IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
***Consolidated with* 80508**

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HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 6

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Docket 77320 Document 2020-37998

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	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48

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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733-JA003813	60/61

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01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
01-18-18	**Transcript – Bench Trial (Day 2)[2]**	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)[3]**	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80

[2] Filed January 31, 201879
[3] Filed January 31, 2018

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	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[4]**	**JA005820-JA005952**	81
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
03-23-18	**Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief**	**JA006173-JA006193**	**84**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**

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05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-JA006442	87/88

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	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
05-08-18	**Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements**	**JA006509-JA006521**	**89**
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90

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	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581-JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
	Exhibit 5 – Summary of Fees	JA006589-JA006614	90
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
06-15-18	**Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA006917 – JA006942**	**96**
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943-JA006948	96

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	Exhibit 2 – Notice of Entry of Denying APCO Construction's Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949-JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955-JA006958	96
	Exhibit 4 – Order Denying *En Banc* Reconsideration	JA006959-JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964-JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC's Response to Special Master Questionnaire	JA006977-JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.'s Response to Special Master Questionnaire	JA006981-JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.'s Response to Special Master Questionnaire	JA006985-JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal's Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC's Special Master Questionnaire	JA007002-JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006-JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037-JA007060	97

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	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042-JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054-JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057-JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA007060-JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion in Limine (against APCO Construction)	JA007070-JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions' Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079-JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary	JA007085-JA007087	97

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	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088-JA007094	97
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007190-JA007192**	**99**
06-21-18	**Helix Electric of Nevada, LLC's Notice of Non-Opposition to its Motion for Attorney's Fees, Interest and Costs**	**JA007193-JA007197**	**99**
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99

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06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225-JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238-JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246-JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262-JA007280	100
09-28-18	Notice of Entry of (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	JA007281-JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300-JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313-JA007315	101

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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332-JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395-JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401-JA007517	102/103

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	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518-JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520-JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524-JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
	Exhibit 10 (Part Two)	JA008142-JA008149	109

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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150-JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168-JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff's Motion to Dismiss	JA008171-JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178-JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215-JA008230	109
	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts	JA008323-JA008338	110

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	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111

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	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602-JA008621	112

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	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622-JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686-JA008693	112

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	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694-JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724-JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730-JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737-JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747-JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875-JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759-JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment	JA008762-JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789-JA008798	113

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	Exhibit 16 – Notice of Appeal	JA008799-JA008810	113
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	JA008925-JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966-JA008986	117/118

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	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119
08-29-19	**Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)**	**JA009117-JA009123**	**119**

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	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137-JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168-JA009182	120

Date	**Description**	**Bates Number**	**Volume(s)**
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654-JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661-JA00167	28/9/29
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218-JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246-JA001263	24

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	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264-JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282-JA001297	25
	Exhibit 5 - Amended NOL	JA001298-JA001309	25
	Exhibit 6 – Notice of Lien	JA001310-JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314-JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377-JA001380	26
	Exhibit 9 – Order Denying *En Banc* Reconsideration	JA001381-JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
	Exhibit 12 – Order Big D Construction Corp.'s Motion for Attorney's Fees, Costs and Interest Pursuant to Judgment	JA001431-JA001435	26
	Exhibit 13 – Appellant's Opening Brief (Padilla v. Big D)	JA001436-JA001469	26
	Exhibit 14 – Respondent's Answering Brief	JA001470-JA001516	26/27
	Exhibit 15 – Appellant's Reply Brief (Padilla v. Big D)	JA001517-JA001551	27
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137-JA009166	120

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	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
09-28-18	**Notice of Entry of 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**	**JA007281-JA007299**	**100**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
07-02-18	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA007238-JA007245**	**100**
01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**

Date	Description	Bates Number	Volume(s)
01-03-18	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001187-JA001198**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion *in Limine* 1-4**	**JA001170-JA001177**	**22**
12-29-17	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion *in Limine* 1-6**	**JA001161-JA001169**	**22**
01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
07-12-19	**Order Dismissing Appeal (Case No. 76276)**	**JA007332-JA007334**	**101**
07-02-10	**Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default**	**JA000042-JA000043**	**1**
08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343-JA00379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380-JA000392	6
11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**
	Exhibit 1 – Notice of Entry of Order	JA000429	7

Date	Description	Bates Number	Volume(s)
		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.'s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC's	JA000436-JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001552-JA001560**	**27**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition**	**JA007190-JA007192**	**99**

Date	Description	Bates Number	Volume(s)
	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
07-19-18	**Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs**	**JA007246-JA007261**	**100**
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222-JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224-JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244-JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283-JA002284	38

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	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307-JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309-JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311-JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313-JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40

Date	Description	Bates Number	Volume(s)
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346-JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357-JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359-JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418-JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422-JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447-JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501-JA002503	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting ($27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/67/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	**Transcript Bench Trial (Day 1)**[5]	**JA001668- JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981- JA001987	32

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	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35

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	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36
01-18-18	**Transcript – Bench Trial (Day 2)**[6]	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)**[7]	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80

[6] Filed January 31, 201879
[7] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[8]**	**JA005820-JA005952**	81
01-24-19	**Transcript for All Pending Fee Motions on July 19, 2018**	**JA007300-JA007312**	**100/101**

[8] Filed January 31, 2018

form of interest costs, increased expenses, and damage to its reputation and sales efforts.

(iii) NRS 624.3011 prohibits the willful "failure and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his authorized representative and the person entitled to have the particular construction project or operation completed in accordance with the plans and specifications." As set forth throughout this letter, APCO has repeatedly disregarded the Contract Drawings. The most blatant example of APCO's breach of this statute was APCO's unilateral decision to conduct the pour of the Building 8 and 9 podium without installing the stud rails. Such stud rails were expressly required by the Contract Documents, but despite well-documented knowledge of this requirement, APCO still conducted the pour without installing the stud rails.

(iv) The 2005 Clark County Fire Code Section 8.14.1.2 and Section 8.14.1.2.1 prohibit the installation of combustible materials in a concealed space unless such space is equipped with its own fire sprinklers. Gemstone's consultant made APCO aware of this prohibition during the initial framing of Phase I. APCO ignored this warning. Consequently, APCO did not properly coordinate the submittal process and work related to such concealed spaces. As a result, Third-Party Service Providers installed combustible materials in concealed spaces that do not contain fire sprinklers.

(v) NRS 624.3014 and the Nevada State Contractors Board prohibit general contractors from using subcontractors that are not properly licensed for the work for which they are engaged. APCO has engaged Jeff Heit Plumbing to install the fire sprinkler system for Phase I. Pursuant to the Nevada State Contractors Board, Jeff Heit Plumbing's license is limited to work worth an aggregate of $950,000. According to the Schedule of Values, Jeff Heit Plumbing's engagement is for $2,387,000. Consequently, APCO has violated NRS 624.3014 by engaging a subcontractor without a proper license to do the required work.

(d) Section 10.02(a)(iv) provides that Gemstone may terminate the Agreement with cause if APCO fails "to provide the revised Schedules as required by Sections 4.01(e) and (f)". As set forth below, APCO breached Section 10.02(a)(iv).

(i) Pursuant to Section 4.01(e), APCO is required to deliver a two week look-ahead schedule in a format reasonably acceptable to Gemstone. First, Gemstone repeatedly requested that APCO use a standard construction scheduling program for such look-ahead. This request was not unreasonable because at the time that such request was made APCO already owned and occasionally used such a program. Despite this reasonable request, both Shawn Bowne and Fred Dilley refused to adopt such program during their respective tenures as the Project Manager and insisted on using an Excel worksheet that lacked all forms of precedent tracking and coherency. Second, after a few

weeks of providing this inadequate two-week schedule, Shawn Bowne stopped delivering this two week look-ahead entirely. Thereafter, despite well-documented requests from Gemstone, no two-week schedule was delivered for several months, and the Schedule suffered dramatic setbacks. Currently, some form of two week look-ahead schedule is prepared in a standard construction scheduling program; however, such schedule is not consistently delivered to Gemstone.

(ii) Pursuant to Section 4.01(f), APCO must update the Schedule on a monthly basis until the applicable Building Completion. A separate copy of each updated Schedule must be posted at the Project Site and delivered to Gemstone. Despite well-documented requests from Gemstone, APCO has consistently failed to meet this requirement.

(e) Section 10.02(a)(v) provides that Gemstone may terminate the Agreement with cause if APCO fails "to conduct any meetings as required by Section 2.02(f)". Pursuant to a letter from APCO to Gemstone, dated June 20, 2008, APCO claimed that Gemstone had added 36 sheets to the Contract Documents (the "36 Sheet Claim"). Pursuant to a letter from Gemstone to APCO, dated July 23, 2008, Gemstone requested additional information related to the 36 Sheet Claim. No such information has been delivered. Upon learning that APCO had based Change Order 11 on such claim, Gemstone delivered an e-mail to APCO more than two weeks ago requesting a meeting to investigate and discuss the 36 Sheet Claim. To date, despite repeated attempts by Gemstone to schedule such meeting, APCO has not complied. Furthermore, pursuant to an e-mail dated August 6, 2008, from APCO to Gemstone, the general counsel for APCO's parent company set forth the following: "I see no point for further meetings or discussions between us relative to the pay apps or change orders and will now refer all matters to our counsel. APCO will not attend Fridays meeting ..."

5. **Curable Breaches.** Section 10.02(a)(vi) provides that Gemstone may terminate the Agreement with cause if APCO "breaches any provision of this Agreement and fails to cure such breach within 48 hours of receiving written notice of such breach from Developer." This letter constitutes 48 hours written notice that all breaches must be cured by APCO to Gemstone's satisfaction prior to the end of August 17, 2008:

(a) Pursuant to Section 1.01, the list of exclusions, express inclusions, and documents set forth on Exhibit A are incorporated into the Agreement as the Contract Documents. Pursuant the Glossary of Defined Terms, the term "Work" means the construction and services required by the Contract Documents. Pursuant to Section 2.02(a), APCO was required to engage the Third-Party Service Providers to perform the Work. Pursuant to several well-documented instructions to the Third-Party Service Providers, APCO intentionally failed to engage the Third-Party Service Providers to perform all of the Work, and then failed to inform Gemstone of the Work that APCO had unilaterally excluded from the bids when the GMP was being negotiated. This behavior is an obvious

breach of the Agreement. It is also an act of dishonesty that likely constitutes fraud.

(b) Pursuant to Section 9.01(b), upon receipt of an order from Gemstone to prepare a Change Order, APCO must "prepare, execute, and submit" to Gemstone the corresponding Change Order setting forth the work to be performed, any corresponding increases or decreases to the Contract Sum, changes to the Completion Period, and an estimate of the applicable Change Order Fee. In late 2007, Gemstone was interested in splitting eight of its C-2 units into two separate units (the "C2 Split"). In order to make an informed decision, APCO was instructed to provide Gemstone with an estimate per unit to complete the C2 Split. In response, on December 11, 2007 APCO provided a written price of $4,150.00 per unit to perform the plumbing work associated with the C2 Split (the "APCO Price"). The APCO Price was represented as being based on hard numbers from the corresponding subcontractors. Based on the APCO Price, the combined total price for the plumbing work associated with the C2 Split should be $33,200.00. Based on the APCO Price, Gemstone decided to implement the C2 Split. Pursuant to APCO's Change Order #53, the actual cost of the plumbing associated with the C2 Split is nine times the $4,150.00 price previously given by APCO to Gemstone while Gemstone was making a decision regarding the viability of the C2 Split. In addition, pursuant to a written correspondence from the plumbing subcontractor to APCO, APCO did not receive such subcontractor's price for the plumbing work associated with the C2 Split until after the APCO Price was given to Gemstone. Furthermore, upon receiving the correct price from such subcontractor, APCO did not notify Gemstone of the problem despite the fact that the corresponding work on the C2 Split had not yet been commenced. In light of this material failure by APCO and the damage that it caused to Gemstone, Change Order #53 must be adjusted to reflect the APCO Price.

(c) Pursuant to Section 2.01(a), APCO agrees to "(i) complete the Work, (ii) furnish efficient business administration and superintendence, and (iii) use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of Developer." It is well documented that APCO has failed to maintain the Schedule, coordinate the efforts of the Third-Party Service Providers, submit shop drawings for review in a timely manner, ensure the delivery of necessary materials, respond to requests for change order revisions, and respond to requests for deductive change orders and value engineering initiatives. These failures constitute a breach of Section 2.01(a).

(d) Pursuant to Section 2.02(b), within 10 days of APCO's execution of each Third-Party Agreement, APCO must deliver to Gemstone such agreement as well as such Third-Party Service Provider's company name, company principal's name, billing address, contact information, project manager's name, superintendent's name, and contractor license number. As of the date of this letter, Gemstone does not have several of the Third-Party Agreements and much

of the above required information. Consequently, APCO has breached Section 2.02(b).

(e) Pursuant to Section 2.02(c), APCO was only permitted to use Third-Party Service Providers who have demonstrated the ability to provide good workmanship and have provided evidence of being in a financially stable position. It is well-documented that Concrete Visions, Inc. did not have the ability or the financial means to complete the work for which APCO engaged it. It is also well-documented the Jeff Heit Plumbing does not have the ability to complete the work for which APCO engaged it.

(f) Pursuant to Section 2.03(a), APCO was required to review the Contract Documents in a timely and comprehensive manner to ascertain the requirements of the Project. Based on (i) the June 20, 2008, letter from APCO to Gemstone, (ii) APCO's submissions of numerous Change Orders for Work that is clearly included in the GMP, (iii) APCO's improper instructions to the Third-Party Service Providers during the bidding process, (iv) APCO's repeated coordination mistakes, and (v) APCO's repeated failure to submit RFIs in a timely manner, APCO failed to review the Contract Documents in a timely and comprehensive manner to ascertain the requirements of the Project.

(g) Pursuant to Section 2.04(a), APCO was responsible for reviewing the Contract Drawings to "insure that the Contract Documents are consistent with each other and adequately describe the Work", and to the extent that problems existed, APCO was responsible for getting them resolved at no cost to Gemstone. Based on the lack of coordination among the Third-Party Service Providers and the submission of RFIs after commencement of the Work underlying such RFIs, APCO breached Section 2.04(a). Furthermore, APCO's repeated submission of Change Orders related to problems that arose because of APCO's failure to perform pursuant to Section 2.04(a) is a further breach of Section 2.04(a).

(h) Pursuant to Section 2.04(c), APCO was required to take field measurements, verify field conditions, and carefully compare such field measurements and conditions to the Contract Documents. In direct breach of this provision, APCO poured the footers for Buildings 8 and 9 in the wrong location because the proper field measurements were not taken in advance. As a result, costly and time-consuming adjustments had to be made. Furthermore, because APCO failed to make the proper field calculations, the mistakes made in the grading of Buildings 2, 3, and 7 were not discovered until the excavation for the footers was started. As a result, APCO thought the grading was completed when in fact several feet of excavation was still required. Consequently, when the problem was discovered during the excavation of the footers, several weeks were lost waiting for the completion of the grading that was supposed to have already been completed weeks earlier.

(i) Pursuant to Section 2.05(a), APCO must notify Gemstone, within 72 hours of discovery, of anything that will affect the Completion Period or the Contract

Sum. To date, APCO has not yet submitted requests for additional time associated with the vast majority of the submitted Change Orders. Furthermore, on several occasions, APCO has waited for months to submit Change Orders that should have been known to APCO during the review of the Contract Documents required by Sections 2.03 and 2.04.

(j) Pursuant to Section 2.05(c), APCO may not make changes to the design of the Project without the prior written consent of Gemstone. By knowingly not installing the stud rails in the podium of Buildings 8 and 9, APCO changed the design without prior written consent of Gemstone. Furthermore, by altering the design of the HVAC and plenums in Buildings 8 and 9, APCO changed the design without prior written consent of Gemstone.

(k) Pursuant to Section 2.05(c), Gemstone's share of any value engineering savings are due as a credit against the Progress Payment immediately following Gemstone's approval of the underlying changes. To date, Gemstone has initiated and approved several value engineering savings but no credits have been issued.

(l) Pursuant to Section 2.06(a), APCO is "solely responsible for obtaining any and all approvals, permits, fees, bonds, licenses, and inspections of the various government agencies, utility providers, or any other third-parties ..." To date, APCO has repeatedly failed to comply with this provision. Furthermore, APCO has actually demanded delay days based on its incorrect assertion that Gemstone was required to deliver the corresponding permits in a timely manner and failed to do so.

(m) Pursuant to Section 2.06(d), APCO shall give notices and comply with laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project. As set forth in Section A(4)(c) of this letter, APCO has breached this provision.

(n) Pursuant to Section 2.07(e), Services shall only be performed by APCO and qualified Third-Party Service Providers. As set forth in Sections A(4)(c)(v) and A(5)(e) of this letter, APCO has breached this provision.

(o) Pursuant to Section 2.07(h), APCO shall review, approve, and submit to Gemstone for approval, Final Working Drawings, product data, samples and similar submittals required by the Project or Contract Documents with reasonable promptness and in such sequence as to avoid delay in the Work or in the activities of Gemstone or any Third-Party Service Provider. Pursuant to the well-documented submission dates, during the construction of the podiums, APCO often submitted RFIs and shop drawings for work immediately before and even during the construction of the Work set forth in such RFIs and shop drawings and then demanded an immediate response from Gemstone and its design team.

(p) Pursuant to Section 2.07(i), APCO shall perform no portion of the Work requiring submittal and review of Final Working Drawings, shop drawings, project

data, samples or similar submittals until the respective submittal has been approved by Gemstone. Such Work shall be in accordance with approved submittals." Pursuant to the well-documented submission dates, during the construction of the podiums, APCO often submitted RFIs and shop drawings for Work during the construction of the Work set forth in such RFIs and shop drawings. Thereafter, when as a result of such breach mistakes were made by APCO, APCO submitted Change Orders demanding that Gemstone pay for APCO's mistakes.

(q) Pursuant to Section 2.07(n), APCO must provide daily reports to Gemstone. Such daily reports have not been consistently made available to Gemstone by APCO.

(r) Pursuant to Section 2.07(o), upon receipt of a written request from Gemstone, APCO must provide to Gemstone, within 24 hours, a copy of any correspondence or agreements with any Third-Party Service Provider. Despite repeated written requests from Gemstone, APCO has repeatedly failed to comply with this provision.

(s) Pursuant to Section 2.07(r), APCO shall be responsible for any cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Despite this provision, APCO submitted Change Order 00016.1 which requests $8,592.65 for the inclusion of headers, blocking, end nailing, and straps for duct penetrations through shear walls that have always been shown on the Contract Documents. In addition, the detail for the header to be used at such locations has, as well, always been in the Contract Documents. In short, the Contract Documents called for this integration, and pursuant to Section 2.07(r), APCO must pay for it.

(t) Pursuant to Section 2.08(a), APCO shall keep Gemstone informed, on a regular and consistent basis, of the progress and quality of the Work and shall inform Gemstone within 48 hours of APCO's discovery of any fault or defect in the Work. APCO has repeatedly breached this agreement by failing to disclose the existence of faults in the Work. Furthermore, APCO has compounded this repeated breach by repeatedly concealing the existence of faults in the Work in response to direct questions from Gemstone.

(u) Pursuant to Section 2.08(b), APCO shall be responsible to Gemstone for acts, errors and omissions of APCO's employees, and parties in privity of contract with APCO, who perform a portion of the Work, including the Third-Party Service Providers and those in privity of contract with such parties. In direct breach of this provision, APCO has submitted several Change Orders based on Work that resulted from errors and omissions by Third-Party Service Providers.

