such Building and the Corresponding Common Area. The Authorized Start Date for a given Building may not precede the date that Developer has obtained the permits necessary to begin the Work on such Building.

(b) The Schedule shall also set forth the trades required for each portion of the Work and the aggregate number of weeks of Work to be performed by each trade. The Schedule shall rely on the critical path scheduling method, and Developer, General Contractor, and all Third-Party Service Providers shall strictly adhere to all Critical Path Items.

(c) The Authorized Start Date for each Building will be established and may be revised by Developer in its sole and absolute discretion. In the event that the sequencing of the Authorized Start Dates after Phase I results in the simultaneous construction of more than five buildings and General Contractor can provide adequate evidence of an unavailability of adequate Third-Party Service Providers to perform such simultaneous Work, General Contractor may submit a Change Order requesting an adjustment to the Required Completion Dates for the Buildings in excess of the five that are then under construction, and Developer will consider and negotiate such adjustment request in good faith.

(d) General Contractor must anticipate weather patterns and delays. The Schedule will not be adjusted based on delays caused by weather falling within the historical weather patterns for Las Vegas, Nevada.

(e) In addition to the updates to the Schedule required by this Section 4.01, General Contractor shall also deliver a two week look-ahead schedule at the end of every second week. Such schedule shall be in the format reasonably requested by Developer.

(f) General Contractor shall update the Schedule on a monthly basis until the applicable Building Completion. A separate copy of each updated Schedule shall be posted at the Project Site and delivered to Developer.

(g) Notwithstanding any provision of this Agreement, any changes to the Schedule that lengthen a Completion Period will require the execution of a Change Order by Developer expressly approving such change.

(h) General Contractor shall be responsible for coordinating all of the activities required for governmental inspections and all activities required to obtain a Certificate of Occupancy by any Required Completion Date.

(i) Completion Periods shall not be extended for delays to the Project which occur as a direct result of financial problems or financial failure of General Contractor or any Third-Party Service Provider(s).

(j) Notwithstanding any provision of this Agreement, Developer may delay the Authorized Start Date for any given Building and the Corresponding Common Areas. By delivering written notice to General Contractor, Developer may suspend any portion of the Work at anytime. If, prior to Final Completion, Developer completely stops the Work on all of the Buildings for more than 30 days and the Third-Party Service Providers actually remove their equipment from the Project Site, upon recommencement of the Work, Developer shall pay a re-mobilization fee equal to the sum of the (i) fees actually paid by General Contractor to have such equipment returned to the Project Site and (ii) costs incurred by General Contractor to return its equipment to the Project Site. For purposes of the Building Liquidated Damages, any suspension pursuant to this Section 4.01 (j) shall result in a unilateral adjustment by Developer of the Schedule to reflect the revised Authorized Start Date(s) and/or Required Completion Date(s).

**4.02 Schedule Supervision.** On the last business day of each month, Developer shall formally evaluate the progress of the Work compared to the amount of Work that should have been completed as of such date pursuant to the Schedule (the "Monthly Review"). To the extent that Developer determines at a Monthly Review, that the Work is behind Schedule on any given Building, General Contractor shall deliver, within 48 hours, a make-up schedule setting forth the actions that General Contractor will undertake to get the corresponding Work back on Schedule prior to the next Monthly Review (the "Recovery Plan"). Any additional costs associated with the additional manpower and overtime necessary to execute any Recovery Plan will be borne

by General Contractor. In the event that at any Monthly Review, Developer determines that General Contractor has failed to (a) deliver the revised schedules pursuant to Sections 4.01 (e) or (f), provide a requested Recovery Plan, or perform the Work set forth in any Recovery Plan pursuant to such Recovery Plan, Developer has the express right to immediately engage and supervise supplemental licensed third-party service providers to augment the performance of the Work, and the cost of such supplemental third-party service providers shall be paid by General Contractor as an offset to the subsequent Progress Payment.

#### 4.03 Liquidated Damages.

(a) Time limits set forth in this Agreement are of the essence.

(b) Each Building Completion will be attained on or prior to the applicable Required Completion Date (as adjusted only by Change Orders approved by Developer). If the Building Completion for any Building is not attained on or prior to the corresponding Required Completion Date, Developer may retain as liquidated damages (and not as a penalty) an amount equal to \$15,000 for each and every calendar day after the Required Completion Date that Building Completion is delayed for such Building (the "Building Liquidated Damages").

(c) Developer and General Contractor acknowledge and agree that any liquidated damages assessed under Sections 2.09 (b) and (c), this Section 4.03, and/or Section 10.02(d)(i) are (i) due to the difficulty or impossibility of calculating actual costs and damages of delays, (ii) a reasonable approximation of the costs and damages that would be incurred by Developer for delays, and (iii) not a penalty. Developer's planning and costs for completing its entire construction process and marketing its condominiums include hiring of employees, purchase and lease of equipment, advertising, accepting deposits and reservations for the sales of units, and addressing closing costs all of which are adversely impacted by delays in Final Completion. In addition, delays in Final Completion may cause additional expenses for contract and construction administration, accounting, and cost of capital. Nothing in Sections 2.09 (b) or (c), this Section 4.03 or Section 10.02(a)(i) shall limit in any manner the remedies and/or damages that may be obtainable by Developer upon any other breach of this Agreement by General Contractor.

### ARTICLE V COMPENSATION/PAYMENTS

5.01 **Contract Sum.** In exchange for the Services, Developer shall pay to General Contractor an amount equal to **\$153,472,300** (the "Contract Sum"). In addition to the Contract Sum, in exchange for the services provided by General Contractor pursuant to Section 2.1.4, Developer shall pay to General Contractor an amount equal to the Cost of the Upgrade Work, plus the General Contractor Upgrade Fee.



#### 5.02 Guaranteed Maximum Price.

(a) The Contract Sum is guaranteed by General Contractor not to exceed **\$153,472,300** subject to additions and deductions only by Change Order as provided in Section 9.01 (the "GMP"). Any costs that are not approved by a Change Order as provided in Section 9.01 and would cause the GMP to be exceeded shall be paid by General Contractor without reimbursement or contribution by Developer, including, for purposes of example and not limitation, costs arising from unforeseen ground conditions, faulty coordination, errors or omissions in the Contract Documents, unexpected encounters with service mains, bad weather, industrial unrest, shortages of labor and materials, insolvency of suppliers and Third-Party Service Providers, fire, storm, or earthquakes. Furthermore, the GMP includes all allowances, overhead, costs, general terms and conditions, general contractor fees and profits related to the Work and the Project, including, without limitation the General Contractor Fees and Costs.

(b) Notwithstanding Section 5.02(a), the Cost of the Upgrade Work is not included in the GMP.

**5.03 Buy-Down Savings Split.** General Contractor will use its best efforts to reduce construction costs by negotiating better terms with the Third-Party Service Providers and such savings will be calculated based on the difference between the GMP and the actual cost of the Work as set forth on the aggregate applicable invoices (as opposed to individual line items) (the "Buy-Down Savings"); however, for purposes of the calculation of the portions of the Buy-Down Savings to be retained by General Contractor, the Buy-Down Savings shall not include (i) any value engineering changes which shall be paid pursuant to Section 2.05(c) and (ii) reductions in the cost of General Contractor's self-performed Work. All Buy-Down Savings will be split between Developer and General Contractor as set forth below:

Party	Percentage of Savings
Developer	50%
General Contractor	50%

**5.04 Discounts, Rebates, and Refunds.** Discounts obtained on payments made by General Contractor shall accrue 50% to Developer and 50% to General Contractor if (a) before making the payment, General Contractor included such payments in an Application for Payment and received payment therefor from Developer or (b) Developer has deposited funds with General Contractor with which to make payments. In addition, trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue

50% to Developer and 50% to General Contractor, and General Contractor shall make provisions so that they can be secured.

#### 5.05 Progress Payments.

(a) On the first business day of each month, General Contractor and Developer shall meet to review the Work that was completed during the previous month and the corresponding payment required for such Work. Two days after such meeting, General Contractor shall submit to Developer applications for payment for the previous month on forms similar to AIA G702 and G703 including separate SOV and AIA G703 pages for each Building as well as the Corresponding Common Areas and a corresponding approved Certificate for Payment (the "Application for Payment"). The form similar to AIA G702 shall set forth the aggregate of the Work completed on the form similar to AIA G703 pages. In addition, a separate report shall be provided setting forth, for each line on the form similar to AIA G703, the aggregate amount of retainage to be withheld in such Application for Payment pursuant to Section 5.07, any adjustments to such retainage made since the preceding Application for Payment, and the cumulative retainage that has been withheld pursuant to Section 5.07. The Application for Payment shall be supported by such data to substantiate its accuracy as Developer may require.

(b) Each Application for Payment shall be based on the Schedule of Values. The Schedule of Values shall allocate the entire GMP among the various portions of the Work, and the General Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Developer may require.

(c) Applications for Payment shall show the Percentage of Completion of each portion of the Work as of the end of the period covered by the Application for Payment. The "Percentage of Completion," shall be the lesser of

(i) the percentage of that portion of the Work which has actually been completed; or

(ii) the percentage obtained by dividing (A) the expense that has actually been incurred by General Contractor on account of that portion of the Work for which General Contractor has made or intends to make actual payment prior to the next Application for Payment by (B) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

(d) Developer may refuse to approve all or a portion of any Application for Payment based on the existence of any of the following:

(i) A failure to complete, or demonstrate completion of, the Percentage of Completion set forth in a given Application of Payment, including, without limitation, a failure to prove the any reasonably requested back-up documentation;

(ii) Defective Work that has not been remedied;

(iii) Third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Developer is provided by General Contractor;

(iv) Failure by General Contractor to make payments properly to Third-Party Service Providers for labor, materials, or equipment;

(v) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(vi) Damage to Developer or any Third-Party Service Provider;

(vii) Reasonable evidence that the Work will not be completed within a Completion Period and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(viii) Persistent failure by General Contractor to complete the Work in accordance with the Contract Documents; or

(ix) General Contractor's failure to obtain and deliver a Certificate for Payment.

