

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 APCO CONSTRUCTION, INC.,
3 NEVADA CORPORATION,

4 Cross Appellant/Respondent,

5 vs.

6 HELIX ELECTRIC OF NEVADA, LLC

7 Cross Respondent/Appellant.

Case No. 77320

District Court Case No. 1900649

Electronically Filed
Aug 27 2019 02:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **APPENDIX TO AMENDED DOCKETING STATEMENT**
9 **VOLUME 4**

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**APPENDIX TO AMENDED DOCKETING STATEMENT
VOLUME 4**

EX.	DOCUMENTS	BATES STAMP NO.	VOL.
1.	Eighth Judicial District Court Docket in Case No. A587168 and consolidated cases in A571228 (PART 1 of 2)	0001-0595	1, 2 & 3
2.	Notice of Entry of Order and Order (1) Granting APCO Construction, Inc's Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part, (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part, (4) Granting Plaintiff In Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc's Motion to File a Surreply	0596-0610	3
3.	Chart outlining each the claims brought by and against the parties to Eighth Judicial District Court Case No. A587168 and how each claim was resolved	0611-0628	3
4.	Accuracy Glass & Mirror Co.'s First Amended Complaint	0629-0644	3

1	5.	APCO Construction, Inc.'s Counter and Claim	0645-0669	3
2		Claims to Interstate Plumbing and Air		
3		Conditioning. Inc's Third Party Complaint		
4	6.	Bruin Painting Corp.'s Third Party Complaint	0670-0682	3
5	7.	Cactus Rose Construction, Inc.'s Third Party	0683-0696	3
6		Complaint dated April 1, 2010		
7	8.	Camco Pacific Construction Co.'s Answer and	0697-0721	3
8		Counterclaim re: Dave Peterson Framing		
9	9.	Camco Pacific Construction Co.'s Answer and	0722-0744	4
10		Counterclaim re: Helix Electric		
11	10.	Camco Pacific Construction Co.'s Answer and	0745-0764	4
12		Counterclaim re: Accuracy Glass		
13	11.	Camco Pacific Construction Co.'s Answer and	0765-0784	4
14		Counterclaim re: Bruin Painting		
15	12.	Camco Pacific Construction Co.'s Answer and	0785-0805	4
16		Counterclaim re: WRG Design, Inc.		
17	13.	Camco Pacific Construction Co.'s Answer and	0806-0823	4
18		Counterclaim re: Cactus Rose Construction		
19	14.	Camco Pacific Construction Co.'s Answer and	0824-0844	4
		Counterclaim re: Heinaman Contract Glazing		
	15.	Camco Pacific Construction Co.'s Amended	0845-0851	4
		Answer and Counterclaim re: HD Supply &		
		Waterworks		
	16.	HD Supply Waterworks, LP's Third Party	0852-0869	4

1		Complaint		
2	17.	Helix Electric of Nevada, LLC's Third Party Complaint	0870-0885	4
3	18.	Heinaman Contract Glazing's Third Party Complaint	0886-0898	4
4	19.	Interstate Plumbing and Air Conditioning, LLC's Third Party Complaint	0899-0916	4
5	20.	WRG Design, Inc.'s Third Party Complaint	0917-0933	4
6	21.	April 5, 2010 Voluntary Dismissal	0934-0941	4
7	22.	May 26, 2010 Order Striking Gemstone's Answer and Counterclaims and Entering Default	0942-0944	4
8	23.	May 7, 2012 Order and Judgement on Scott Financial's Motion for Summary Judgment as to Priority of Liens	0945-0958	4
9	24.	April 4, 2013 Stipulation and Order to Dismiss	0959-0969	5
10	25.	October 7, 2016 Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation, and District Court Order	0970-0974	5
11	26.	September 20, 2017 Order Granting Plaintiff's Motion to Dismiss	0975-0977	5
12	27.	September 20, 2017 Stipulation and Order of Dismissal of All Claims Relating to Cardno	0978-0981	5

1	WRG, Inc.		
2	28. February 5, 2018 Stipulation and Order to	0982-0984	5
3	Dismiss Third Party Complaint of Interstate		
4	Plumbing & Air Conditioning, LLC Against		
	APCO Construction With Prejudice		
5	29. April 25, 2018 4.25.18 Findings of Fact and	0985-1056	5
6	Conclusions of Law as to the Claims of Helix		
	Electric and Cabenetec Against APCO		
7	30. April 26, 2018 Findings of Fact and Conclusions	1057-1069	5
8	of Law as to the Claims of Cactus Rose		
9	Construction Co., Inc.		
10	31. April 26, 2018 Findings of Fact and Conclusions	1070-1083	5
11	of Law as to the Claims of Heinaman Contract		
	Glazing		
12	32. April 26, 2018 Findings of Fact and Conclusions	1084-1094	5
13	of Law as to the Claims of Helix Electric of		
14	Nevada, LLC Against Camco Pacific		
	Construction, Inc.		
15	33. July 19, 2018 Order Granting Motion to Deposit	1095-1097	5
16	Bond Penal Sum With Court, Exoneration of		
	Bond, and Dismissal		
17	34. July 26, 2018 Order Approving Distribution of	1098-1100	5
18	Fidelity and Deposit Company of Maryland's		
19	Bond		

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the
3 Nevada Supreme Court on the 27th day of August, 2019 and was served
4 electronically in accordance with the Master Service List and via the United
5 States Mail, first class, postage prepaid, addressed as follows:

6 PEEL BRIMLEY LLP

MARQUIS AURBACH COFFING

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9 Tom W. Stewart
(tstewart@maclaw.com)

10
11 I further certify that I served a copy of this document by mailing a true
12 and correct copy thereof, postage prepaid, addressed to:

13 

14 _____
An employee of Fennemore Craig P.C.

EXHIBIT “9”

EXHIBIT “9”

ORIGINAL

Ho

ANS/CTCM
STEVEN L. MORRIS
Nevada Bar No. 7454
WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
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slmorris@wmb-law.net

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

**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.,** a 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.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO HELIX ELECTRIC'S
STATEMENT OF FACTS
CONSTITUTING LIEN AND THIRD-
PARTY COMPLAINT AND CAMCO
PACIFIC CONSTRUCTION COMPANY
INC.'S COUNTERCLAIM**

08A571228
380564



FILED

SEP 10 4 22 PM '09

Ed [Signature]
CLERK OF COURT

WOODBURY, MORRIS & BROWN
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RECEIVED
SEP 10 2009
CLERK OF COURT

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

4 Plaintiff-in-Intervention,

5 vs.

6 ASPHALT PRODUCTS CORP., A Nevada
7 corporation; APCO CONSTRUCTION, a
8 Nevada corporation; CAMCO PACIFIC
9 CONSTRUCTION COMPANY, INC., a
10 California corporation; GEMSTONE
11 DEVELOPMENT WEST, INC., a Nevada
12 Corporation; FIDELITY AND DEPOSIT
13 COMPANY OF MARYLAND; SCOTT
14 FINANCIAL CORPORATION, a North
15 Dakota Corporation; DOES I through X;
16 ROE CORPORATIONS I through X; BOE
17 BONDING COMPANIES I through X; LOE
18 LENDERS I through X, inclusive,

19 Defendants-in-Intervention.

20 CAMCO PACIFIC CONSTRUCTION
21 COMPANY, INC., a California corporation,

22 Countclaimant,

23 vs.

24 HELIX ELECTRIC OF NEVADA, LLC, a
25 Nevada limited-liability company d/b/a
26 HELIX ELECTRIC, and DOES I through X,

27 Counterdefendants.

28 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
(hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
(hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
"Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HELIX ELECTRIC
OF NEVADA, LLC, d/b/a HELIX ELECTRIC, (hereinafter "Plaintiff" or "Helix"), on file
herein, and admit, deny, and allege as follows:

1. Camco and Fidelity are without information or knowledge sufficient to ascertain

1 Camco and Fidelity are without information or knowledge sufficient to ascertain
2 the truth of the allegations contained in Paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 26, 27, 28,
3 29, 48, 49, 50, 51, 52, 56, 70, 71, 72, and 73 of Plaintiff's Complaint, and therefore deny each
4 and every allegation contained therein.

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

7 3. Camco and Fidelity deny each and every allegation contained in Paragraphs 18,
8 19, 20, 21, 22, 23, 24, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 53, 58, 60, 61, 62,
9 63, 64, 65, 66, 67, 76, 77, 78, 79, and 88 of Plaintiff's Complaint.

10 4. As to Paragraph 31, Camco and Fidelity admit that there is a covenant of good
11 faith and fair dealing implied in every agreement, and admit that Camco acted fairly and in good
12 faith. Camco and Fidelity all remaining allegations therein.

13 5. As to Paragraph 57, Camco and Fidelity admit that Helix's claim against the
14 Property is superior to the claim(s) of SFC, but deny the remaining allegations contained
15 therein.

16 6. As to Paragraphs 69 and 75, Camco and Fidelity admit that NRS §§ 624.606 to
17 624.630 speak for themselves, but deny the remaining allegations contained therein.

18 7. As to Paragraphs 83 and 84, Camco and Fidelity admit that the Mezzanine Deeds
19 of Trust Subordination Agreement speaks for itself, but deny the remaining allegations
20 contained therein.

21 8. As to paragraph 87, Camco and Fidelity admit that a dispute has arisen, and an
22 actual controversy now exists, but deny the remaining allegations contained therein.

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

26 10. To the extent that any allegations set forth in Plaintiff's Complaint have not been
27 answered, these answering Defendants deny each and every allegation or inference thereof not
28

1 expressly set forth hereinabove.

2 11 It has become necessary for these answering Defendants to retain the services of
3 WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result,
4 these answering Defendants have been damaged by the Plaintiff, and these answering
5 Defendants are accordingly entitled to their attorney fees and costs incurred herein.

6 **AFFIRMATIVE DEFENSES**

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

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

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

13 4. Camco is not negligent with respect to the transactions that are the subject of the
14 Complaint, and is and was not in breach of contract.

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

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

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

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

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

27 10. The claims for breach of contract and breach of implied covenant of good faith
28

1 and fair dealing are barred by the statute of frauds.

2 11. Plaintiff brought the case at bar without reasonable grounds upon which to base a
3 claim for relief.

4 12. Plaintiff maintained the present action without reasonable grounds upon which to
5 base a claim for relief.

6 13. Plaintiff's claims are not well grounded in fact.

7 14. Plaintiff's claims are not warranted by existing law.

8 15. Plaintiff is barred from recovering by the doctrine of unclean hands.

9 16. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

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

12 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
13 now complains.

14 19. There is no justiciable case or controversy as between Plaintiff and Camco
15 and/or Fidelity.

16 20. Plaintiff lacks standing to assert all or part of the causes of action contained in
17 their complaint.

18 21. Camco's performance on any contract was excused by Plaintiff's material breach
19 thereof.

20 22. Plaintiff failed to comply with the requirements of NRS Chapter 108 to perfect
21 its mechanic's lien and therefore would not be entitled to any recovery on its lien foreclosure
22 claim.

23 23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

1. That Plaintiff take nothing by way of its Complaint;
2. For an award of reasonable attorneys' fees and costs for having to defend this

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

2 **COUNTERCLAIM**

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

6 **JURISDICTIONAL ALLEGATIONS**

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

10 2. Counterdefendant HELIX ELECTRIC OF NEVADA, LLC, d/b/a HELIX
11 ELECTRIC, a Nevada limited-liability company (hereinafter referred to as "Helix") is and was
12 at all times relevant to this action, a corporation conducting business in Clark County, Nevada,

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

19 **FIRST CAUSE OF ACTION**

20 **(Abuse of Process)**

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

24 5. Camco was a general contractor for the Manhattan West Condominiums project,
25 located in Clark County, Nevada (the "Property," and/or "Project").

26 6. GEMSTONE DEVELOPMENT WEST, INC. ("Gemstone") was the owner of
27 the Project.

28 7. Camco did not request proposals from any subcontractor on the Project and

7. Camco did not request proposals from any subcontractor on the Project and Camco did not negotiate or enter into a contract with Helix.

8. Helix was selected by Gemstone and furnished its respective work and materials at Gemstone's direction and request.

9. No payments for the work and materials furnished to the Project came through Camco.

10. There was no contract between Helix and Camco with regard to the Project.

11. The only viable claims Helix has, if any, are against Gemstone and/or the Property.

12. Lacking a basis for relief against Camco, Helix has an ulterior purpose, other than resolving a legal dispute, in bringing this lawsuit against Camco.

13. Helix has engaged in a willful act in the use of the legal process not proper in the regular conduct of the proceeding.

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

SECOND CAUSE OF ACTION

(Breach of Contract - In the Alternative)

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

16. Apco Construction ("Apco") was initially the general contractor for the Project.

17. Helix and Apco entered into a Subcontract Agreement (the "Agreement") relative to the Project.

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

1 19. If any contract existed at all between Camco and Helix, it was an implied
2 contract based on the terms of the Agreement.

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

6 21. Camco never received payment on behalf of the subcontractors, including Helix,
7 and was therefore, not responsible nor liable for payment to the subcontractors, including Helix.

8 22. Helix agreed and expressly acknowledged that it assumed the risk of non-
9 payment by the Owner.

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

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

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

18 **THIRD CAUSE OF ACTION**

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

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

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

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

27 29. As a result of its breach of the covenant of good faith and fair dealing, Helix has
28 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
WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a
reasonable attorneys fees and costs therefor.

FOURTH CAUSE OF ACTION

(Declaratory Relief)

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

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

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

FIFTH CAUSE OF ACTION

(Attorneys' Fees)

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

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

36. In this case, pursuant to NRS Chapter 30, the Uniform Declaratory Judgment
Act, and more particularly, NRS 30.030 and NRS 30.040, Camco has requested that this Court
declare the rights, status and relationships between the parties under the Agreement. Camco has

1 been forced to retain the services of an attorney and has incurred costs in seeking such
2 declaratory relief from this Court.