(v) Pursuant to Section 2.08(d), APCO shall be responsible for all costs (including engineering fees) associated with Work that fails to conform to the Contract Documents and such Work must be completed fast enough to avoid negatively impacting the Schedule. APCO has failed to pay outstanding

invoices in the amount of $61,527.50 for remedial work done by Gemstone's structural engineer. Furthermore, the remedial work required by APCO's failure to include the stud rails in the Buildings 8 and 9 podium was not completed fast enough to avoid negative impact to the Schedule.

(w)Section 2.09(a) sets forth three stages in the Work at which APCO shall inspect and approve in writing the work as of such stage and such written approvals shall be delivered to Gemstone prior to commencement of the subsequent construction stage. One of these three stages has been completed, but no such inspections or written approvals have been delivered.

(x) Pursuant to Section 2.13(a), APCO is required to have a minimum level of fulltime staffing. APCO has consistently failed to meet this minimum level especially with regard to the number of superintendents and assistant superintendents.

(y) Pursuant to Section 2.13(d), upon the written request of Gemstone, APCO shall provide the resumes of any APCO employee associated with the Project. Despite well-documented written requests from Gemstone, APCO has failed to comply with this Section 2.13(d) requirement.

(z) Pursuant to Section 2.13(d), Gemstone may, "by providing a reasonable written explanation, require the removal" of any APCO employee associated with the Project. Pursuant to an e-mail, dated August 8, 2008, Gemstone required the removal of Brian Benson and set forth a reasonable written explanation for such removal. In an e-mail, dated August 8, 2008, APCO responded that it would not comply with Gemstone's request, and Brian Benson was not removed.

(aa) Pursuant to Section 2.14(a), APCO is responsible for the proper installation of the Upgrades. APCO has repeatedly failed to take the steps necessary to generate the Change Orders and Purchase Orders necessary to complete the proper installation of the Upgrades. In light of this consistent failure and at the express written request of APCO, Gemstone is currently generating such Change Orders and Purchase Orders for APCO; however, pursuant to Section 12.09, such help from Gemstone does not waive this breach by APCO.

(bb) Pursuant to Section 2.15, there are express minimums for the number of drywall hangers that must be present in each Building during the time that any drywall is being hung. Pursuant to Gemstone's daily inspections, APCO has consistently failed to meet these minimums.

(cc) Pursuant to Section 2.16, upon a failure of APCO to provide the Services, Gemstone has the right to correct such deficiencies directly and charge all reasonable and related costs to APCO. On each occasion that Gemstone tried to correct APCO's deficiencies pursuant to Section 2.16, APCO refused to cooperate, and as a result, Gemstone was unable to make the desired corrections.

(dd) Pursuant to Section 4.02, Gemstone shall determine if APCO is maintaining the Schedule. To the extent that Gemstone determines that the Work is behind Schedule on any given Building, APCO shall deliver, within 48 hours, a make-up schedule setting forth the actions that APCO will undertake to get the corresponding Work back on Schedule prior to the next Monthly Review (the "Recovery Plan"). Aside from a basic comparison of the Work completed versus the Schedule, there are no qualifications related to Gemstone's right to demand a Recovery Plan. Gemstone has consistently given proper notice to APCO that APCO is not maintaining the Schedule, and APCO has consistently failed to deliver the Recovery Plan. Furthermore, at the last meeting regarding APCO's failure to maintain the Schedule, APCO claimed that it was not failing to meet the Schedule based on its incorrect and unsubstantiated assumption that APCO was entitled to delay days and expressly refused to deliver any Recovery Schedule. This refusal is an express unmitigated breach of Section 4.02.

(ee) Pursuant to Section 4.02, any additional costs associated with the additional manpower and overtime necessary to execute any Recovery Plan will be borne by APCO. Despite repeated requests from Gemstone, APCO refused to assume the costs associated with the additional manpower and overtime necessary to execute any Recovery Plan.

(ff) Pursuant to Section 4.02, in the event that at any Monthly Review, Gemstone determines that APCO has failed to (a) deliver the revised schedules pursuant to Sections 4.01(e) or (f), provide a requested Recovery Plan, or perform the Work set forth in any Recovery Plan pursuant to such Recovery Plan, Gemstone has the express right to immediately engage and supervise supplemental licensed third-party service providers to augment the performance of the Work, and the cost of such supplemental third-party service providers shall be paid by APCO as an offset to the subsequent Progress Payment. On each occasion that Gemstone attempted to engage such third-party service providers, APCO refused to cooperate, and as a result, Gemstone was unable to engage such third-parties.

(gg) Pursuant to Section 5.02(a), any costs that are not approved by a Change Order as provided in Section 9.01 and would cause the GMP to be exceeded shall be paid by APCO without reimbursement or contribution by Gemstone, including, for purposes of example and not limitation, costs arising from unforeseen ground conditions, faulty coordination, errors or omissions in the Contract Documents, unexpected encounters with service mains, bad weather, industrial unrest, shortages of labor and materials, insolvency of suppliers and Third-Party Service Providers, fire, storm, or earthquakes. Despite this express language, APCO has submitted and repeatedly demanded payment of Change Orders related to costs arising from unforeseen ground conditions, faulty coordination, errors or omissions in the Contract Documents, and unexpected encounters with service mains. In fact, APCO has given notice of its intent to stop the Work unless Gemstone agrees to such Change Orders despite the fact that their submission by APCO is a direct breach of Section 5.02(a).

(hh) Pursuant to Section 5.02(a), the GMP includes all allowances, overhead, costs, general terms and conditions, general contractor fees and profits related to the Work and the Project. Despite this express language to the contrary, APCO has consistently submitted Change Orders based on the unsupported, but commonly made, argument that such Change Orders were not included in APCO's allowances for the Project.

(ii) Pursuant to Section 9.01(b), upon receipt of an order from Gemstone to prepare a Change Order, APCO must "prepare, execute, and submit" to Gemstone the corresponding Change Order setting forth the work to be performed, any corresponding increases or decreases to the Contract Sum, changes to the Completion Period, and an estimate of the applicable Change Order Fee. APCO repeatedly submitted Change Orders that (i) were not executed, (ii) failed to describe the work to be performed, (iii) miscalculated the increases to the Contract Sum, (iv) miscalculated or failed to calculate the corresponding changes to the Completion Period, and/or (v) miscalculated the applicable Change Order Fee. Despite repeated requests for revisions from Gemstone, APCO failed to correct the above problems. To date several Change Orders submitted with one or more of the above problems have yet to be corrected and re-submitted by APCO. Notwithstanding this breach by APCO, APCO is threatening to cease its Work on the Project until such Change Orders are approved by Gemstone.

(jj) Pursuant to Section 9.02, APCO may not submit Change Orders related to additional Work that was caused by APCO's negligent performance of its responsibilities including its responsibility to review the Contract Documents including, without limitation, any soils reports and hydrology studies. Despite this provision, APCO continues to submit and demand payment of Change Orders that are precluded by the above provision.

(kk) Pursuant to Section 9.02, APCO shall not be entitled to any Change Orders or adjustment in the Contract Sum made necessary by any unforeseen conditions including, without limitation, unforeseen gaps in or coordination issues arising from the Contract Drawings. Again, despite this provision, APCO continues to submit and demand payment of Change Orders that are precluded by the above provision.

(ll) Pursuant to Article XI, APCO is required to resolve any disputes arising out of or relating to the Agreement pursuant to a well-defined procedure that involves mediation by the architect, mediation pursuant to the rules of the American Arbitration Association, and finally arbitration pursuant to the rules of the American Arbitration Association. In each instance where a dispute has arisen, APCO has ignored these express provisions for dispute resolution and relied exclusively on its statutory right to cease the Work and give notice to terminate the Agreement. Regardless of APCO's statutory rights, APCO is required to follow the dispute resolution procedures set forth in the Agreement, and to date, APCO has failed to do so.

B. Termination of the Grading Agreement.

1. **Termination With Cause.** Pursuant to Section 10.01 of the Grading Agreement, Gemstone is hereby terminating the Grading Agreement with cause for the reasons set forth in Section 3 below.

2. **No Waiver of Breach.** Section 11.11 of the Grading Agreement sets forth the following:

> 11.11 **Waivers.** No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by General Contractor of the same or any other provision. Developer's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Developer's consent to or approval of any subsequent act by General Contractor. Developer's failure to declare a breach of this Agreement for a particular default by General Contractor shall not be a waiver of any preceding or subsequent breach by General Contractor.

In a good faith effort to amicably resolve its issues with APCO's lack of performance, Gemstone has delayed issuing this termination notice as long as possible. Pursuant to Section 11.11 of the Grading Agreement, however, Gemstone's willingness to cooperate and give APCO repeated opportunities to improve its performance will not be construed as a waiver of any breach.

3. **Cause for Termination.**

(a) Pursuant to Section 2.06 of the Grading Agreement, APCO was required to perform or have performed the Work necessary to complete the grading pursuant to the Contract Documents and the Schedule. APCO and its grading Subcontractor failed to read the notes on the civil drawings. As a result of this oversight, (i) the second level of parking for Buildings 2 and 3 was not initially excavated and (ii) Building 7 was not excavated to the proper depth. This mistake was not discovered until several weeks later during the excavation for the footers. As a result, several weeks were lost waiting for the completion of the grading that was supposed to have been completed weeks earlier. The above mistake is also an obvious breach of several other provisions of the Grading Agreement, including, without limitation, the following: (A) Section 2.02(a) which requires the engagement of competent Subcontractors; (B) Section 2.03(a) which requires APCO to review the Contract Documents; (C) Section 2.06(e) which requires APCO to coordinate the construction means and methods; and (D) Section 2.07(c) which requires that the Work be free from faults.

(b) Pursuant to Section 2.04(a) of the Grading Agreement, APCO must keep Gemstone informed, on a regular and consistent basis, of the progress and

quality of the Work and shall inform Gemstone within 48 hours of APCO's discovery of any fault or defect in the Work. APCO failed to inform Gemstone of the above mistakes made by APCO in connection with the grading. Gemstone learned about these mistakes from its civil engineer.

(c) Pursuant to Section 2.08 of the Grading Agreement, APCO must complete the Work pursuant to the Schedule. APCO failed to complete the Work pursuant to the Schedule, and this failure delayed the entire Project.

C. **Actions Required Upon Termination.**

1. Return of Documents. Pursuant to Article VI, all documents related to the Work and the Project including documents that were furnished or obtained by APCO (including, without limitation, any drawings, specifications, or designs) are the sole property of Gemstone. Consequently, all permits issued to APCO in connection with the Project are also the property of Gemstone. APCO is directed to safeguard all Project Documents and return them to Gemstone in the event of termination.

2. Possession of the Project Site. Pursuant to Section 10.02(b)(i), Gemstone shall take possession of the Project Site and everything on it in the event of termination.

3. Assignment of Third-Party Agreements and Permits. In the event of termination, and pursuant to Section 10.04, (a) all Third-Party Agreements shall be assigned to Gemstone and (b) APCO must execute and deliver all documents and take all such steps as Gemstone may require for the purpose of fully vesting in Gemstone the rights and benefits of such assigned Third-Party Agreements.

Please feel free to contact me with any questions.

Sincerely,

Gemstone Development West, Inc.

Alexander Edelstein
Chief Executive Officer

EXHIBIT J

EXHIBIT J

EXHIBIT J

Direct Dial 702.667.4817 email:WBG@h2law.com

August 15, 2008

VIA E-MAIL AND
FACSIMILE (702) 365-6940
Sean D. Thueson, Esq.
HOLLAND & HART
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169

Our Client: APCO Construction
Your Client: Gemstone Development
Project: Manhattan West

Dear Mr. Thueson:

We have been asked by our client, APCO Construction ("APCO"), to respond to the August 15, 2008 letter from Gemstone Development West, Inc. ("Gemstone") regarding the alleged "ManhattanWest (sic) Phase I Termination for Cause" (the "Termination Letter"). Due to the fact that the notice was provided on a Friday, and due to the limited time to prepare a response, I have attempted to gather information regarding each issue. While I have endeavored to provide as complete a response as possible, APCO reserves the right to correct any items as necessary after having an adequate time for review.

According to the Termination Letter Gemstone is providing APCO with 48 hours notice that APCO must cure what Gemstone has termed the Immediate Termination Breaches and the Curable Breaches. Gemstone's demand is factually incorrect as APCO is not in default of the agreement, and even if APCO was in default of the agreement as alleged, the issues set forth by Gemstone would not support a termination of the contract.

The timing of Gemstone's letter leaves little doubt as to it true purpose. As you and Gemstone are well aware, APCO has provided Gemstone with a 10 day Notice of Intent to Stop Work on the project due to Gemstone's failure to pay the June 2008 Application. Instead of making the payment that is due, Gemstone is seeking to terminate the contract on or before the date that APCO will stop work on the project. It is also no accident that Gemstone has provided a 48 hour notice on a Friday, making the relevant cure date on Sunday, August 17, 2008. Even if APCO was in default, there would be no realistic time to cure any default. It is also curious that your client provided

the notice when it happens to be a weekend that Mr. Randy Nickerl has informed Gemstone as late as yesterday that he would be out of town.

Every contract in the State of Nevada contains an implied duty of good faith and fair dealing. *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249 (1998). Throughout the project, Gemstone has breached its duty to act in good faith toward APCO. The latest letter is further evidence of Gemstone's lack of good faith. During the project, Gemstone has continually made changes to the plans for the project. Despite the substantial amount of changes made by Gemstone, Gemstone has refused to approve almost every change order, or even provide for appropriate extensions of the contract schedule, making new excuses (when Gemstone has even bothered to address the change orders) as to why they needed more time or more information. Gemstone is now attempting to use its refusal to recognize the proper extensions to the contract schedule as a basis for claiming APCO is in default of the contract. Other items, as addressed below, are also blatantly in bad faith.

Finally, before I address the individual items set out in the Termination Letter, I would also note that APCO has received a copy of the e-mail sent to APCO's subcontractors by Gemstone. The e-mail notes that Gemstone has a replacement General Contractor in place. Obviously, Gemstone's intent is to improperly declare APCO in default and then attempt to move forward with the project using APCO's subcontractors. Gemstone's e-mail is just the latest effort to interfere with APCO contractual relations, and APCO will take all steps necessary to protect it rights and interests.

The Alleged Immediate Termination Breaches.

Gemstone has set out several items it terms the "Immediate Termination Breaches" as section 4 of the Termination Letter. Many of the items listed are a rehash of old issues that were resolved months ago. Others are simply vague statements with no truth or support.

4(a) Items (ii), (iii), (iv) and (v) were all complete months ago as part of the normal job process. To the extent there where any problems, they would be cured.

With regard to Item (i), Gemstone's statements are untrue. APCO has supplied the appropriate number of workers to perform the drywall work, as the work has become available. Further, APCO is performing the work in accordance with the schedule as it would be adjusted if Gemstone did not refuse to address any of the change orders requesting time extensions. The problem has been with the numerous changes that have affected APCO's ability to provide areas for the drywaller to work on a consistent basis. Gemstone is well aware of this issue and Gemstone's responsibility.

Item (vii) – APCO is not currently behind schedule. As noted above, APCO has submitted many, many change orders and requests for extension of the contract schedule due to the changes made to the plans and the project during construction. Gemstone, when it has even bothered to address the change orders, has refused to approve any extension of time, and has even gone so far as to instruct APCO that APCO should not submit any requests for extension of the contract schedule. I should also note that several change orders are approved under Nevada Law due to Gemstone's failure to object to the change orders as required by the statute. Considering the days approved and even a reasonable amount of the remaining requested days, APCO is meeting what should be the updated schedule.

4(b) In this section, Gemstone again overreaches to find an issue where none exists. ThyssenKrupp demanded immediate payment under its contract when APCO provided ThyssenKrupp with a copy of the Notice of Intent to Stop Work for Gemstone's failure to pay the Application for May 2008. The issue arose because Gemstone failed to make payment to APCO. However, once payment was made, ThyssenKrupp has been paid for all amounts due them for the work performed to date. Again, to the extent this was an issue, it has been cured.

4(c) This section is just further self serving statements and attempts to find issues where none exist. Initially, it must be noted that Items (i), (ii), (iii) and (v) all refer to items that are potential disciplinary actions before the Nevada State Contractor's Board, after an investigation and hearing. You client is not the arbiter of whether any violation of these statutes has occurred. There is no default here, and there is nothing to cure.

Item (i) - APCO has not failed to diligently prosecute the work. See 4(a), Item (vii), above.

Item (ii) – This is just a self serving statement without any support and does not warrant further discussion.

Item (iii) – Again, this is an old item that was fixed months ago as part of the normal construction process. To the extent this is an issue, it has been cured.

Item (iv) – The factual assertions in this item are incorrect. The alleged violation is based upon the use of an incorrect code by Gemstone's consultant. First, All materials installed in these spaces meet NFPA requirements as outlined and required by the Clark County Building Department approved contract documents and the Owner /Architect approved submittals. Gemstone's consultant referenced NFPA 13 (2007 Edition), and the project was not permitted under this edition of the NFPA. However, in order to ensure no issues arose, as requested by Mr.

Craig Colligan on July 31, 2008, "APCO will get the fire spay-in insulation started immediately and the required HVAC changes in Building 7,8 and 9." APCO obtained pricing for the non-combustible insulation and submitted it for review to Gemstone on August 4, 2008. That submittal was rejected by the Architect on August 8, 2008 as "Not required." Despite all of this, APCO continues to work with Gemstone and the Clark County Fire Department to ensure that this issue is properly resolved.

4(d) Item (i) – APCO has provided two week look-ahead schedules and discussed the schedules at each site meeting. To the extent that there is an issue, APCO will continue to provide the two week look-ahead schedule. This item is cured to the extent it needs any further action.

Item (ii) – Again, the requested schedule updates have been provided. To the extent that there is an issue, APCO will continue to provide the schedule. This item is cured to the extent it needs any further action.

4(e) This item is another self serving claim with no substance. First, I must correct Gemstone's incorrect statement that they received an e-mail from "the general counsel for APCO's parent company." Mr. Barker is general counsel for APCO. Further, APCO does not have a "parent company." To the extent that Gemstone may be trying to drag any other company into this dispute, such action is without any basis. As for the contract section cited, Section 2.02(f) requires APCO to conduct a weekly safety and coordination meeting. APCO has conducted this meeting and continues to do so. Nothing in Section 2.02 requires APCO to set or attend a meeting to discuss the 36 Additional Sheets Gemstone added to the Contract Documents. It should also be noted that APCO did attempt to meet with representatives of Gemstone to discuss this and other issues. As has become par for the course, Gemstone refused to discuss any change orders or requests for extensions of time. APCO has tried to get these issues resolved and does not want to continue to set meetings in which Gemstone refuses to participate in good faith.

The Alleged Curable Breaches.

5(a) This issue seems to be included only to claim some fraud occurred, which is non-sense. APCO has contracted to do a scope of work, and that work will be performed by APCO as long as Gemstone continues to pay for the work. The remainder has nothing to do with any legitimate issue under Section 10.02.

5(b) APCO provided Gemstone with a proposed budget for the C-2 split work based upon a sketched floor plan, at Gemstone's request. Gemstone representatives acknowledged that there would be additional pricing based upon the engineering

and design that still had to be performed. Based upon the pricing APCO received, it supplied a change order. If Gemstone does not agree with the price, there is a procedure set out in the contract to resolve the issue. There is nothing to cure in this item.

5(c) APCO is proceeding to complete the work, furnish efficient business administration and use its best efforts on the project. To the extent an issue exists, APCO will continue to make these efforts, which should cure any issue.

5(d) All signed contracts have been provided to Gemstone upon execution. Any remaining contracts will be supplied once they are executed. There is nothing to cure on this item.

5(e) All subcontractors used were licensed by the Nevada State Contractor's Board and have performed their work on the project. Gemstone cites Concrete Visions as a problem, but they have performed all of the work requested. There is nothing to cure on this item.