(e) Upon receipt of an Application for Payment that is acceptable to Developer pursuant to Sections 5.05(a-d), Developer shall, within 12 calendar days, submit, to Developer's lender or such lender's authorized designee, the corresponding draw application for the undisputed amount to be paid pursuant to such Application for Payment (the "Draw Application"). Thereafter, Developer shall take such actions as are necessary for the payment of the amount owed to General Contractor pursuant to such Draw Application (the "Progress Payment"). In the event that the Draw Application is not submitted to Developer's lender or such lender's authorized designee within the above 12 calendar day period, Developer shall pay to General Contractor \$5,000 for each day that the submission of the Draw Application is delayed after such 12 calendar day period.

(f) Subject to other provisions of the Contract Documents, the amount of each Progress Payment shall be computed as follows:

(i) take that portion of the GMP properly allocable to completed Work as determined by multiplying the Percentage of Completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values.

(ii) add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation into the Work, or if approved in advance by Developer, suitably stored off of the Project Site at a location agreed upon in writing.

(iii) subtract the aggregate of previous Progress Payments made by Developer;

(iv) subtract the applicable Standard Retainage, Monthly Retainage, and Milestone Retainage calculated pursuant to Section 5.07.

(v) add the General Contractor Payment.

(vi) subtract the shortfall, if any, indicated by General Contractor in the documentation required by Section 5.05(c) to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Developer's accountant in such documentation; and

(vii) subtract amounts, if any, (A) for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the AIA General Conditions or (B) that are disputed by Developer.

(g) Upon receipt of the Progress Payment, General Contractor shall promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of the Work Completed that was completed by such Third-Party Service Provider during the period covered by the corresponding Progress Payment. General Contractor shall, by appropriate agreement with each Third-Party Service Provider, require each Third-Party Service Provider to make payment to sub-contractors in a similar manner.

(h) General Contractor warrants that title to all Work covered by an Application for Payment will pass to Developer no later than the time of payment. General Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Developer shall, to the best of General Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of General Contractor, Third-Party Service Providers, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

(i) Subject to Section 9.01 but notwithstanding any other provision of this Agreement, the aggregate General Contractor Fees and Costs shall equal \$10,000,000. For the avoidance of doubt, the General Contractor Fees and Costs do not include the General Contractor Upgrade Fee and are not subject to the documentation requirements of Section 2.06(g).

#### **5.06 Final Payment.**

(a) A final payment, constituting the entire unpaid balance of the Contract Sum (the "Final Payment"), shall be made by Developer to General Contractor when the following conditions have been met:

(i) the General Contractor has fully performed the Contract except for any General Contractor's warranty as provided in Section 2.12 of this Agreement, and to satisfy other requirements, if any, which extend beyond Final Payment;

(ii) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

(iii) a written statement that General Contractor knows or has no reason to suspect that any additional costs or indebtedness exists in connection with the Work; and

(iv) a final Certificate for Payment has been issued by the Architect.

(b) Developer's accountants will review and report in writing on General Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by General Contractor. Based upon such costs and expenses as Developer's accountants report to be substantiated by General Contractor's final accounting, and provided the other conditions of Section 5.06(a) have been met, the Architect will, within seven days after receipt of the written report of Developer's accountants, either issue to Developer a final Certificate for Payment with a copy to General Contractor, or notify General Contractor and Developer in writing of the Architect's reasons for withholding such Certificate for Payment as provided in Section 9.5.1 of the AIA General Conditions. The time periods stated in this Section 5.06(b) supersede those stated in Section 9.4.1 of the AIA General Conditions.

(c) Notwithstanding and without limiting any other provision in the Contract Documents, the Final Payment is conditioned upon satisfaction of all conditions applicable to such payment imposed by any funding construction draws, as well as Developer's and Architect's reasonable approval. Prior to final

payment, and as a condition precedent, General Contractor shall furnish Developer with the following (the "Completion Documents"):

- (i) All maintenance and operating manuals;
  - (ii) Marked set of drawings and specifications reflecting "as-built" conditions, upon which General Contractor shall have transferred all changes in the location of concealed utilities, mechanical or electrical systems and components. Said "as-built" drawings for mechanical, electrical and plumbing systems shall be verified and approved, in writing, by the engineer of record.
  - (iii) The documents set forth in Section 2.06(e).
  - (iv) Any assignment and/or transfer of all guarantees and warranties from Third-Party Service Providers, vendors and suppliers and manufacturers.
  - (v) A list of the names, address and phone numbers of all parties providing guarantees and warranties, and
  - (vi) Verification that all waivers that should be issued to Developer concurrent with Final Payment.
- (d) Acceptance of Final Payment by General Contractor shall constitute a waiver of all claims by General Contractor except such claims as are previously made in writing and identified as unsettled at the time of the final Application for Payment.

#### 5.07 Retainage.

- (a) Each Progress Payment shall be subject to retainage equal to 5% multiplied by the amount of such Progress Payment (the "Standard Retainage").
- (b) In addition to the Standard Retainage, in the event that at any Monthly Review, Developer determines that General Contractor has failed to perform the Work set forth in any Recovery Plan pursuant to such Recovery Plan, Developer may withhold from the subsequent Progress Payment an amount equal to (i) 1% multiplied by (ii) the amount of such Progress Payment attributable to the Building for which General Contractor failed to maintain the Recovery Plan (the "Monthly Retainage"). To the extent that multiple Recovery Plans are not met, the Monthly Retainage will accumulate separately for each Building and may accumulate cumulatively for each time that a Recovery Plan is not met for an individual Building.

(c) Notwithstanding Section 5.07(b), the Monthly Retainage withheld by Developer for any failure by General Contractor to maintain a particular Recovery Plan will be released in the Progress Payment following the completion by General Contractor of the Work set forth in (i) the Recovery Plan for which the Monthly Retainage was initially withheld and (ii) any subsequent Recovery Plan imposed, for the same Building, pursuant to Section 5.07(b).

(d) Furthermore, on each occasion that any of the following milestones are not met by General Contractor for each separate Building prior to the corresponding date set forth in the Schedule, the Standard Retainage shall be increased by an additional 5% for such Building multiplied by the amount of such Progress Payments as pertain to such Building (the "Milestone Retainage");

(i) The foundation for a given Building must be completed prior to the applicable deadline for such Work as set forth in the Schedule.

(ii) A given Building must be dried-in (including the exterior paper, windows, and roof but excluding the stucco) prior to the applicable deadline for such Work as set forth in the Schedule.

(iii) A given Building must have passed its rough framing inspection (as such term is commonly used by Clark County Building Inspectors) prior to the applicable deadline for such Work as set forth in the Schedule.

(iv) Prior to the applicable deadline for such Work as set forth below, Buildings 2 and 3 must (A) meet the Minimum Requirements for Grey Shell Completion, set forth on Exhibit D hereto and (B) be ready for the Building 2 and 3 buyers to commence their improvements to the grey shell:

Building	Floor	Improvement Start Date
2	First	19-Apr-08
2	Second	21-Apr-08
2	Third	26-Apr-08
2	Fourth	1-May-08
3	First	26-Apr-08
3	Second	29-Apr-08
3	Third	4-May-08
3	Fourth	9-May-08

(v) The drywall must be completely hung in a given Building, including texture and paint, prior to the applicable deadline for such Work as set forth in the Schedule.

(vi) Prior to September 9, 2007, the first floor of Building 7 must be completed and the Temporary Certificate of Occupancy issued.

(vii) Building Completion for a given Building must be attained prior to the corresponding Required Completion Date.

(e) However, on any occasion that one of the unmet milestones set forth in Section 5.07(d) is subsequently met by General Contractor, any existing Milestone Retainage held in connection with such unmet milestone for the corresponding Building shall be reduced by 5% for the subsequent Progress Payments.

(f) Any remaining Standard Retainage, Monthly Retainage, and Milestone Retainage shall be released to General Contractor on the date that (i) Final Completion is attained and (ii) all outstanding disputes between Developer and General Contractor and Developer and any Third-Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed.

#### ARTICLE VI OWNERSHIP AND USE OF DOCUMENTS

**6.01 Ownership.** All documents related to the Work and the Project including documents that are furnished or obtained by General Contractor, including, without limitation, any drawings, specifications, or designs (the "Project Documents") are the sole property of Developer and may be used by Developer for any purpose.

**6.02 Liability.** Developer's ownership of the Project Documents furnished or obtained by General Contractor does not relieve General Contractor of its legal and professional responsibilities to Developer relating to such Project Documents for purposes of the Project.

**6.03 Subsequent Use.** To the extent that the Project Documents that are furnished or obtained by General Contractor are used by Developer for a subsequent project that does not involve General Contractor, General Contractor shall not be professionally liable for the use of such Project Documents on such subsequent project.

**6.04 Non-Publication.** Submission or distribution of any Project Documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of common law copyrights or other reserved rights.

#### ARTICLE VII PROTECTION OF PERSONS AND PROPERTY



**7.01 Safety Precautions.** As a material obligation of this Agreement, General Contractor shall be solely responsible for initiating, providing and maintaining safety precautions and programs in connection with the Work.