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

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

8 WHEREFORE, Counterclaimant Camco prays as follows:

9 1. For this Court to enter judgment against Counterdefendant in an amount in
10 excess of \$10,000,000, plus interest at the contract rate.

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

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

14 DATED this 9th day of September 2009.

15 WOODBURY, MORRIS & BROWN

16 Steven L. Morris #11657 for

17 STEVEN L. MORRIS, ESQ.

18 Nevada Bar No. 7454

19 701 N. Green Valley Pkwy., Suite 110

20 Henderson, NV 89074-6178

21 Attorneys for Camco and Fidelity

22 **CERTIFICATE OF MAILING**

23 I hereby certify that on the 9th day of September 2009, I served a copy of the
24 **ANSWER TO HELIX ELECTRIC'S STATEMENT OF FACTS CONSTITUTING LIEN**
25 **AND THIRD-PARTY COMPLAINT AND CAMCO PACIFIC CONSTRUCTION**
26 **COMPANY INC.'S COUNTERCLAIM** by facsimile and by enclosing a true and correct
27 copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and
28 addressed to the following:

Richard L. Peel, Esq;
Michael T. Gehhart, Esq
Dallin T. Wayment, Esq
PEEL BRIMLEY, LLP
3333 East Serene Avenue, Suite 200

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

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Henderson, Nevada 89074-6571

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

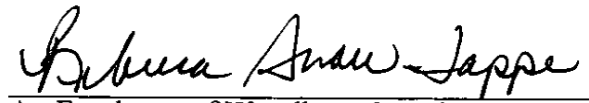

An Employee of Woodbury, Morris & Brown

EXHIBIT A

0735



Date: April 28, 2000
To: Nevada State Contractor's Board
From: Scott Financial Corporation
Subject: ManhattanWest Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,868.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

1180 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brent J. Scott
President



Exhibit 'A'

December 1, 2008

Lap Duckstein,

~~Cabine Tec Inc.~~

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

RE: ManhattanWest Funding

M. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503

Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

0741

Jennifer Olivares

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

Hi:

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

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

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

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

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

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

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

Thanks,

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



Brad J. Scott, CRE
 President
 brad@scottfinancialcorp.com
 15010 Sundown Drive
 Bismarck, ND 58503
 Office: 701.255.2215
 Fax: 701.223.7299
 Cell: 701.220.3999

A licensed and bonded corporate finance company.

Jennifer Olivares

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks,

Brad J. Scott
 Scott Financial Corporation
 15010 Sundown Drive
 Bismarck, ND 58503
 W 701.265.2215
 M 701.220.3999
 F 701.223.7299
 brad@scottfinancialcorp.com

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.265.2215 Fax: 701.223.7299 Cell: 701.220.3999
A licensed and bonded corporate finance company.	

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

01/2009

Exhibit B

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

EXHIBIT “10”

EXHIBIT “10”

WOODBURY, MORRIS & BROWN

701 N. Green Valley Parkway, Suite 110

Henderson, Nevada 89074

(702) 933-0777 • Fax (702) 933-0778

ANS/CTCM
STEVEN L. MORRIS
Nevada Bar No. 7454
WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 933-0777
slmorris@wmb-law.net
Attorneys for
Camco Pacific Construction Company, Inc. and
Fidelity and Deposit Company of Maryland

FILED

SEP 11 5 25 PM '09

E. J. Smith
CLERK OF THE COURT

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 1 through X;
ROE CORPORATIONS 1 through X; BOE
BONDING COMPANIES 1 through X; LOE
LENDERS 1 through X, inclusive,

Defendants.

CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation

Counterclaimant,

vs.

ACCURACY GLASS & MIRROR, a
Nevada corporation; and DOES 1 through X,
inclusive,

Counterdefendant,

Case No. A587168
Dept. No. XIII

Consolidated with
A571228

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

09A587168
389415



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

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

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

10 10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

1 "Project").

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

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

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

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

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

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

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

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

25 **SECOND CAUSE OF ACTION**

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

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

reference and further allege:

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

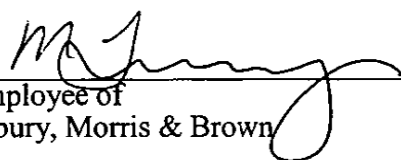
Dnd Blue #11051 for
STEVEN L. MORRIS, ESQ.
Nevada Bar No. 7454
701 N. Green Valley Pkwy, Suite 110
Henderson, NV 89074-6176
Attorneys for Camco and Fidelity

CERTIFICATE OF MAILING

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

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

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


An Employee of
Woodbury, Morris & Brown

WOODBURY, MORRIS & BROWN
701 W. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 933-0777 • Fax (702) 933-0774

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~6330 South Valley View, Suite 110~~

6330 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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


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

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

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

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

Sincerely,


Brad J. Scott
President

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

A licensed and bonded corporate finance company.

0760



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~ManhattanWest Funding~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

~~Although we cannot guarantee the approval of the October Payment Application, we do expect to be processed and funded by SFC within the next 15 business days.~~

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

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

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

Sincerely,


Brad A. Scott
President

15010 Sundown Drive • Bismarck, ND 58503

Office: 701.255.2215 • Fax: 701.228.7299

A licensed and bonded corporate finance company.

0761

Exhibit B

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

Jennifer Olivares

[Redacted] brad@scottfinancialcorp.com

Sent: Tuesday, December 16, 2008 9:38 AM

To: [Redacted] Jennifer Olivares

Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'

Subject: ManhattanWest Status

Importance: High

Jan:

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

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

I anticipate this final decision will however likely lead to ~~the October draws being approved~~

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

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

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

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

Thanks.

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

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
<small>A licensed and bonded corporate financial company.</small>	

1/1/2009

Jennifer Olivares

From: Brad J. Scott (brad@scottfinancialcorp.com)

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Oliver, Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NSB is hereby instructed by SFC to wire the previously advanced, but undispersed funds held on the account at NSB in the amount of \$93,166.72 back to SFC as per the attached wiring instructions.

The amount includes the current Lehman Payment held last of 12/29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott

Scott Financial Corporation

15010 Sundown Drive

Bismarck, ND 58503

W: 701.255.2215

M: 701.220.3999

F: 701.223.7299

brad@scottfinancialcorp.com



Brad J. Scott, CRE

President

brad@scottfinancialcorp.com

15010 Sundown Drive

Bismarck, ND 58503

Office: 701.255.2215

Fax: 701.223.7299

Cell: 701.220.3999

* licensed and bonded corporate finance company.

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

4/1/2009

0764

EXHIBIT “11”

EXHIBIT “11”

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

ANS/CTCM
STEVEN L. MORRIS
Nevada Bar No. 7454
WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 933-0777
slmorris@wmb-law.net
Attorneys for
Camco Pacific Construction Company, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No. A587168
Depl. No. XII

Consolidated with:
A571228

ANSWER TO BRUIN PAINTING CORPORATION'S STATEMENT OF FACTS CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC CONSTRUCTION INC.'S COUNTERCLAIM

09A587168
389434



FILED

SEP 11 5 22 PM '09

Ed Brin
CLERK OF THE COURT

1 BRUIN PAINTING CORPORATION, a
2 California corporation,

3 Plaintiff in Intervention,

4 vs.

5 CAMCO PACIFIC CONSTRUCTION
6 COMPANY, INC., a California corporation;
7 GEMSTONE DEVELOPMENT WEST,
8 INC., Nevada corporation; FIDELITY AND
9 DEPOSIT COMPANY OF MARYLAND;
10 SCOTT FINANCIAL CORPORATION, a
11 North Dakota Corporation; DOES 1 through
12 X; ROE CORPORATIONS 1 through X;
13 BOE BONDING COMPANIES 1 through X;
14 LOE LENDERS 1 through X, inclusive;

15 Defendants.

16 CAMCO PACIFIC CONSTRUCTION
17 COMPANY, INC., a California corporation,

18 Counterclaimant,

19 vs.

20 BRUIN PAINTING CORPORATION, a
21 California corporation; and DOES 1 through
22 X, inclusive,

23 Counterdefendants.

24 Third Party Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
25 (hereinafter "Camco"), by and through its counsel, Steven L. Morris, Esq. of the law firm of
26 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of BRUIN PAINTING
27 CORPORATION, (hereinafter "Plaintiff" or "Bruin"), on file herein, and admits, denies, and
28 alleges as follows:

1. Camco denies each and every allegation contained in Paragraphs 12, 13, 14, 15,
16, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 53, 56, 57, 58 and 59 of Plaintiff's
29 Complaint.

2. Camco is without information or knowledge sufficient to ascertain the truth of
30 the allegations contained in Paragraphs 7, 32, 34, 35, 36, 37, 38 and 42 of Plaintiff's Complaint,

and therefore denies each and every allegation contained therein.

3. Camco admits the allegations contained in Paragraphs 1, 2, 3, 4, 6, 41, 61, 62, 65, and 66 of Plaintiff's Complaint.

4. As to Paragraphs 8, 16, 21, 30, 40, 45, 54, and 60 of Plaintiff's Complaint, Camco repeats and realleges the answers to paragraphs 1 through 67 as though fully set forth herein.

5. As to Paragraphs 5, 46, 47, 48, 49, 50, 51, and 52 of Plaintiff's Complaint, it is unnecessary for Camco to respond in light of Bruin's August 3, 2009 Voluntary Dismissal of Claims against Fidelity and Deposit Company of Maryland; nonetheless, Camco denies each and every allegation contained therein.

6. As to Paragraph 9 Camco admits that Camco entered into a Subcontract Agreement with Bruin, but as for the remaining allegations therein, Camco admits that the contract speaks for itself.

7. As to Paragraph 10 Camco admits that Bruin furnished work for the benefit of and at the specific request of the Owner, but denies the remaining allegations therein.

8. As to Paragraph 11 Camco admits that Bruin was to be paid by the Owner for its services, but denies the remaining allegations therein.

9. As to Paragraph 17 Camco admits that it acted in good faith, but as for the remaining allegations therein, Camco admits that the contract speaks for itself.

10. As to Paragraph 25 Camco admits that Bruin knew or should have known that payment would have been made by Owner, but denies the remaining allegations therein.

11. As to Paragraph 43 Camco denies that Bruin's claim against the Property is superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of the remaining allegations therein and therefore denies the same.

12. As to Paragraph 55 Camco admits that the Statute speaks for itself, but denies the remaining allegations therein.

13. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

14. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

15. As to Paragraph 67 Camco admits that there is an actual controversy as to the overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

17. It has become necessary for this answering Defendant to retain the services of WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result, this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is accordingly entitled to its attorney fees and costs incurred herein.

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

10. Plaintiff brought the case at bar without reasonable grounds upon which to base a claim for relief.

11. Plaintiff maintained the present action without reasonable grounds upon which to base a claim for relief.

12. Plaintiff's claims are not well grounded in fact.

13. Plaintiff's claims are not warranted by existing law.

14. Plaintiff is barred from recovering by the doctrine of unclear hands.

15. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

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

17. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff now complains.

18. There is no justiciable case or controversy as between Plaintiff and Camco.

19. Plaintiff lacks standing to assert all or part of the causes of action contained in their complaint.

20. Camco's performance on any contract was excused by Plaintiff's material breach thereof.

21. Plaintiff has failed to mitigate its damages.

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

23. Pursuant To NRCP 8, all possible affirmative defenses may not have been alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to

1 amend its Answer to allege additional affirmative defenses if subsequent investigation warrants.

2 WHEREFORE, Third Party Defendant Camco prays as follows:

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

7 **COUNTERCLAIM**

8 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

9 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

10 Morris & Brown complains as follows:

11 **JURISDICTIONAL ALLEGATIONS**

- 12 1. Camco was and is at all times relevant to this action, a California corporation,
- 13 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State
- 14 Contractors Board.
- 15 2. Counterdefendant BRUIN PAINTING CORPORATION, a California
- 16 corporation (hereinafter referred to as "Bruin") is and was at all times relevant to this action, a
- 17 corporation conducting business in Clark County, Nevada.
- 18 3. The true names and capacities, whether individual, corporate, associate or
- 19 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.
- 20 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
- 21 Counterclaimant sues Defendants by such fictitious names. Counterclaimant will ask leave to
- 22 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
- 23 at such time as the same have been ascertained.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**

- 26 4. Camco repeats and realleges each and every allegation contained in the
- 27 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
- 28 reference and further alleges;
5. On or about September 8, 2008, Camco and Bruin entered into a Subcontract

1 Agreement (the "Agreement") relative to the Manhattan West Condominiums project, located
2 in Clark County, Nevada (the "Project").

3 6. Section II.A. of the Subcontract Agreement states: "Contractor and
4 Subcontractor expressly acknowledge that all payments due to Subcontractor under this
5 Agreement shall be made by Contractor solely out of funds actually received by Contractor
6 from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein,
7 in the risk that Owner may for at any reason, including, but not limited to, insolvency or an
8 alleged dispute, fail to make one or more payments to Contractor for all or a portion of the
9 Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition
10 precedent to Contractor's obligation to pay Subcontractor; it being understood that
11 Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's
12 portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable
13 to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives
14 the corresponding payment from Owner."

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

18 8. Camco never received payment on behalf of the subcontractors, including
19 Bruin, and was therefore, not responsible nor liable for payment to the subcontractors,
20 including Bruin.

21 9. Bruin agreed and expressly acknowledged that it assumed the risk of non-
22 payment by the Owner.

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

26 11. Camco is entitled to all of its attorneys' fees and costs pursuant to the terms
27 and conditions of the Agreement.

28 12. Camco has been required to engage the services of the law firm of
WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a

reasonable attorneys' fees and costs therefor.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

David B. Morris #11259 for

STEVEN L. MORRIS, ESQ.