5(f) APCO did, and continues to review the Contract Documents in a timely and comprehensive manner. Gemstone's position is without merit.

5(g) APCO did review the drawings as required. Gemstone fails to include the additional language that APCO "shall not be responsible for the design of the Project." The issue has been the problem with the plans and the continuing changes made to the plans, all of which is not APCO' s responsibility.

5(h) This work was all corrected in September 2007. There is nothing left to cure.

5(i) APCO has submitted numerous requests for additional time. Gemstone has refused to grant any extensions to the contract, and has even informed APCO that APCO should not bother submitting any further requests for additional time.

5(j) The issues addressed in this item were fixed months ago at the direction of Gemstone and its consultants. There is nothing left to cure.

5(k) There are no savings. The repeated changes and demands of Gemstone have increased the price of the work, not resulted in any savings.

5(l) APCO obtained the permits when they were available. The change relates to delays due to problems with the design that lead to late approval of the plans, thereby delaying APCO's ability to obtain the permits.

5(m) This is just a rehash of the same issues from above, and was previously addressed.

5(n) This is just a rehash of the same issues from above, and was previously addressed.

5(o) This is just a statement and not an issue upon which the contract may be terminated.

5(p) This is another self serving statement with no basis in fact. APCO has not billed Gemstone for the correction of any mistakes made by APCO.

5(q) The daily reports have always been kept in a binder on the jobsite. They are available to Gemstone anytime.

5(r) APCO does not recall any requests from Gemstone for this information. What requests were made and when? APCO will provide Gemstone with any information as required under the contract. There does not appear to be anything to cure in this item.

5(s), 5(u), 5(v), 5(gg), 5(hh), 5(jj), 5(kk)
As noted above, there is a procedure in the contract for the resolution of disputes. If Gemstone truly believes that there are issues with the change orders, the dispute resolution provisions of the contract should be followed, to the extent that the change order has not been approved or deemed approved. Further, the allegations are so vague and lacking specifics that they cannot be responded to in anything other than a general fashion. These items are not defaults.

5(t) APCO has informed Gemstone whenever issues have been discovered. If the issue was determined to be APCO's responsibility, APCO has fixed the issues at its cost. Once again we have a vague and self serving statement for which no detailed response can be given. To the extent that APCO discovers faults in its work, APCO will keep Gemstone informed as required by the contract documents. This issue is cured.

5(w) Gemstone is at the project everyday and knows what work is complete and what work is going to take place. Gemstone never made an issue about this issue until now, when it is facing a Stop Work Notice. However, to the extent that this issue has not been waived and in order to avoid any problems on this issue, APCO has provided the written inspection and approval has been delivered to Gemstone. This item is cured.

5(x) APCO has provided the required full time staffing. Gemstone has repeatedly demanded that APCO remove project supervisory personnel from the project

when they refuse to go along with Gemstone's demands. When APCO has complied, Gemstone turns around and complains about the lack of that position on the project. APCO is committed to providing the necessary personnel to the project, despite Gemstone's repeated interference in that regard. This issue is cured.

5(y) This is more non-sense. Please provide the details of when any such requests were made by Gemstone. All of the resumes have already been provided, and any updates will be provided if requested.

5(z) This issue has previously been addressed. There is no default on this issue.

5(aa) APCO has been working with Gemstone on these issues and the parties are working together to coordinate these change orders. Again, this item is not a default.

5(bb) This is the same issue raised by Gemstone in the Immediate Breach category and are addressed above.

5(cc) APCO has no idea what Gemstone is referring to in this item. There does not appear to be any default in this item.

5(dd) The schedule issue has been addressed above.

5(ee) The schedule issue has been addressed above.

5(ff) Gemstone has not engaged any supplemental service providers on the project to APCO's knowledge.

5(ii) APCO has prepared change orders for the project. Gemstone has refused to consider many change orders as Gemstone is required to do under Nevada law. APCO has billed for these change orders as provided by Nevada law. There is no default here.

5(ll) The position Gemstone seems to be taking is contrary to Nevada Prompt Pay Statute. As you are well aware, the Prompt Pay Statute states that no provision of any contract can waive or alter the rights provided by the Statute. Yet, that seems to be exactly what Gemstone is claiming. APCO has not ignored the dispute resolution provisions when disputes have arisen. Gemstone simply ignored the change order requests so they would not have to fund the additional amounts or allow the schedule extensions. There is simply no default on this issue by APCO.

The Grading Agreement.

Gemstone's letter also purports to terminate the Grading Agreement. Just like the issues addressed above, there is no basis for terminating the agreement. The issues raised in Section 3(a) have all been completed for some time. In Section 3(b), Gemstone was notified of any faults, and those issues have been resolved. Finally, APCO does not know how APCO failed to complete any work pursuant to a schedule. Please identify the schedule and how APCO failed to comply.

Conclusion.

APCO considers that every issue that might actually require some action on the part of APCO to have been cured. Certainly, there is no good faith basis for termination of the contract for cause. Gemstone's letter is obvious for what it is, a continuing attempt to avoid payment for the work performed by APCO. Please be assured that while APCO hopes Gemstone will step back from its position and work with APCO to get this project complete, APCO stands ready, willing and able to protect its legal rights as it deems necessary.

Sincerely,

Wade B. Gochnour, Esq.

WBG:

CC: James Barker, Esq.
Gwen Mullins, Esq.

EXHIBIT K

EXHIBIT K

APCO CONSTRUCTION
3432 N. 5th Street • North Las Vegas, NV 89032
Phone: (702) 734-0188 • Fax: (702)734-0396
E-mail: apcoconstruction.com • NCL: 14563

August 21, 2008

VIA FACSIMILE (702-614-0669)
AND U.S. MAIL

Mr. Alexander Edelstein, CEO
Gemstone Development
9121 W. Russell Road, Suite 117
Las Vegas, Nevada 89148

RE: MANHATTAN WEST MIXED USE DEVELOPMENT
APCO CONSTRUCTION – NOTICE OF STOPPING WORK & NOTICE OF INTENT TO TERMINATE CONTRACT
DEADLINE: THURSDAY, AUGUST 21, 2008 – 5:00 PM

Dear Mr. Edelstein:

On August 11, 2008, APCO provided Gemstone with written notice that unless APCO was paid the full amount of $6,183,445.24 by close of business on Thursday, August 21, 2008, that APCO would stop work on the Project. Gemstone has failed to make full payment as required by statute, despite having no good faith contractual or proper statutory basis for withholding the payment. As a result, APCO is stopping work on the Manhattan West Project effective immediately.

In addition to stopping work on the project, APCO hereby asserts its rights to terminate the contract pursuant to NRS 624.610(2). THIS LETTER SHALL SERVE AS APCO'S NOTICE OF INTENT TO TERMINATE THE MANHATTAN WEST GENERAL CONSTRUCTION AGREEMENT FOR GMP PURSUANT TO NRS 624.606 THROUGH NRS 624.630, INCLUSIVE. PURSUANT TO THE TERMS OF NRS 624.610, THE AGREEMENT SHALL BE TERMINATED AS OF SEPTEMBER 5, 2008.

Nothing herein shall be construed to limit or waive any other rights, claims or defenses that APCO may have under statutory or common law.

Thank you for your attention to this matter.

Sincerely,

APCO CONSTRUCTION

JAMES M. BARKER, ESQ.
Corporate Counsel

Cc: Peter Smith, Gemstone
Craig Colligan, Gemstone
All Subcontractors

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

COPY

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DISTRICT COURT
CLARK COUNTY, NEVADA

In Re Manhattan Mechanic's Lien Litigation	CASE NO.: A571228 DEPT. NO.: XXIX Consolidated with: 08A574391, 08A574792, 08A577623, 09A580889, 09A583289, 09A584730, 09A587168, A-09-589195-C, A-09-589677-C, A-09-590319-C, A-09-592826-C, A-09-596924-C, and A-09-597089-C **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT IN FAVOR OF APCO CONSTRUCTION AGAINST GEMSTONE DEVELOPMENT WEST, INC., ONLY**
AND ALL RELATED CASES AND MATTERS	

This matter having come before this Court for a hearing on APCO Construction's LIMITED MOTION TO LIFT STAY FOR PURPOSES OF THIS MOTION ONLY and MOTION FOR JUDGMENT AGAINST GEMSTONE DEVELOPMENT WEST, INC. ONLY ("APCO's Motions"), the Court having heard the arguments of counsel and further considered all the papers and other pleadings filed in this action, and other good cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. Gemstone Development West, Inc. ("Gemstone") is the developer of the ManhattanWest Mixed-Use Development Project ("Project"), commonly referred to as 9205 W. Russell Road, Clark County, Nevada (the "Property").

2. APCO Construction is a duly licensed contractor in the State of Nevada with an unlimited AB license, License No. 14563.

3. APCO and Gemstone entered into the ManhattanWest General Construction Agreement for GMP (the "Agreement"), dated September 6, 2006.

4. The Agreement was drafted by Gemstone.

5. Pursuant to the Agreement, APCO was to act as the General Contractor for the construction of the Project.

6. After the Agreement was executed, APCO was informed by Gemstone for the first time that the Project would be constructed in two phases, with the first phase consisting of the construction of five (5) buildings.

7. APCO performed its work on the Project pursuant to the Agreement, and in accordance with all local and industry standards.

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

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

10. On or about July 8, 2008, APCO provided Gemstone written notice of APCO's dispute of the intended withholding on the May Application.

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

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

13. After receiving the stop work notice, Gemstone paid APCO all amounts except for the sum of $226,360.88 due under the May Application.

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

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

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

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

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

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

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

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

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

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

24. The Termination Letter set out what Gemstone stated were "Immediate Termination Breaches" and "Curable Breaches."

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

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

27. On August 15, 2008, despite the cure period still being in effect, Gemstone improperly contacted several of APCO's Subcontractors for the Project, notifying them that Gemstone was terminating its Agreement with APCO as of Monday, August 18, 2008, and that Gemstone already had a replacement general contractor in place.

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

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

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30. Ultimately, APCO was not paid for the June Application and stopped work on the Project on August 21, 2008.

31. APCO provided Gemstone with written notice of APCO's intent to terminate the Agreement as of September 5, 2008.

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

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

34. APCO complied with all material terms of the Agreement.

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

a. Failing to make payments due to APCO;

b. Interfering with APCO's relationships with its subcontractors;

c. Refusing to review, negotiate or consider change order requests in good faith;

d. Removing APCO from the Project without valid or appropriate grounds; and

e. Otherwise breaching the terms of the Agreement.

36. Gemstone owes APCO the principal amount of $20,782,659.95 under the terms of the Agreement, and under the provisions of NRS 624.610, for work performed by APCO.

THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. Gemstone materially breached the Agreement with APCO by:

a. Failing to make payments due to APCO;

b. Interfering with APCO's relationships with its subcontractors;

c. Refusing to review, negotiate or consider change order requests in good faith;

d. Removing APCO from the Project without valid or appropriate grounds; and

e. Otherwise breaching the terms of the Agreement.

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2. NRS 624.610 provides:

Grounds and procedure for stopping work or terminating agreement; change orders; damages and other remedies; rights of lower-tiered subcontractors; limitations on liability.

1. If:

(a) An owner fails to pay the prime contractor in the time and manner required by subsection 1 or 4 of NRS 624.609;

(b) An owner fails to give the prime contractor written notice of any withholding in the time and manner required by subsection 3 or 4 of NRS 624.609;

(c) After receipt of a notice of withholding given pursuant to subsection 3 or 4 of NRS 624.609, the prime contractor gives the owner written notice pursuant to subsection 4 of NRS 624.609 and thereby disputes in good faith and for reasonable cause the amount withheld or the condition or reason for the withholding; or

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

(1) Issue the change order; or

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

→ the prime contractor may stop work after giving written notice to the owner at least 10 days before stopping work.

2. If a prime contractor stops work pursuant to paragraph (a), (b) or (c) of subsection 1, the prime contractor may terminate the agreement by giving written notice of termination to the owner after stopping work but at least 15 days before terminating the agreement. If the prime contractor is paid the amount due before the date for termination of the agreement set forth in the written notice, the prime contractor shall not terminate the agreement and shall resume work.

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

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

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

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

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

. . .

6. If the agreement is terminated pursuant to subsection 4, or if the prime contractor stops work in accordance with this section and the agreement is terminated pursuant to subsection 1 or 5, the prime contractor is entitled to recover from the owner payment in an amount found by a trier of fact to be due the prime contractor, including, without limitation:

(a) The cost of all work, labor, materials, equipment and services furnished by and through the prime contractor, including any overhead the prime contractor and his or her lower-tiered subcontractors and suppliers incurred and profit the prime contractor and his or her lower-tiered subcontractors and suppliers earned through the date of termination;

(b) The balance of the profit that the prime contractor and his or her lower-tiered subcontractors and suppliers would have received if the agreement had been performed in full;

(c) Interest determined pursuant to NRS 624.630; and

(d) The reasonable costs, including court and arbitration costs, incurred by the prime contractor and his or her lower-tiered subcontractors in collecting the amount due.

→ In any action brought to enforce the rights or obligations set forth in this subsection, the trier of fact may award reasonable attorney's fees to the prime contractor and his or her lower-tiered subcontractors and suppliers or, if the trier of fact determines that the prime contractor stopped work or terminated the agreement without a reasonable basis in law or fact, the trier of fact may award reasonable attorney's fees and costs, including court and arbitration costs, to the owner.

. . .

3. Payment for the June Application was due to APCO on or before August 8, 2008.

4. APCO provided proper written notice of its intent to stop work for non-payment pursuant to NRS 624.610(1).

5. APCO properly stopped work in accordance with the provisions of NRS 624.610(1) after Gemstone failed to make payment on or before August 21, 2008.

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6. APCO provided proper written notice of its intent to terminate the Agreement pursuant to NRS 624.610(2).

7. APCO properly terminated the Agreement work in accordance with the provisions of NRS 624.610(2) after Gemstone failed to make payment on or before September 5, 2008.

8. Gemstone's actions also constitute a breach of the duty of good faith and fair dealing.

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that APCO's Motion for Judgment against Gemstone is hereby granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that APCO shall be granted Judgment against Gemstone Development West, Inc. in the principal amount of $20,782,659.95, for Gemstone's breach of contract, breach of the duty of good faith and fair dealing, for money due and owing, and for violation of NRS 624 Prompt Payment Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims, counterclaims that were, or could have been asserted by Gemstone against APCO are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all other claims, counterclaims or other causes of action between APCO and Gemstone not specifically determined herein, are hereby dismissed with prejudice.

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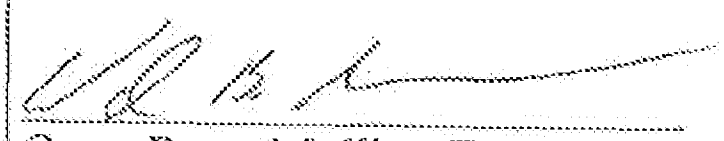
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to the extent any finding of fact should be considered a conclusion of law, or any conclusion of law should be considered a finding of fact, then any such provision shall be treated as such.

DATED this ___ day of June 2013.

DISTRICT COURT JUDGE

Respectfully Submitted By:

HOWARD & HOWARD ATTORNEYS PLLC



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DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	June 13, 2013

08A571228 Apco Construction, Plaintiff(s)
vs.
Gemstone Development West Inc, Defendant(s)

June 13, 2013 **10:00 AM** **Motion**

HEARD BY: Scann, Susan **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Larry Snyder; Dania Batiste/db

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES PRESENT:

Berman, Brian Keith	Attorney for the Plaintiff
Cawley, Reuben	Attorney for the Plaintiff
Gochnour, Wade B.	Attorney for the Plaintiff
Katz, Morrea	Attorney for the Defendant

JOURNAL ENTRIES

- Rachel Donn, Esq., Bar Number 10568 also present on behalf of the Defendant.

Colloquy between Court counsel regarding the language of the Order. Mr. Gochnour stated he will send Defendant s counsel a revised Order to approve as to form and content. Ms. Donn advised the property has closed and a Notice of Sale will be filed. COURT ORDERED, Motion GRANTED with the qualifications made by counsel.

ORIGINAL

Electronically Filed
8/2/2017 8:29 AM
Steven D. Grierson
CLERK OF THE COURT

MPSJ
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Attorneys for Various Lien Claimants

DEPARTMENT XIII
NOTICE OF HEARING
DATE 8/24/17 TIME 9:00 AM
APPROVED BY

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **PEEL BRIMLEY LIEN CLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS** **AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

COME NOW the Lien Claimants represented by the undersigned counsel of the law firm of PEEL BRIMLEY LLP ("the Peel Brimley Lien Claimants")[1] and do hereby submit the following Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements ("the Motion") as against Plaintiff/Cross-Claim Defendant APCO Construction ("APCO") and Defendant Camco Pacific Construction Co., Inc. ("Camco"). This Motion is based on and supported by the Declaration of Eric. B. Zimbelman, included below, the Memorandum of Points and Authorities in Support of this Motion that follows, the pleadings and papers on file,

[1] The Peel Brimley Lien Claimants are: Buchele Inc.; Cactus Rose Construction; Fast Glass Inc.; Heinaman Contract Glazing; Helix Electric of Nevada, LLC; SWPPP Compliance Solutions, LLC; and Cardno WRG, Inc. fka WRG Design Inc.

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JUL 31 2017
DISTRICT COURT DEPT# 13

Case Number: 08A571228

and such matters as may be considered by the Court.

DATED this 31st day of July 2017.

PEEL BRIMLEY LLP

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ORDER SHORTENING TIME

The Court having reviewed the underlying Motion for Partial Summary Judgment and the *Ex-Parte* Application for Order Shortening Time and good cause appearing:

It is HEREBY ORDERED that the time may be shortened and the Motion for Partial Summary Judgment shall be set for hearing on the 24th day of August 2017, at 9:00 a.m., in Department No. XIII.

DATED this 1st day of August, 2017

DISTRICT COURT JUDGE

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DECLARATION OF RICHARD L. PEEL, ESQ. IN SUPPORT OF AN ORDER SHORTENING TIME TO HEAR MOTION FOR PARTIAL SUMMARY JUDGMENT

RICHARD L. PEEL, ESQ., hereby declares under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and if called upon to testify, would do so.

1. I am the managing partner in the law firm of Peel Brimley LLP, counsel of record for the Peel Brimley Lien Claimants (as defined above). I am duly licensed to practice law within the State of Nevada. I have personal knowledge of the information contained in this Declaration and could qualify as a competent witness if called upon to testify in connection with this matter.

2. I am making this Declaration in support of an Order Shortening Time to hear the Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Regarding Pay-if-Paid Agreements.

3. By agreement of the parties and under the auspices of the Special Master, the depositions of the persons most knowledgeable for APCO, Camco and some of the lien claimants were conducted over multiple days in June and July 2017.[2] As discussed more fully herein, Camco and APCO both contend they have no obligation to pay the Peel Brimley Lien Claimants (and others) based on contract language purporting to make their receipt of payment from the now-insolvent project owner, Gemstone Development West, Inc. ("Gemstone") a condition precedent to their obligation to pay their subcontractors. Such a provision, known in the construction industry as a "pay-if-paid" agreement, violates the public policy of the State of Nevada and is void and unenforceable pursuant to *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 197 P.3d 1032 (Nev. 2008) and the provisions of NRS Chapter 624.

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[2] The Camco deposition was conducted on June 5 and 6, 2017 while the APCO deposition was conducted on June 20 and 22, 2017 (Part I) as well July 18-19, 2017 (Part II). The PMK deposition of Helix Electric of Nevada, LLC ("Helix") was taken on July 20, 2017. The transcripts of these depositions have either only recently been received or are still in production.