**7.02 Reasonable Protection.** General Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to; (a) employees on the Project Site and other persons who may be affected thereby; (b) the Work and materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Project Site.

**7.03 Liability.** General Contractor shall be liable for damage or loss to the property at the Project Site to the extent caused by General Contractor, Third-Party Service Providers, or anyone directly or indirectly employed by General Contractor or Third-Party Service Providers, or by anyone for whose acts they may be liable.

**7.04 Expulsion.** Developer may expel from the Project Site any party, including, without limitation, General Contractor and any Third-Party Service Provider that fails to comply with any safety regulations or standards or otherwise endangers the safety of any party on the Project Site.

#### ARTICLE VIII INSURANCE AND BONDS

**8.01 Insurance.** The Agreement, Work and Project shall be subject to the insurance provisions set forth on Exhibit E hereto.

**8.02 Performance Bond and Payment Bond.** It is the intention of Developer and General Contractor that General Contractor will not be required to furnish bonds for the Project; provided however, that in the event that General Contractor is unable to convince Developer's lenders that such bonds are not necessary, (a) Developer shall have the right to require General Contractor to furnish such bonds and (b) Developer and General Contractor shall negotiate in good faith to determine the appropriate division of the cost of such bonds.

#### ARTICLE IX CHANGES IN THE WORK

##### **9.01 Change Orders.**

(a) A "Change Order" is a written order signed by Developer and General Contractor, authorizing a change in the Work and/or adjustment in the scope of the Project, the Contract Sum, or any Completion Period. Neither the Contract Sum nor any Completion Period can be changed without a validly executed Change Order.

(b) Developer, without invalidating this Agreement, may order changes in the Work consisting of additions, deletions or revisions. Upon receipt of such an order, General Contractor shall prepare, execute, and submit to Developer the corresponding Change Order setting forth the work to be performed, any corresponding increases or decreases to the Contract Sum, changes to the Completion Period, and an estimate of the applicable Change Order Fee. Such submitted Change Order shall only be deemed authorized upon its execution and return by Developer. The Work requested in a Change Order will not be completed until such Change Order has been executed by General Contractor and Developer. Any dispute arising over the terms of any proposed Change Order shall be treated as a Claim.

(c) As compensation for any additional work to be performed pursuant to a Change Order, General Contractor shall be paid a fee equal to 5% multiplied by any increase to the Contract Sum set forth in such Change Order; provided however, that no such fee shall be applied to Change Orders related to Upgrades. Furthermore, if pursuant to the terms of a Change Order, the Contract Sum is reduced, General Contractor shall deduct from the General Contractor Fees and Costs an amount equal to 5% multiplied by such decrease in the Contract Sum.

(d) Notwithstanding any provision of this Agreement, Developer may unilaterally terminate any Change Order prior to the completion of the Work set forth in such Change Order. Upon such termination, a deductive change order for the amount of the uncompleted Work set forth in the terminated Change Order shall be issued by Developer and no General Contractor Payment, Change Order Fee, or General Contractor Upgrade Fee shall be assessed in connection with such Change Order.

**9.02 Concealed Conditions.** To the extent that Concealed Conditions exist and adversely and materially affect the production or sequencing of the Work, General Contractor shall be entitled to an equitable adjustment of the Contract Sum to reflect the actual unforeseeable costs associated with such Concealed Conditions; provided however, that such adjustment shall be requested and approved as if it were a Change Order. However, if General Contractor was negligent in the performance of its responsibilities including its responsibility to review the Contract Documents including, without limitation, any soils reports and hydrology studies, and such negligence was a cause for the increased claim, the Contract Sum shall not be increased. The term "Concealed Conditions" shall include such conditions that (a) are concealed or unknown conditions; (b) discovered below grade; (c) are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided for by this Agreement; and (d) vary materially from those conditions set forth in the Contract Documents. Subject only to the previous sentence of this Section 9.02, General Contractor shall not be entitled to any Change Orders or adjustment in the Contract Sum made necessary by any unforeseen conditions including, without limitation, unforeseen gaps in or coordination issues arising from the Contract Drawings.

**ARTICLE X  
TERMINATION OF AGREEMENT**

**10.01 Termination by Developer Without Cause.**

(a) Developer may, without cause, terminate this Agreement in whole, or in part, at any time prior to the completion of the Work. It is expressly understood that such a partial termination may include, without limitation, the removal of the construction or completion of one or more of the Buildings from the scope of the Work. Developer shall give General Contractor 20 days written notice, specifying the extent of termination and the effective date. In the event of such termination, General Contractor shall only be entitled to recover from Developer (a) payment for any Work (including the applicable General Contractor Fees and Costs) completed since the Progress Payment prior to such termination and (b) General Contractor's reasonable demobilization costs not to exceed an aggregate of \$10,000. In no event shall General Contractor be entitled to profit or markup on services or work not performed.

(b) Upon receipt of written notice of termination of the Agreement or a portion of the Agreement pursuant to Section 10.01 (a), General Contractor shall do the following:

(i) Cease operations, or such portion of the operations, as directed by Developer in such notice;

(ii) Take any action necessary, or that Developer may request, for the protection and preservation of the Work until the effective date of such termination;

(iii) Continue any Work that is not subject to such notice;  
and

(iv) Cooperate with, and take any actions necessary to support, any efforts by Developer to assign the Third-Party Agreements to Developer or its designees.

**10.02 Termination by Developer With Cause.**

(a) Developer may terminate the Agreement if General Contractor:

(i) Fails to supply enough properly skilled workers as set forth in Article I; fails to supply enough proper materials or manpower to complete any portion of the Work pursuant to the Schedule;

(ii) Fails to make payment to Third-Party Service Providers for materials or labor in accordance with this Agreement and the respective agreements between General Contractor and such Third-Party Service Providers;

(iii) Persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;

(iv) Fails to provide the revised Schedules as required by Sections 4.01(e) and (f);

(v) Fails to conduct any meetings as required by Section 2.02(f); or

(vi) Otherwise breaches any provision of this Agreement and fails to cure such breach within 48 hours of receiving written notice of such breach from Developer.

(b) When any of the reasons set forth in Section 10.02(a) exist, Developer may without prejudice to any other rights or remedies available to Developer and after giving General Contractor seven days' written notice (in addition to the 48 hours notice for purposes of Section 10.02(a)(vi)), terminate employment of General Contractor and may do the following:

(i) Take possession of the Project Site, and all materials, equipment, tools, and construction equipment and machinery thereon owned by General Contractor to the extent that such items are incorporated into the Buildings or the Project Site;

(ii) Accept assignment of any Third-Party Agreements pursuant to Section 10.04; and

(iii) Complete the Work by whatever reasonable method that Developer deems expedient.

(c) In the event of a termination pursuant to Section 10.02(b), (i) General Contractor shall not be entitled to receive any further payment until the Work is finished and the receipt of any such payment shall be subject to Section 10.02(d) and (ii) upon the request of General Contractor after the completion of the Work, Developer shall furnish to General Contractor within 10 calendar days a detailed accounting of the costs incurred by Developer to finish the Work pursuant to Section 10.02(b)(iii).

(d) In the event of a termination pursuant to Section 10.02(b), upon completion of the Work, one of the following shall be paid:

(i) If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for any additional

services, cost increases, damages, or expenses made necessary by such termination or breach, such excess balance shall be retained by Developer as liquidated damages (and not as a penalty) for the underlying breach.

(ii) If the cost of finishing the Work, including compensation for any additional services, cost increases, damages, or expenses made necessary by such termination or breach, exceeds the unpaid balance of the Contract Sum, such excess cost of finishing the Work shall be immediately paid by General Contractor to Developer.

**10.03 Retained Equipment.** Upon the termination of the Agreement pursuant to this Article X, Developer may elect to retain any equipment owned by General Contractor that is incorporated into the Project.

**10.04 Assignment.** Each Third-Party Agreement for a portion of the Work is hereby assigned by General Contractor to Developer provided that such assignment is effective only after termination of the Agreement by Developer for cause pursuant to Section 10.02 and only for those Third-Party Agreements which Developer accepts by notifying General Contractor and the applicable Third-Party Service Provider in writing. General Contractor shall execute and deliver all such documents and take all such steps as Developer may require for the purpose of fully vesting in Developer the rights and benefits of General Contractor under such documents. Upon the acceptance by Developer of any Third-Party Agreement, subject to the other terms of this Article X, Developer shall pay to the corresponding Third-Party Service Provider any undisputed amounts owed for any Work completed by such Third-Party Service Provider, prior to the underlying termination for which Developer had not yet paid General Contractor prior to such underlying termination.

## ARTICLE XI CLAIM AND DISPUTE RESOLUTION

**11.01 Definition.** The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of any Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between Developer and General Contractor arising out of or relating to the Agreement. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**11.02 Time Limits on Claims.** Claims by either party must be initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

### 11.03 Resolution of Claims and Disputes by the Architect.

(a) Claims, including those alleging an error or omission by the Architect shall be referred initially to the Architect, for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between Developer and General Contractor arising prior to the date that Final Payment is made, unless 30 days have passed after the Claim has been referred to the Architect with no decision has been rendered by the Architect. The Architect will not decide disputes between General Contractor and persons or entities other than Developer.

(b) The Architect will review each Claim, and within 10 days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

(c) The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or applicable Completion Period or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

(d) When a written decision of the Architect states that (i) the decision is final but subject to mediation and arbitration and (ii) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within such 30 days' period shall result in the Architect's decision becoming final and binding upon Developer and General Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

### 11.04 Mediation.

(a) Any Claim shall after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

(b) The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the Construction Industry

Mediation Rules of the American Arbitration Association in effect as of the date that such Claim arises. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

(c) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Las Vegas, Nevada. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **11.05 Arbitration.**

(a) Any Claim shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 11.04.