Nevada Bar No. 7454

701 N. Green Valley Pkwy., Suite 110

Henderson, NV 89074-6178

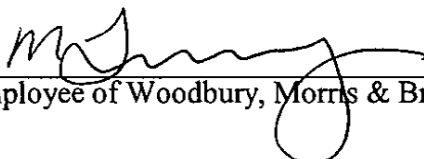
Attorneys for Camco

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
ANSWER TO BRUIN PAINTING CORPORATION'S STATEMENT OF FACT'S
CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and correct
copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and
addressed to the following:

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

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


An Employee of Woodbury, Morris & Brown

WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 913-0777 • Fax: (702) 913-0778

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$983,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

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

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

Sincerely,



Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



Exhibit A

November 4, 2008

Mr. Mike Evans

~~Mr. Mike Evans, President, E&E Fire Protection LLC~~

83110 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott
President

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

A licensed and bonded corporate finance company.

0780



Exhibit A

December 1, 2008

Leo Duckstein
~~Gemstone~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

~~Although we cannot guarantee when approval of the October draw request will be processed and completed, we will endeavor to complete the review process by December 1, 2008.~~

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

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

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

Sincerely,


Eric J. Scott
President

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

A licensed and bonded corporate finance company.

0781

Exhibit B

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

Jennifer Olivares

[Redacted] brad@scottfinancialcorp.com

Sent: Tuesday, December 16, 2008 9:38 AM

[Redacted]

To: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

I anticipate this final decision will however likely lead to foreclosure not being approved.

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

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

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

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

Thanks.

Brad J. Scott
Scott Financial Corporation
 16010 Sundown Drive
 Bismarck, ND 58503
 W: 701.255.2215
 M: 701.220.3999
 F: 701.223.7299
brad@scottfinancialcorp.com



Brad J. Scott, CRE	15010 Sundown Drive
President	Bismarck, ND 58503
brad@scottfinancialcorp.com	Office: 701.255.2215
	Fax: 701.223.7299
	Cell: 701.220.3999

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4/1/2009

0783

Jennifer Olivares

From: Brad J. Scott [brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

As per the instructions from SFC to wire the previous ManhattanWest funds held on account at NSB, the amount of \$1,356,729.23 has been wired to SFC using the attached wiring instructions.

The amount includes the current ManhattanWest payment for Dec of \$66,027.23 as it has not been received by SFC at this time.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

EXHIBIT “12”

EXHIBIT “12”

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

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

9 Attorneys for
10 Camco Pacific Construction Company, Inc. and
11 Fidelity and Deposit Company of Maryland
12

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

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

17 **Plaintiff,**

18 **vs.**

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

Defendants.

FILED

SEP 11 5 21 PM '09

Ed [Signature]
CLERK OF THE COURT

Case No. **A587168**
Dept. No. **XII**

Consolidated with:
A571228

**ANSWER TO WRG DESIGN, INC.'S
STATEMENT OF FACTS
CONSTITUTING LIEN, THIRD-PARTY
COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION INC.'S
COUNTERCLAIM**

09A587168
389442



1 WRG DESIGN, INC., a Delaware
2 corporation,

3 Plaintiff in Intervention,

4 vs.

5 ASPHALT PRODUCTS CORP., a Nevada
6 corporation; APCO CONSTRUCTION, a
7 Nevada corporation; CAMCO PACIFIC
8 CONSTRUCTION COMPANY, INC., a
9 California corporation; GEMSTONE
10 DEVELOPMENT WEST, INC., Nevada
11 corporation; FIDELITY AND DEPOSIT
12 COMPANY OF MARYLAND; SCOTT
13 FINANCIAL CORPORATION, a North
14 Dakota Corporation; DOES I through X;
15 ROE CORPORATIONS I through X; BOE
16 BONDING COMPANIES I through X; LOE
17 LENDERS I through X, inclusive,

18 Defendants.

13 CAMCO PACIFIC CONSTRUCTION
14 COMPANY, INC., a California corporation;
15 FIDELITY AND DEPOSIT COMPANY OF
16 MARYLAND,

17 Counterclaimant,

18 vs.

19 WRG DESIGN, INC., a Delaware
20 corporation; and DOES I through X,
21 inclusive,

22 Counterdefendants,

23 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
24 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
25 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
26 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
27 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of WRG DESIGN,
28 INC., a Delaware corporation (hereinafter "Plaintiff"), on file herein, and admit, deny and allege
as follows:

1 Camco and Fidelity deny each and every allegation contained in Paragraphs 29,
2 30, 31, 32, 45, 46, 47, 50, 51, 53, 54, 55, 56, 58, 60, 66, 71, 73, 74, 75, 76, 77, 78, 79, 80, and
3 89 of Plaintiff's Complaint.

4 2. Camco and Fidelity are without information or knowledge sufficient to ascertain
5 the truth of the allegations contained in Paragraphs 4, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20,
6 21, 22, 23, 24, 34, 35, 36, 37, 39, 40, 41, 42, 46, 61, 62, 63, 64, 65, and 69 of Plaintiff's
7 Complaint, and therefore deny each and every allegation contained therein.

8 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 6, 7,
9 68, 82, 83, 86, and 87 of Plaintiff's Complaint.

10 4. As to Paragraphs 9, 17, 25, 33, 38, 43, 48, 57, 67, 72, and 81 of Plaintiff's
11 Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 89 as
12 though fully set forth herein.

13 5. As to Paragraph 26 Camco and Fidelity admit that Camco entered into a
14 Ratification and Amendment of Subcontract Agreement with WRG, but as for the remaining
15 allegations therein, Camco admits that the contract speaks for itself.

16 6. As to Paragraph 27 Camco admits that WRG furnished work for the benefit of
17 and at the specific request of the Owner, but denies the remaining allegations therein.

18 7. As to Paragraph 28 Camco admits that WRG was to be paid by the Owner for its
19 services, but denies the remaining allegations therein.

20 8. As to Paragraph 44 Camco admits that it acted in good faith, but as for the
21 remaining allegations therein, Camco admits that the contract speaks for itself.

22 9. As to Paragraph 49 Camco admits that WRG furnished services for the benefit of
23 and at the specific instance of the Owner, but denies the remaining allegations therein.

24 10. As to Paragraph 52 Camco admits that WRG knew or should have known that
25 payment would have been made by Owner, but denies the remaining allegations therein.

26 11. As to Paragraph 57 Camco denies that WRG's claim against the Property is
27 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
28

1 the remaining allegations therein.

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

4 13. As to Paragraph 85 Camco admits that the Mezzanine Deeds of Trust
5 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

6 14. As to Paragraph 88 Camco admits that there is an actual controversy as to the
7 overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

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

15 AFFIRMATIVE DEFENSES

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

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

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

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

24 5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff
25 had full and complete knowledge and information in regard to the conditions and circumstances
26 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,
27 assume the risk attendant to any condition there or then present.
28

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

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

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

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

10. Plaintiff has failed to mitigate its damages.

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

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

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

14. Plaintiff has approved and ratified the alleged acts of Cameo for which Plaintiff now complains.

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

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

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

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

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

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

1 NRS 624.273.

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

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

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

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

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

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

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

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

26 **COUNTERCLAIM**

27 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter
28 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

1 Morris & Brown complains as follows:

2 **JURISDICTIONAL ALLEGATIONS**

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

6 2. Countertendant WRG DESIGN, INC., a Delaware corporation (hereinafter
7 referred to as "WRG") is and was at all times relevant to this action, a corporation conducting
8 business in Clark County, Nevada.

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

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

17 4. Cameco repeats and realleges each and every allegation contained in the
18 preceding paragraphs of Cameco's Counterclaim, incorporates the same at this point by reference
19 and further alleges:

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

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

26 7. Section 3.4 of the Subcontract Agreement states: "Any payments to
27 Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from
28 Owner. Subcontractor herein agrees to assume the same risk that the Owner may become

1 insolvent that Contractor has assumed by entering into the Prime Contract with the Owner."

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

5 9. Cameco never received payment on behalf of the subcontractors, including WRG,
6 and was therefore, not responsible nor liable for payment to the subcontractors, including WRG.

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

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

12 12. Cameco is entitled to all of its attorneys' fees and costs pursuant to the terms and
13 conditions of the Ratification Agreement.

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

17 **SECOND CAUSE OF ACTION**

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

19 14. Cameco repeats and realleges each and every allegation contained in the
20 preceding paragraphs of Counterclaimant's Counterclaims, incorporate the same at this point by
21 reference and further alleges:

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

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

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

28 18. Cameco 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 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

9 DATED this 11th day of September 2009.

10 WOODBURY, MORRIS & BROWN

11  #11059 for

12 STEVEN L. MORRIS, ESQ.

13 Nevada Bar No. 7454

14 701 N. Green Valley Pkwy., Suite 110

15 Henderson, NV 89074-6178

16 Attorneys for Camco and Fidelity

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

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
**ANSWER TO WRG DESIGN, INC.'S STATEMENT OF FACTS CONSTITUTING
LIEN, THIRD PARTY COMPLAINT AND CAMCO PACIFIC CONSTRUCTION'S
COUNTERCLAIM** by facsimile and by enclosing a true and correct copy of the same in a
sealed envelope upon which first-class postage was fully prepaid, and addressed to the
following:

RICHARD L. PEEL, ESQ
PEEL BRIMLEY, LLP
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Fax: 702-950-7273

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

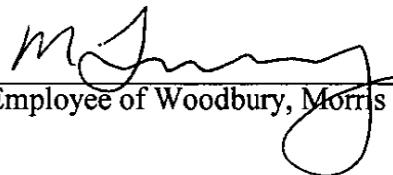

An Employee of Woodbury, Morris & Brown

EXHIBIT A 0796



Scott

Financial Corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Brent Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

Prevention

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

RE: ManhattanWest Funding

Mr Evans.

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

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

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

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

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

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

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

Sincerely,

Bred J. Scott,
President



Exhibit A

December 1, 2008

Leo Duckstein

~~Gemstone~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

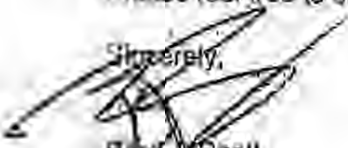
~~Although we cannot guarantee the approval of the draw request, we will process the draw request as quickly as possible.~~

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

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

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

Sincerely,


Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503

Office: 701.255.2215 • Fax: 701.223.7299

A licensed and bonded corporate finance company.

0802

Exhibit B

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

Jennifer Olivares

[REDACTED] brad@scottfinancialcorp.com]

Sent: Tuesday, December 16, 2008 9:38 AM

[REDACTED]

Cc: Margo Scott; 'Jason Ulmer'; Patricia Curtis; 'Tim James'

Subject: ManhattanWest Status

Importance: High

Joni

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

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

I anticipate this final decision will however likely lead to [REDACTED] no approved.

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

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

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

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

Thanks.

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

 Scott Financial Corporation	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
<small>a licensed and bonded corporate finance company.</small>	

1/1/2009

Jennifer Olivares

[Redacted] (brad@scottfinancialcorp.com)

Sent: Monday, December 15, 2008 3:00 PM

[Redacted] Anne Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

[Redacted] was instructed by SFC to wire the previous ManhattanWest funds held on account # NSB 09004-20-04 to SFC using the attached wiring instructions.

[Redacted] Manhattan West funds held on account # NSB 09004-20-04 have been wired to SFC using the attached wiring instructions.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott

Scott Financial Corporation

15010 Sundown Drive

Bismarck, ND 58503

W: 701.255.2215

M: 701.220.3999

F: 701.223.7299

brad@scottfinancialcorp.com

 Scott Financial Corporation	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
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Email is not always a secure transmission medium. Caution should always be used to communicate "confidential" information. If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

0805

EXHIBIT “13”

EXHIBIT “13”


CLERK OF THE COURT

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

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

11 In re: Case No: A571228
12 Manhattan West Mechanics' Lien Litigation Dept. No: XXV
13 And All Consolidated Cases

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

17 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
18 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
19 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
20 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
21 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HELIX ELECTRIC
22 OF NEVADA, LLC. d/b/a HELIX ELECTRIC, (hereinafter "Plaintiff" or "Helix"), on file
23 herein, and admit, deny, and allege as follows:

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

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

- 12, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 36, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, and 65 of Plaintiff's Complaint.
4. As to Paragraph 17, Camco and Fidelity admit that there is a covenant of good faith and fair dealing implied in every agreement, and admit that Camco acted fairly and in good faith. Camco and Fidelity deny all remaining allegations therein.
5. As to Paragraph 40, Camco and Fidelity admit that Helix's claim against the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained therein.
6. As to Paragraph 52, Camco and Fidelity admit that NRS §§ 624.606 to 624.630 speak for themselves, but deny the remaining allegations contained therein.
7. As to Paragraphs 60 and 61, Camco and Fidelity admit that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations contained therein.
8. As to paragraph 64, Camco and Fidelity admit that a dispute has arisen, and an actual controversy now exists, but deny the remaining allegations contained therein.
9. As to Paragraphs 8, 16, 21, 30, 37, 42, 51, and 57 of Plaintiff's Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 65 as though fully set forth herein.
10. To the extent that any allegations set forth in Plaintiff's Complaint have not been answered, these answering Defendants deny each and every allegation or inference thereof not expressly set forth hereinabove.
11. It has become necessary for these answering Defendants to retain the services of WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result, these answering Defendants have been damaged by the Plaintiff, and these answering Defendants are accordingly entitled to their attorney fees and costs incurred herein.

AFFIRMATIVE DEFENSES

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

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

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

- 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.