4. Based on APCO's and Camco's recently-produced discovery responses and the confirming deposition testimony, it is now clear that APCO and Camco intend to seek dismissal of the subcontractors' claims based on the "pay-if-paid" agreements.[3]

5. This case is set for trial on the September 12, 2017 stack with a Calendar Call scheduled for September 5, 2017. The Parties must meet and confer and present a joint pretrial statement and/or file separate pretrial statements no later than August 28, 2017. Resolution of this important and purely legal issue on shortened time will assist the parties in preparing for trial, may substantially reduce the time needed for trial and could be a catalyst for settlement.

6. Shortened time is therefore respectfully requested to hear this motion no later than August 28, 2017

7. I declare under penalty of perjury as provided under the laws of the State of Nevada that the foregoing is true and correct and if called upon to testify, would do so.

DATED this 31st day of July 2017.

Richard L. Peel, Esq.

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INTRODUCTION/SUMMARY OF ARGUMENT

The Nevada Supreme Court and the Nevada Legislature have declared that "pay-if-paid" agreements - like those APCO and Camco rely upon here as a defense to their non-payment of monies owed to their subcontractors – are against public policy and void and unenforceable. Notwithstanding the clear prohibition of such agreements, APCO and Camco assert the right to rely on such agreements as a defense to their failure to pay millions of dollars owed to the Peel Brimley Lien Claimants and other subcontractors who furnished work, material and equipment to

[3] Although APCO and Camco make the assumption that all of the subcontractors entered into written agreements containing "pay-if-paid" language, this assertion is ***not*** conceded by way of the present Motion, which asks the court only to rule that the "pay-if-paid" agreements (to the extent they exist and are otherwise applicable to the Peel Brimley Lien Claimants) are void and unenforceable under Nevada law. At least some of the Peel Brimley Lien Claimants, including Helix and Heinaman, contend that they never entered into any pay-if-paid agreements. This issue is reserved for trial or later motion.

the Project and have been waiting since 2008 to be paid as agreed. As more fully discussed below, this Court can and should dispense with APCO's and Camco's continued reliance on pay-if-paid agreements as a defense to their continuing failure to pay their subcontractors.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY JUDGMENT STANDARD.

A motion for summary judgment must be granted when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant is entitled to summary judgment if the non-moving party, who bears the burden of persuasion, fails to designate "'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986) (quoting Fed. R. Civ. P. 56(e)).

In order to preclude a grant of summary judgment, the non-moving party must do more than show that there is some "metaphysical doubt" as to the material facts. *See Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). Rather, the non-moving party must set forth "'specific facts showing that there is a genuine issue for trial.'" Id. at 587 (quoting Fed. R. Civ. P. 56(e)). *See also Wood v. Safeway, Inc.*, 121 Nev. 724, 730-731 (Nev. 2005) (rejecting the "slightest doubt" standard because "the nonmoving party may not defeat a motion for summary judgment by relying 'on the gossamer threads of whimsy, speculation and conjecture.'").

Rule 56 should not be regarded as a "disfavored procedural shortcut" but instead "as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*, 477 U.S. at 327. Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial." *Matsushita*, 475 U.S. at 586.

As set forth below, the present Motion presents no genuine issues of material fact. Rather, the Motion presents a discrete legal question that is ripe for summary judgment: can APCO and Camco refuse to pay their subcontractors in reliance on "pay-if-paid" clauses contained in (some of) the parties' agreements? Pursuant to *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*,

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197 P.3d 1032 (Nev. 2008) and the provisions of NRS Chapter 624 the answer is plainly "no."

II. RELEVANT UNDISPUTED FACTS

Despite the fact that pay-if-paid agreements have, since at least 2001, been void and unenforceable in Nevada, APCO and Camco continue to assert such agreements as a defense to their obligations to pay their subcontractors. For instance, by way of its substantially identical objections and responses to discovery requests from some of the subcontractors, including Helix, APCO emphasized its reliance on the "pay-if-paid" language of its subcontract agreement ("the APCO Subcontract Agreement"), as follows:

> Pursuant to the terms of the Subcontract Agreement, any payments to Helix were specifically conditioned upon APCO's actual receipt of payment from Gemstone for Helix's work. Moreover, the Subcontract specifically provided that Helix was assuming the same risk that Gemstone may become insolvent and not be paid for its work as APCO assumed in entering into [the] prime contract with Gemstone. Helix further agreed that APCO had no obligation to pay [the subcontractor] for any work performed by Helix until or unless APCO had actually been paid for such work performed by Helix.

[*See* **Exhibit 1**].[4]

Camco asserts an essentially identical defense, relying on language in the APCO Subcontract Agreement that was adopted by way of a Ratification Agreement between Camco and some of the subcontractors. By way of its substantially identical objections and responses to substantially identical discovery requests from some of the Peel Brimley Lien Claimants, Camco replied that it intends to rely upon certain sections of the APCO Subcontract Agreement (as adopted by the Ratification Agreements[5]), which provisions also form the basis of APCO's pay-if-paid defense. Specifically, those provisions state:

> 3.4 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.

[4] As noted above, the Peel Brimley Lien Claimants do not by the present Motion concede that they entered into any "pay-if-paid agreements."

[5] The Peel Brimley Lien Claimants do not by the present Motion concede that they entered into the Ratification Agreements.

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3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: ... (c) Receipt of final payment by Contractor from Owner.

3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such Work by the owner.

4.2 The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.

[*See* **Exhibit 2**]. Each of these provisions represents or contains a classic "pay-if-paid" agreement such that, if enforced, may allow APCO and Camco to deny payment to their subcontractors for work performed solely on the grounds that APCO and Camco have not been paid. As discussed below, such provisions are void and unenforceable in Nevada.

III. DISCUSSION

A. Pay-if-Paid is Against Public Policy, Void and Unenforceable.

In 2008 the Nevada Supreme Court declared "pay if paid" provisions in construction contracts void and unenforceable as against Nevada's public policy because "Nevada's public policy favors securing payment for labor and material contractors." *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008). Moreover, and while the policy impetus for the ***judicial*** ban on pay-if-paid provisions is deeply rooted in the long Nevada tradition of protecting lien claimants, the Nevada Legislature has in fact also barred these odious provisions in ***all*** Nevada construction agreements (i.e., irrespective of lien rights) except in very limited circumstances not present here. As the *Bullock* Court discussed:

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> [I]n 2001, the Legislature amended NRS Chapter 624 to include the prompt payment provisions contained in NRS 624.624 through 624.626. Pay-if-paid provisions entered into subsequent to the Legislature's amendments are enforceable only in limited circumstances and are subject to the restrictions laid out in these sections. 2001 Nev. Stat., ch. 341, §§ 5–6, at 1615–18.

Bullock, 124 Nev. at 1117 n. 50. As explained below, the "limited circumstances" referenced by the *Bullock* Court have no application here.

B. Pay-if-Paid Provisions Improperly Impair Mechanic's Lien Rights.

The Nevada Supreme Court has repeatedly and consistently held that Nevada's statutory schemes designed to secure payment to contractors and subcontractors in the construction industry as a whole are remedial. *See Hardy Companies, Inc. v. W.E. O'Neil Const. Co.*, 245 P.3d 1149, 1155 (Nev. 2010) (citing *Las Vegas Plywood v. D & D Enterprises*, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982)). The *Bullock* Court reiterated and bolstered these holdings and held as follows:

> Underlying the policy in favor of preserving laws that provide contractors secured payment for their work and materials is the notion that contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time, labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment. ***We determine that this reasoning is persuasive as it accords with Nevada's policy favoring contractors' rights to secured payment for labor, materials, and equipment furnished***.

Bullock, 124 Nev. at 1116.

Importantly, the *Bullock* Court noted that "because a pay-if-paid provision limits a subcontractor's ability to be paid for work already performed, such a provision impairs the subcontractor's statutory right to place a mechanic's lien on the construction project." 124 Nev. at 1117 n. 51 (citing *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 15 Cal. 4th 882, 64 Cal. Rptr. 2d 578, 938 P.2d 372, 376 (Cal. 1997) (hereinafter "*Clarke*") (concluding that a pay-if-paid provision "has the same practical effect as an express waiver of [mechanic's lien] rights")).

C. The 2001 Amendments to NRS Chapter 624 Ban Pay-if-Paid Agreements.

As Bullock noted, the Nevada Legislature amended NRS Chapter 624 in 2001 ("the 2001 Amendments") to, among other things, (i) add prompt pay provisions and (ii) bar contractual terms that purport to waive, release, extinguish or limit any of the rights provided by NRS 624.624 to 624.630, inclusive. As noted by the Nevada Supreme Court in Bullock, and as more fully discussed below, the 2001 Amendments render pay-if-paid agreements enforceable only in very limited circumstances not relevant here while otherwise making them void as against public policy and unenforceable.

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*1. **Prompt payment is required by NRS 624.624**.*

NRS 624.624 is explicit and unambiguous[6] in requiring payment to be made ***promptly***, as follows:

> 1. Except as otherwise provided in this section, if a higher-tiered contractor enters into:
>
> (a) A written agreement with a lower-tiered subcontractor that includes a schedule for payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:
>
> (1) On or before ***the date payment is due***; or
>
> (2) ***Within 10 days after the date the higher-tiered contractor receives payment*** for all or a portion of the work, materials or equipment described in a request for payment submitted by the lower-tiered subcontractor,
>
> ➥ ***whichever is earlier***.
>
> (b) A written agreement with a lower-tiered subcontractor that does not contain a schedule for payments, or an agreement that is oral, the higher-tiered contractor shall pay the lower-tiered subcontractor:
>
> (1) ***Within 30 days*** after the date the lower-tiered subcontractor submits a request for payment; or
>
> (2) ***Within 10 days after the date the higher-tiered contractor receives payment*** for all or a portion of the work, labor, materials, equipment or services described in a request for payment submitted by the lower-tiered subcontractor,
>
> ➥ ***whichever is earlier***.

NRS 624.624(1).

In other words, if there is a "schedule of payments" in an otherwise enforceable written agreement between the higher-tiered contractor (e.g., APCO or Camco) and the lower-tiered subcontractor (e.g., the Peel Brimley Lien Claimants), the higher-tiered contractor must pay the lower-tiered subcontractor – ***at the latest*** – on the ***date payment is due***. If there is no enforceable written agreement containing a schedule of payments, the payment is due to the lower-tiered subcontractor – ***at the latest*** - **within 30 days of its request** for payment. The statutory language referencing payment received by the higher-tiered contractor exists only to hasten the time within which payment must be made and does not extend the time, much less indefinitely. Here, all of the Peel Brimley Lien Claimants have been waiting for almost ***nine years*** without payment.

APCO and Camco may argue that the "schedule of payments" in Section 3.5 of the APCO Subcontract Agreement is "within 15 days after Contractor actually receives payment for Subcontractor's work from Owner." *See* Ex. 1. However, were this argument to prevail, any construction contract could effectively vitiate the express requirements and intent of the 2001 Amendments by (as here) making the "schedule of payments" a pay-if-paid agreement. In other

[6] If a statute's language is clear and unambiguous, courts must enforce the statute as written. *Hobbs v. Nevada*, 127 Nev 234, 237, 251 P.3d 177, 179 (2011).

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words, the "date payment is due" would never arise unless and until payment is received from the owner. That is not a "schedule of payments" but rather a pay-if-paid agreement. As such, there is no schedule of payments in the APCO Subcontract Agreement and payment was due to the Peel Brimley Lien Claimants within 30 days of their requests for payment. Neither APCO nor Camco has alleged or is expected to assert that the Peel Brimley Lien Claimants failed to request payment. As such, and pursuant to NRS 6245.624(1)(b), the payments are now nearly ***nine years*** past due.

2. The rights afforded by NRS 624.24 to 624.630 may not be waived.

Even if Section 3.5 or some other provision of the APCO Subcontract Agreement or other agreement could be interpreted to avoid the unambiguous language and clear intent of the 2001 Amendments to require prompt payment, the Legislature made such provisions void and enforceable. Specifically, NRS 624.628(3) (with emphasis added) provides:

> ***A condition, stipulation or provision in an agreement which:***
> (a) ***Requires a lower-tiered subcontractor to waive any rights provided in NRS 624.624 to 624.630***, inclusive, ***or which limits those rights***
> (b) Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to NRS 624.624 to 624.630, inclusive; or
> (c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the lower-tiered subcontractor is not responsible,
> ***is against public policy and is void and unenforceable***.

Here, to the extent Section 3.5 of the APCO Subcontract Agreement attempts to circumvent the clear obligation to promptly pay the subcontractors, it is just such a prohibited "condition, stipulation or provision." Indeed, ***any*** condition stipulation or provision that purports to delay a higher-tiered contractor's obligation to pay a lower-tiered subcontractor more than 30 days after a request for payment is made is "against public policy and is void and unenforceable." NRS 624.638(3).

D. The NRS 624.626 "Exception" Is Inapplicable And Limited To Stop Work Remedies.

In reliance on Footnote 50 of the *Bullock* decision ("Footnote 50"), APCO and Camco may argue that there is some statutory exception to their obligation to pay the subcontractors – at the latest – within 30 days of their requests for payment.[7] Specifically, while acknowledging the prompt payment provisions of the 2001 Amendments, Footnote 50 states that "[p]ay-if-paid provisions

[7] It is worth noting that Footnote 50 is mere dicta since the footnote itself acknowledges that the 2001 Amendments were not retroactive and, therefore "[do] not affect our analysis here." 124 Nev. at 1117 n. 50.

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entered into subsequent to the Legislature's amendments are enforceable ***only in limited circumstances and are subject to the restrictions laid out in those sections***. 2001 Nev. Stat., ch. 341, §§5-6, at 1615-18." *Bullock*, 124 Nev. At 1118 n.50 (emphasis added). As discussed below, these "limited circumstances ... subject to ... restrictions" in no way permit APCO and Camco to avoid their prompt pay obligations.

At the risk of the obvious, these "limited circumstances" plainly cannot include the blanket circumvention of the rule against pay-if-paid agreements as set forth in section 3.5 (i.e., declaring the pay-if-paid condition to be the "schedule of payments") because, of course, such an exception swallows the rule, renders the intent of the statute entirely meaningless[8] and produces an absurd result.[9] Instead, and as noted above, NRS 624.624 does take the receipt of payment by the higher-tiered contractor into account when determining the date by which payment must be made to the lower-tiered subcontractor but only to ***hasten*** the time within which payment must be made. For example, pursuant to NRS 624.624(1)(b), if there is no enforceable written agreement containing a schedule of payments, the payment is due to the lower-tiered subcontractor ***the earlier of*** 30 days after request for payment is made ***or*** 10 days after the date the higher-tiered contractor receives payment.

The only other provision in NRS 624.624 through 624.630 inclusive that even takes the higher-tiered contractor's receipt of payment into consideration is NRS 624.626(1)(b). However that provision relates not to the statutory obligation to make prompt payment (provided for in NRS 624.624(1) as discussed above) but rather to the subcontractor's right to stop work in the event of non-payment. Specifically, NRS 624.626(1)(b) gives the lower-tiered subcontractor the right to stop work ***if***:

> [a] higher-tiered contractor fails to pay the lower-tiered subcontractor within 45 days after the 25th day of the month in which the lower-tiered subcontractor submits a request for payment, even if the higher-tiered contractor has not been paid and the agreement contains a provision which requires the higher-tiered contractor to pay the lower-tiered subcontractor only if or when the higher-tiered contractor is paid.

In other words, NRS 624.626(1)(b) allows an unpaid subcontractor to stop work even if there is a pay-if-paid clause but extends the time before the subcontractor may exercise the right to stop work to 45

[8] The Court's objective in construing a statute is to give effect to the Legislature's intent. *Hobbs v. State*, 127 Nev. at 237 citing *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

[9] The Court must consider "the policy and spirit of the law and ... seek to avoid an interpretation that leads to an absurd result." *Washoe Med. Ctr. v. Second Judicial Dist. Court of State of Nev. ex rel. Cty. of Washoe*, 122 Nev. 1298, 1302, 148 P.3d 790, 793 (2006).

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days after the 25th day of the month in which a request for payment is made.

Thus, assuming there is a pay-if-paid agreement and a request for payment is made on the first day of the month, the maximum days that can pass before the subcontractor is allowed to exercise its right to stop work is 60 days (25 days plus 45 days). Notably, this statutory provision does ***not*** alter the higher-tiered contractor's prompt pay obligations set forth in NRS 624.624 or otherwise extend the time to pay to 60 days. Rather, NRS 624.626(1)(b) simply forces the lower-tiered subcontractor to wait additional time before exercising its right to stop work of there is a pay-if-paid clause.

Far from granting an exception to the broad prohibition against pay if paid clauses, NRS 624.626(1)(b), which must be read in conjunction with statute as a whole, merely (i) recognizes the reality that such pay-if-paid provisions frequently appear in construction agreements, even though they are deemed unenforceable in Nevada and many other states, and (ii) where rarely applicable, merely provides additional time before an unpaid lower-tiered subcontractor may exercise its statutory right to stop work.

CONCLUSION

Based on the foregoing, the Peel Brimley Lien Claimants respectfully request that the Court grant the foregoing Motion for Summary Judgment and rule that no pay-if-paid agreements may be used as a defense to claims against APCO and Camco for non-payment.

DATED this 31st day of July 2017.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this August 2, 2017 ~~31st day of July 2017~~, I caused the above and foregoing document entitled **PEEL BRIMLEY LIEN CLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the party(ies) and/or attorney(s) listed below; and/or

☒ to registered parties via Wiznet, the Court's electronic filing system;

☐ pursuant to EDCR 7.26, to be sent **via facsimile;**

☐ to be hand-delivered; and/or

☐ other _____

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Exhibit 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

APCO CONSTRUCTION'S ANSWERS TO HELIX ELECTRIC OF NEVADA LLC'S FIRST REQUESTS FOR INTERROGATORIES

In accordance with NRCP 33, APCO Construction (hereinafter referred to as "APCO" or "Plaintiff"), by and through its attorneys, Marquis Aurbach Coffing, hereby answers Helix Electric of Nevada, LLC's (hereinafter referred to as "Defendant" or "Helix") Request for Interrogatories as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Plaintiff objects to Defendant's First Set of Interrogatories to the extent that they attempt to impose burdens greater than those imposed by Rules 26 and 33 of the Nevada Rules of Civil Procedure and/or to the extent they infringe upon the attorney-client privilege and/or the attorney work-product doctrine.

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2. Answers will be made on the basis of information and writings available to and located by the Plaintiff upon reasonable investigation of its records. There may be other and further information respecting the Interrogatories propounded by Defendant of which the Plaintiff, despite its reasonable investigation and inquiry, are presently unaware. Thus, the Plaintiff reserves the right to modify or enlarge any answer with such pertinent additional information as it may subsequently discover.

3. Many of the Interrogatories set forth herein are extremely, indeed unreasonably, broad; therefore, responding to all generally requested information and the production of all possible documents responsive to the Interrogatory would be an unreasonable burden upon the Plaintiff. Likewise, many of the Interrogatories are compound, cumulative, vague, ambiguous, lack proper foundation and/or seek information that is protected by the attorney-client privilege and/or attorney-work product doctrine or other privileges or exemptions.

4. The Plaintiff objects to these Interrogatories to the extent that they impose upon the Plaintiff greater duties than are contemplated under the Nevada Rules of Civil Procedure.

5. No incidental or implied admissions will be made nor shall be construed by the answers. The fact that the Plaintiff may respond or object to any Interrogatory, or any part thereof, shall not be deemed an admission that the Plaintiff accepts or admit the existence of any fact set forth therein or assumed by such Interrogatory, or that such answer constitutes admissible evidence. The fact that the Plaintiff responds to part of any Interrogatory is not to be deemed a waiver by the Plaintiff of its objections, including privilege, to any other part of such an Interrogatory.