(b) Claims not resolved by mediation shall be decided by arbitration which shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect as of the date that such Claim arises. The demand for arbitration shall be filed in writing with the other party to the Agreement, the American Arbitration Association, and the Architect.

(c) A demand for arbitration shall be made within the time limits specified in Sections 11.03(d) and 11.04(a) as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 2.12(d).

(d) The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

(e) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**11.06 Continued Performance.** Notwithstanding any provision of this Agreement, in the event of any unresolved Claim, dispute, or controversy between Developer and General Contractor related to the Project or this Agreement, General Contractor shall diligently continue to prosecute the Work

to the full extent practicable pending resolution of the unresolved Claim, dispute, or controversy and Developer shall continue to make payment required under the this Agreement for all Work that is not directly implicated in the Claim, dispute, or controversy.

## ARTICLE XII MISCELLANEOUS PROVISIONS

**12.01 Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by electronic mail or facsimile, upon transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below or such other address as either party may specify in writing:

(i) If to General Contractor:

APCO Construction  
3432 N. 5th Street  
Las Vegas, NV 89032  
Attention: Shawn Bowne  
Phone: (702) 734-0198  
Fax: (702) 734-0396  
Email: [showne@apcoconstruction.com](mailto:showne@apcoconstruction.com)  
[rnickerl@apcoconstruction.com](mailto:rnickerl@apcoconstruction.com)

(ii) If to Developer

Gemstone Development West, Inc.  
9121 W. Russell Rd., Suite 117  
Las Vegas, NV 89148  
Attention: Peter Smith  
Phone: (702) 614-3193  
Email: [pete@gemstonedev.com](mailto:pete@gemstonedev.com)

**12.02 Injunctive Relief for Breach.** General Contractor's obligations under this Agreement are of a unique character that gives them particular value. A breach of any of such obligations will result in irreparable and continuing damage to Developer for which there will be no adequate remedy at law. In the event of such breach, Developer will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

**12.03 Merger Clause.** This Agreement represents the entire and integrated agreement between Developer and General Contractor related to the subject matter hereof and supersedes all prior negotiations, representations,



or agreements, either written or oral, expressly excluding the Grading Agreement, dated April 17, 2007, between General Contractor and Developer.

**12.04 Amendment and Termination.** Subject to Article X and Section 4.01(j), this Agreement may be amended or terminated only by written instrument executed by both Developer and General Contractor.

**12.05 Assignment of this Agreement.** Developer may freely assign this Agreement but shall provide written notice of any assignment to General Contractor. Except as set forth in this Agreement, General Contractor may not subcontract, assign, or otherwise delegate its obligations under this Agreement without Developer's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of General Contractor's and Developer's successors and assigns, and will be binding on any assignees; provided however, that this Agreement shall not be construed to create a contractual relationship for the benefit of any third-party, including, without limitation, the Architect or any Third-Party Service Provider.

**12.06 Governing Law; Venue.** This Agreement shall be governed in all respects by the laws of the State of Nevada, as such laws are applied to agreements entered into and to be performed entirely within Nevada between Nevada residents and without regard to any conflict of law provisions. Subject to Article XI, any action or proceeding arising from or relating to this Agreement may only be brought in the applicable court in Las Vegas, Nevada, and each party hereby irrevocably submits to the jurisdiction and venue of such courts.

**12.07 Attorney's Fees:** Subject to Section 2.16, in the event that any negotiation, suit, action, arbitration, or mediation is instituted to enforce or interpret any provision in this Agreement or to resolve any dispute arising from or related to the Work, the prevailing party in such negotiation, suit, action, arbitration, or mediation shall be entitled to recover, in addition to any other relief to which it is entitled, from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including, without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**12.08 Unenforceability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**12.09 Waivers and Non-Waiver of Remedies.** No waiver by Developer of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by General Contractor of the same or any other provision. Developer's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Developer's consent to or approval of any subsequent act by General Contractor. Developer's failure to declare a breach of this Agreement for a particular default by General Contractor shall not be a waiver of any preceding or subsequent breach by General Contractor. Unless expressly stated otherwise in this Agreement, nothing in this Agreement shall limit the rights and remedies available to any party for any breach of this Agreement by the other party.

**12.10 Headings.** The table of contents and the headings of Articles and Sections are for convenience only and shall not modify rights and obligations created by this Agreement.

**12.11 Indemnification.**

(a) General Contractor agrees to defend, indemnify and hold harmless Developer and Developer's agents and employees from any claims, demands, losses and liabilities to or by any and all persons or entities (including without limitation, Developer, General Contractor, and any Third-Party Service Provider and their respective employees, agents, licenses, or representatives) arising out of or from the (i) any breach of this Agreement by General Contractor; (ii) the negligence or willful misconduct of General Contractor or any Third-Party Service Provider or any of their agents or employees; and (iii) the Services.

(b) Notwithstanding Section 12.11 (a), General Contractor's duty to defend and indemnify and hold Developer harmless shall not apply to liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the sole negligence of Developer or Developer's agents or employees.

(c) Provided that Developer has paid all undisputed outstanding invoices for a given Third-Party Service Provider, in the event that Developer is joined as a party in a lawsuit or arbitration filed by such Third-Party Service Provider concerning sums allegedly due to such party, General Contractor shall provide a bond or other security agreeable to Developer to protect the interests of Developer. The amount of bond or security provided by General Contractor shall be equal to 150% of the amount allegedly due the Third-Party Service Provider or supplier.

**12.12 Building Type References.** All references to "Types" of Buildings in this Agreement are referring to the five building types (I, II, III, IV, and V) in the Contract Documents.

**12.13 Business Days.** Unless it is expressly set forth that a "day" is a "business day", it shall be assumed that such day is a calendar day.

**12.14 Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute one and the same agreement. Signatures to this Agreement may be transmitted via facsimile or PDF, and such signatures shall be deemed to be originals.


**12.15 Insurance Binder.** Developer must deliver reasonable evidence of the existence of the OCIP within four business days of the Effective Date.

[Signature Page Attached]

This Agreement is entered into as of the Effective Date.

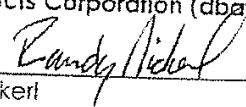
**DEVELOPER:**

Gemstone Development West, Inc.

  
Alexander Edelstein  
Chief Executive Officer

**GENERAL CONTRACTOR:**

Asphalt Products Corporation (dba:APCO Construction)

  
By: Randy Nickert  
Its: Division Manager

8.28.07

[APCO Agreement Signature Page]

**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 02:41 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 8, Bates Nos. 1691–1916)**

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MAC:05161-019 3698575\_1

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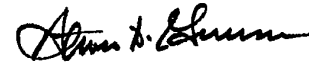


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<b><u>Date</u></b>	<b><u>DOCUMENT DESCRIPTION</u></b>	<b><u>Vol.</u></b>	<b><u>Bates Nos.</u></b>
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CLERK OF THE COURT

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*Attorneys for Interstate Plumbing & Air Conditioning, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 vs.

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

21 Defendants.

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

24 Plaintiff in Intervention,

25 vs.

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

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

*Consolidated with:*

A571792

A574391

A577623

A583289

A584730

A587168

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

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

PEEL BRIMLEY LLP  
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HENDERSON, NEVADA 89074  
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Calendared  
Date: 4/13/10

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

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

28 Defendants.

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

Plaintiff in Intervention,

vs.

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

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

*Consolidated with:*

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

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

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

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

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

15 **THE PARTIES**

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

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

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

28 and more particularly described as Clark County Assessor Parcel Numbers 63-32-101-020 and  
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-  
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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

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

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

11 5. Interstate is informed and believes and therefore alleges that Defendant CAMCO  
12 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was  
13 at all times relevant to this action doing business as a licensed contractor authorized to conduct  
14 business in Clark County, Nevada.  
15

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

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

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



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

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

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

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

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

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

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

23 14. APCO has breached the APCO Agreement by, among other things:  
24

25 a. Failing and/or refusing to pay the monies owed to Interstate for the APCO  
26 Work;  
27  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ///

27 ///

28

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

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

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

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

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

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

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

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

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

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

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

4 33. Due to the actions of CPCC, Interstate suffered damages in an amount to be  
5 determined at trial for which Interstate is entitled to judgment plus interest.  
6

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

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

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

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

17 37. As to APCO and CPCC, this cause of action is being pled in the alternative.  
18

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

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

23 40. Interstate has demanded payment of the APCO Outstanding Balance and CPCC  
24 Outstanding Balance.

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

27 42. The Defendants have been unjustly enriched, to the detriment of Interstate.  
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ///

28 ///



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 18 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
19 20060705, Instrument No. 0004264;  
20 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
21 20060705, Instrument No. 0004265;  
22 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
23 20060705, Instrument No. 0004266; and,  
24 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book  
25 20080207, Instrument No. 01482.

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

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

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

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

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

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

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

26     ///

27     ///

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

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

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

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

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

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

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

20       ///

21       ///

22       ///

23       ///

24       ///

25       ///

26       ///

27       ///

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- Interstate Plumbing\006 - Camco Pacific

[Manhattan West]\PX\Originals\100326 Interstate

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

3           Dated this 5 day of April 2010.

**PEEL BRIMLEY LLP**



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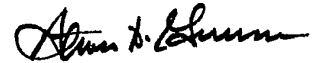
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*Attorneys for Interstate Plumbing & Air  
Conditioning, LLC*

**EXHIBIT 1**  
**Manhattan West**

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

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



CLERK OF THE COURT

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

LISP

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

14 Plaintiff,

15 vs.