SECOND CAUSE OF ACTION

(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. BOWLER, DIXON & TWITCHELL 400 North Stephanie #235 Henderson, NV 89014 <i>Attorneys for The Pressure Grout Company</i> Fax: 260-8983 E-mail: andrew@bdtlawyers.com	<input type="checkbox"/> U.S. Mails, first class postage fully prepaid <input type="checkbox"/> Facsimile at the number listed <input checked="" type="checkbox"/> Electronic transmission (Wiznet) <input type="checkbox"/> Personal Service / Hand delivery
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/s/ Zachariah B. Parry

Employee of WOODBURY, MORRIS & BROWN

EXHIBIT “14”

EXHIBIT “14”

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11 Fidelity and Deposit Company of Maryland

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

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

16 Plaintiff,

17 vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

**ANSWER TO HEINAMAN CONTRACT
GLAZING'S STATEMENT OF FACTS
CONSTITUTING LIEN, THIRD-PARTY
COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM**

09A571228
390049



FILED

SEP 11 4 39 PM '09

[Signature]
CLERK OF THE COURT

HEINAMAN CONTRACT GLAZING, a
California corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

CAMCO PACIFIC CONSTRUCTION
 COMPANY, INC., a California corporation;
 FIDELITY AND DEPOSIT COMPANY OF
 MARYLAND,

Counterclaimant,

vs.

HEINAMAN CONTRACT GLAZING, a
 California corporation; and DOES I through
 X, inclusive,

Counterdefendants,

Third Party Defendants; CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
 Woodbury, Morris & Brown, hereby answer the Third Party Complaint of HEINAMAN
 CONTRACT GLAZING, (hereinafter "Plaintiff" or "Heinaman"), on file herein, and admit,
 deny, and allege as follows:

1. Camco and Fidelity deny each and every allegation contained in Paragraphs 12,

1 13, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 46, 47, 48, 49, 50, 51, 52, 53,
2 56, 57, 58, 59, and 68 of Plaintiff's Complaint.

3 2. Camco and Fidelity are without information or knowledge sufficient to ascertain
4 the truth of the allegations contained in Paragraphs 7, 32, 34, 35, 36, 37, 38, and 42 of
5 Plaintiff's Complaint, and therefore deny each and every allegation contained therein.

6 3. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6,
7 41, 61, 62, 65, and 66 of Plaintiff's Complaint.

8 4. As to Paragraphs 8, 16, 21, 30, 40, 45, 54, and 60 of Plaintiff's Complaint,
9 Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 68 as though fully
10 set forth herein.

11 5. As to Paragraph 9 Camco and Fidelity admit that Camco entered into a
12 Subcontract Agreement with Heinaman, but as for the remaining allegations therein, Camco
13 admits that the contract speaks for itself.

14 6. As to Paragraph 10 Camco admits that Heinaman furnished work for the benefit
15 of and at the specific request of the Owner, but denies the remaining allegations therein.

16 7. As to Paragraph 11 Camco admits that Heinaman was to be paid by the Owner
17 for its services, but denies the remaining allegations therein.

18 8. As to Paragraph 17 Camco admits that it acted in good faith, but as for the
19 remaining allegations therein, Camco admits that the contract speaks for itself.

20 9. As to Paragraph 25 Camco admits that Heinaman knew or should have known
21 that payment would have been made by Owner, but denies the remaining allegations therein.

22 10. As to Paragraph 43 Camco denies that Heinaman's claim against the Property is
23 superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of
24 the remaining allegations therein.

25 11. As to Paragraph 55 Camco admits that the Statute speaks for itself, but denies
26 the remaining allegations therein.

27 12. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust
28

1 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

2 13. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust
3 Subordination Agreement speaks for itself, but denies the remaining allegations therein.

4 14. As to Paragraph 67 Camco admits that there is an actual controversy as to the
5 overall priority of all the mechanic's liens, but denies the remaining allegations therein.

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

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

13 AFFIRMATIVE DEFENSES

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

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

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

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

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

26 6. The liability, if any, of Camco must be reduced by the percentage of fault of
27 others, including the Plaintiff
28

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

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

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

7 10. Plaintiff has failed to mitigate its damages.

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

9 12. Plaintiff's claims are barred by the doctrine of laches and estoppel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

1. Camco was and is at all times relevant to this action, a California corporation,

1 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State
2 Contractor's Board.

3 2. Counterdefendant HEINAMAN CONTRACT GLAZING, a California
4 corporation (hereinafter referred to as "Heinaman") is and was at all times relevant to this
5 action, a corporation conducting business in Clark County, Nevada.

6 3. The true names and capacities, whether individual, corporate, associate or
7 otherwise of Defendants named herein as DOES 1 through X are unknown to Counterclaimant.
8 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
9 Counterclaimants sue Defendants by such fictitious names. Counterclaimants will ask leave to
10 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
11 at such time as the same have been ascertained.

12 **FIRST CAUSE OF ACTION**

13 **(Breach of Contract)**

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

17 5. On or about September 8, 2008, Camco and Heinaman entered into a
18 Subcontract Agreement (the "Agreement") relative to the Manhattan West Condominiums
19 project, located in Clark County, Nevada (the "Project").

20 6. Section II.A. of the Subcontract Agreement states: "Contractor and
21 Subcontractor expressly acknowledge that all payments due to Subcontractor under this
22 Agreement shall be made by Contractor solely out of funds actually received by Contractor from
23 Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein, in the risk
24 that Owner may for at any reason, including, but not limited to, insolvency or an alleged
25 dispute, fail to make one or more payments to Contractor for all or a portion of the Contract
26 Work. Contractor's receipt of the corresponding payment from Owner is a condition precedent
27 to Contractor's obligation to pay Subcontractor; it being understood that Subcontractor is solely
28 responsible for evaluating Owner's ability to pay for Subcontractor's portion of the Contract

1 Work, and Subcontractor acknowledges that Contractor is not liable to Subcontractor for
2 payment of Subcontractor's invoice unless and until Contractor receives the corresponding
3 payment from Owner."

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

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

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

12 10. Heinaman breached its contract with Camco by demanding payment from
13 Camco and by bringing claims against Camco and its License Bond Surety relative to payment
14 for the work allegedly performed by Heinaman on the Project.

15 11. Camco is entitled to all of its attorneys fees and costs pursuant to the terms and
16 conditions of the Agreement.

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

20 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

6 WHEREFORE, Counterclaimant Camco prays as follows:


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

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

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

12 DATED this 11th day of September 2009.

13 WOODBURY, MORRIS & BROWN

14
15  #11059 for
16 STEVEN L. MORRIS, ESQ.
17 Nevada Bar No. 7454
18 701 N. Green Valley Pkwy., Suite 110
19 Henderson, NV 89074-6178
20 Attorneys for Camco and Fidelity
21
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WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September 2009, I served a copy of the
**ANSWER TO HEINAMAN CONTRACT GLAZING'S STATEMENT OF FACT'S
CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC
CONSTRUCTION'S COUNTERCLAIM** by facsimile and by enclosing a true and correct
copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and
addressed to the following:

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

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

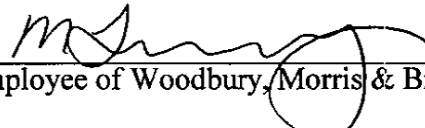

An Employee of Woodbury, Morris & Brown

EXHIBIT A



Date: April 28, 2000
To: Nevada State Contractor's Board
From: Scott Financial Corporation
Subject: ManhattanWest Project

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

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

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

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

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

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

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

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

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

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

A licensed and bonded corporate finance company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,


Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~775 E Fire Protection LLC~~

8380 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~2711 E. Craig Road, Suite A~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

~~Although we are not currently processing the payment, SFC and its affiliates are reviewing the draw application to be processed and funded to MHC (ManhattanWest) in December.~~

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

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

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

Sincerely,


Bill J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503

Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit B

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

Jennifer Olivares

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

Jen:

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

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

I anticipate this final decision will however likely lead to ~~the draw being approved~~.

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

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

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

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

Thanks.

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

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
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6/1/2009

Jennifer Olivares

From: Brad Scott [mailto:brad@scottfinancialcorp.com]

Sent: Monday, December 15, 2008 3:00 PM

To: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

It is hereby instructed by SFC to wire the previously advertised but undispensed funds held on
 Scott Financial's account of \$433,985.72 back to SFC using the attached wiring instructions.

The amount includes the current interest at a rate of 0.5% as it has not been
 added by SFC in its payments.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks,

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

4/1/2009

EXHIBIT “15”

EXHIBIT “15”


CLERK OF THE COURT

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

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

17 In re:
18 Manhattan West Mechanics' Lien Litigation
19 Case No: A571228
20 Dept. No: XXV
21 And All Consolidated Cases

22 **AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF**
23 **FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT**

24 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.
25 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND
26 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as
27 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of
28 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HD SUPPLY &
WATERWORKS, LP (hereinafter "Plaintiff" or "HD Supply"), on file herein, and admit, deny,
and allege as follows:

1. Camco and Fidelity are without information or knowledge sufficient to ascertain
the truth of the allegations contained in Paragraphs 4, 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 22,
23, 24, 25, 26, 27, 31, 32, 33, 35, 36, 37, 52, 53, 54, 55, 56, 62, 63, 64, 68, 81, 82, 83, 84, 85,
86, 87, 90, 91, 92, 93, 94, 95, and 96 of Plaintiff's Complaint, and therefore deny each and
every allegation contained therein.

2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 8,

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

11, 30, 67, 99, 100, 103, 104, of Plaintiff's Complaint.

3. Camco and Fidelity deny each and every allegation contained in Paragraphs 20, 28, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 57, 59, 60, 61, 65, 70, 72, 73, 74, 75, 76, 77, 78, 79, 88, 97, and 106 of Plaintiff's Complaint.

4. As to Paragraph 69, Camco and Fidelity admit that HD Supply's claim against the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained therein.

5. As to Paragraphs 101 and 102, Camco and Fidelity admit that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations contained therein.

6. As to paragraph 105, Camco and Fidelity admit that a dispute has arisen, and an actual controversy now exists, but deny the remaining allegations contained therein.

7. As to Paragraphs 13, 21, 29, 34, 39, 48, 58, 66, 71, 80, 89, 98, of Plaintiff's Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 88 as though fully set forth herein.

8. 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.

9. 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 which relief can be granted.

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

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

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

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

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

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

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

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

17 10. The claims for breach of contract and breach of implied covenant of good faith
18 and fair dealing are barred by the statute of frauds.

19 11. Plaintiff brought the case at bar without reasonable grounds upon which to base
20 a claim for relief.

21 12. Plaintiff maintained the present action without reasonable grounds upon which
22 to base a claim for relief.

23 13. Plaintiff's claims are not well grounded in fact.

24 14. Plaintiff's claims are not warranted by existing law.

25 15. Plaintiff is barred from recovering by the doctrine of unclean hands.

26 16. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

27 17. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
28

1 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

2 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
3 now complains.

4 19. There is no justiciable case or controversy as between Plaintiff and Camco
5 and/or Fidelity.

6 20. Plaintiff lacks standing to assert all or part of the causes of action contained in
7 their complaint.

8 21. Camco's performance on any contract was excused by Plaintiff's material breach
9 thereof.

10 22. Plaintiff failed to comply with the requirements of NRS Chapter 108 to perfect
11 its mechanic's lien and therefore would not be entitled to any recovery on its lien foreclosure
12 claim.

13 23. Plaintiff has failed to mitigate its damages.

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

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

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

21 27. The liability of Fidelity if any, is limited to its obligations as set forth in its
22 surety bond agreement.

23 28. The liability of Fidelity if any, is limited to the statutory liability as set forth in
24 NRS 624.273.

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

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

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

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

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

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

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

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

22 DATED this 26th day of April 2010.

23 WOODBURY, MORRIS & BROWN

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

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 28th day of April 2010, I served a copy of the **AMENDED**
3 **ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF FACTS**
4 **CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT** by e-serving a copy on all
5 parties listed in the Master Service List in accordance with the Electronic Filing Order entered
6 in this matter.

7
8 /s/ Zachariah B. Parry
9 An Employee of Woodbury, Morris & Brown

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16 *Attorneys for HD Supply Waterworks, LP*

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.

22 **HD SUPPLY WATERWORKS, LP,** a Florida
23 limited partnership,

24 Plaintiff in Intervention,

25 vs.

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

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Emil Stain
CLERK OF THE COURT

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

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

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

09A587168
211018



EXEMPTION FROM ARBITRATION:
Title to Real Estate

PEEL BRIMLEY LLP
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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 1 through X; ROE
CORPORATIONS 1 through X; BOE
BONDING COMPANIES 1 through X; LOE
LENDERS 1 through X, inclusive,

Defendants.

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

THE PARTIES

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

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

Manhattan West Condominiums (Project)

Spring Valley

County Assessor Description: PT NE4 NW4 SEC 32 21 60 &

PT N2 NW4 SEC 32 21 60

SEC 32 TWP 21 RNG 60

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

H:\PBA\CLIENT\FD\ES02000 - 2999 (P - 10)2879
- HD Supply Waterworks\037 - E & E Fire
Protection (Manhattan West)\PXCOriginals\090622

Page 2

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
(Breach of Contract - JHPC Credit Agreement)

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

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

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

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

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

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

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

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

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

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

21 19. HD Supply is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
22 the JHPC Supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 47. HD Supply has been required to engage the services of an attorney to collect the
9 JHPC Outstanding Balance and E&E Outstanding Balance, and HD Supply is entitled to recover
10 its reasonable costs, attorney's fees and interest therefore.
11

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

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

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

19 50. As provided at NRS 108.245 and common law, the Defendants had knowledge of
20 HD Supply's delivery of the JHPC Supplies to the Property or HD Supply provided a Notice of
21 Right to Lien.
22

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

25 52. On or about December 29, 2008, HD Supply timely recorded a Notice of Lien in
26 Book 20081229 of the Official Records of Clark County, Nevada, as Instrument No. 0000767
27 (the "JHPC Original Lien").
28

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

4 54. The JHPC Original Lien and JHPC Amended Lien are collectively hereinafter
5 referred to as the "JHPC Liens."
6

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

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

12 57. HD Supply is entitled to an award of reasonable attorney's fees, costs and interest
13 on the JHPC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.
14

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

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

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

22 60. As provided at NRS 108.245 and common law, the Defendants had knowledge of
23 HD Supply's delivery of the E&E Supplies to the Property or HD Supply provided a Notice of
24 Right to Lien.
25

26 61. HD Supply demanded payment of an amount in excess of Ten Thousand and
27 no/100 Dollars (\$10,000.00), which amount remains past due and owing.
28

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

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

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

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

EIGHTH CAUSE OF ACTION
(Claim of Priority)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **TWELFTH CAUSE OF ACTION**
17 **(Declaratory Judgment)**

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

21 99. Upon information and belief, Owner is the Trustor and SPC is the beneficiary
22 under the following deeds of trust covering the real property at issue:

23 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book
24 20060705, Instrument No. 0004264;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


23 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of
24 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
25 entity; and
26
27
28

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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 22 day of June 2009.