6. Each Response to the Interrogatories will be subject to all objections as to the competence, relevance, materiality, propriety and admissibility, and to any and all other objections on any ground which would require the exclusion from evidence of any statement herein as if any such statements were made by a witness present and testifying at a hearing or trial in this matter, all of which objections and grounds are expressly reserved and may by interposed at such hearings and trial as necessary.

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7. The Plaintiff hereby adopts, by reference, the above General Objections and incorporate each such objection as if it were fully set forth in each of the responses below.

8. Pursuant to Nevada law the Plaintiff reserves the right to amend/supplement its answers herein as additional information becomes known to the Plaintiff through the discovery process, including expert witness reports/opinions.

9. Further, the Plaintiffs specifically reserve the right to amend/supplement their Responses herein as additional information becomes known to them through the discovery process, including but not limited to, expert witness reports/opinions. Hence, no answer should be construed to contain all responsive documents available to the Parties that could be utilized at trial, or the current absence of a document should not be construed as any form of admission or fodder for a motion to dismiss or for summary judgment. Last, as additional information becomes available to the Parties, the nature and meaning of various documents previously disclosed by Plaintiffs may further become responsive to any given Interrogatory, and as such, the Plaintiffs reserves the right to amend their answers accordingly.

ANSWER TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify and state with specificity the facts that you intend to rely upon to refute each cause of action in Helix's Complaint.

ANSWER TO INTERROGATORY NO. 1:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to "Identify and state with specificity the facts that you intend to rely upon to refute each cause of action in Helix's Complaint." Broad ranging interrogatories are improper when they essentially subsume every fact in the case or every person having knowledge. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998). ("Interrogatories should not require the answering party to provide a narrative account of its case."). Parties can hardly know when they have identified "all" facts, persons, and documents with respect to anything – particularly before the close of discovery. "How can the court make enforceable orders with reference to 'all'

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of anything?" Often, the relevance of a particular fact to a particular issue is not known until clarified and put into context by testimony at deposition or trial. Such a question places the responding party in an impossible position. See id.; Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998)(finding unreasonable an interrogatory calling for all facts supporting denial of a request for admission); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997)(finding unduly burdensome an interrogatory seeking to require plaintiff to state 'each and every fact' supporting allegations of a complaint). APCO further objects on the grounds that to answer this Interrogatory would result in annoyance, embarrassment, or oppression to APCO in that the question is overly broad, vague, ambiguous, indefinite as to time and without reasonable limitation in its scope. APCO further objects on the basis that the question is oppressive, harassing and burdensome; the information sought seeks APCO's counsel's legal analysis and theories regarding laws, ordinances, safety orders, etc., which are equally available to Helix; the question also invades the attorney's work product privilege. APCO further objects on the basis that the question calls for information which is available to all parties equally, and is therefore oppressive and burdensome to APCO. APCO further objects on the basis that the question seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the question seeks to invade APCO's counsel's work product privilege in that it calls for him to provide an analysis of written data. APCO further objects on the basis that the question seeks to ascertain all facts and other data which APCO intends to offer at trial and, as such, is violative of the attorney work product privilege. APCO objects on the basis that the attorney-client privilege protects disclosure of the information sought. APCO further objects to this Interrogatory on the grounds that it calls for legal conclusions, and that the contract documents at issue speak for themselves.

Subject to and without waiving any objections, APCO responds as follows: Gemstone Development West, Inc. ("Gemstone") has asserted various complaints about the quality of the work performed by APCO and its subcontractors. As of this time, Gemstone has not identified specific issues that Gemstone has with APCO's or its subcontractor's work, including that of

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Helix. However, as a result of Gemstone's assertions that there are issues with the quality of the work performed on the Project, Gemstone has failed to pay APCO for the work that APCO performed including the work that was performed by Helix. Pursuant to the terms of the Subcontract Agreement, any payments to Helix were specifically conditioned upon APCO's actual receipt of payment from Gemstone for Helix's work. Moreover, the Subcontract specifically provided that Helix was assuming the same risk that Gemstone may become insolvent and not be paid for its work as APCO assumed in entering into prime contract with Gemstone. Helix further agreed that APCO had no obligation to pay Helix for any work performed by Helix until or unless APCO had actually been paid for such work by Gemstone. To date, APCO has not been paid for the work performed, including the work performed by Helix. In fact, due to non- payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime contract with Gemstone and further terminated the Subcontract with Helix. After APCO ceased work on the Project, Helix may have negotiated with Camco Pacific Construction Company ("Camco"), the replacement general contractor, and/or Gemstone and may have entered into a ratification agreement, wherein APCO was replaced as the general contractor under the Subcontract and Camco and/or Gemstone became liable for any monies due Helix on the Project. Discovery is ongoing; APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 2:

State the procedure by which you and/or Gemstone Development West, Inc. ("Gemstone") paid Helix for its work, material, and/or equipment furnished at the Project.

ANSWER TO INTERROGATORY NO. 2:

Subject to, and without waiving any objection identified above, APCO responds as follows: APCO paid Helix pursuant to the terms of the Subcontract. More specifically, see Section 3 of the Subcontract. Basically the procedure for payment was as follows: Pursuant to the terms of the Subcontract, Helix submitted to APCO its monthly billing, no later than the 25th of each month, showing quantities of subcontract work that has been satisfactorily completed in the preceding month, as well as backup material. In the event that Helix failed to timely submit

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its monthly billing with the necessary backup material that resulted in that monthly payment application being rolled over to the following month. In turn, APCO submitted its Application for Payment, which included the subcontractor's monthly billing and backup documentation to Gemstone for payment. Upon actual receipt of payment by APCO from Gemstone, APCO then paid the amount that APCO received for Helix work to Helix as required under the Subcontract. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 3:

State the amount of any payments you or Gemstone made to Helix, the date and manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment.

ANSWER TO INTERROGATORY NO. 3:

Subject to, and without waiving any objection identified above, APCO responds as follows: To date, APCO has approved/paid Helix the sum of $4,626,186.11 See documents identified by Bate Stamp No. APC0003415 – 339519, 39548 – 39785, and 103577 – 103586 which APCO deposited into a depository established by APCO for this litigation matter with Litigation Services located at 3770 Howard Hughes Pkwy, Ste 300, Las Vegas, NV 89169-0935 and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. APCO does not have any information as to what payments may have been made by Gemstone directly to Helix after APCO terminated its prime contract with Gemstone. However, from the information obtained through Helix discovery requests propounded upon APCO, it appears that Gemstone may have paid Helix at least $364,760.00. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 4:

State the amount of any payments to you by Gemstone, the date and manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment.

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ANSWER TO INTERROGATORY NO. 4:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and/or oppressive. Subject to, and without waiving any objections, APCO responds as follows: See documents located at Litigation Services that are made available for review and copying (at requestor's expense). More specifically, see documents identified by Bate Stamp No. APC000033494 through APC000035651. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 5:

Do you contend that the value of the unpaid work, material, and/or equipment furnished or supplied by Helix is less than the amount set forth in Helix's Initial Disclosures?

If so, please state:

a. the basis for your contention including all facts, witnesses, or documents you rely on in support of your contention;

b. how much you contend the work and equipment provided by Helix is actually valued at; and

c. the manner in which you calculated the value of the work, materials, and/or equipment provided by Helix.

ANSWER TO INTERROGATORY NO. 5:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive. More specifically APCO objects on the grounds that it is vague and ambiguous in that "value of the unpaid work, material and/or equipment furnished or supplied by Helix" is not defined. APCO further reiterates its General Objections and adds that as this action is in the initial stages of discovery and APCO has not yet determined which witnesses will testify or what evidence will be used in support of APCO's assertions or denials; therefore, this Interrogatory is premature. APCO further objects as the Interrogatory seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the Interrogatory seeks disclosure of

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trial witnesses (other than experts) and is therefore violative of the attorney work product privilege. APCO further objects on the basis that the Interrogatory seeks to ascertain the anticipated testimony of witnesses who are not "experts" and as such violate the attorney work product privilege. APCO further objects on the basis that the question seeks to ascertain all facts and other data which APCO intends to offer at trial and, as such, is violative of the attorney work product privilege. Furthermore, APCO objects to this Interrogatory insofar as it purports to require APCO to describe the substance of each person's knowledge for the reason that such a requirement seeks to impose burdens on APCO beyond those permitted by the Nevada Rules of Civil Procedure, calls for APCO to speculate, is overly broad and unduly burdensome and seeks information protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges.

Subject to and without waiving any objections, APCO responds as follows: See documents identified by Bate Stamp No. APC000000001[1] through APC000078992, APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586, which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 6:

State with specificity the reasons why you have not paid Helix the sums for the work, material, and/or equipment that Helix provided for the Project.

ANSWER TO INTERROGATORY NO. 6:

Subject to, and without waiving any objection identified above, APCO responds as

[1] Please note that documents bate stamped APC000000001 through APC000001557 are not being produced by APCO as those documents were delivered by APCO to Gemstone Development West ("Gemstone") on September 3 2008, around the time of termination of APCO's prime contract so that Gemstone could continue with the construction of the Project. APCO does not have a copy of these documents as they remain in Gemstone's possession. Furthermore, due to clerical error, the following Bate Stamp Nos. were not used, APC000005841, APC000024165 and APC000033296 and are thus not being produced.

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follows: Pursuant to the terms of the Subcontract any payments to Helix were specifically conditioned upon APCO's actual receipt of payment from Gemstone for Helix's work. Moreover, the Subcontract specifically provides that Helix was assuming the same risk that Gemstone may become insolvent and not be paid for its work as APCO assumed in entering into prime contract with Gemstone. Helix further agreed that APCO had no obligation to pay Helix for any work performed by Helix until or unless APCO had actually been paid for such work by Gemstone. To date, APCO has not been paid for the work performed, including the work performed by Helix. In fact, due to non-payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime contract with Gemstone and further terminated the Subcontract with Helix. Discovery is ongoing; APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 7:

State each and every fact that you rely on to support your position that any claim for unjust enrichment against you is invalid.

ANSWER TO INTERROGATORY NO. 7:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact" that APCO relied upon to support its position that any claim for "unjust enrichment against you is invalid." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified what documents it may decide to utilize or offer as exhibits against Helix at the time of trial.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 2,

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and 6 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[2], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 8:

Separately state each and every fact that you rely on to support each of your affirmative defenses.

ANSWER TO INTERROGATORY NO. 8:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact that you rely on to support each of your affirmative defenses." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative to Helix's action.

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6, 7, and 8 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APC000000001[3] through APC000078992 and APCO104200 through 104234,

[2] See Footnote No. 1.
[3] See Footnote No. 1.

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and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[4], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 9:

If you contend that Helix entered into any independent agreement or ratification with CAMCO Pacific Construction Company, Inc. ("CAMCO") or Gemstone, state each and every fact that you rely on to support your position and on what basis any such agreement relieves APCO of its contractual duties to Helix.

ANSWER TO INTERROGATORY NO. 9:

Subject to, and without waiving any objection identified above, APCO responds as follows: It is APCO's understanding that after APCO's termination of the prime contract with Gemstone for non-payment, Gemstone, through Camco Pacific Construction Company ("Camco"), its replacement contractor, entered into independent and/or ratification agreements. APCO is aware that several of its subcontractors have entered into such independent and/or ratification agreement. APCO does not have personal knowledge of which subcontractors have entered into such agreements. APCO objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all subcontractors who may have entered into such agreements and whether or not Helix was one of such subcontractors. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 10:

Identify all facts, witnesses (names, employers, addresses and telephone number) and documents, records that support your Answers to these Interrogatories and your responses to Requests for Admission.

[4] See Footnote No. 1.

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ANSWER TO INTERROGATORY NO. 10:

Objection. APCO objects to this Interrogatory as being overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "all facts, witnesses (names, employers, addresses and telephone number) and documents, records, that support your Answers to these Interrogatories and your responses to Requests for Admission" Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative to Helix's action.

Subject to and without waiving any objections, see documents identified by Bate Stamp No. APC000000001[5] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[6], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

With respect to the potential witnesses sought in Interrogatory No. 10, APCO objects to this Interrogatory as well. APCO reiterates its General Objections and adds that as this action is in the initial stages of discovery, and APCO has not yet determined which witnesses support its Answers to these Interrogatories and its responses to the propounded Requests for Admission. APCO further objects that this Interrogatory is premature. APCO further objects as the

[5] See Footnote No. 1.

[6] See Footnote No. 1.

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Interrogatory seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the Interrogatory seeks disclosure of trial witnesses (other than experts) and is therefore violative of the attorney work product privilege. APCO further objects on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "all witnesses (names, employers, addresses and telephone number) and...that support your Answers to these Interrogatories and your responses to Requests for Admission." Furthermore, APCO objects to this Interrogatory insofar as it purports to require APCO to describe the substance of each person's knowledge for the reason that such a requirement seeks to impose burdens on APCO beyond those permitted by the Nevada Rules of Civil Procedure, calls for APCO to speculate, is overly broad and unduly burdensome and seeks information protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges.

Subject to and without waiving any objections, APCO anticipates that the following individuals may be witnesses and/or have relevant information relative the claims asserted in this action:

1. Brian Benson
APCO Construction
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Las Vegas, Nevada 89145

Mr. Nickerl will testify regarding the facts and circumstances surrounding this action and provide other testimony to support the allegations of APCO's Complaint against Gemstone and all other claims that APCO has asserted against various subcontractors. Mr. Nickerl will further provide testimony to refute the allegations of Gemstone's Counterclaim and various Complaints in Intervention filed by various subcontractors.

2. Joe Pelan
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Mr. Pelan will testify regarding the facts and circumstances surrounding this action and provide other testimony to support the allegations of APCO's Complaint against Gemstone and all other claims that APCO has asserted against various subcontractors. Mr. Pelan will further provide testimony to refute the allegations of Gemstone's Counterclaim and various Complaints in Intervention filed by various subcontractors.

3. Lisa Lynn
APCO Construction
Marquis Aurbach Coffing
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Ms. Lynn will testify regarding the facts and circumstances surrounding this action.

4. Mary Jo Allen
APCO Construction
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Ms. Allen is expected to testify regarding the amounts due to APCO on the Manhattan West Project and shall further provide other testimony in support of the allegations of APCO's Complaint.

5. Person Most Knowledgeable - APCO
c/o Gwen Rutar Mullins, Esq.
Marquis Aurbach Coffing
10001, Park Run Drive
Las Vegas, Nevada 89145

Person Most Knowledgeable of APCO will testify regarding the facts and circumstances surrounding this action, will support the allegations of APCO's Complaints and will refute the allegations of the Counterclaim and/or various Complaints in Intervention as they are asserted against APCO.

6. The Person Most Knowledgeable
Gemstone Development West, Inc.
c/o Alexander Edelstein, registered Agent
10170 W. Tropicana Ave., Suite 156-169
Las Vegas, Nevada 89147

The Person Most Knowledgeable of Gemstone Development West, Inc. is expected to testify regarding the facts and circumstances related to the claims made in this action.

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7. Alexander Edelstein
10170 W. Tropicana Ave., Suite 156-169
Las Vegas, Nevada 89147

Mr. Edelstein is expected to testify regarding the facts and circumstances related to the claims made in this action.

8. Pete Smith
Gemstone Development West, Inc.
Address unknown

Mr. Smith is expected to testify regarding the facts and circumstances related to the claims made in this action.

9. Craig Colligan
Address unknown

Mr. Colligan is expected to testify regarding the facts and circumstances related to the claims made in this action.

10. The Person Most Knowledgeable
Scott Financial Services, Inc.
c/o Kemp, Jones & Coulthard
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Scott Financial Services, Inc. is expected to testify regarding the facts and circumstances related to the claims made by in this action.

11. Bradley J. Scott
c/o Kemp, Jones & Coulthard
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169

Mr. Scott is expected to testify regarding the facts and circumstances related to the claims made by in this action.

12. The Person Most Knowledgeable
Bank of Oklahoma
c/o Lewis and Roca, LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Bank of Oklahoma is expected to testify regarding the facts and circumstances related to the claims made in this action.

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13. The Person Most Knowledgeable
Club Vista Financial Services, LLC
c/o Cooksey, Toolen, Gage, Duffy & Woog
3930 Howard Hughes Pkwy., Ste. 200
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Club Vista Financial Services, LLC is expected to testify regarding the facts and circumstances related to the claims made in this action.

14. The Person Most Knowledgeable
Tharaldson Motels II, Inc.
c/o Cooksey, Toolen, Gage, Duffy & Woog
3930 Howard Hughes Pkwy., Ste. 200
Las Vegas, Nevada 89169

The Person Most Knowledgeable of Tharaldson Motels II, Inc. is expected to testify regarding the facts and circumstances related to the claims made in this action.

15. Gary D. Tharaldson
c/o Cooksey, Toolen, Gage, Duffy & Woog
3930 Howard Hughes Pkwy., Ste. 200
Las Vegas, Nevada 89169

Mr. Tharaldson is expected to testify regarding the facts and circumstances related to the claims made in this action.

16. Aaron Davis
Insulpro Projects, Inc.
c/o Eric Dobberstein, Esq.
DOBBERSTEIN & ASSOCIATES
8965 S. Eastern Avenue, Suite 280
Las Vegas, Nevada 89123

Mr. Davis is expected to testify as to his understanding of the facts of this matter forming the basis of Insulpro's lawsuit against APCO.

17. Cheryl Johnson
Insulpro Projects, Inc.
c/o Eric Dobberstein, Esq.
DOBBERSTEIN & ASSOCIATES
8965 S. Eastern Avenue, Suite 280
Las Vegas, Nevada 89123

Ms. Johnson is expected to testify as to her understanding of the facts of this matter forming the basis of Insulpro's lawsuit against APCO.

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18. Matthew Hashagen
Insulpro Projects, Inc.
c/o Eric Dobberstein, Esq.
DOBBERSTEIN & ASSOCIATES
8965 S. Eastern Avenue, Suite 280
Las Vegas, Nevada 89123

Mr. Hashagen is expected to testify as to his understanding of the facts of this matter forming the basis of Insulpro's lawsuit against APCO.

19. The Person Most Knowledgeable
Pressure Grout Company, Inc.
c/o T. James Truman, Esq.
T. James Truman & Associates
3654 North Rancho Drive
Las Vegas, Nevada 89130

The Person Most Knowledgeable for PGC is expected to testify as regarding the circumstances of this matter forming the basis of PGC's claims against APCO.

20. H.R. Alalusi
Pressure Grout Company, Inc.
c/o T. James Truman, Esq.
T. James Truman & Associates
3654 North Rancho Drive
Las Vegas, Nevada 89130

H.R. Alalusi is expected to testify as regarding the circumstances of this matter forming the basis of PGC's claims against APCO and regarding the PGC's work on the Projects and issues relating thereto.

21. Jim Thompson
REI/Structural
700 17th Street, Ste. 1900
Denver, CO 80202
(303)575-9510

Mr. Thompson is expected to testify regarding the circumstances of this matter including the improper workmanship of PGC on the Project which resulted in findings that some of the columns capitals on Buildings 8 and 9 needed to be demolished or reconstructed. Mr. Thompson is further expected to testify about the defective work performed by PGC on the Project.

. . .

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22. Robert D. Redwine
Civil Structural Engineer
700 17th Street, Ste. 1900
Denver, CO 80202
(303)575-9510

Mr. Redwine is expected to testify regarding the circumstances of this matter including the improper workmanship of PGC on the Project which resulted in findings that some of the columns capitals on Buildings 8 and 9 needed to be demolished or reconstructed. Mr. Redwine is further expected to testify about the defective work performed by PGC on the Project.