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

23 Defendants.

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

26 Plaintiff in Intervention,

27 vs.

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

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

*Consolidated with:*

A571792

A574391

A577623

A583289

A584730

A587168

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

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

Defendants.

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

County Assessor Description:

Manhattan West Condominiums  
Spring Valley  
See Attached Exhibit 1  
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246).

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

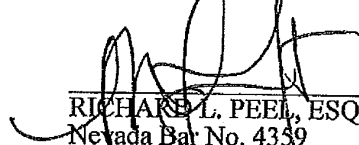


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5, 2006, in Book 20060705 as Instrument No. 0004265, its Third Deed of Trust recorded on July 5, 2006 in Book 20060705 as Instrument No. 0004266 and its Senior Debt Deed of Trust recorded February 7, 2008, in Book 20080207 as Instrument No. 01482.

Dated this 5 day of April 2010.

**PEEL BRIMLEY LLP**



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4339

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

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*Attorneys for Interstate Plumbing & Air  
Conditioning, LLC*

**WHEN RECORDED RETURN TO:**

RICHARD L. PEEL, ESQ.

PEEL BRIMLEY LLP

3333 E. Serene Avenue, Suite 200

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**EXHIBIT 1**  
**Manhattan West**

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

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

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**ASCR**  
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MICHAEL T. GEBHART, ESQ.  
Nevada Bar No. 7718  
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[dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

*Attorneys for Interstate Plumbing & Air Conditioning, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

Plaintiff in Intervention,

vs.

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

Defendants.

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

*Consolidated with:*

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

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

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

6 DATED this \_\_\_\_ day of April 2010.

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

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10 Gwen Rutar Mullins, Esq.  
11 Nevada Bar No. 3146  
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17 *Attorneys for Asphalt Products Corp. & APCO*  
18 *Construction*  
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28

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**SUMM**

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

Nevada Bar No. 10270

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*Attorneys for Interstate Plumbing & Air Conditioning, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

Plaintiff in Intervention,

vs.

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

Defendants.

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

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**SUMMONS - CIVIL**

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

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

4 **TO THE DEFENDANTS:**

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

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

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

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

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

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

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

16 Submitted by:

**STEVEN D. GRIERSON,**  
Clerk of the Court

17 **PEEL BRIMLEY LLP**

18 By: 

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

Nevada Bar No. 10270

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[dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

Attorneys for Interstate Plumbing & Air  
Conditioning, LLC

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

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

APR 3 2010

Date

PEEL BRIMLEY LLP  
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(702) 990-7272 ♦ FAX (702) 990-7273

AFFIDAVIT OF SERVICE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

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

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

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

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

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

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

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

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

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

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

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

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Signature of Person Making Service

PEEL BRIMLEY LLP  
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**IAFD**

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MICHAEL T. GEBHART, ESQ.

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DALLIN T. WAYMENT, ESQ.

Nevada Bar No. 10270

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[dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

*Attorneys for Interstate Plumbing & Air Conditioning, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

Plaintiff in Intervention,

vs.

ASPHALT PRODUCTS CORP., a Nevada  
corporation; APCO CONSTRUCTION, a  
Nevada corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., Nevada  
corporation; FIDELITY AND DEPOSIT

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

*Consolidated with:*

A571792

A574391

A577623

A583289

A584730

A587168

**INITIAL APPEARANCE FEE  
DISCLOSURE**

**(NRS CHAPTER 19)**



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HENDERSON, NEVADA 89074

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


Defendants.

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

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

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP

  
RICHARD L. PEEL, ESQ.

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MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

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**ASCR**

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[dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

*Attorneys for Interstate Plumbing & Air Conditioning, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

Plaintiff in Intervention,

vs.

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

Defendants.

LEAD CASE NO.: A571228

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A587168

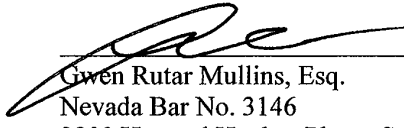
**ACCEPTANCE OF SERVICE BY  
ASPHALT PRODUCTS CORP. AND  
APCO CONSTRUCTION**

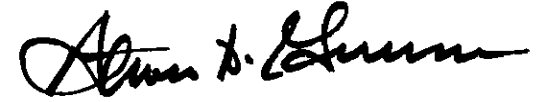
PEEL BRIMLEY LLP  
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1 I, Gwen Rutar Mullins, Esq. of the Law Offices of Howard & Howard Attorneys, P.C., attorneys  
2 for **ASPHALT PRODUCTS CORP. AND APCO CONSTRUCTION** and thereby acting at their  
3 request and on their behalf, hereby accepts service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

6 DATED this 12<sup>th</sup> day of April 2010.

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

8  
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10 Gwen Rutar Mullins, Esq.  
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17 *Attorneys for Asphalt Products Corp. & APCO*  
18 *Construction*  
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CLERK OF THE COURT

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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

Case No: A571228  
Dept. No: XXV

And All Consolidated Cases

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

16 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

17 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
18 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as  
19 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
20 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HELIX ELECTRIC  
21 OF NEVADA, LLC. d/b/a HELIX ELECTRIC, (hereinafter "Plaintiff" or "Helix"), on file  
22 herein, and admit, deny, and allege as follows:

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

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

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

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

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

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

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

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

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

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

#### **AFFIRMATIVE DEFENSES**

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

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

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

- 1 29. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
2 partnerships, corporations, associations, or other organizations that are not its named  
3 principal.
- 4 30. The damages sustained by Plaintiff, if any, were caused by the acts of third persons who  
5 were not agents, servants, or employees of Fidelity, or its principal, and who were not  
6 acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity  
7 or its principal are not liable in any manner to the Plaintiff.
- 8 31. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
9 partnerships, corporations, associations, or other organizations that are not its named  
10 principal.
- 11 32. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond because  
12 no judgment or court decree has been entered against its principal.
- 13 33. It has been necessary for Camco and Fidelity to retain the services of the law offices of  
14 Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action,  
15 and Camco is entitled to payment of all costs, fees, and expenses associated with and/or  
16 arising out of the defense of this action.
- 17 34. Pursuant To NRCP 8, all possible affirmative defenses may not have been alleged  
18 herein, inasmuch as sufficient facts were not available after reasonable investigation and  
19 inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the  
20 right to amend their Answer to allege additional affirmative defenses if subsequent  
21 investigation warrants.

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

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

27 **COUNTERCLAIM**

28 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter



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

3 **JURISDICTIONAL ALLEGATIONS**

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

16 **FIRST CAUSE OF ACTION**

17 **(Abuse of Process)**

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

1 9. No payments for the work and materials furnished to the Project came through  
2 Camco.

3 10. There was no contract between Cactus Rose and Camco with regard to the Project.

4 11. The only viable claims Cactus Rose has, if any, are against Gemstone and/or the  
5 Property.

6 12. Lacking a basis for relief against Camco, Cactus Rose has an ulterior purpose, other  
7 than resolving a legal dispute, in bringing this lawsuit against Camco.

8 13. Cactus Rose has engaged in a willful act in the use of the legal process not proper in the  
9 regular conduct of the proceeding.

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

13 **SECOND CAUSE OF ACTION**

14 **(Breach of Contract - In the Alternative)**

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

18 16. Apco Construction ("Apco") was initially the general contractor for the Project.

19 17. Cactus Rose and Apco entered into a Subcontract Agreement (the "Agreement") relative  
20 to the Project.

21 18. Section 3.4 of the Agreement states: "Any payments to Subcontractor shall be  
22 conditioned upon receipt of the actual payments by Contractor from Owner.

23 Subcontractor herein agrees to assume the same risk that the Owner may become  
24 insolvent that Contractor has assumed by entering into the Prime Contract with the  
25 Owner."

26 19. If any contract existed at all between Camco and Cactus Rose, it was an implied  
27 contract based on the terms of the Agreement.

28 20. All payments made to subcontractors and suppliers on the Project were made directly by

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

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

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

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

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

25. 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.

### **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Relief)**

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

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

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

20 **FIFTH CAUSE OF ACTION**

21 **(Attorney's Fees)**

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

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

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

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

- 4 37. Therefore, Camco asks this Court, pursuant to NRS 30.120, to award Camco the  
5 attorney's fees and costs that it incurs in the defense and prosecution of this litigation.  
6 38. It has become necessary for Camco to retain the services of the law firm of Woodbury,  
7 Morris & Brown to defend against the Complaint and to bring counterclaims against  
8 Cactus Rose, and Camco is therefore entitled to an award of attorneys' fees and costs  
9 incurred herein.

10 WHEREFORE, Counterclaimant Camco prays as follows:

- 11 1. For this Court to enter judgment against Counterdefendant in an amount in  
12 excess of \$10,000.00, plus interest at the contract rate;  
13 2. For an award of reasonable attorneys' fees and costs for having to prosecute this  
14 action; and  
15 3. For such other and further relief as the Court deems just and proper.