4 PEEL BRIMLEY LLP

5
6 
7 RICHARD E. PEEL, ESQ.

8 Nevada Bar No. 4359

9 MICHAEL T. GEBHART, ESQ.

10 Nevada Bar No. 7718

11 DALLIN T. WAYMENT, ESQ.

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20 Attorneys for HD Supply Waterworks, LP

EXHIBIT “17”

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Emil A. Smith
CLERK OF THE COURT

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

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.

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

25 Plaintiff in Intervention,

26 vs.

27 ASPHALT PRODUCTS CORP., a Nevada
28 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

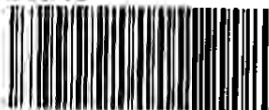
A583289

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A587168

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

09A587168
211076



EXEMPTION FROM ARBITRATION:
Title to Real Estate

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

Defendants.

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

13 THE PARTIES

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

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

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

27 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
28 163-32-101-022 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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
(Breach of Contract against APCO)

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

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

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

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

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

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

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

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- Helix Electric of NV\056 - APCO [Manhattan]
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c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the APCO Agreement and permit related adjustments in scheduled performance;

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

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

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

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

SECOND CAUSE OF ACTION
(Breach of Contract against CPCC)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **FOURTH CAUSE OF ACTION**

13 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 53. Helix is entitled to an award of reasonable attorney's fees, costs and interest on the
24 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the
25 Nevada Revised Statutes.
26

27 ///

28 ///

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SEVENTH CAUSE OF ACTION
(Claim of Priority)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 Helix), as provided in the in the Statute.

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

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

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

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

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

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

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

15 76. In violation of the Statute, CPCC failed and/or refused to timely pay Helix monies
16 due and owing.
17

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

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

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

25 ///

26 ///

27 ///

28 ///

PERI DOCUMENTS
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ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

3 85. Helix is informed and believes and therefore alleges that construction on the
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
5 law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt
6 Deed of Trust.
7

8 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Helix's.
12

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

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

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

19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
20 the APCO Outstanding Balance and CPCC Outstanding Balance amounts;
21

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

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

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

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

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

12 Dated this 22 day of June 2009.

PEEL BRIMLEY LLP


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d/b/a Helix Electric

EXHIBIT “18”

EXHIBIT “18”

Edmund H. Hines
CLERK OF THE COURT

1 STMT
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 MICHAEL T. GEBHART, ESQ.
5 Nevada Bar No. 7718
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15 dwayment@peelbrimley.com
16 Attorneys for Heinaman Contract Glazing

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

21 HEINAMAN CONTRACT GLAZING, a
22 California corporation,

Plaintiff in Intervention,

vs.

24 CAMCO PACIFIC CONSTRUCTION
25 COMPANY, INC., a California corporation;
26 GEMSTONE DEVELOPMENT WEST, INC.,
27 Nevada corporation; FIDELITY AND
28 DEPOSIT COMPANY OF MARYLAND;
SCOTT FINANCIAL CORPORATION, a
North Dakota corporation; DOES I through X;
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HEINAMAN CONTRACT GLAZING'S
AMENDED STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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

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

8 **THE PARTIES**

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

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

17
18 Manhattan West Condominiums (Project)
19 Spring Valley
20 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
21 PT N2 NW4 SEC 32 21 60
22 SEC 32 TWP 21 RNG 60

23 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
24 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
25 001 thru 163-32-112-246) including all easements, rights-of-way, common areas and
26 appurtenances thereto, and surrounding space may be required for the convenient use and
27 occupation thereof, upon which Owners caused or allowed to be constructed certain
28 improvements (the "Property").

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

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

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

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

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

23 ///

24 ///

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

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

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

10. Heinaman furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

11. Pursuant to the CPCC Agreement, Heinaman was to be paid an amount in excess of Ten Thousand Dollars (\$10,000.00) (hereinafter "Outstanding Balance") for the Work.

12. Heinaman furnished the Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

13. CPCC has breached the CPCC Agreement by, among other things:

- a. Failing and/or refusing to pay the monies owed to Heinaman for the Work;
 - b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or their representatives;
 - c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;
 - d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
- and

1 e. Negligently or intentionally preventing, obstructing, hindering or interfering
2 with Heinaman's performance of the Work.

3 14. Heinaman is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
4 the Work.

5 15. Heinaman has been required to engage the services of an attorney to collect the
6 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and
7 interest therefore.
8

9 **SECOND CAUSE OF ACTION**
10 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

11 16. Heinaman repeats and realleges each and every allegation contained in the
12 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
13 alleges as follows:

14 17. There is a covenant of good faith and fair dealing implied in every agreement,
15 including the CPCC Agreement.

16 18. CPCC breached its duty to act in good faith by performing the CPCC Agreement
17 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying
18 Heinaman's justified expectations.

19 19. Due to the actions of CPCC, Heinaman suffered damages in an amount to be
20 determined at trial for which Heinaman is entitled to judgment plus interest.

21 20. Heinaman has been required to engage the services of an attorney to collect the
22 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and
23 interest therefore.
24

25
26 ///

27 ///

28 ///

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DENVER, COLORADO 80202
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THIRD CAUSE OF ACTION

(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

21. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22. Heinaman furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Heinaman expected to be paid for the Work.

26. Heinaman has demanded payment of the Outstanding Balance.

27. To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding Balance.

28. The Defendants have been unjustly enriched, to the detriment of Heinaman.

29. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION

(Foreclosure of Mechanic's Lien)

30. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

31. The provision of the Work was at the special instance and request of the Defendants for the Property.

1 32. As provided at NRS 108.245 and common law, the Defendants had knowledge of
2 Heinaman's delivery of the Work to the Property or Heinaman provided a Notice of Right to
3 Lien.

4 33. Heinaman demanded payment of an amount in excess of Ten Thousand and
5 no/100 Dollars (\$10,000.00), which amount remains past due and owing.
6

7 34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book
8 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the
9 "Original Lien").

10 35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien
11 in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355
12 (the "Amended Lien").

13 36. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".
14

15 37. The Liens were in writing and were recorded against the Property for the
16 outstanding balance due to Heinaman in the amount of One Hundred Eighty-Seven Thousand
17 Five Hundred Twenty-Five and 26/100 Dollars (\$187,525.26).

18 38. The Liens were served upon the Owner and/or its authorized agents, as required by
19 law.
20

21 39. Heinaman is entitled to an award of reasonable attorney's fees, costs and interest
22 on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

23 **FIFTH CAUSE OF ACTION**
24 **(Claim of Priority)**

25 40. Heinaman repeats and realleges each and every allegation contained in the
26 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
27 alleges as follows:
28

1 41. Heinaman is informed and believes and therefore alleges that construction on the
2 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the
3 Property, including the deeds of trust recorded by SFC.

4 42. Heinaman is informed and believes and therefore alleges that even if a deed(s) of
5 trust and/or other interest(s) in the Property were recorded before construction on the Property
6 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to
7 Heinaman's statutory mechanics' lien thereby elevating Heinaman's statutory mechanics' lien to
8 a position superior to those deed(s) of trust and/or other interests(s) in the Property.

9 43. Heinaman's claim against the Property is superior to the claim(s) of SFC, any
10 other defendant, and/or any Loe Lender.

11 44. Heinaman has been required to engage the services of an attorney to collect the
12 Outstanding Balance due and owing for the Work, and Heinaman is entitled to recover its
13 reasonable costs, attorney's fees and interest therefore.

14 **SIXTH CAUSE OF ACTION**
15 **(Claim Against Bond – CPCC Surety)**

16 45. Heinaman repeats and realleges each and every allegation contained in the
17 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further
18 alleges as follows:

19 46. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued
20 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars
21 (\$50,000.00).

22 47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

23 48. The Bond was provided pursuant to the requirements of NRS 624.270, which
24 Bond was in force during all times relevant to this action.

49. Heinaman furnished the Work as stated herein and has not been paid for the same.
Heinaman therefore claims payment on said Bond.

51. Demand for the payment of the sums due to Heinaman has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Heinaman.

53. Heinaman was required to engage the services of an attorney to collect the Outstanding Balance due and owing to Heinaman and Heinaman is entitled to recover its reasonable attorney's fees and costs therefore.

54. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

56. In violation of the Statute, CPCC have failed and/or refused to timely pay Helmanan monies due and owing.

58. By reason of the foregoing, Heinaman is entitled to a judgment against CPCC in the amount of the Outstanding Balance

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EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

60. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

61. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

62. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

63. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Heinaman's mechanics' lien.

64. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the
2 Senior Debt Deed of Trust.

3 65. Heinaman is informed and believes and therefore alleges that construction on the
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
5 law, all mechanics' liens, including Heinaman's, enjoy a position of priority over the Senior Debt
6 Deed of Trust.
7

8 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Heinaman's.
12

13 67. A dispute has arisen, and an actual controversy now exists over the priority issue
14 of Heinaman's mechanics' lien over other encumbrances on the property.

15 68. Heinaman is entitled to a court order declaring that its mechanics' lien has a
16 superior lien position on the Property over any other lien or encumbrance created by or for the
17 benefit of SFC or any other entity.

18 **WHEREFORE**, Heinaman prays that this Honorable Court:

19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
20 the Outstanding Balance amount;
21

22 2. Enters a judgment against Defendants, and each of them, jointly and severally, for
23 Heinaman's reasonable costs and attorney's fees incurred in the collection of the Outstanding
24 Balance, as well as an award of interest thereon;

25 3. Enter a judgment declaring that Heinaman has valid and enforceable mechanic's
26 liens against the Property, with priority over all Defendants, in an amount of the Outstanding
27 Balance;
28

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1 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable
2 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the
3 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State
4 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Heinaman
5 herein;

6
7 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
9 entity; and

10 6. For such other and further relief as this Honorable Court deems just and proper in
11 the premises.

12 Dated this 22 day of June 2009,

PEEL BRIMLEY LLP


RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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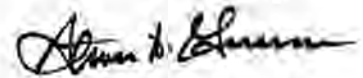
mgebhart@peelbrimley.com

dwayment@peelbrimley.com

Attorneys for Heinaman Contract Glazing

EXHIBIT “19”

EXHIBIT “19”


CLERK OF THE COURT

1 **STMT**
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 MICHAEL T. GEBHART, ESQ.
5 Nevada Bar No. 7718
6 DALLIN T. WAYMENT, ESQ.
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13 rpeel@peelbrimley.com
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15 dwayment@peelbrimley.com
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.

22 **INTERSTATE PLUMBING & AIR**
23 **CONDITIONING, LLC,** a Nevada limited-
24 liability company,

25 Plaintiff in Intervention,

26 vs.

27 **ASPHALT PRODUCTS CORP.,** a Nevada
28 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**

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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 ("Interstate") by and through its attorneys PEEL BRIMLEY LLP, as for its Statement of Facts Constituting a Notice of Lien and Complaint ("Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. Interstate is and was at all times relevant to this action a Nevada limited-liability company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

2. Interstate is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

	Manhattan West Condominiums
	Spring Valley
County Assessor Description:	See Attached Exhibit 1
	SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 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
5 3. The whole of the Work of Improvement and any leasehold estate in thereon is
6 reasonably necessary for the convenient use and occupation of the Work of Improvement.

7
8 4. Interstate is informed and believes and therefore alleges that Defendant APCO
9 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
10 action doing business as a licensed contractor authorized to conduct business in Clark County,
11 Nevada. APCO may also be known as Asphalt Products Company.

12
13 5. Interstate is informed and believes and therefore alleges that Defendant CAMCO
14 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
15 at all times relevant to this action doing business as a licensed contractor authorized to conduct
16 business in Clark County, Nevada.

17
18 6. Interstate is informed and believes and therefore alleges that Defendant,
19 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was
20 and is a bonding company licensed and qualified to do business as a surety in Nevada.

21
22 7. Interstate is informed and believes and therefore alleges that Defendant Scott
23 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
24 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
25 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
26 securing loans given to the Owner for, inter alia, development of the Work of Improvement.

27
28 8. Interstate does not know the true names of the individuals, corporations,
partnerships and entities sued and identified in fictitious names as DOES I through X, ROE
CORPORATIONS I through X, BOE BONDING COMPANIES I through X and IOE

LENDERS I through X. Interstate alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Interstate as more fully discussed under the claims for relief set forth below. Interstate will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Interstate discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract against APCO)

9. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

10. On or about April 17, 2007 Interstate entered into an Agreement with APCO (the "APCO Agreement") to provide certain plumbing and HVAC related work, materials and equipment (the "APCO Work") for the Work of Improvement located in Clark County, Nevada.

11. Interstate furnished the APCO Work for the benefit of and at the specific instance and request of APCO and/or Owner.

12. Pursuant to the APCO Agreement, Interstate was to be paid an amount in excess of Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO Work.

13. Interstate furnished the APCO Work and has otherwise performed its duties and obligations as required by the APCO Agreement.

14. APCO has breached the APCO Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Interstate for the APCO Work;

b. Failing to adjust the APCO Agreement price to account for extra and/or changed work, as well as suspensions and delays of APCO Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the APCO Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the APCO Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Interstate's performance of the APCO Work.