23. The Person Most Knowledgeable
Helix Electric of Nevada, LLC
c/o Eric B. Zimbelman, Esq.
c/o Richard L. Peel, Esq.
PEEL BRIMLEY LLP
3333 E. Serene Ave., Ste. 200
Henderson, Nevada 89074

The Person Most Knowledgeable for Helix Electric of Nevada, LLC is expected to testify as to his/her understanding of the facts of this matter forming the basis Helix's lawsuit against APCO.

APCO further expects that each of the subcontractors who are participating in this action will also testify as to his/her understanding of the facts on this matter and to support their claims that were asserted in this action. Also, see APCO's disclosure of witnesses previously served on this matter. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 11:

For every response to Helix's Requests for Admission that is anything other than an unequivocal admission, identify all facts, witnesses (names, employers, addresses and telephone number) and documents, records, that support such responses.

ANSWER TO INTERROGATORY NO. 11:

Objection. This Interrogatory calls for multiple responses as there were denials made by APCO to Helix's Requests for Admissions. APCO objects to any attempt by Helix to evade any numerical limitations set on interrogatories by asking multiple independent questions within

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single individual questions and subparts. APCO further objects on the grounds of relevance and that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every denial." See also Response to Interrogatory No. 1 above, which is incorporated herein by this reference. Subject to and without waiving any objections, see APCO's Responses to Helix's Requests for Admissions. See also, Responses to Interrogatory No. 1, 2, 6, and 10 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APC000000001[7] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[8], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 12:

State each and every fact that supports your position that you are not legally liable for payment to Helix for the work, material, and/or equipment that it furnished on the Project.

ANSWER TO INTERROGATORY NO. 12:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact that supports your position that you are not legally liable for payment to Helix for the work, material, and/or equipment that it furnished on the Project." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney

[7] See Footnote No. 1.

[8] See Footnote No. 1.

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work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative Helix's action.

Subject to and without waiving any objections, See Responses to Interrogatory No. 1, 6, and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APC000000001[9] through APC000078992 and APCO104200 through 104234,and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[10], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 13:

Identify each person you expect to call as an expert witness at the time of trial in this action. With respect to each, please state:

a. the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify;

b. a summary of the grounds for each opinion;

c. whether written document was prepared by such expert;

d. the professional title, educational background, qualifications and work experience of each such expert.

ANSWER TO INTERROGATORY NO. 13:

Objection. APCO objects to this Interrogatory on the grounds that it is premature. APCO has not yet decided on which, if any, expert witnesses might be called at trial. In fact, APCO has not yet retained any expert witness on this matter. Discovery is ongoing. APCO reserves the right to supplement this Response when APCO has retained an expert witness on this matter.

[9] See Footnote No. 1.

[10] See Footnote No. 1.

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INTERROGATORY NO. 14:

Identify any and all exhibits which you intend to produce at the time of trial in this matter as it relates to the claims brought by Helix and the work, material, and/or equipment furnished by Helix on the Project.

ANSWER TO INTERROGATORY NO. 14:

Objection. APCO objects to this Interrogatory on the grounds that it is premature. APCO has yet to determine the exhibits to be produced at trial. See also Response to Interrogatory No. 1 above, which is incorporated herein by this reference. Subject to and without waiving any objections, see documents identified by Bate Stamp No. APC000000001[11] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[12], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. See also documents produced by other parties to this action, including any documents produced by Helix in this action. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 15:

If you have asserted or intend to assert any causes of action, counter-claims, cross-claims, or any other similar claim against Helix in this matter, identify each and state all facts you rely on to support each claim.

ANSWER TO INTERROGATORY NO. 15:

Objection. APCO objects on the basis that the Interrogatory is overly broad, vague, ambiguous, indefinite as to time and without reasonable limitation in its scope. APCO further objects on the basis that the question is oppressive, harassing and burdensome; the information sought seeks APCO's counsel's legal analysis and theories regarding laws, ordinances, safety orders, etc., which are equally available to Helix; the question also invades the attorney's work

[11] See Footnote No. 1.

[12] See Footnote No. 1.

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product privilege. APCO further objects on the basis that the question seeks to invade APCO's counsel's work product privilege in that it calls for him to provide an analysis of written data. APCO further objects on the basis that the question seeks to ascertain all facts and other data which APCO intends to offer at trial and, as such, is violative of the attorney work product privilege. APCO objects on the basis that the attorney-client privilege protects disclosure of the information sought.

Subject to and without waiving any objections, APCO, in view of the claims that have been asserted by Gemstone, APCO is evaluating all of its options, including asserting claims against Helix, including, but not limited to, breach of contract, unjust enrichment, indemnity, set off, and contribution. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 16:

Please identify the first and last date Helix performed work and describe in detail Helix's scope of work for the Project.

ANSWER TO INTERROGATORY NO. 16:

Objection. APCO objects on the basis that the Interrogatory is oppressive, harassing and burdensome as the information sought information that is equally available to Helix.

Subject to and without waiving any objections, APCO responds as follows: Helix commenced with its work on the Project sometime in April 2007. APCO does not know the last date that Helix performed work on the Project. APCO understands that Helix continued to perform work on the Project after APCO ceased its work and terminated the prime contract with Gemstone. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 17:

Identify all facts and circumstances leading up to your issuance of the stop work order to Helix and describe any and all reasons you believe you were justified you in taking such action.

ANSWER TO INTERROGATORY NO. 17:

Objection. APCO objects to this request for Interrogatory is overly broad, unduly

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burdensome and oppressive because it seeks to force APCO to identify "all facts and circumstances leading up to your issuance of the stop work order to Helix and describe any and all reasons you believe you were justified you in taking such action." Broad ranging written discovery is improper when it essentially subsumes every fact in the case. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998); Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997). APCO further objects to this Interrogatory on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative to Helix's action.

Subject to and without waiving any objections, APCO responds as follows: After APCO was not paid by Gemstone for work that was being performed by APCO and its subcontractors, APCO, pursuant to Nevada law, gave notice to Gemstone of its intent to stop work and terminate the prime contract unless payment was made. APCO provided a copy of such notice to its subcontractors, including Helix, so that the subcontractors, including Helix, could take whatever action they deemed necessary to protect their respective rights under Nevada law. After payment from Gemstone was not made, APCO, as allowed under Nevada law, terminated its prime contract with Gemstone and further notified its subcontractors, including Helix of such termination. See also, Responses to Interrogatory No. 1, 6, and 7 above, which are incorporated herein by this reference. Also, see documents identified by Bate Stamp No. APC000000001[13] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[14], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this

[13] See Footnote No. 1.

[14] See Footnote No. 1.

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Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 18:

If you or any officer, director, or employee of APCO has had any conversations with Helix regarding the facts alleged in Helix Complaint against APCO and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

ANSWER TO INTERROGATORY NO. 18:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify any conversations that APCO may have had with Helix including the dates of each conversation, persons involved and the contents of the conversations. APCO further objects to this Interrogatory on the grounds that the burden of deriving or ascertaining the answer to this Interrogatory is substantially the same for Helix as for APCO. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

Subject to and without waiving any objections, APCO, during the course of construction, had numerous conversations with Helix relative Helix's work and the Project in general. APCO is unable to recall each and every conversation and their contents. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 19:

If you or any officer, director, or employee of APCO has had any conversations with CAMCO regarding the facts alleged in Helix's Complaint against APCO and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

ANSWER TO INTERROGATORY NO. 19:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify any conversations that APCO may have had with Camco

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including the dates of each conversation, persons involved and the contents of the conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

Subject to and without waiving any objections, APCO, does not recall having any conversations with Camco regarding Helix's work or otherwise. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 20:

If you or any officer, director, or employee of APCO has had any conversations with Gemstone regarding the facts alleged in Helix's Complaint against APCO and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

ANSWER TO INTERROGATORY NO. 20:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify any conversations that APCO may have had with Gemstone including the dates of each conversation, persons involved and the contents of the conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

Subject to and without waiving any objections, APCO, during the course of construction, undoubtedly had some conversations with Gemstone relative Helix's work and the Project in general. APCO is unable to recall each and every conversation and their contents. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 21:

If you or any officer, director, or employee of APCO has had any conversations with any Third-Party regarding the facts alleged in Helix's Complaint against APCO and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

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ANSWER TO INTERROGATORY NO. 21:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify any conversations that APCO may have had with a Third Party including the dates of each conversation, persons involved and the contents of the conversations. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

Subject to and without waiving any objections, APCO does not recall having any conversations with a "Third-Party' regarding Helix's work or otherwise. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 22:

If you contend that your lien has priority over any other party in this matter, including Helix, please state each and every fact supporting your claim.

ANSWER TO INTERROGATORY NO. 22:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "each and every fact supporting" "that your lien has priority over any other party in this matter." See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference.

Subject to and without waiving any objections, APCO responds as follows: APCO has asserted priority over the deeds of trust that are of record against the Manhattan West Project pursuant to NRS 108.225. Priority over the deeds of trusts is based on the fact that APCO first performed work under the Grading Agreement on or about May 2007. APCO first performed work under the ManhattanWest General Construction Agreement for GMP or about September 5, 2007. The deeds of trust on the property attached after construction work commenced. APCO has further asked the Court to declare the rank of mechanic's liens pursuant to NRS 108.236. See

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also documents identified by Bate Stamp No. APC000000001[15] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[16], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 23:

Identify the dates you started and ceased construction on the Project and describe the work that was performed while you were the general contractor for the Project.

ANSWER TO INTERROGATORY NO. 23:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to describe "the work that was performed." APCO further objects on the grounds that it is vague and ambiguous in that "construction" and "work" are not defined. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference. Subject to and without waiving any objections, APCO responds as follows: APCO first performed work under the Grading Agreement on or about May 2007. APCO first performed work under the Manhattan West General Construction Agreement for GMP or about September 5, 2007. See also documents identified by Bate Stamp No. APC000000001[17] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[18], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place.

[15] See Footnote No. 1.

[16] See Footnote No. 1.

[17] See Footnote No. 1.

[18] See Footnote No. 1.

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Discovery is ongoing; APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 24:

Identify all payments received by you for the work, material, and/or equipment furnished by Helix at the Project for which Helix has not been paid.

ANSWER TO INTERROGATORY NO. 24:

Subject to, and without waiving any objection identified above, APCO responds as follows: None. APCO has not received any payments for work, materials and/or equipment furnished by Helix at the Project for which Helix has not been paid by APCO.

INTERROGATORY NO. 25:

Identify all facts, opinions, or law not set forth in other responses, which you contend would excuse you from paying Helix the owed and outstanding amounts for the work, material, and/or equipment furnished by Helix at the Project.

ANSWER TO INTERROGATORY NO. 25:

Objection. APCO objects on the grounds of relevance and further objects that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "all facts, opinions, or law not set forth in other responses, which you contend would excuse you from paying Helix the owed and outstanding amounts for the work, material, and/or equipment furnished by Helix at the Project." APCO further objects to this Request on the grounds of attorney client privilege and/or attorney work product. APCO further objects that this Interrogatory is premature, as discovery has just commenced on this matter and APCO has not yet identified all facts that it intends to use relative to Helix's action. APCO further objects on the basis that to answer this Interrogatory would result in annoyance, embarrassment, or oppression to APCO in that the question is overly broad, vague, ambiguous, indefinite as to time and without reasonable limitation in its scope. APCO further objects on the basis that the question is oppressive, harassing and burdensome; the information sought seeks APCO's counsel's legal analysis and theories regarding laws, ordinances, safety orders, etc., which are equally available to Helix; the question also invades the attorney's work product

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privilege. APCO further objects on the basis that the question calls for information which is available to all parties equally, and is therefore oppressive and burdensome to APCO. APCO further objects on the basis that the question seeks information which is protected from disclosure by the attorney's work product privilege. APCO further objects on the basis that the question seeks to invade APCO's counsel's work product privilege in that it calls for him to provide an analysis of written data and/or law.

APCO further objects to this Interrogatory on the ground that it calls for legal conclusions. See also Response to Interrogatory No. 2 above, which is incorporated herein by this reference. Subject to and without waiving any objections, APCO responds as follows: Gemstone has asserted various complaints about the quality of the work performed by APCO and its subcontractors. As of this time, Gemstone has not identified specific issues that Gemstone has with APCO's or its subcontractor's work, including that of Helix. However, as a result of Gemstone's assertions that there are issues with the quality of the work performed on the Project, Gemstone has failed to pay APCO for the work that APCO performed, including the work that was performed by Helix. Pursuant to the terms of the Subcontract Agreement, any payments to Helix were specifically conditioned upon APCO' s actual receipt of payment from Gemstone for Helix's work. Moreover, the Subcontract specifically provided that Helix was assuming the same risk that Gemstone may become insolvent and not be paid for its work as APCO assumed in entering into prime contract with Gemstone. Helix further agreed that APCO had no obligation to pay Helix for any work performed by Helix until or unless APCO had actually been paid for such work by Gemstone. To date, APCO has not been paid for the work performed, including the work performed by Helix. In fact, due to non-payment, APCO exercised its rights pursuant to NRS Chapter 624 and terminated the prime contract with Gemstone and further terminated the Subcontract with Helix. After APCO ceased work on the Project, Helix may have negotiated with Camco, the replacement general contractor, and/or Gemstone and may have entered into a ratification agreement, wherein APCO was replaced as the general contractor under the Subcontract and Camco and/or Gemstone became liable for any monies due Helix on the Project. Discovery is ongoing. APCO reserves the right to supplement or amend its response to this

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Interrogatory as investigation, discovery, disclosure and analysis continues.

INTERROGATORY NO. 26:

Identify and explain, what sections or provisions, if any, of your contractor's license absolves you of your obligation to pay Helix, your subcontractor, the owed and outstanding amounts for the work, material and/or equipment furnished by Helix at the Project irrespective of whether the owner has paid you.

ANSWER TO INTERROGATORY NO. 26:

Objection. APCO objects to this Interrogatory on the grounds that this Interrogatory is vague, ambiguous, overly broad, unduly burdensome and oppressive because it seeks to force APCO to identify "explain what sections or provisions, if any, of your "contractors license" absolves you of your obligation to pay Helix, your subcontractor, the owed and outstanding amounts for the work, material, and/or equipment furnished by Helix at the Project irrespective of whether the owner has paid you." Broad ranging interrogatories are improper when they essentially subsume every fact in the case or every person having knowledge. See Hiskett v. Wal-Mart Stores, Inc., 180 F.R.D. 403, 404 (D. Kan. 1998). ("Interrogatories should not require the answering party to provide a narrative account of its case."). Parties can hardly know when they have identified "all" facts, persons, and documents with respect to anything — particularly before the close of discovery. "How can the court make enforceable orders with reference to 'all' of anything?" Often, the relevance of a particular fact to a particular issue is not known until clarified and put into context by testimony at deposition or trial. Such a question places the responding party in an impossible position. See id.; Safeco of Am. V. Rawstron, 181 F.R.D. 441, 447048 (C.D. Cal. 1998)(finding unreasonable an interrogatory calling for all facts supporting denial of a request for admission); Lawrence v. First Kan. Bank & Trust Co., 169 F.R.D. 657, 660-63 (D. Kan. 1996)(same); Hilt v. SFC, Inc., 170 F.R.D. 182, 186-87 (D. Kan. 1997)(finding unduly burdensome an interrogatory seeking to require plaintiff to state 'each and every fact' supporting allegations of a complaint).

Subject to and without waiving any objections, See Response to Interrogatory No. 1, 6 and 7 above, which are incorporated herein by this reference. Also, see documents identified by

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Bate Stamp No. APC000000001[19] through APC000078992 and APCO104200 through 104234, and more specific APC0003415 – 339519, 39548 – 39785, and 103577 – 103586[20], which APCO has deposited into a depository established by APCO for this litigation matter with Litigation Services and/or are hereby made available for review and copying (at requestor's expense) at a mutually agreeable time and place. Discovery is ongoing. APCO reserves the right to supplement or amend its Response to this Interrogatory as investigation, discovery, disclosure and analysis continues.

Dated this 15th day of May, 2017.

MARQUIS AURBACH COFFING

By _____
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[19] See Footnote No. 1.

[20] See Footnote No. 1.

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CLICK HERE AND TYPE, being first duly sworn, deposes and says:

That I am the Click Here and Type for Click Here and Type, the named Click Here and Type in the above-entitled action; that I have read the foregoing document and know the contents thereof; the same is true based upon my review of the documents and information relevant to the inquiries therein, except as to those matters therein stated on information and belief and, as to those matters, I believe them to be true based upon my review of the documents and information relevant to the inquiries therein.

Click Here and Type

SUBSCRIBED AND SWORN to before me this _____ day of Click Here and Type, 20Click Here and Type.

NOTARY PUBLIC in and for said County and State

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APCO CONSTRUCTION'S ANSWERS TO HELIX ELECTRIC OF NEVADA LLC'S FIRST SET OF REQUESTS FOR INTERROGATORIES** was submitted electronically for service with the Eighth Judicial District Court on the 15 day of May, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[21]

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

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Exhibit 2

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

DISTRICT COURT

CLARK COUNTY, NEVADA

In re: MANHATTAN WEST MECHANIC'S LIEN LITIGATION,	Case No: A571228 Dept. No: XII Consolidated with: 08A574391, 08A574792, 08A577623, 09A580889, 09A583289, 09A584730, 09A587168, A-09-589195-C, A-09-589677-C, A-09-590319-C, A-09-592826-C, A-09-596924-C, and A-09-597089-C **CAMCO PACIFIC CONSTRUCTION COMPANY, INC.'S RESPONSES TO HELIX ELECTRIC OF NEVADA, LLC'S INTERROGATORIES**
AND ALL RELATED MATTERS.	

PROPOUNDING PARTY: HELIX ELECTRIC OF NEVADA, LLC

RESPONDING PARTY: CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco") by and through its counsel of record, hereby responds to HELIX ELECTRIC OF NEVADA, LLC's ("Helix") Interrogatories as follows:

GENERAL OBJECTIONS

Camco generally objects to Helix's Interrogatories on the grounds that the Requests are burdensome, oppressive, compound, vague, and ambiguous. To the extent that any Interrogatory seeks information which is protected by the attorney-client privilege and/or attorney work-product doctrine, Camco declines to provide such information. To the extent that any Interrogatory seeks constitutionally or statutorily protected, proprietary or confidential information, Camco also declines to provide such information. To the extent that any

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Interrogatory seeks information that may constitute an invasion of a right of privacy based upon any statutory or common-law right of privacy, Camco hereby declines to produce any such information without an appropriate protective order.

Camco has not fully completed its investigation of the facts relating to this case, has not completed discovery in this action, and has not completed preparation for trial. Therefore, Camco's responses are based on Camco's knowledge, information and belief at this time. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and documents, add meaning to known facts or documents, as well as establish entirely new factual conclusion and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the facts herein set forth. The responses contained herein are made in a good faith effort to supply as much factual information, and as much specification of legal contentions as are presently known, but should in no way be to the prejudice of Camco in relation to further discovery, research or analysis.

INTERROGATORY NO. 1: Identify and state with specificity the facts that you intend to rely upon to refute each cause of action in Helix's Complaint.