16 DATED this 13th day of April 2010.

WOODBURY, MORRIS & BROWN

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

## CERTIFICATE OF MAILING

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

Counsel of Record	Method of Service
Brian K. Berman, Esq. 721 Gass Avenue Las Vegas, NV 89101 <i>Attorney for Ready Mix, Inc.</i> Fax: 382-6450 E-mail: b.k.berman@att.net	<input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery
Andrew F. Dixon, Esq. Jonathan W. Barlow, Esq. <b>BOWLER, DIXON &amp; TWITCHELL</b> 400 North Stephanie #235 Henderson, NV 89014 <i>Attorneys for The Pressure Grout Company</i> Fax: 260-8983 E-mail: andrew@bdtlawyers.com	<input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery
Richard Dreitzer, Esq. <b>BULLIVANT HOUSER BAILEY PC</b> 3883 Howard Hughes Pkwy., Suite 550 Las Vegas, Nevada 89169 <i>Attorneys for Plaintiff Wiss, Janney, Elstner Associates, Inc.</i> Fax: 650-2995 E-mail: richard.dreitzer@bullivant.com	<input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery
Cabinetec, Inc. 2711 East Craig Road North Las Vegas, NV 89030-3367	<input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery
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<p>Eric Dobberstein, Esq.  G. Lance Welch, Esq.  <b>DOBBERSTEIN &amp; ASSOCIATES</b>  8965 S. Eastern Ave., #280  Las Vegas, NV 89123  <i>Attorneys for Insulpro Projects, Inc.</i>  Fax: 382-1661  E-mail: lancew@edautolaw.com</p>	<p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid  <input type="checkbox"/> Facsimile at the number listed  <input checked="" type="checkbox"/> Electronic transmission (Wiznet)  <input type="checkbox"/> Personal Service / Hand delivery</p>
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Counsel of Record	Method of Service
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<p>Phillip S. Aurbach, Esq.  <b>MARQUIS &amp; AURBACH</b>  10001 Park Run Drive  Las Vegas, NV 89145  <i>Co-Counsel for Nevada Construction Services</i>  Fax: 920-8309  E-mail: paurbach@marquisaurbach.com</p>	<p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid  <input type="checkbox"/> Facsimile at the number listed  <input checked="" type="checkbox"/> Electronic transmission (Wiznet)  <input type="checkbox"/> Personal Service / Hand delivery</p>
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<p>Ryan Bellows, Esq.  <b>McDONALD CARANO WILSON, LLP</b>  100 West Liberty Street, 10<sup>th</sup> Floor  Reno, Nevada 89505  <i>Attorneys for Fast Glass, Inc.</i>  Fax: 788-2020  E-mail:</p>	<p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid  <input type="checkbox"/> Facsimile at the number listed  <input checked="" type="checkbox"/> Electronic transmission (Wiznet)  <input type="checkbox"/> Personal Service / Hand delivery</p>
<p>Glenn F. Meier, Esq.  <b>MEIER &amp; FINE, LLC</b>  2300 W, Sahara Ave., #430  Las Vegas, NV 89102  <i>Attorneys for Scott Financial Corporation</i>  Fax: 673-1001  E-mail: www.mpnvlaw.com</p>	<p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid  <input type="checkbox"/> Facsimile at the number listed  <input checked="" type="checkbox"/> Electronic transmission (Wiznet)  <input type="checkbox"/> Personal Service / Hand delivery</p>
<p>K. Layne Morrill, Esq.  Martin A. Aronson, Esq.  <b>MORRILL &amp; ARONSON</b>  One E. Camelback Road, Ste. 340  Phoenix, AZ 85012  <i>Attorneys for Club Vista Financial Group, Tharaldson Motels II, Inc. and Gary D. Tharaldson</i></p>	<p><input type="checkbox"/> U.S. Mails, first class postage fully prepaid  <input type="checkbox"/> Facsimile at the number listed  <input checked="" type="checkbox"/> Electronic transmission (Wiznet)  <input type="checkbox"/> Personal Service / Hand delivery</p>

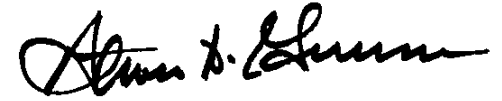
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/s/ Zachariah B. Parry  
Employee of WOODBURY, MORRIS & BROWN

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14 Attorneys for APCO Construction

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

12 APCO CONSTRUCTION, a Nevada  
13 corporation,  
14 Plaintiff,

15 vs.

16 GEMSTONE DEVELOPMENT WEST, INC.,  
17 a Nevada corporation; NEVADA  
18 CONSTRUCTION SERVICES, a Nevada  
19 corporation; SCOTT FINANCIAL  
20 CORPORATION, a North Dakota 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. NO.: XXV

Consolidated with: 08A574391,  
08A574792, 08A577623, 09A580889,  
09A583289, 09A584730, 09A584960,  
09A587168, A-09-589195-C, A-09-589677-  
C, A-09-590319-C, A-09-592826-C,  
A-09-596924-C, and A-09-597089-C

**STIPULATION AND ORDER FOR  
DISMISSAL WITH PREJUDICE OF  
CLAIMS ASSERTED BY SELECT BUILD  
NEVADA, INC AGAINST APCO  
CONSTRUCTION**

24 AND ALL RELATED CASES AND  
25 MATTERS.

Date: N/A  
Time: N/A

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**STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE OF CLAIMS  
ASSERTED BY SELECT BUILD NEVADA, INC AGAINST APCO CONSTRUCTION**

Date: N/A  
Time: N/A

Plaintiff in Intervention, SELECTBUILD NEVADA, INC. ("Selectbuild"), by and through its attorneys of record, Brian K. Walters, Esq. of the law firm of Morris Polich & Purdy LLP and Plaintiff/Defendant, APCO CONSTRUCTION ("APCO"), by and through its attorneys of record, Gwen Rutar Mullins, Esq. and Wade B. Gochmour, Esq. of the law firm Howard & Howard Attorneys PLLC, hereby stipulate and agree as follows:

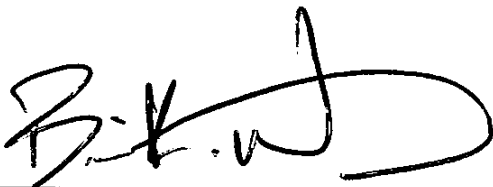
IT IS HEREBY STIPULATED AND AGREED that Selectbuild hereby DISMISSES all of its claims that have been asserted by Selectbuild against APCO with PREJUDICE in this action.

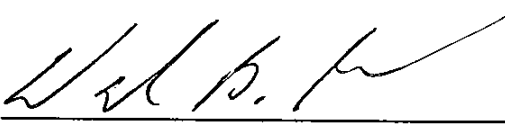
IT IS FURTHER STIPULATED AND AGREED that all remaining claims that have been asserted in this action by either Selectbuild and/or APCO against any other party to this action shall remain for adjudication by this Court and are not being dismissed hereby.

IT IS FURTHER STIPULATED AND AGREED that each party bears their own attorneys' fees and costs of this suit relative the claims and causes of action which are being dismissed through this Stipulation.

**MORRIS POLICH & PURDY LLP**

**HOWARD & HOWARD ATTORNEYS  
PLLC**

  
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*Attorneys for APCO Construction Corp.*

Dated: 6/23/10

Dated: 6/24/10

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

**ORDER**

Based on the Stipulation entered above,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all claims and causes of action that have been asserted by Selectbuild against APCO in this action be and hereby are dismissed with PREJUDICE.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all remaining claims that have been asserted in this action by either Selectbuild and/or APCO against any other party to this action shall remain for adjudication by this Court and are not being hereby dismissed.

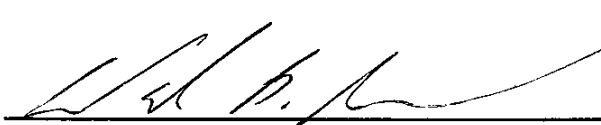
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Selectbuild and APCO each bear their own attorneys' fees and costs of this suit relative the claims and causes of action that are being dismissed through this Order.

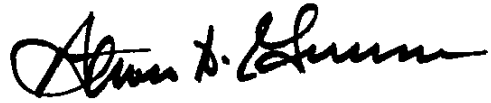
DATED this 28<sup>th</sup> day of June 2010.

  
DISTRICT COURT JUDGE  
KATHLEEN E. DELANEY

Submitted by:

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9 *And Tharaldson Motels II, Inc.*

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

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

14 **Plaintiffs,**

15 **v.**

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

25 **Defendants.**

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

Case No.: A571228

Dept. No.: XXIX

**CONSOLIDATED CASES:**

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

**NOTICE OF ENTRY OF ORDER**  
**APPROVING SALE OF PROPERTY**

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

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April, 2013. A copy is attached.

Dated this \_\_\_\_\_ day of April, 2012.

GREENBERG TRAURIG, LLP

By:  NV 12007 for:

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**CERTIFICATE OF SERVICE**

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

Please see the attached list downloaded from Wiznet  
by causing a full, true, and correct copy thereof to be sent by the following indicated method  
or methods, on the date set forth below:

- ☐ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☒ by electronic mail to the last known e-mail address, through Wiznet.

DATED this 25<sup>th</sup> day of April, 2013.

Valene Larsen  
An employee of Greenberg Traurig, LLP

**E-Service Master List  
For Case**

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

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ORIGINAL



CLERK OF THE COURT

**ORDR**

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*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiffs,

v.

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

Defendants.

**AND ALL RELATED CASES AND  
MATTERS**

Case No.: A571228  
Dept. No.: XXIX

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

**ORDER APPROVING SALE OF  
PROPERTY**

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

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

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

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

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

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

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

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

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

15 ACCORDINGLY, IT IS HEREBY ORDERED that:

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

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

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

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



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

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

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

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

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

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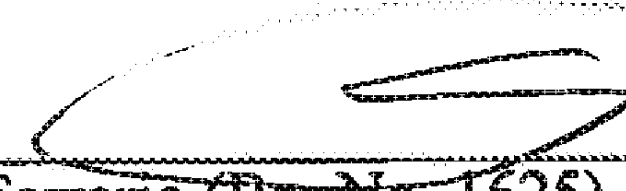
Purchase and Sale Agreement or this Order shall be deemed to be a waiver of any party's legal arguments or positions regarding priority.