15. Interstate is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the APCO Work.

16. 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 interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract against CPCC)

17. 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:

18. On or about August 26, 2008, Interstate entered into a Ratification and Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general contractor on the Project, to continue the work for the Work of Improvement ("CPCC Work").

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 21. Interstate furnished the CPCC Work and has otherwise performed its duties and
7 obligations as required by the CPCC Agreement.

8 22. CPCC has breached the CPCC Agreement by, among other things:

9 a. Failing and/or refusing to pay the monies owed to Interstate for the CPCC
10 Work;

11 b. Failing to adjust the CPCC Agreement price to account for extra and/or
12 changed work, as well as suspensions and delays of CPCC Work caused or ordered by the
13 Defendants and/or their representatives;

14 c. Failing to promptly recognize and grant time extensions to reflect additional
15 time allowable under the CPCC Agreement and permit related adjustments in scheduled
16 performance;

17 d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
18 and

19 e. Negligently or intentionally preventing, obstructing, hindering or interfering
20 with Interstate's performance of the CPCC Work.

21 23. Interstate is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for
22 the CPCC Work.

23 ///

24 ///

1 24. Interstate has been required to engage the services of an attorney to collect the
2 CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's
3 fees and interest therefore.

4
5 **THIRD CAUSE OF ACTION**

6 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

7 25. Interstate repeats and realleges each and every allegation contained in the
8 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
9 follows:

10 26. There is a covenant of good faith and fair dealing implied in every agreement,
11 including the APCO Agreement.

12 27. APCO breached its duty to act in good faith by performing the APCO Agreement
13 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying
14 Interstate's justified expectations.

15 28. Due to the actions of APCO, Interstate suffered damages in an amount to be
16 determined at trial for which Interstate is entitled to judgment plus interest.

17 29. Interstate has been required to engage the services of an attorney to collect the
18 APCO Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's
19 fees and interest therefore.

20
21 **FOURTH CAUSE OF ACTION**

22 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

23 30. Interstate repeats and realleges each and every allegation contained in the
24 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
25 follows:

26 31. There is a covenant of good faith and fair dealing implied in every agreement,
27 including the CPCC Agreement.

32. CPCC breached its duty to act in good faith by performing the CPCC Agreement in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Interstate's justified expectations.

33. Due to the actions of CPCC, Interstate suffered damages in an amount to be determined at trial for which Interstate is entitled to judgment plus interest.

34. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION

(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

35. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

36. Interstate furnished the APCO Work and the CPCC Work for the benefit of and at the specific instance and request of the Defendants.

37. As to APCO and CPCC, this cause of action is being pled in the alternative.

38. The Defendants accepted, used and enjoyed the benefit of the APCO Work and CPCC Work.

39. The Defendants knew or should have known that Interstate expected to be paid for the APCO Work and CPCC Work.

40. Interstate has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Interstate.

1 43. Interstate has been required to engage the services of an attorney to collect the
2 APCO Outstanding Balance and CPCC Outstanding Balance, and Interstate is entitled to recover
3 its reasonable costs, attorney's fees and interest therefore.

4 **SIXTH CAUSE OF ACTION**
5 **(Foreclosure of Mechanic's Lien)**

6 44. Interstate repeats and realleges each and every allegation contained in the
7 preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as
8 follows:

9
10 45. The provision of the Work was at the special instance and request of the
11 Defendants for the Work of Improvement.

12 46. As provided at NRS 108.245 and common law, the Defendants had knowledge of
13 Interstate's delivery of the APCO Work and CPCC Work to the Work of Improvement or
14 Interstate provided a Notice of Right to Lien.

15 47. Interstate demanded payment of an amount in excess of Ten Thousand and no/100
16 Dollars (\$10,000.00), which amount remains past due and owing.

17 48. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the
18 Official Records of Clark County, Nevada, as Instrument No. 201003290001085 (the "Plumbing
19 Lien").

20
21 49. The Plumbing Lien was in writing and was recorded against the Work of
22 improvement for the outstanding balance due to Interstate in the amount of Three Million Three
23 Hundred Seventy-Six Thousand Six Hundred and 45/100 Dollars (\$3,376,600.45).

24
25 50. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the
26 Official Records of Clark County, Nevada, as Instrument No. 201003290001086 (the "HVAC
27 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 56. Interstate is informed and believes and therefore alleges that even if a deed(s) of
19 trust and/or other interest(s) in the Work of Improvement were recorded before construction on
20 the Work of Improvement commenced, those deed(s) of trust, including SFC's, were thereafter
21 expressly subordinated to Interstate's statutory mechanics' lien thereby elevating Interstate's
22 statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in
23 the Work of Improvement.
24

25 57. Interstate's claim against the Work of Improvement is superior to the claim(s) of
26 SFC, any other defendant, and/or any Loe Lender.
27
28

58. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Work due and owing for the APCO Work and CPCC Work, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

EIGHTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

59. 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:

60. Prior to the events giving rise to this Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).

61. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

62. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

63. Interstate furnished the CPCC Work as stated herein and has not been paid for the same. Interstate therefore claims payment on said Bond.

64. The CPCC Surety is obligated to pay Interstate the sums due.

65. Demand for the payment of the sums due to Interstate has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Interstate.

66. CPCC and the CPCC Surety owe Interstate the penal sum of the Bond.

67. Interstate was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to Interstate and Interstate is entitled to recover its reasonable attorney's fees and costs therefore.

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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.

76. In violation of the Statute, CPCC failed and/or refused to timely pay Interstate monies due and owing.

77. CPCC's violation of the Statute constitutes negligence per se.

78. By reason of the foregoing, Interstate is entitled to a judgment against CPCC in the amount of the CPCC Outstanding Balance

79. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance and Interstate is entitled to recover its reasonable costs, attorney's fees and interests therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

80. 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:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482,

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, "regardless of any priority otherwise available to SFC by law or agreement".

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.

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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
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6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP

~~RICHARD L. PERRY, ESQ.~~

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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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

EXHIBIT “20”

EXHIBIT “20”

Edmund H. Smith
CLERK OF THE COURT

1 STMT
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
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16 Attorneys for WRG Design, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

11 ACCURACY GLASS & MIRROR
12 COMPANY, INC., a Nevada corporation,

13 Plaintiff,

14 vs.

15 ASPHALT PRODUCTS CORP., a Nevada
16 corporation; APCO CONSTRUCTION, a
17 Nevada corporation; CAMCO PACIFIC
18 CONSTRUCTION COMPANY, INC., a
19 California corporation; GEMSTONE
20 DEVELOPMENT WEST, INC., Nevada
21 corporation; FIDELITY AND DEPOSIT
22 COMPANY OF MARYLAND; SCOTT
23 FINANCIAL CORPORATION, a North Dakota
24 corporation; DOES I through X; ROE
25 CORPORATIONS I through X; BOE
26 BONDING COMPANIES I through X; LOE
27 LENDERS I through X, inclusive,

28 Defendants.

23 WRG DESIGN, INC., a Delaware corporation,

24 Plaintiff in Intervention,

25 vs.

26 ASPHALT PRODUCTS CORP., a Nevada
27 corporation; APCO CONSTRUCTION, a
28 Nevada corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

09A587168
203739



WRG DESIGN, INC.'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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1 DEVELOPMENT WEST, INC., Nevada
2 corporation; FIDELITY AND DEPOSIT
3 COMPANY OF MARYLAND; SCOTT
4 FINANCIAL CORPORATION, a North Dakota
5 corporation; DOES I through X; ROE
6 CORPORATIONS I through X; BOE
7 BONDING COMPANIES I through X; LOE
8 LENDERS I through X, inclusive,

9 Defendants.

10 WRG DESIGN, INC. ("WRG") by and through its attorneys PEEL BRIMLEY LLP, as
11 for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint
12 ("Amended Complaint") against the above-named defendants complains, avers and alleges as
13 follows:

14 THE PARTIES

15 1. WRG is and was at all times relevant to this action a Delaware corporation, duly
16 authorized, licensed and qualified to do business in Clark County, Nevada.

17 2. WRG is informed and believes and therefore alleges that Defendant GEMSTONE
18 DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant
19 to this action, the owner, reputed owner, or the person, individual and/or entity who claims an
20 ownership interest in that certain real property portions thereof located in Clark County, Nevada
21 and more particularly described as follows:

22 Manhattan West Condominiums (Project)
23 Spring Valley
24 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
25 PT N2 NW4 SEC 32 21 60
26 SEC 32 TWP 21 RNG 60

27 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and
28 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and
appurtenances thereto, and surrounding space may be required for the convenient use and

1 occupation thereof, upon which Owners caused or allowed to be constructed certain
2 improvements (the "Property").

3 3. The whole of the Property is reasonably necessary for the convenient use and
4 occupation of the improvements.

5 4. WRG is informed and believes and therefore alleges that Defendant APCO
6 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this
7 action doing business as a licensed contractor authorized to conduct business in Clark County,
8 Nevada. APCO may also be known as Asphalt Products Company.

9 5. WRG is informed and believes and therefore alleges that Defendant CAMCO
10 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was
11 at all times relevant to this action doing business as a licensed contractor authorized to conduct
12 business in Clark County, Nevada.

13 6. WRG is informed and believes and therefore alleges that Defendant, FIDELITY
14 AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a
15 bonding company licensed and qualified to do business as a surety in Nevada.

16 7. WRG is informed and believes and therefore alleges that Defendant Scott
17 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business
18 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,
19 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust
20 securing loans given to the Owner for, inter alia, development of the Property.

21 8. WRG does not know the true names of the individuals, corporations, partnerships
22 and entities sued and identified in fictitious names as DOES 1 through X, ROE
23 CORPORATIONS 1 through X, BOE BONDING COMPANIES 1 through X and LOE
24 LENDERS 1 through X. WRG alleges that such Defendants claim an interest in or to the

1 Properties, and/or are responsible for damages suffered by WRG as more fully discussed under
2 the claims for relief set forth below. WRG will request leave of this Honorable Court to amend
3 this Amended Complaint to show the true names and capacities of each such fictitious Defendant
4 when WRG discovers such information.

5
6 **FIRST CAUSE OF ACTION**
(Breach of Contract against Owner)

7
8 9. WRG repeats and realleges each and every allegation contained in the preceding
9 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
10 follows:

11 10. On or about July 31, 2006 WRG entered into an Agreement with Owner (the
12 "Owner Agreement") to provide certain surveying and mapping related work, materials and
13 equipment to the Property located in Clark County, Nevada (the "Owner Services")

14 11. WRG furnished the Services for the benefit of and at the specific instance and
15 request of the Owner.

16 12. Pursuant to the Owner Agreement, WRG was to be paid an amount in excess of
17 Ten Thousand Dollars (\$10,000.00) (hereinafter "Owner Outstanding Balance") for the Owner
18 Services.

19 13. WRG furnished the Owner Services and has otherwise performed its duties and
20 obligations as required by the Owner Agreement.

21 14. The Owner has breached the Owner Agreement by, among other things:

22 a. Failing and/or refusing to pay the monies owed to WRG for the Owner
23 Services;

24 b. Failing to adjust the Owner Agreement price to account for extra and/or
25 changed work, as well as suspensions and delays of Owner Services caused or ordered by the
26 Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the Owner Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the Owner Agreement and Nevada laws and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with WRG's performance of the Owner Services.

15. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the Owner Services.

16. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefor.

SECOND CAUSE OF ACTION
(Breach of Contract against APCO)

17. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

18. On or about April 17, 2007 WRG entered into an Agreement with APCO (the "APCO Agreement") to provide certain surveying and mapping related work, materials and equipment to the Property located in Clark County, Nevada (the "APCO Services")

19. WRG furnished the APCO Services for the benefit of and at the specific instance and request of APCO and/or Owner.

20. Pursuant to the APCO Agreement, WRG was to be paid an amount in excess of Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO Services.

1 21. WRG furnished the APCO Services and has otherwise performed its duties and
2 obligations as required by the APCO Agreement.

3 22. APCO has breached the APCO Agreement by, among other things:

4 a. Failing and/or refusing to pay the monies owed to WRG for the APCO
5 Services;

6 b. Failing to adjust the APCO Agreement price to account for extra and/or
7 changed work, as well as suspensions and delays of APCO Services caused or ordered by the
8 Defendants and/or their representatives;

9 c. Failing to promptly recognize and grant time extensions to reflect additional
10 time allowable under the APCO Agreement and permit related adjustments in scheduled
11 performance;

12 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law,
13 and

14 e. Negligently or intentionally preventing, obstructing, hindering or interfering
15 with WRG's performance of the APCO Services.

16 23. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the
17 APCO Services.

18 24. WRG has been required to engage the services of an attorney to collect the APCO
19 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
20 interest therefore.

21 **THIRD CAUSE OF ACTION**
22 **(Breach of Contract against CPCC)**

23 25. WRG repeats and realleges each and every allegation contained in the preceding
24 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
25 follows:

1 26. On or about August 26, 2008, WRG entered into the Ratification and Amendment
2 of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general
3 contractor on the Project, to continue the services for the Property ("CPCC Services").

4 27. WRG furnished the CPCC Services for the benefit of and at the specific instance
5 and request of CPCC and/or Owner.

6 28. Pursuant to the CPCC Agreement, WRG was to be paid an amount in excess of
7 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC
8 Services.

9 29. WRG furnished the CPCC Services and has otherwise performed its duties and
10 obligations as required by the CPCC Agreement.

11 30. CPCC has breached the CPCC Agreement by, among other things:

12 a. Failing and/or refusing to pay the monies owed to WRG for the CPCC
13 Services;

14 b. Failing to adjust the CPCC Agreement price to account for extra and/or
15 changed work, as well as suspensions and delays of CPCC Services caused or ordered by the
16 Defendants and/or their representatives;

17 c. Failing to promptly recognize and grant time extensions to reflect additional
18 time allowable under the CPCC Agreement and permit related adjustments in scheduled
19 performance;

20 d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law,
21 and

22 e. Negligently or intentionally preventing, obstructing, hindering or interfering
23 with WRG's performance of the CPCC Services.

31. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the CPCC Services.

32. WRG has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)

33. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

34. There is a covenant of good faith and fair dealing implied in every agreement, including the Owner Agreement.

35. Owner breached its duty to act in good faith by performing the Owner Agreement in a manner that was unfaithful to the purpose of the Owner Agreement, thereby denying WRG's justified expectations.

36. Due to the actions of Owner, WRG suffered damages in an amount to be determined at trial for which WRG is entitled to judgment plus interest.

37. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

38. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

1 39. There is a covenant of good faith and fair dealing implied in every agreement,
2 including the APCO Agreement.

3 40. APCO breached its duty to act in good faith by performing the APCO Agreement
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying WRG's
5 justified expectations.

6 41. Due to the actions of APCO, WRG suffered damages in an amount to be
7 determined at trial for which WRG is entitled to judgment plus interest.

8 42. WRG has been required to engage the services of an attorney to collect the APCO
9 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
10 interest therefore.

11
12 **SIXTH CAUSE OF ACTION**

13 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

14 43. WRG repeats and realleges each and every allegation contained in the preceding
15 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as
16 follows:

17 44. There is a covenant of good faith and fair dealing implied in every agreement,
18 including the CPCC Agreement.

19 45. CPCC breached its duty to act in good faith by performing the CPCC Agreement
20 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying WRG's
21 justified expectations.

22 46. Due to the actions of CPCC, WRG suffered damages in an amount to be
23 determined at trial for which WRG is entitled to judgment plus interest.

24 47. WRG has been required to engage the services of an attorney to collect the CPCC
25 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and
26 interest therefore.

SEVENTH CAUSE OF ACTION

(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

48. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

49. WRG furnished the Owner Services, APCO Services and CPCC Services for the benefit of and at the specific instance and request of the Defendants.

50. As to Owner, Asphalt, APCO and CPCC, this cause of action is being pled in the alternative.

51. The Defendants accepted, used and enjoyed the benefit of the Owner Services, APCO Services and CPCC Services.

52. The Defendants knew or should have known that WRG expected to be paid for the Owner Services, APCO Services and CPCC Services.

53. WRG has demanded payment of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance.

54. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

55. The Defendants have been unjustly enriched, to the detriment of WRG.

56. WRG has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

EIGHTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

57. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

58. The provision of the Owner Services, APCO Services and CPCC Services was at the special instance and request of the Defendants for the Property.

59. As provided at NRS 108.245 and common law, the Defendants had knowledge of WRG's delivery of the Owner Services, APCO Services and CPCC Services to the Property or WRG provided a Notice of Right to Lien.

60. WRG demanded payment of an amount in excess of Ten Thousand and no/100 Dollars (\$10,000.00), which amount remains past due and owing.

61. On or about February 13, 2009, WRG timely recorded a Notice of Lien in Book 20090213 of the Official Records of Clark County, Nevada, as Instrument No. 0004321 (the "Original Lien").

62. One or about April 27, 2009, WRG timely recorded an Amended Notice of Lien in Book 20090427 of the Official Records of Clark County, Nevada, as Instrument No. 0000107 (the "Amended Lien").

63. The Original Lien and Amended Lien are hereinafter collectively referred to as the "Liens".

64. The Liens were in writing and were recorded against the Property for the outstanding balance due to WRG in the amount of Two Hundred Seventy-Five Thousand One Hundred Fifteen and 66/100 Dollars (\$275,115.66).

65. The Liens were served upon the Owner and/or its authorized agents, as required by law.

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66. WRG is entitled to an award of reasonable attorney's fees, costs and interest on the APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

NINTH CAUSE OF ACTION
(Claim of Priority)

67. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

68. WRG is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC,

69. WRG is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to WRG's statutory mechanics' lien thereby elevating WRG's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

70. WRG's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

71. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance due and owing for the Owner Services, APCO Services and CPCC Services, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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(Manhattan West)\EW\Originals\090621 WRG Amd

TENTH CAUSE OF ACTION
(Claim Against Bond - CPCC Surety)

72. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

73. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).

74. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

75. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

76. WRG furnished the CPCC Services as stated herein and has not been paid for the same. WRG therefore claims payment on said Bond.

77. The CPCC Surety is obligated to pay WRG the sums due.

78. Demand for the payment of the sums due to WRG has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to WRG.

79. CPCC and the CPCC Surety owe WRG the penal sum of the Bond.

80. WRG was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to WRG and WRG is entitled to recover its reasonable attorney's fees and costs therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

81. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

82. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

- a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;
- b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;
- c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,
- d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

83. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, "regardless of any priority otherwise available to SFC by law or agreement".

84. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as WRG's mechanics' lien.

85. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

86. WRG is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by

law, all mechanics' liens, including WRG's, enjoy a position of priority over the Senior Debt Deed of Trust.

87. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including WRG's.

88. A dispute has arisen, and an actual controversy now exists over the priority issue of WRG's mechanics' lien over other encumbrances on the property.

89. WRG is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Property over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

WHEREFORE, WRG prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance amounts;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for WRG's reasonable costs and attorney's fees incurred in the collection of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that WRG has valid and enforceable mechanic's liens against the Property, with priority over all Defendants, in an amount of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance;

4. Adjudge a lien upon the Property for the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and

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1 interest thereon, and that this Honorable Court enter an Order that the Property, and
2 improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and
3 that the proceeds of said sale be applied to the payment of sums due WRG herein;

4
5 5. Enter a judgment declaring that WRG's mechanics' lien enjoys a position of
6 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
7 entity; and

8 6. For such other and further relief as this Honorable Court deems just and proper in
9 the premises.

10 Dated this 22 day of June 2009.

11 **PEEL BRIMLEY LLP**

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16 Nevada Bar No. 7718

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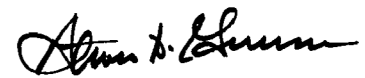
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26 Attorneys for WRG Design, Inc.

EXHIBIT “21”

EXHIBIT “21”



CLERK OF THE COURT

1 **VDSM**
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13 Attorneys for HD Supply Waterworks, LP

DISTRICT COURT

CLARK COUNTY, NEVADA

14 ACCURACY GLASS & MIRROR
15 COMPANY, INC., a Nevada corporation,

16 Plaintiff,

17 vs.

18 ASPHALT PRODUCTS CORP., a Nevada
19 corporation; APCO CONSTRUCTION, a
20 Nevada corporation; CAMCO PACIFIC
21 CONSTRUCTION COMPANY, INC., a
22 California corporation; GEMSTONE
23 DEVELOPMENT WEST, INC., Nevada
24 corporation; FIDELITY AND DEPOSIT
25 COMPANY OF MARYLAND; SCOTT
26 FINANCIAL CORPORATION, a North Dakota
27 corporation; DOES 1 through X; ROE
28 CORPORATIONS 1 through X; BOE
BONDING COMPANIES 1 through X; LOE
LENDERS 1 through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP, a Florida
limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada
corporation; CAMCO PACIFIC
CONSTRUCTION COMPANY, INC., a
California corporation; GEMSTONE
DEVELOPMENT WEST, INC., Nevada
corporation; JEFF HEIT PLUMBING CO, LLC,
a Nevada limited-liability company; E & E
FIRE PROTECTION, LLC, a Nevada limited
liability company; FIDELITY AND DEPOSIT

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:

A571792
A574391
A577623
A583289
A584730
A587168

**HD SUPPLY WATERWORKS, LP'S
VOLUNTARY DISMISSAL OF
PLATTE RIVER INSURANCE
COMPANY ONLY WITHOUT
PREJUDICE**

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COMPANY OF MARYLAND; OLD
REPUBLIC SURETY; PLATTE RIVER
INSURANCE COMPANY; SCOTT
FINANCIAL CORPORATION, a North Dakota
corporation ; DOES I through X; ROE
CORPORATIONS I through X; BOE
BONDING COMPANIES I through X; LOE
LENDERS I through X, inclusive,

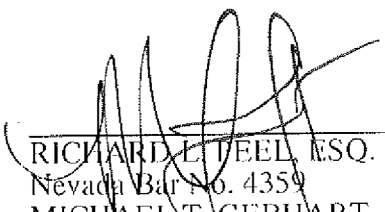
Defendants.

Pursuant to NRCP 41(a)(1), Plaintiff-in-Intervention, HD SUPPLY WATERWORKS, LP
voluntarily dismisses the above referenced matter as to PLATTE RIVER INSURANCE
COMPANY only. No answer or motion for summary judgment has been served and the Court
has set no trial date in this action.

Therefore, Plaintiff-in-Intervention authorizes and directs the Clerk of this Court to enter a
Dismissal of PLATTE RIVER INSURANCE COMPANY from this action without prejudice.

Dated this 5 day of April 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 5th day of April 2010, I served the above and foregoing **HD SUPPLY WATRWORKS, LLP'S VOLUNTARY DISMISSL OF PLATTE RIVER INSURANCE COMPANY ONLY WITHOUT PREJUDICE**, in accordance with EDCR 7.25(A)(3), by placing a true and correct copy by electronic means via the courts website (Wiznet):

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An Employee of PEEL BRIMLEY LLP

EXHIBIT “22”

EXHIBIT “22”

1 **ORDR**

2 **DISTRICT COURT**


CLERK OF THE COURT

3 **CLARK COUNTY, NEVADA**

4 APCO CONSTRUCTION, INC., a Nevada
5 corporation,

6 Plaintiff,

7 vs.

8 GEMSTONE DEVELOPMENT WEST, INC.,
a Nevada corporation; NEVADA
9 CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
10 CORPORATION, a North Dakota corporation;
COMMONWEALTH LAM) TITLE
11 INSURANCE COMPANY; FIRST
AMERICAN TITLE INSURANCE
12 COMPANY; and DOES I through X,

13 Defendants.

14 And all related matters.
15

Case No.: A-08-571228
Dept. No.: XXV

Consolidated With:

A-08-574391
A-08-574792
A-08-577623
A-09-580889
A-09-583289
A-09-584730
A-09-584960
A-09-587168
A-09-589195
A-09-589677
A-09-590319
A-09-592826
A-09-596924
A-09-597089

16 **ORDER STRIKING DEFENDANT GEMSTONE DEVELOPMENT WEST, INC.'S**
17 **ANSWER AND COUNTERCLAIMS, AND ENTERING DEFAULT**

18 The Court's Order to Show Cause why default should not be entered against
19 GEMSTONE DEVELOPMENT WEST, INC. pursuant to EDCR 7.60 for failure to give
20 reasonable attention to the matters captioned herein, failure to obtain new counsel pursuant
21 to EDCR 7.42(b), and failure to appear at the hearing on Tuesday, April 13, 2010 came on
22 for hearing on May 17, 2010 at 9:00 a.m. before the Honorable Kathleen E. Delaney. The
23 Court, having reviewed the papers and pleadings on file herein, and oral argument
24 presented hereto, and good cause appearing therefore:
25

26 ///

27 ///

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant
2 GEMSTONE DEVELOPMENT WEST, INC.'S Answer and Counterclaims are hereby
3 stricken and default is entered against it.
4

5 DATED: May 25, 2010.

6 
7 KATHLEEN E. DELANEY
8 District Court Judge

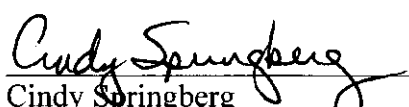
9 **CERTIFICATE OF SERVICE**

10 On or about the date filed, the undersigned served a true and correct copy of the
11 foregoing **ORDER STRIKING DEFENDANT GEMSTONE DEVELOPMENT**
12 **WEST, INC.'S ANSWER AND COUNTERCLAIMS, AND ENTERING DEFAULT**
13 by U.S. Mail, postage prepaid, upon the following:

14 Gemstone Development West.. Inc.
15 c/o Alexander Edelstein
16 10170 W. Tropicana Ave., Suite 156-169
17 Las Vegas, NV 89147

18 Monica Caffaratti, Esq.
19 411 15th Avenue, #31
20 San Francisco, CA 94118

21 and by e-serving a copy on all parties listed in the Master Service List in accordance with
22 the Electronic Filing Order entered in this matter.

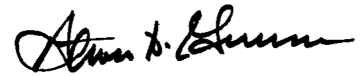
23 
24 Cindy Springberg
25 Judicial Executive Assistant
26
27
28

KATHLEEN E. DELANEY
DISTRICT JUDGE

DEPARTMENT TWENTY FIVE
LAS VEGAS NV 89155

EXHIBIT “23”

EXHIBIT “23”



CLERK OF THE COURT

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **In Re Manhattan West Mechanic's Lien
Litigation,**

12 **APCO CONSTRUCTION, INC., a Nevada
corporation,**

13 **Plaintiff,**

14 **vs.**

15 **GEMSTONE DEVELOPMENT WEST, INC., a**
Nevada corporation; **NEVADA**
16 **CONSTRUCTION SERVICES, a Nevada**
corporation; **SCOTT FINANCIAL**
17 **CORPORATION, a North Dakota corporation;**
COMMONWEALTH LAND TITLE
18 **INSURANCE COMPANY; FIRST**
AMERICAN TITLE INSURANCE
19 **COMPANY; and DOES I through X,**

20 **Defendants.**

21
22 *And all Related and Consolidated Claims.*

Case No. 08-A571228-B
Dept. No. XXIX

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

Date: April 4, 2012
Time: 11:00 a.m.

**NOTICE OF ENTRY OF DECISION,
ORDER AND JUDGMENT ON
DEFENDANT SCOTT FINANCIAL
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AS TO
PRIORITY OF LIENS**

23 PLEASE TAKE NOTICE that on the 7th day of May, 2012, Decision, Order and
24 Judgment on Scott Financial Corporation's Motion for Summary Judgment as to Priority of

25 ///

26 ///

27 ///

28

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1 Liens was entered in the above-captioned matter, a copy of which is annexed hereto.