RESPONSE: On or about December 22, 2008, Camco received the following email from Gemstone:

> To all Manhattan West subcontractors and vendors:
>
> Effective immediately, construction of the Manhattan West project is suspended. Over the weekend, Gemstone determined that its construction lenders do not expect to disperse further funds for construction. As a result, Gemstone does not have funds sufficient to pay out the October draw or other obligations.
>
> We apologize earnestly to all the companies to whom we currently owe money. Gemstone procured sufficient funding to finish the Project, but was surprised by the revelation that APCO had generated approximately seventeen million dollars in cost overruns and defect remediation costs. In the current economic chaos, we were unable to find a solution for generating the extra money, and as a result funding has stopped.
>
> Gemstone is currently working to secure new financing, but has no visibility as to when and how this will be accomplished.
>
> I am available to speak directly with you, face to face, if you so desire. Thank you for your cooperation during this process.
>
> Respectfully

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Alex Edelstein
CEO
Group Gemstone
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www.groupgemstone.com

Camco forwarded the notice from Gemstone to all subcontractors and vendors, on or about December 22, 2008. In addition to sending the Notice provided by Gemstone, Camco provided its notice of termination of the various subcontract agreements and further reminded the subcontractors they each had contractually acknowledged and agreed that all remedies for payment resided in Gemstone and the Project pursuant to NRS 108, the Nevada Mechanic's Lien Statute.

The Camco ratified subcontract agreements include the following relevant language:

> **3.4** Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. **Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.**
>
> **3.5** Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. . . **Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.**
>
> **3.8** The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: . . . (c) Receipt of final payment by Contractor from Owner.
>
> **3.9** Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor **until or unless Contractor has actually been paid for *such work* by the owner.**
>
> **4.2** . . . The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.
>
> **4.6** Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.
>
> **9.4** Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the

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> amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.

As both sections 3.4 and 3.5 plainly state, all subcontractors agreed to assume the same risk as Camco that Gemstone may become insolvent. The language of the contract contemplated the exact scenario that the subcontractors and Camco now find themselves in: Gemstone is insolvent, and neither the subcontractors nor Camco has been paid. The subcontractors must now face the consequences of the contract they voluntarily entered into–they must, as Camco has done, rely on their mechanic's lien claims against the Project for payment. However, with the ruling of the Nevada Supreme Court regarding the priority of the mechanic's liens, the sale of the Project free and clear of those liens, which essentially rendered the mechanic's liens ineffective, and with the insolvency of Gemstone, there is no viable remedy or source for payment under contract or Nevada law.

Moreover, throughout the duration of the Project, all of the subcontractors were content receiving payments from Gemstone through Nevada Construction Services with full knowledge that Camco never possessed or handled any funds to be paid to the subcontractors.

Sections 3.4 and 3.5 of the Contract contemplated the very scenario that is now playing out: Gemstone is insolvent, has not and cannot make payments to both Camco and the subcontractors (the parties to the Contract), and now the agreement of the parties dictates that the subcontractors and Camco stand in the same position, having assumed the same risk. Instead, the subcontractors now seek to make Camco the de facto lender/insurer of the Project by seeking to have Camco bear the burden of the risk of nonpayment that was assumed by the subcontractors.

Helix agreed to assume the risk of Gemstone's insolvency, and has therefore waived any right to seek payment from Camco in the instance that Gemstone should become insolvent and the property did not provide sufficient security to satisfy the lien claims–which are the exact set of circumstances at present. The Property has been sold free and clear of all liens and all parties who worked on the Project and have not been paid, which includes Camco, are without remedy or recompense, contractually and statutorily.

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INTERROGATORY NO. 2: State the procedure by which you and/or Gemstone Development West, Inc. ("Gemstone") and/or Nevada Construction Services paid Helix for its work, ,material, and/or equipment furnished at the Project.

RESPONSE: Camco was not responsible for the direction and/or the payment of the work, material, and/or equipment furnished at the Project by the subcontractors and/or suppliers. Camco was never paid for any of the work, material, and/or equipment furnished at the Project by the subcontractors and/or suppliers. Once Gemstone approved the invoices submitted by a subcontractor and/or supplier Gemstone directed Nevada Construction Services to pay the subcontractor and/or supplier directly.

INTERROGATORY NO. 3: State the amount of any payments made to Helix by or on behalf of you, Nevada Construction Services or Gemstone, the date and manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment.

RESPONSE: Camco did not make any payment directly to Helix nor did Camco receive any payment on behalf of Helix. Camco is unaware of the date, manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment made by Nevada Construction Services or Gemstone.

INTERROGATORY NO. 4: State the amount of any payments to you by or on behalf of Gemstone or Nevada Construction Services, the date and manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment.

RESPONSE: Camco did not make any payment directly to Helix nor did Camco receive any payment on behalf of Helix. Camco is unaware of the date, manner in which each payment was made, and at what stage of completion the Project was in at the time of each payment made by Nevada Construction Services or Gemstone.

INTERROGATORY NO. 5: Do you contend that he value of the unpaid work, material, and/or equipment furnished or supplied by Helix is less than the amount set forth in Helix's Initial Disclosures? If so, please state:

a. the basis for your contention including all facts, witnesses, or documents you

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rely on in support of your contention;

b. how much you contend the work and equipment provided by Helix is actually valued at; and

c. the manner in which you calculated the value of the work, materials, and/or equipment provided by Helix.

RESPONSE: The value of Helix's unpaid work is irrelevant because Camco is not responsible for the payment of Helix's work on the Project. See response to Interrogatory No. 1.

INTERROGATORY NO. 6: State with specificity the reasons why you have not paid Helix the sums for the work, material, and/or equipment that Helix provided for the Project.

RESPONSE: Camco is not responsible for the payment of Helix, nor has Camco received any payment on behalf of Helix. See response to Interrogatory No. 1.

INTERROGATORY NO. 7: State each and every fact that you rely on to support your postion that any claim for unjust enrichment against you is invalid.

RESPONSE: Camco did not receive a benefit from the work or materials that were furnished to the Project by Helix. Furthermore, Camco did not unjustly retain the money or property of Helix against the fundamental principles of justice or equity and good conscience. Helix cannot prove the elements necessary for a claim for unjust enrichment based on the undisputed facts and circumstances in this action.

INTERROGATORY NO. 8: Separately state each and every fact that you rely on to support each of your affirmative defenses.

RESPONSE: See response to these Interrogatories and specifically Interrogatory No. 1.

INTERROGATORY NO. 9: Identily all facts, witnesses (names, employers, addresses and telephone number) and documents, records, that support your Answers to these Interrogatories and your responses to Requests for Admission.

RESPONSE: See response to these Interrogatories and Camco's 16.1 Disclosures.

INTERROGATORY NO. 10: For every response to Helix's Requests for Admission that is anything other than an unequivocal admission, identify all facts, witnesses (names, employers, addresses and telephone number) and documents, records, that support such responses.

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RESPONSE: See response to these Interrogatories and Camco's 16.1 Disclosures.

INTERROGATORY NO. 11: State each and every fact that supports your position that you are not legally liable for payment to Helix for the work, material, and/or equipment that it furnished on the Project.

RESPONSE: See responses to these Interrogatories and Camco's 16.1 Disclosures.

INTERROGATORY NO. 12: Identify each person you expect to call as an expert witness at the time of trial in this action. With respect to each, please state:

a. the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which each expert is expected to testify;

b. a summary of the grounds for each opinion;

c. whether written document was prepared by such expert;

d. the professional title, educational background, qualifications and work experience of each such expert.

RESPONSE: Camco does not intend to call an expert witness.

INTERROGATORY NO.13: Identify any and all exhibits which you intend to produce at the time of trial in this matter as it relates to the claims brought by Helix and the work, material, and/or equipment furnished by Helix on the Project.

RESPONSE: See Camco's 16.1 Disclosures and all supplements thereto.

INTERROGATORY NO.14: If you have asserted or intend to assert any causes of action, counter-claims, cross-claims, or any other similar claim against Helix in this matter, identify each and state all facts you rely on to support each claim.

RESPONSE: Helix breached its agreement with Camco by seeking to hold Camco liable for Gemstone's and/or the Project's failure to pay and/or secure payment for the work, materials, and/or equipment allegedly furnished by Helix to the Project. Helix assumed the same risk for non-payment as did Camco and the other contractors and/or suppliers to the Project.

INTERROGATORY NO.15: Please identify the first and last date Helix performed work and describe in detail Helix's scope of work for the Project.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly

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burdensome, and irrelevant. Camco was only on the Project from approximately August 25, 2008 to December 22, 2008, and this request is asking for information that occurred during that time period over 8 years ago. Furthermore, Camco did not direct Helix's workwas not involved in the payment of subcontractors nor did it receive any payment from Gemstone and/or Nevada Construction Services on behalf of any subcontractor. Notwithstanding the foregoing, and without waiving any objection hereto, see Camco's 16.1 Disclosures.

INTERROGATORY NO. 16: Identify all facts and circumstances leading up to you ceasing to perform work on the project.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Notwithstanding the foregoing objection and without waiving the same Camco responds by stating the email from Alex Edelstein of Gemstone on or about December 22, 2008 was the principal fact and circumstance that lead up to the ceasing of work on the project.

INTERROGATORY NO. 17: If you or any officer, director, or employee of Camco has had any conversations with Helix regarding the facts alleged in Helix's Complaint against Camco and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco is not aware of any conversations with Helix regarding the facts alleged in Helix's Complaint against Camco and Gemstone.

INTERROGATORY NO. 18: If you or any officer, director, or employee of Camco has had any conversations with APCO regarding the facts alleged in Helix's Complaint against Camco and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco is not aware of any conversations with APCO regarding the facts alleged in Helix's Complaint against Camco and Gemstone.

INTERROGATORY NO. 19: If you or any officer, director, or employee of Camco has had

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any conversations with Gemstone regarding the facts alleged in Helix Complaint against Camco and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco is not aware of any conversations with Gemstone regarding the facts alleged in Helix's Complaint against Camco and Gemstone.

INTERROGATORY NO. 20: If you or any officer, director, or employee of Camco has had any conversations with any Third-Party regarding the facts alleged in Helix Complaint against Camco and Gemstone, please state the dates of each conversation, the parties, involved, the contents of the conversation, and what was said.

RESPONSE Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco is not aware of any conversations with any Third-Party regarding the facts alleged in Helix's Complaint against Camco and Gemstone.

INTERROGATORY NO. 21: If you contend that your lien has priority over any other party in this matter, including Helix, please state each and every fact supporting your claim.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Helix agreed to assume the risk of Gemstone's insolvency, and has therefore waived any right to seek payment from Camco in the instance that Gemstone should become insolvent and the property did not provide sufficient security to satisfy the lien claims–which are the exact set of circumstances at present. The Property has been sold free and clear of all liens and all parties who worked on the Project and have not been paid, which includes Camco, are without remedy or recompense, contractually and statutorily.

INTERROGATORY NO. 22: Identify the dates you started and ceased construction on the Project and describe the work that was performed while you were the general contractor for the Project.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco was only on the Project from approximately August 25, 2008 to December 22, 2008, and this request is asking for information that occurred during that

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time period over 8 years ago. Notwithstanding the foregoing, and without waiving any objection hereto, see Camco's 16.1 Disclosures.

INTERROGATORY NO. 23: Identify all payments received by you for the work, material, and/or equipment furnished by Helix at the Project for which Helix has not been paid.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco was only on the Project from approximately August 25, 2008 to December 22, 2008, and this request is asking for information that occurred during that time period over 8 years ago. Furthermore, Camco was not involved in the payment of subcontractors nor did it receive any payment from Gemstone and/or Nevada Construction Services on behalf of any subcontractor.

INTERROGATORY NO. 24: Identify all facts, opinions, or law not set forth in other responses, which you contend would excuse you from paying Helix the owed and outstanding amounts for the work, material, and/or equipment furnished by Helix at the Project.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and irrelevant. Camco was not involved in the payment of subcontractors nor did it receive any payment from Gemstone and/or Nevada Construction Services on behalf of any subcontractor. Helix assumed the risk of non-payment and waived any claims it may have against Camco.

INTERROGATORY NO. 25: Identify and explain, what sections or provisions, if any, of your contractor's license absolves you of your obligation to pay Helix, your subcontractor, the owed and outstanding amounts for the work, material and/or equipment furnished by Helix at the Project irrespective of whether the owner has paid you.

RESPONSE: Camco objects to this Interrogatory on the grounds that it is vague and irrelevant. Camco was not involved in the payment of subcontractors nor did it receive any payment from Gemstone and/or Nevada Construction Services on behalf of any subcontractor. Helix assumed the risk of non-payment and waived any claims it may have against Camco.

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VERIFICATION

I David Parry, under penalty of perjury of the laws of the State of Nevada, deposes and says that I have read the above and foregoing, **CAMCO PACIFIC CONSTRUCTION COMPANY, INC.'S REPLY TO HELIX ELECTRIC OF NEVADA, LLC'S INTERROGATORIES**, that I know the contents thereof and that the same are true to the best of my knowledge, except as to the matters therein set forth upon information and belief, and as to those matters, I believe them to be true.

DATED this 9 day of June 2017.

DAVID PARRY

Submitted by:

GRANT MORRIS DODDS

/s/ Steven L. Morris
Steven L. Morris, Esq.
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CERTIFICATE OF MAILING

I hereby certify that on the 9th day of June 2017, I served a true and correct copy of **CAMCO PACIFIC CONSTRUCTION COMPANY, INC.'S RESPONSES TO HELIX ELECTRIC OF NEVADA, LLC's INTERROGATORIES** on all parties registered to receive electronic service for the above-captioned case by serving the same via Wiznet.

/s/ Steven L. Morris
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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: 13 *Consolidated with: A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319* Hearing Date: September 5, 2017 Hearing Time: 9:00 a.m.

APCO CONSTRUCTION'S OPPOSITION TO PEEL BRIMLEY LIEN CLAIMANTS' PARTIAL MOTION FOR SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS

Plaintiff APCO Construction ("APCO"), by and through its counsel of record, Marquis Aurbach Coffing, hereby submits its Opposition to Peel Brimley Lien Claimant's Motion for Partial Summary Judgment.

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MAC:05161-019 3157777_2

Case Number: 08A571228

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This Opposition is made and based on the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument the Court may choose to entertain at the time of hearing.

Dated this 21st day of August, 2017.

MARQUIS AURBACH COFFING

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

First and foremost, The Nevada Supreme Court has not declared that pay-if-paid agreements are *per se* against public policy as Helix and the Peel Brimley Lien Claimants suggest, and alternatively held that a case-by-case assessment is appropriate.[1] If any case were to be weighed on a case-by-case basis as detailed by the Nevada Supreme Court, this case would fall squarely within the exception where pay-if-paid clauses are not against public policy. With that said, the entirety of Helix and the Peel Brimley Lien Claimants' Motion is procedurally flawed and not ripe for the Court to consider for summary judgment, as under the standard for summary judgment, documents provided to the Court for consideration must be authenticated and there must not be any issues of material fact left for the Court to consider. Here, not only has Helix and the Peel Brimley Lien Claimants failed to provide the Court with **any facts** or

[1] Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041.

authenticated contract language,[2] Helix and the Peel Brimley Lien Claimants purposely admit in their Motion that they do "***not***" even "concede that they entered into a 'pay-if-paid agreement. . .," and that "[t]his issue is reserved for trial or later motion."[3] For this reason alone, Helix and the Peel Brimley Lien Claimants' Motion must be denied. Moreover, Helix and the Peel Brimley Lien Claimants' own admission and reservation of rights is nothing more than a request from this Court to issue an advisory opinion, which is evidenced by Helix and the Peel Brimley Lien Claimants' Motion being completely void of any facts surrounding the underlying Project for the Court to apply to the purported law asserted in the Motion.

An even more perplexing issue, besides Helix and the Peel Brimley Lien Claimants asking the Court to rule on contractual language that they *do not supply the Court with regard to APCO or even admit is pay-if-paid language*, is that Helix — with regard to APCO — is asking the Court to rule on contact(s) where Helix admitted it was paid ever dollar it submitted payment for under APCO's tenure of the Project except the withheld retention.[4] Likewise, the only issue remaining between APCO and Helix is the retention Helix purports to be owed from APCO, which is not only a factual impossibility on numerous fronts, but also has no mention in the Motion how pay-if-paid language may apply to a separately agreed to retention on a project that never was completed. In using Helix's own words, this is an issue reserved for trial or later motion.

Moreover, summary judgment is wholly inappropriate here for any of the Joining Subcontractors[5], as there are disputed facts and the issue presented is clearly not a strict issue of

[2] It is undisputed that Helix conducted work at the Project under multiple and differing contracts. It is also undisputed that the other Peel Brimley Lien Claimants conducted work under contracts that have differing language.

[3] See Motion at FN 3 & 4.

[4] Deposition of Helix's NRCP 30(b)(6) witness at 52:2–11, 54:3–8, attached collectively hereto as **Exhibit A.**

[5] The following subcontractors joined Helix Motion: E&E Fire Protection, National Wood Product, Buchele, Cactus Rose, Fast Glass, Heinaman Contract Glazing, Helix Electric, SWPPP Compliance, Cardno/WRG, Zitting Brothers, Steel Structures, Nevada Prefab Engineering, Unitah Investments,

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law, because this Court must conduct a case-by-case analysis of the facts and law, and **not a single Joining Subcontractor**, much like Helix and the Peel Brimley Lien Claimants, provided the Court with **ANY** factual evidence to consider and weigh toward granting a motion for summary judgment.[6]

Accordingly, as further detailed below, and with no presented or authenticated facts or evidence for the Court to consider and weigh toward granting the Motion, the Court must deny the Motion in its entirety.

II. APCO'S STATEMENT OF CONTROVERTED FACTS AND DISPUTED EVIDENCE

The only factual basis Helix and the Peel Brimley Lien Claimants purport to provide is: (1) that "pay-if-paid agreements have, since at least 2001, been void and unenforceable in Nevada"[7] – which is not a factual basis to support a motion for summary judgment, and is nothing more than a self serving statement and interpretation of purported Nevada law; and (2) Helix cites to contractual language in Exhibit 2 of its Motion that is not only unauthenticated contract language, but is nothing more than Camco's responses to Helix's interrogatories addressing language of a ratification agreement that has absolutely no bearing on APCO for the purpose of this Motion other than to evidence that Camco took over the Project from APCO and that Helix agreed to conduct work as a subcontractor for Camco after APCO had left the Project for nonpayment.

Further, in direct opposition to the motion for summary judgment standard, Helix and the Peel Brimley Lien Claimants defeat their own Motion by specifically stating under the "Relevant Undisputed Facts" section of the Motion that they "do not by the present Motion concede that

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Gerdau Reinforcing, United, Subcontractors, Interstate Plumbing & Air, and any late joining subcontractors (hereinafter referenced as the "Joining Subcontractors").

[6] Furthermore, with each of the Joining Subcontractors having failed to provide a scintilla of facts and evidence, APCO has no facts to respond to, and specifically reserves it right to brief and address any arguments with regard to the pay-if-paid issue when properly presented to the Court.

[7] See Motion at 6:3.

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they entered into any 'pay-if-paid agreements"[8] This reservation of rights is extreme telling, as Helix and the Peel Brimley Lien Claimants have not only failed to provide any factual basis or contractual language that applies to APCO for the Court to consider, but have also admitted ***they do not even concede they entered into an agreement that contains pay-if-paid language***. If Helix and the Peel Brimley Lien Claimants do not even concede they entered into a contract that contains pay-if-paid language, then what is this Court to even consider?

Consequently, by Helix and the Peel Brimley Lien Claimants' own admission, there is a factual dispute with regard to not only the contracts themselves, but even whether the language contained within the contracts that were not provided to the Court actually contain pay-if-paid language, i.e., there is no way for the Court to rule on whether contractual language is, in fact, pay-if-paid language on a motion for summary judgment when the moving parties themselves do not provide or even concede that they entered into any pay-if-paid agreements.[9]

Last, Helix and the Peel Brimley Lien Claimants lack of factual evidence in its Motion cannot be remedied by simply providing documents and factual allegations in their reply that are outside the scope of the original Motion that APCO has had no opportunity to respond to or address and, thus, APCO specifically reserves its right forthwith to address any such purported facts and arguments at the time they are properly presented to the Court — which appears at this procedural stage to be at trial.