IT IS SO ORDERED.

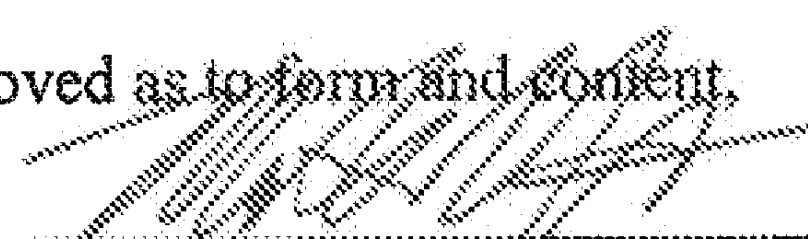
DATED this 23rd day of April, 2013.

  
DISTRICT COURT JUDGE

Respectfully submitted,

By:   
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Tami D. Cowden (Bar No. 8994)  
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Suite 400 North  
Las Vegas, Nevada 89169  
*Attorneys for Defendants Club Vista Financial Services, LLC  
and Tharaldson Motels II, Inc.*

Approved as to form and content,

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*Attorneys for Scott Financial Corporation  
and Bradley J. Scott*

By: \_\_\_\_\_  
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*Attorneys for APCO Construction*

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

**IT IS SO ORDERED.**

DATED this \_\_\_\_\_ day of April, 2013.

\_\_\_\_\_  
DISTRICT COURT JUDGE

Respectfully submitted,

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

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

**IT IS SO ORDERED.**

DATED this \_\_\_\_\_ day of April, 2013.

DISTRICT COURT JUDGE

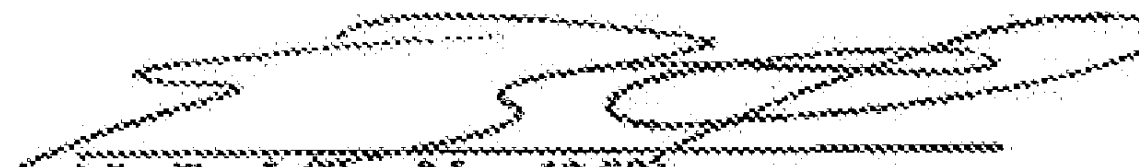
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*Attorneys for Various Lien Claimants*

# Exhibit A

# Exhibit A

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

ATTENTION: Kristin Ravelo

Amended April 3, 2013

Your Number

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

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

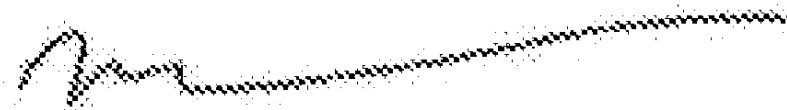
In response to the above referenced application for a policy of title insurance, Nevada Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set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

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

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

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

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



---

Title Officer: Martin Bressler



## SCHEDULE A

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

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

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

A Fee

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

**Gemstone Development West, Inc., a Nevada corporation**

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

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

Address: Vacant Land Las Vegas, NV

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL I:**

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

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

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

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

**PARCEL II:**

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

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

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

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

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



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

**PARCEL III:**

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

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

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

**PARCEL IV:**

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

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

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

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

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

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

## SCHEDULE B

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

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

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

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

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

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

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

Affects: Parcel I

Parcel No. 163-32-101-020

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

Affects: Parcel I

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

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

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

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

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

Affects: Parcel II

Parcel No. 163-32-101-022

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

Affects: Parcel II

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

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

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

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

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

Affects: Parcel III

Parcel No. 163-32-101-023

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

Affects: Parcel III

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

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

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

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

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

Affects: Parcel IV

Parcel No. 163-32-101-024

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

Affects: Parcel IV

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Dated: June 26, 2006

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

Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY

Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

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

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

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

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

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

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

25. Deed of Trust to secure an indebtedness of \$13,000,000.00 and any other amounts payable under the terms thereof:  
Recorded: July 5, 2006 in Book 20060705 Document No. 04266 of Official Records.  
Dated: June 26, 2006  
Trustor: GEMSTONE APACHE, LLC, A NEVADA LIMITED LIABILITY COMPANY  
Trustee: FIRST AMERICAN TITLE INSURANCE COMPANY  
Beneficiary: SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION

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

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

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

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

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

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

26. Terms, covenants, conditions and provisions in an instrument entitled, "IMPROVEMENT PHASING AGREEMENT", recorded February 7, 2007, in Book 20070207 as Document No. 04555, of Official Records.
27. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for pedestrian access and utility, recorded August 23, 2007, in Book 20070823 as Document No. 04784 of Official Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

Amount: \$1,956,902.53

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

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

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

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

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

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

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



54. A claim of Mechanic's Lien by LAS VEGAS PIPELINE LLC, recorded December 16, 2008 in Book 20081216 of Official Records as document number 0004218.  
Amount: \$373,892.42

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

New Amount: \$358,892.42

The above lien was amended by Amended and Restated Notice of Lien recorded April 1, 2009 in Book 20090401 as Document No. 04564 of Official Records.  
New Amount: \$202,592.07

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

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

55. A claim of Mechanic's Lien by ROBERT D. FORD D.B.A. BRUIN PAINTING, CORPORATION, recorded December 17, 2008 in Book 20081217 of Official Records as document number 0001837.  
Amount: \$641,748.33

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

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

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

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

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

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

56. Intentionally omitted (Expunged A571228)

57. Intentionally omitted (Expunged A571228)

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

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

59. Intentionally omitted (Expunged A571228)

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

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

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

63. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00975.

Amount: \$63,362.02

64. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00976.

Amount: \$3,685.15

65. A claim of Mechanic's Lien by CREATIVE HOME THEATRE, LLC, recorded December 19, 2008 in Book 20081219 of Official Records as document number 00977.

Amount: \$3,257.73

66. A claim of Mechanic's Lien by ZITTING BROTHERS CONSTRUCTION, recorded December 23, 2008 in Book 20081223 of Official Records as document number 03690.

Amount: \$788,405.41

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

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

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02126 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02127 of Official Records.

New Amount: \$750,807.16

The above lien was amended by Amended Notice of Lien recorded April 7, 2010 in Book 20100407 as Document No. 02128 of Official Records.

New Amount: \$750,807.16

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

Amount: \$25,441.40

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

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

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

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

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

68. A claim of Mechanic's Lien by DAVE PETERSON FRAMING, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 001396.

Amount: \$50,000.00

An action commenced in the District Court, dated March 26, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00431 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "DAVE PETERSON FRAMING, INC.'S AMENDED NOTICE OF PENDENCY OF ACTION", DAVE PETERSON FRAMING, INC., A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00983 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00984 of Official Records.

69. A claim of Mechanic's Lien by SACRAMENTO INSULATION CONTRACTORS, INC., DBA GALE BUILDING PRODUCTS FKA INSULPRO PROJECTS INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 01766.  
Amount: \$95,659.36

An action commenced in the District Court, dated March 24, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", INSULPRO PROJECTS, INC. -vs- GEMSTONE DEVELOPMENT, INC., A NEVADA CORPORATION; AND DOES I THROUGH X; AND ROES CORPORATIONS I THROUGH V, INCLUSIVE; APCO CONSTRUCTION, A NEVADA CORPORATION; AND DOES XI THROUGH XX; AND ROES CORPORATIONS VI THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; AND DOES XXI THROUGH XXV; AND ROES CORPORATIONS XI THROUGH SV, INCLUSIVE

Notice of Pendency of said Action was recorded March 30, 2009 in Book 20090330 as Document No. 0001552 of Official Records.

70. A claim of Mechanic's Lien by BUCHELE, INC., recorded December 30, 2008 in Book 20081230 of Official Records as document number 03196.  
Amount: \$77,220.70

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01818 of Official Records.

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

72. Intentionally Omitted (Expunged A571228)

73. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. -- CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04470.  
Amount: \$5,868.00

74. A claim of Mechanic's Lien by SELECTBUILD NEVADA, INC. -- CONCRETE DIV., recorded January 5, 2009 in Book 20090105 of Official Records as document number 04471.  
Amount: \$62,250.50

75. Intentionally omitted (refiled see Exc. 155)

76. A claim of Mechanic's Lien by STEEL STRUCTURES, INC., recorded January 7, 2009 in Book 20090107 of Official Records as document number 0001649.  
Amount: \$4,300.00



77. An action commenced in the District Court, dated January 5, 2009, Case No. A571228, entitled, "NOTICE OF LIS PENDENS", APCO CONSTRUCTION, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; NEVADA CONSTRUCTION SERVICES, A NEVADA CORPORATION; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X; AND HARSCO CORPORATION, A FOREIGN CORPORATION, --vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; CONCRETE VISIONS, INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE COMPANY, A SURETY; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; AND DOES I THROUGH X

Notice of Pendency of said Action was recorded January 7, 2009 in Book 20090107 as Document No. 04231 of Official Records.

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

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

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

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

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

83. A claim of Mechanic's Lien by NOORDA SHEET METAL COMPANY, recorded January 8, 2009 in Book 20090108 of Official Records as document number 00267.  
Amount: \$945,351.40

An action commenced in the District Court, dated February 25, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded March 2, 2009 in Book 20090302 as Document No. 00250 of Official Records.

An action commenced in the District Court, dated April 18, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "NOORDA SHEET METAL COMPANY'S SECOND AMENDED NOTICE OF PENDENCY OF ACTION", NOORDA SHEET METAL COMPANY, A NEVADA CORPORATION -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.; A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00987 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010 in Book 20100504 as Document No. 00988 of Official Records.