2 Dated: May 7, 2012.

3 MEIER & FINE, LLC

4 

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11 *Attorneys for Defendant*

12 *SCOTT FINANCIAL CORPORATION*

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that I am an Employee of the law firm of MEIER & FINE,
15 LLC, and that on May 7, 2012, I served the above and foregoing **NOTICE OF ENTRY OF**
16 **SCOTT FINANCIAL CORPORATIONS FINDINGS OF FACT AND CONCLUSIONS**
17 **OF LAW AND JUDGMENT** in accordance with EDCR 7.26(a)(3) by sending a true and
18 correct copy of same via facsimile transmission as indicated below, by electronic means via the
19 court's website ("Wiznet"), as indicated below to the parties on the attached E-Service List.

20 

21 An employee of MEIER & FINE, LLC

E-Service Master List
For Case

null - Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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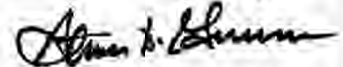
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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re Manhattan West Mechanic's Lien
Litigation,

Case No. 08-A571228-B
Dept. No. XXIX

APCO CONSTRUCTION, INC., a Nevada
corporation,

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

Plaintiff,
vs.

GEMSTONE DEVELOPMENT WEST, INC., a
Nevada corporation; NEVADA
CONSTRUCTION SERVICES, a Nevada
corporation; SCOTT FINANCIAL
CORPORATION, a North Dakota corporation;
COMMONWEALTH LAND TITLE
INSURANCE COMPANY; FIRST
AMERICAN TITLE INSURANCE
COMPANY; and DOES I through X,

**DECISION, ORDER AND JUDGMENT
ON DEFENDANT SCOTT FINANCIAL
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT AS TO
PRIORITY OF LIENS**

Defendants.

Date: April 4, 2012
Time: 11:00 a.m.

And all Related and Consolidated Claims.

Defendant SCOTT FINANCIAL CORPORATION'S ("SFC") re-hearing of its Motion
for Summary Judgment as to Priority of Liens having come on for hearing on March 21, 2012,
and after reviewing all of the moving papers, oppositions, joinders and replies filed as a result of
both the original and the re-hearing; and having entertained arguments of counsel;

///

///

05-30-12 09:08 18

1 The following is the Court's DECISION:

2 As threshold finding, the Court finds that this issue is ripe for summary judgment as there
3 are no genuine issues of material fact. The following are the undisputed facts material to the
4 resolution of the issue of lien priority:

5 **UNDISPUTED FACTS**

6 1. At issue in this motion is the relative priority of competing liens encumbering
7 certain real property in Clark County, Nevada commonly referred to as 9205 W. Russell Road,
8 Clark County, Nevada. The property at issue was initially identified by Assessor Parcel
9 Numbers: 163-32-101-003; 163-32-101-004; 163-32-101-005; 163-32-101-010; and 163-32-101-
10 014, but were later identified by the Clark County Assessor's Office as Assessor Parcel Number:
11 163-32-101-019. The parcel was subsequently sub-divided into parcels numbered 163-32-101-
12 019; 163-32-101-020; 163-32-101-022; and 163-32-101-023 and those are the parcel numbers as
13 assigned by the Clark County Assessor's office as of the date of this order. ("Subject Property").

14 2. The priority issues decided in this motion deal with the relative priority of two
15 groups of liens. The first group of liens are represented by numerous deeds of trust securing
16 purchase money and construction loans while the second are mechanics' liens asserted by
17 various contractors who have claimed to furnish labor and materials in support of improving
18 the Subject Property and assert liens pursuant to Chapter 108 of the Nevada Revised Statutes.

19 3. The Subject Property was acquired by Gemstone Apache, LLC in July 5, 2006,
20 and this acquisition was financed by two Purchase Money Deeds of Trust in favor of SFC in
21 the amount of \$15 million and \$10 million, respectively, and a third line of Credit Deed of
22 Trust in the amount of \$13 million.

23 4. The loans referenced above were secured by three separate Deeds of Trust. A
24 First Deed of Trust for \$15,000,000.00, was recorded in Book Number 20060705 as Instrument
25 Number 0004264 on July 5, 2006. A Junior Deed of Trust for \$10,000,000.00 was recorded in
26 Book Number 200607045 as Instrument Number 0004265 on July 5, 2006, and a Third Deed of
27 Trust for \$13,000,000.00 recorded as Book Number 20060705 as Instrument Number 0004266
28 on July 5, 2006 in the Official Records of the Clark County Recorder for Clark County, Nevada

(collectively, the "Original Mezzanine Deeds of Trust").

5. No work commenced until April 2007, well after Original Mezzanine Deeds of Trust were properly recorded.

6. On or about May 22, 2007 SFC extended additional financing in the amount of \$8,000,000.00 to Gemstone and such financing was secured by way of an Amendment to the above-referenced Junior Deed of Trust. The Junior Deed of Trust Amendment was recorded in Book Number 20070522 as Instrument Number 0004011 in the Official Records of the Clark County Recorder for Clark County, Nevada, on May 22, 2007. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of \$8,000,000.00 was new money for the Manhattan West project.

7. On or about October 24, 2007 SFC extended additional financing in the amount of \$10,000,000.00 secured by way of an Amendment to the Third Deed of Trust which was recorded in Book Number 20071024 as Instrument Number 0004182 in the Official Records of the Clark County Recorder for Clark County, Nevada. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of \$10,000,000.00 was new money for the Manhattan West project.

8. On January 22, 2008 an Assumption Agreement was executed and entered with SFC as Lender, Gemstone Apache, LLC and Gemstone Development West, LLC in which Gemstone Apache conveyed its interest in the Subject Property to Gemstone Development West, LLC and Gemstone Development West, LLC assumed the Senior Deed of Trust, Junior Deed of Trust and Third Deed of Trust with the amendments thereto. The Assumption Agreement was recorded on February 7, 2008 on Book Number 20080207 as Instrument Number 0001483 in the Official Records of the Clark County Recorder for Clark County, Nevada.

9. On January 22, 2008 a First Amendment to the Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing (Line of Credit) (Mezzanine) was executed ("Senior Deed of Trust Amendment"). The Senior Deed of Trust Amendment was recorded on February 7, 2008 in Book Number 20080207 as Document Number 0001484.

10. On January 22, 2008 a Second Amendment to the Junior Deed of Trust and

1 Security Agreement with the Assignment of Rents and Fixture Filing was executed and recorded
2 on February 7, 2008 in Book Number 200080207 as Document Number 0001485. The Senior
3 Deed of Trust Amendment and the Junior Deed of Trust Second Amendment were renamed the
4 Mezzanine Trust Deeds. This additional funding provided by SFC simply introduced new
5 money to the project and did not constitute a new loan or a refinance of any existing debt.

6 11. On January 28, 2008 the Senior Deed of Trust and Security Agreement with
7 Assignment of Rents and Fixture Filings for \$110,000,000.00 was executed ("Construction Deed
8 of Trust"). SFC was the beneficiary of the Construction Deed of Trust which was recorded on
9 February 7, 2008 in Book Number 20080207 as Document Number 00014882. This was not a
10 refinance of the existing debt, nor was the original loan paid off. This additional funding
11 provided by SFC simply introduced new money to the project and did not constitute a new loan
12 or a refinance of any existing debt.

13 12. In addition to the execution of the above-referenced Deeds of Trust, on January
14 22, 2008 a Mezzanine Deed of Trust Subordination Agreement was executed ("Subordination
15 Agreement") solely by Gemstone and SFC and provided that the Construction Deed of Trust was
16 to be deemed superior and hold a first security interest as between these two entities. The
17 Subordination Agreement was recorded on February 7, 2008 in Book Number 20080207 as
18 Document Number 0001486.

19 13. In July of 2006, prior to the commencement of construction for any work of
20 improvement on the Subject Property, the Original Mezzanine Deeds of Trusts secured
21 obligations totaling \$38,000,000.00. In May of 2007 the total amount secured by all Mezzanine
22 Deeds of Trust (including post-April 2007 amendments) was \$46,000,000.00, and in October of
23 2007 the total amount again increased to \$56,000,000.00. In February of 2008 the Construction
24 Deed of Trust added an additional \$110,000,000.00 of financing for the Subject Project to the
25 \$56,000,000.00 which was already in existence. At that time, all the Mezzanine Deeds of Trust
26 were subordinated to the Construction Deed of Trust pursuant to the Subordination Agreement.

27 14. The Original Mezzanine Deeds of Trust were never released or reconveyed.

28 15. In all amendments to the Original Mezzanine Deeds of Trust, all Mezzanine

1 Deeds of Trust were affirmed, and all Notes and Trust Deeds were amended and not replaced.

2 16. The express purpose of the Subordination Agreement is to place the
3 \$110,000,000.00 Construction Deed in a senior priority position to the Mezzanine Trust Deeds.

4 17. The clear language of the Subordination Agreement when read in its entirety
5 demonstrates that the language in paragraph 1 page 2 of the Subordination Agreement modifies
6 and references the \$110,000,000.00 Construction Deed in reference to the Mezzanine Trust
7 Deeds and does not subordinate the Mezzanine Trust Deeds to any other interest in the Subject
8 Property. No language in the Subordination Agreement evidences a clear intent for the parties to
9 the Subordination Agreement to benefit any non-party to the Subordination Agreement.

10 CONCLUSIONS OF LAW

11 20. Pursuant to NRS § 108.225, encumbrances that are of record prior to the date that
12 construction commences on any work of improvement (as that term is used in NRS Chapter 108)
13 are entitled to priority over any mechanic lien claims asserted pursuant to NRS Chapter 108.
14 The Original Mezzanine Deeds of Trust with principal amounts totaling \$38,000,000.00 were
15 recorded before the commencement of construction for the project at issue and are therefore
16 entitled to a senior priority lien position over any mechanics lien claims at issue in this case.

17 21. The fact that SFC obtained title insurance as part of the loan transactions is
18 irrelevant and is common procedure. SFC's purchase of title insurance does not operate in any
19 way to waive any claim it would have to priority under any of the Deeds of Trust at issue in this
20 case.

21 22. This case presents an issue of first impression in Nevada, specifically, whether the
22 Subordination Agreement operates to alter the priority positions of any non-parties to that
23 Agreement, in this case, specifically the mechanics lien claimants.

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23. The mechanics lien claimants in this case have argued that as the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust, were subordinated to the Construction Loan Deed of Trust that was recorded after the commencement of construction for the work of improvement at issue, that the effect of the Subordination Agreement is to subordinate the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust to both the Construction Loan Deed of Trust and the mechanics lien claims.

24. The clear intent of the Subordination Agreement when read in its entirety reveals no intent to do anything other than ensure that the \$110,000,000.00 Construction Deed of Trust would be paid prior to the Mezzanine Deeds of Trust.

25. The clear intent of the Subordination Agreement would be contradicted by placing mechanic's liens in higher priority than the Construction Deed of Trust.

26. The Subordination Agreement does not evidence any expressed or implied intent to benefit any third-party and specifically evidences no intent to benefit the mechanics lien claimants.

27. It is undisputed that lien claimants had actual and/or constructive knowledge that they were commencing construction on a project already subject to a \$38,000,000.00 lien.

28. This Court adopts the reasoning of Bratcher v. Buckner, 90 Cal. App. 4th 1177 (2001) and as such the Subordination Agreement does not change the lien claimants' priority.

29. The lien claimants commenced work subject to a \$38,000,000.00 lien when they started work on the Manhattan West project. To place them in a more advantageous position due to a subordination agreement they were not a party to would be to grant them a windfall.

28. The lien claimants received benefit from the construction funding including the funds advanced and secured by the Construction Deed of Trust.

29. The reasoning provided in the AmSouth Bank v. J&D Financing Corp., 679 So. 2d 695 (Ala. 1996) is not persuasive and the Bratcher case more correctly and fairly describes the issue of circuity of liens in line with the policies and laws of the state of Nevada.

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1 30. Specifically under Bratcher assuming that there are three liens respectively in
2 priority (referred to for convenience herein as liens A, B, and C), subordinating A to C does not
3 result in the subordinating of A to B. The legal effect of the Subordination Agreement in this
4 context is that A and C have switched places in priority but only to the amount of A's lien
5 against the property. B's interest in the property is neither benefited nor burdened by this result
6 since B's interest in the property is still subordinate to a lien of the same amount as it was when
7 its lien attached to the property.

8 31. This reasoning was likewise adapted by Nevada's neighbor Arizona in 2002 in In
9 re Price Waterhouse, Ltd, 202 Ariz. 379 (2002) and appears to be the majority view nationally.

10 IT IS THEREFORE ORDERED ADJUDGED AND DECREED SFC's Motion for
11 Partial Summary Judgment as to Priority of Liens is GRANTED as reconsidered and/or reheard
12 by this Court;

13 IT IS FURTHER ORDERED ADJUDGED AND DECREED that SFC's loan of
14 \$110,000,000.00 is in first position priority regarding the other claimants in the principal amount
15 of \$38,000,000.00. Thereafter, the mechanic lien claimants are in second position and the
16 remainder of SFC's \$110,000,000.00 principal amount loan, namely \$72,000,000.00 in principal
17 is in third position, and the Original Mezzanine Deeds of Trust along with the post-April 2007
18 Mezzanine Deeds of Trust are in junior priority position to the aforementioned encumbrances;

19 IT IS FURTHER ORDERED ADJUDGED AND DECREED a further stay of this
20 litigation is granted pending a petition to the Nevada Supreme Court provided such is timely
21 filed and for which no bond is required; and

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1 IT IS FURTHER ORDERED ADJUDGED AND DECREED this matter is set for a
2 status check on May 9, 2012 at 10:00 a.m.

3 Dated: ~~April~~ May, 2012.

4 
5 
6 DISTRICT COURT JUDGE

7 Submitted by:

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