84. A claim of Mechanic's Lien by AIERN RENTALS, INC., recorded January 8, 2009 in Book 20090108 of Official Records as document number 02970.  
Amount: \$109,032.00
85. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04475.  
Amount: \$8,625.00
86. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded January 9, 2009 in Book 20090109 of Official Records as document number 04476.  
Amount: \$242,608.00
87. Intentionally omitted (Expunged A571228)
88. Intentionally omitted (Expunged A571228)
89. A claim of Mechanic's Lien by SUPPLY NETWORK, INC. DBA VIKING SUPPLYNET, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02594.  
Amount: \$20,596.03
90. A claim of Mechanic's Lien by HELIX ELECTRIC OF NEVADA, LLC D/B/A HELIX ELECTRIC, recorded January 12, 2009 in Book 20090112 of Official Records as document number 02864.  
Amount: \$3,186,102.67



The above lien was amended by Amended Notice of Lien recorded January 29, 2009 in Book 20090129 as Document No. 00237 of Official Records.

An action commenced in the District Court, dated April 14, 2009, Case No. A587168, entitled, "NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 16, 2009 in Book 20090416 as Document No. 00180 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "HELIX ELECTRIC'S AMENDED NOTICE OF LIS PENDENS", HELIX ELECTRIC OF NEVADA, LLC, A NEVADA LIMITED-LIABILITY COMPANY, D/B/A HELIX ELECTRIC -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; APCO CONSTRUCTION, A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00237 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01812 of Official Records.

91. Intentionally omitted (Expunged A571228)

92. A claim of Mechanic's Lien by THE PRESSURE GROUT COMPANY, recorded January 12, 2009 in Book 20090112 of Official Records as document number 04585.

Amount: \$79,420.00

93. Intentionally omitted (Released)
94. Intentionally omitted (Expunged Case 08-A571228-B)
95. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 14, 2009 in Book 20090114 of Official  
Records as document number 03191.  
Amount: \$3,376,600.45
96. Intentionally omitted (Released 3/5/13).
97. A claim of Mechanic's Lien by CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., recorded January 15, 2009 in Book 20090115 of Official  
Records as document number 00331.  
Amount: \$20,311,853.16
98. A claim of Mechanic's Lien by INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, recorded January 16, 2009 in Book 20090116 of Official  
Records as document number 01512.  
Amount: \$783,161.63
99. Intentionally omitted (Expunged Case 08-A571228-B)
100. Intentionally omitted (Expunged Case 080A571228-B)
101. A claim of Mechanic's Lien by NORTHSTAR CONCRETE, INC., recorded  
January 20, 2009 in Book 20090120 of Official Records as document number  
04864.  
Amount: \$9,494.23 (THERE IS A PROMISED PAYMENT OF \$2,333.62  
WHICH CLAIMANT DOES NOT WANT TO INCLUDE IN THE LIEN)

An action commenced in the District Court, dated July 9, 2009, Case No.  
A571228, entitled, "LIS PENDENS", NORTHSTAR CONCRETE, INC., A  
NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., A CALIFORNIA CORPORATION; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND, A SURETY; CONCRETE VISIONS,  
INC., A NEVADA CORPORATION; PLATTE RIVER INSURANCE  
COMPANY, A SURETY; GEMSTONE DEVELOPMENT WEST, INC., A  
NEVADA CORPORATION; MOES 1 - 10, INCLUSIVE; AND ZOE  
CORPORATIONS 1 - 10, INCLUSIVE

Notice of Pendency of said Action was recorded July 20, 2009 in Book 20090720  
as Document No. 00028 of Official Records.

102. Intentionally omitted (Refiled see Exc. 154)

103. Intentionally omitted (Released 20130207-267)

104. A claim of Mechanic's Lien by PAPE MATERIAL HANDLING DBA PAPE RENTS, recorded January 20, 2009 in Book 20090120 of Official Records as document number 05051.  
Amount: \$22,176.01

105. A claim of Mechanic's Lien by SUNSTATE COMPANIES INC., recorded January 21, 2009 in Book 20090121 of Official Records as document number 01736.  
Amount: \$20,156.25

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

107. A claim of Mechanic's Lien by PROFESSIONAL DOORS & MILLWORKS, recorded January 23, 2009 in Book 20090123 of Official Records as document number 04055.  
Amount: \$582,966.86

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00432 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, AND ALL CONSOLIDATED CASES, entitled, "PROFESSIONAL DOORS AND MILLWORK'S AMENDED NOTICE OF PENDENCY OF ACTION", PROFESSIONAL DOORS AND MILLWORKS, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504 as Document No. 00989 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010

in Book 20100504 as Document No. 00990 of Official Records.

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

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

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

111. A claim of Mechanic's Lien by RENAISSANCE POOLS & SPAS, INC.,  
recorded January 30, 2009 in Book 20090130 of Official Records as document  
number 0002909.  
Amount: \$89,474.70

112. A claim of Mechanic's Lien by CELL-CRETE FIREPROOFING OF NEVADA,  
INC., recorded February 2, 2009 in Book 20090202 of Official Records as  
document number 03407.  
Amount: \$111,629.00

113. A claim of Mechanic's Lien by HEINAMAN CONTRACT GLAZING, recorded  
February 3, 2009 in Book 20090203 of Official Records as document number  
00318.  
Amount: \$185,319.09

The above lien was amended by Amended Notice of Lien recorded April 9, 2009  
in Book 20090409 as Document No. 01355 of Official Records.  
New Amount: \$187,525.26

An action commenced in the District Court, dated April 27, 2009, Case No.  
A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT  
GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS  
CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE  
DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND; DOES I THROUGH X; ROE  
CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I  
THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded April 29, 2009 in Book  
20090429 as Document No. 00142 of Official Records.

An action commenced in the District Court, dated June 22, 2009, Lead Case No. A571228, CONSOLIDATED WITH A571792, A574391, A577623, A583289, A584730 AND A587168, entitled, "NOTICE OF LIS PENDENS", HEINAMAN CONTRACT GLAZING, A CALIFORNIA CORPORATION -vs- ASPHALT PRODUCTS CORP., A NEVADA CORPORATION; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A CALIFORNIA CORPORATION; GEMSTONE DEVELOPMENT WEST, INC., NEVADA CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, A NORTH DAKOTA CORPORATION; DOES I THROUGH X; ROE CORPORATIONS I THROUGH X; BOE BONDING COMPANIES I THROUGH X; LOE LENDERS I THROUGH X, INCLUSIVE

Notice of Pendency of said Action was recorded June 25, 2009 in Book 20090625 as Document No. 00238 of Official Records.

An Amended Notice of Lis Pendens was recorded July 23, 2012 in Book 20120723 as Document No. 01813 of Official Records.

114. A claim of Mechanic's Lien by GRANITE CONSTRUCTION COMPANY, recorded February 3, 2009 in Book 20090203 of Official Records as document number 02712.

Amount: \$127,822.00

115. A claim of Mechanic's Lien by E&E FIRE PROTECTION, LLC, recorded February 4, 2009 in Book 20090204 of Official Records as document number 00167.

Amount: \$3,795,218.91

An action commenced in the District Court, dated March 27, 2009, Case No. A571228, entitled, "NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION; FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded April 1, 2009 in Book 20090401 as Document No. 00430 of Official Records.

An action commenced in the District Court, dated April 15, 2009, Case No. A571228, entitled, "E & E FIRE PROTECTION, LLC'S AMENDED NOTICE OF PENDENCY OF ACTION", E & E FIRE PROTECTION, LLC, A NEVADA LIMITED LIABILITY COMPANY -vs- GEMSTONE DEVELOPMENT WEST, INC., A NEVADA CORPORATION; DOES I THROUGH X, INCLUSIVE; AND ROE CORPORATIONS I THROUGH X, INCLUSIVE; CAMCO

PACIFIC CONSTRUCTION COMPANY, INC., A FOREIGN CORPORATION;  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Notice of Pendency of said Action was recorded May 4, 2010 in Book 20100504  
as Document No. 00981 of Official Records.

The above lien was amended by Amended Notice of Lien recorded May 4, 2010  
in Book 20100504 as Document No. 00982 of Official Records.

116. A claim of Mechanic's Lien by THE MASONRY GROUP NEVADA INC.,  
recorded February 4, 2009 in Book 20090204 of Official Records as document  
number 02241.

Amount: \$756,647.12

The above lien was amended by Amended Notice of Lien recorded February 26,  
2009 in Book 20090226 as Document No. 05925 of Official Records.

An action commenced in the District Court, dated March 9, 2009, Case No.  
A584730, entitled, "LIS PENDENS", THE MASONRY GROUP NEVADA,  
INC., A NEVADA CORPORATION -vs- CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.; GEMSTONE DEVELOPMENT WEST, INC.; FIDELITY  
AND DEPOSIT COMPANY OF MARYLAND AND DOES 1 THROUGH 500,  
INCLUSIVE

Notice of Pendency of said Action was recorded March 11, 2009 in Book  
20090311 as Document No. 03973 of Official Records.

117. Intentionally omitted (Expunged A571228)

118. A claim of Mechanic's Lien by FERGUSON FIRE & FABRICATION, INC.,  
recorded February 10, 2009 in Book 20090210 of Official Records as document  
number 02713.

Amount: \$90,932.76

119. Intentionally omitted (Expunged A571228)

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

121. A claim of Mechanic's Lien by WRG DESIGN, INC., recorded February 13,  
2009 in Book 20090213 of Official Records as document number 04321.

Amount: \$314,085.66

The above lien was amended by Amended Notice of Lien recorded April 27, 2009  
in Book 20090427 as Document No. 00107 of Official Records.

New Amount: \$275,115.66