III. LEGAL STANDARD.

A. ADVISORY ONIONS

It has long been held that decisions may be rendered only where actual controversies exist. Applebee v. Applebee, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981). Likewise, "a controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." Solid v. Eighth Judicial Dist. Court of State in & for Cty. of Clark, 393 P.3d 666, 670 (Nev. 2017).

[8] See Motion at 6, fn 4.

[9] Id.

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Moreover, the Nevada Supreme Court has always been reluctant to establish laws or give advisory opinions, especially when unnecessary and broad in scope. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Pratt & Whitney Canada, Inc., 107 Nev. 535, 546, 815 P.2d 601, 608 (1991).

As detailed herein, Helix and the Peel Brimley Lien Claimants have failed to even concede they entered into a contract with pay-if-paid language and, likewise, have moved this Court for a finding / opinion as to the state of law in Nevada with regard to pay-if-paid clauses in general with no regard to **ANY** underlying facts to support their position. Such a request is nothing more than an advisory opinion, and not ripe for summary judgment. Thus, for this reason alone the instant Motion must be denied in its entirety.

B. SUMMARY JUDGMENT

"Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the [ ] Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986) (quoting FRCP 1)); see also Dredge Corp. v. Husite Co., 78 Nev. 69, 89 n.2, 369 P.2d 676, 687 n.2 (1962) (describing summary judgment as a "salutary device" and reasoning that "[t]he very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.").

Pursuant to NRCP 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "A material issue of fact is one that affects the outcome of the litigation." S.E.C. v. Seaboard Corp., 677 F.2d 1289, 1293 (9th Cir. 1982); see also Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

The party moving for summary judgment has the initial burden of showing the absence of a genuine issue of material fact. See, e.g., Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). But, where, as here, "the nonmoving party will bear the

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
***Consolidated with* 80508**

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 7

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Docket 77320 Document 2020-37998

CHRONOLOGICAL APPENDIX OF EXHIBITS

Date	Description	Bates Number	Volume(s)
06-24-09	**Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint**	**JA000001-JA000015**	**1**
08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
04-26-10	**CAMCO and Fidelity's Answer and CAMCO's Counterclaim**	**JA000031-JA000041**	**1**
07-02-10	**Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default**	**JA000042-JA000043**	**1**
06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6

Date	Description	Bates Number	Volume(s)
06-13-13	**Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone**	**JA000327**	**6**
08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343-JA00379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380-JA000392	6
08-21-17	**APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000393-JA000409**	**6/7**
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410-JA000412	7
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.'s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC's	JA000436-JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
11-06-17	**Helix Electric of Nevada's Motion *in Limine* Nos. 1-4**	**JA000534-JA000542**	**8**
	Exhibit 1 – Notice of Entry of Order	JA000543-JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

Date	Description	Bates Number	Volume(s)
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

Date	Description	Bates Number	Volume(s)
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.'s Initial Disclosures Pursuant to NRCP 16.1	JA000849-JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.'s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857-JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
11-14-17	**Camco Pacific Construction Company, Inc.'s Opposition to Lien Claimants' Motions in Limine Nos. 1-6**	**JA000898-JA000905**	**12**
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906-JA000907	12
	Exhibit B – Scott Financial Corporation's April 28, 2009 letter to the Nevada State Contractor's Board	JA000908-JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916-JA000917	13
	Exhibit D – Camco Pacific's letter dated December 22, 2008	JA000918-JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921-JA000928	13

Date	Description	Bates Number	Volume(s)
11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
11-14-17	**Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion *in Limine***	**JA000994-JA001008**	**20**
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009-JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043-JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056-JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060-JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	**APCO Construction, Inc.'s Reply in Support of its Omnibus *Motion in Limine***	**JA001133 JA001148**	**21**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149-JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152-JA001160	21
12-29-17	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion *in Limine* 1-6**	**JA001161-JA001169**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion *in Limine* 1-4**	**JA001170-JA001177**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
01-03-18	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001187-JA001198**	**22**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218-JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246-JA001263	24

Date	Description	Bates Number	Volume(s)
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264-JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282-JA001297	25
	Exhibit 5 - Amended NOL	JA001298-JA001309	25
	Exhibit 6 – Notice of Lien	JA001310-JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314-JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377-JA001380	26
	Exhibit 9 – Order Denying *En Banc* Reconsideration	JA001381-JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
	Exhibit 12 – Order Big D Construction Corp.'s Motion for Attorney's Fees, Costs and Interest Pursuant to Judgment	JA001431-JA001435	26
	Exhibit 13 – Appellant's Opening Brief (Padilla v. Big D)	JA001436-JA001469	26
	Exhibit 14 – Respondent's Answering Brief	JA001470-JA001516	26/27
	Exhibit 15 – Appellant's Reply Brief (Padilla v. Big D)	JA001517-JA001551	27
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order**	**JA001552-JA001560**	**27**

Date	Description	Bates Number	Volume(s)
	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-12-18	**Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]**	**JA001574-JA001594**	**27/28**
	Exhibit 1 – Exhibit List APCO	JA001595-JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615-JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617-JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636-JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638-JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640-JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642-JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA001644-JA001647	28

Date	Description	Bates Number	Volume(s)
	Exhibit 9 - Amended *nunc pro tunc* order regarding APCO Construction, Inc.'s Omnibus Motion *in Limine* No. 7	JA001648-JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions *in Limine* 1-4 (Against APCO Construction)	JA001651-JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654-JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661-JA00167	28/9/29
01-17-18	**Transcript Bench Trial (Day 1)**[1]	**JA001668-JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803-JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826-JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869-JA001884	30

[1] Filed January 31, 2018

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885-JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975-JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979-JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981-JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36

Date	Description	Bates Number	Volume(s)
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222-JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224-JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244-JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283-JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307-JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309-JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311-JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313-JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346-JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357-JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359-JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418-JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422-JA002423	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447-JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 "pending"	JA002501-JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting ($27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733-JA003813	60/61

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 510 - Unsigned Subcontract	JA003814-JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928-JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035-JA005281	63/64/65/66/67/68/69/70/71/72/73/74/75/76/77
01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
01-18-18	**Transcript – Bench Trial (Day 2)[2]**	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)[3]**	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80

[2] Filed January 31, 201879
[3] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[4]**	**JA005820-JA005952**	81
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
03-23-18	**Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief**	**JA006173-JA006193**	**84**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**

[4] Filed January 31, 201883

Date	Description	Bates Number	Volume(s)
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-JA006442	87/88

Date	Description	Bates Number	Volume(s)
	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
05-08-18	**Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements**	**JA006509-JA006521**	**89**
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90

Date	Description	Bates Number	Volume(s)
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581-JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
	Exhibit 5 – Summary of Fees	JA006589-JA006614	90
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
06-15-18	**Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA006917 – JA006942**	**96**
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943-JA006948	96

Date	Description	Bates Number	Volume(s)
	Exhibit 2 – Notice of Entry of Denying APCO Construction's Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949-JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955-JA006958	96
	Exhibit 4 – Order Denying *En Banc* Reconsideration	JA006959-JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964-JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC's Response to Special Master Questionnaire	JA006977-JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.'s Response to Special Master Questionnaire	JA006981-JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.'s Response to Special Master Questionnaire	JA006985-JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal's Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC's Special Master Questionnaire	JA007002-JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006-JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037-JA007060	97

Date	Description	Bates Number	Volume(s)
	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042-JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054-JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057-JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA007060-JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion in Limine (against APCO Construction)	JA007070-JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions' Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079-JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary	JA007085-JA007087	97

Date	Description	Bates Number	Volume(s)
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088-JA007094	97
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007190-JA007192**	**99**
06-21-18	**Helix Electric of Nevada, LLC's Notice of Non-Opposition to its Motion for Attorney's Fees, Interest and Costs**	**JA007193-JA007197**	**99**
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99

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06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225-JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238-JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246-JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262-JA007280	100
09-28-18	Notice of Entry of (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	JA007281-JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300-JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313-JA007315	101

Date	Description	Bates Number	Volume(s)
08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332-JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395-JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401-JA007517	102/103

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	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518-JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520-JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524-JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
	Exhibit 10 (Part Two)	JA008142-JA008149	109

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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150-JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168-JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff's Motion to Dismiss	JA008171-JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178-JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215-JA008230	109
	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts	JA008323-JA008338	110

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	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111

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	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602-JA008621	112

Date	Description	Bates Number	Volume(s)
	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622-JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686-JA008693	112

Date	Description	Bates Number	Volume(s)
	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694-JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724-JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730-JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737-JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747-JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875-JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759-JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment	JA008762-JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789-JA008798	113

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	Exhibit 16 – Notice of Appeal	JA008799-JA008810	113
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	JA008925-JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966-JA008986	117/118

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	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119
08-29-19	**Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)**	**JA009117-JA009123**	**119**

Date	Description	Bates Number	Volume(s)
	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137-JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168-JA009182	120

Date	**Description**	**Bates Number**	**Volume(s)**
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

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		JA006442	
	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's	JA009168-JA009182	114

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	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120
11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615-JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625-JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647-JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679-JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731-JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809-JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827-JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832-JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838-JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845-JA000848	12

Date	Description	Bates Number	Volume(s)
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.'s Initial Disclosures Pursuant to NRCP 16.1	JA000849-JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.'s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857-JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925-JA008947	116/117

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	Pacific Construction Company, Inc.'s Counterclaim		
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966-JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119

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06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
08-21-17	**APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000393-JA000409**	**6/7**
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410-JA000412	7
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
11-15-17	**APCO Construction, Inc.'s Reply in Support of its Omnibus *Motion in Limine***	**JA001133 JA001148**	**21**

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	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149-JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152-JA001160	21
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99
04-26-10	**CAMCO and Fidelity's Answer and CAMCO's Counterclaim**	**JA000031-JA000041**	**1**
11-14-17	**Camco Pacific Construction Company, Inc.'s Opposition to Lien Claimants' Motions in Limine Nos. 1-6**	**JA000898-JA000905**	**12**
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906-JA000907	12
	Exhibit B – Scott Financial Corporation's April 28, 2009 letter to the Nevada State Contractor's Board	JA000908-JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916-JA000917	13
	Exhibit D – Camco Pacific's letter dated December 22, 2008	JA000918-JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921-JA000928	13
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120

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08-08-18	**Court's Decision on Attorneys' Fees and Cost Motions**	**JA007262-JA007280**	**100**
06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-13-13	**Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone**	**JA000327**	**6**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**
11-06-17	**Helix Electric of Nevada's Motion *in Limine* Nos. 1-4**	**JA000534-JA000542**	**8**
	Exhibit 1 – Notice of Entry of Order	JA000543-JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575-JA000589	9
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
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	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
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03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
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06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
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	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
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09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001552-JA001560**	**27**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition**	**JA007190-JA007192**	**99**

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07-19-18	**Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs**	**JA007246-JA007261**	**100**
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
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	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418-JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422-JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447-JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501-JA002503	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
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	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/67/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	**Transcript Bench Trial (Day 1)**[5]	**JA001668- JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981- JA001987	32

[5] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36
01-18-18	**Transcript – Bench Trial (Day 2)**[6]	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)**[7]	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80

[6] Filed January 31, 201879
[7] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[8]**	**JA005820-JA005952**	81
01-24-19	**Transcript for All Pending Fee Motions on July 19, 2018**	**JA007300-JA007312**	**100/101**

[8] Filed January 31, 2018

burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) "'pointing out . . . that there is an absence of evidence to support the nonmoving party's case.'" Id. at 602-03, 172 P.3d at 134 (quoting Celotex Corp., 477 U.S. at, 325, 106 S. Ct. at 2554).

Once the moving party has carried its initial burden, the party opposing summary judgment must "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." Cuzze. Indeed, "[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. Wood v. Safeway, Inc., 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986)); see also Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) ("[T]he opposing party is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.") (internal quotation marks and citation omitted).

C. LACK OF EVIDENCE AND UNAUTHENTICATED DOCUMENTS

APCO must note that the instant Motion is procedurally defective on multiple grounds. To begin with, Helix and Peel Brimley Lien Claimants failed to properly provide and authenticate any contract or documents it asserts against APCO, which precludes the Court from considering such exhibits in conjunction with their request for summary judgment. Orr v. Bank of America, NT, 285 F.3d 764, 773 (2002) (courts have "repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment.") (listing cases). In addition, Helix and the Peel Brimley Lien Claimants did not provide the Court with a statement of undisputed facts as required by NRCP 56 as against APCO. Where there is a rule requiring the movant [for summary judgment] to supply the court with a list of uncontested facts with supported specific citations to the record, a party's failure to comply is grounds for judgment

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against that party. A.M. Capen's Co. v. Am. Trading and Prod. Corp., 202 F.3d 469, 472 n. 4 (1st Cir. 2000); see also Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d 922, 931-32 (1st Cir. 1983) (same). To be clear, Helix and the Peel Brimley Lien Claimants' "Undisputed Material Facts" is nothing more than a list of conclusorly statements about why they believe their Motion should be granted. This list does not satisfy NRCP 56 requirements and, likewise, the instant Motion must be denied in its entirety.

IV. LEGAL ARGUMENT

A. NEVADA LAW DOES ALLOW FOR PAY-IF-PAID PROVISIONS UNDER SOME CIRCUMSTANCES.

Under NRS 624.626, subcontractors **may stop work** if a higher-tiered contractor fails to make timely payments, "even if the higher-tiered contractor has not been paid and the agreement contains a provision which requires the higher-tiered contractor to pay the lower-tiered subcontractor only if or when the higher-tiered contractor is paid." The next statutory subsection, NRS 624.628, provides additional guidance regarding pay-if-paid provisions. In particular, it provides that:

> 3. A condition, stipulation or provision in an agreement which:
>
> . . .
>
> c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is **unreasonable under the circumstances**, that **was not within the contemplation of the parties at the time the agreement was entered into**, or for which **the lower-tiered subcontractor is not responsible**, is against public policy and is void and unenforceable. (Emphasis added).

Thus, while both of these provisions provide certain limitations regarding payment of subcontractors, Nevada's statutory law **does not** outright prohibit pay-if-paid clauses.

Unfortunately, the Supreme Court of Nevada's decisions in Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. ___, 185 P.3d 1055 (June 2008) ("Lehrer I"), and Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032 (Oct. 2008) ("Lehrer II"), caused significant confusion over this otherwise straight-forward statute.

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Both Lehrer cases centered on a subcontract between subcontractor Bullock Insulation ("Bullock") and general contractor Lehrer McGovern Bovis ("Bovis") in which Bullock agreed to provide firestopping work needed for the construction of the Venetian hotel and casino. See Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1035. The subcontract incorporated several terms from the Construction Management Agreement, including a lien waiver clause and pay-if-paid provision. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1107-08, 197 P.3d at 1036. After much of the work on the project had been completed, an inspection revealed that Bullock had not properly installed putty pads in accordance with the subcontract. Lehrer I, 185 P.3d at 1059; Lehrer II, 124 Nev. at 1107, 197 P.3d at 1036. In order to correct the mistake, Bullock had to complete significant retrofit work. Lehrer I, 185 P.3d at 1059; Lehrer II, 124 Nev. at 1108, 197 P.3d at 1036. When the retrofitting was complete Bullock recorded a mechanic's lien for the total value of the retrofit and initiated litigation. Lehrer I, 185 P.3d at 1059; Lehrer II, 124 Nev. at 1108, 197 P.3d at 1036.

The case proceeded to trial and a jury found in favor of Bullock. Lehrer I, 185 P.3d at 1057; Lehrer II, 124 Nev. at 1109, 197 P.3d at 1036-37. But, because the jury gave contradictory responses to special interrogatories regarding the subcontract, Bovis moved for a new trial. Lehrer I, 185 P.3d at 1060; Lehrer II, 124 Nev. at 1110, 197 P.3d at 1037. In both cases, "the primary issue [was] whether a new trial [wa]s required when the district court creates special interrogatories upon issues of fact and the jury's answers to those interrogatories are inconsistent." Lehrer I, 185 P.3d at 1057; Lehrer II, 124 Nev. at 1105-06, 197 P.3d at 1034. As secondary issues, Bovis questioned whether the district court erred by holding that the lien waiver and pay-if-paid provisions which were incorporated into the subcontract were unenforceable under Nevada law. Lehrer I, 185 P.3d at 1058; Lehrer II, 124 Nev. at 1106, 197 P.3d at 1035.

In both decisions, the Supreme Court held that remand was necessary because the general verdict was irreconcilable with the interrogatory answers. Lehrer I, 185 P.3d at 1062; Lehrer II,

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124 Nev. at 1113, 197 P.3d at 1039. *The Court's position with regard to pay-if-paid clauses shifted, however, from the first decision to the second.*

In the first Lehrer decision, the Supreme Court noted that the parties entered into the subcontract before the Legislature "proclaimed pay-if-paid provision unenforceable." Lehrer I, 185 P.3d at 1063. In a footnote, the Court further clarified that the Legislature amended NRS Chapter 624 in 2001 to include "prompt payment provisions . . . which make pay-if-paid provisions entered into subsequent to the Legislature's amendments unenforceable." Id. at 1063 n.33. Nevertheless, while new statutory language did not apply to parties' subcontract, the Supreme Court determined that the pay-if-paid provision in the parties' subcontract was unenforceable because "a pay-if-paid provision limits a subcontractor's ability to be paid for work already performed," and effectively "impair[ed] the [Bullock's] statutory right to place a mechanic's lien on the construction project." Id. at 1064.

The Supreme Court issued a second, amended opinion a few months later in order to clarify a portion of its decision that "could be misconstrued as being contrary to this court's precedent." Lehrer II, 124 Nev. at 1105, 197 P.3d at 1034. In the revised opinion, the Supreme Court again noted that the parties entered into the subcontract before the Legislature "proclaimed pay-if-paid provisions unenforceable." Id. at 1117, 197 P.3d at 1042. But, in the related footnote, the Court altered its explanation of the statutory amendment by stating, *"[p]ay-if-paid provisions entered into subsequent to the Legislature's amendments are enforceable only in limited circumstances and are subject to the restrictions laid out in [the statute.]."* Id. at 1117 n.50, 197 P.3d at 1042 n.50. Then, as in the previous decision, the Court held that the subcontract between Bullock and Bovis was unenforceable because it effectively impaired Bullock's right to place a mechanic's lien on the project. Id. at 1117, 197 P.3d at 1042.

In the aftermath of the Lehrer decisions, scholars and attorneys understandably expressed confusion.[10] In particular, confusion remains regarding the actual impact of the Supreme Court's

[10] See, e.g., Leon F. Mead II, Nevada Supreme Court Rules Pay-If-Paid Clause Unenforceable, June 2008, *available at*: http://www.swlaw.com/assets/pdf/publications/2008/06/16/NevadaSupremeCourtRules_6.08 indd.pdf; Gregory S. Gilbert, Pay-if-Paid Clauses: Still Alive in Nevada, Mar. 2009, *available at*:

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remarks regarding pay-if-paid clauses because the Court's decision turned on the issue of inconsistent verdicts and all other matters were purely dictum.[11] In addition, it remains unclear how the Court reached its decision, given that NRS 624 does not contain any direct references to pay-of-paid clauses. And, by the same token, it is unclear why the Supreme Court revised its dicta regarding pay-if-paid clauses when the supposed purpose of the amended opinion was to clarify confusion regarding inconsistent verdicts.

Thus, to summarize, there remain many questions regarding Nevada's law on pay-if-paid provisions. But, under existing law there is no reason to believe that such provisions are *per se* unenforceable because Supreme Court of Nevada simply would not have revised its opinion in Lehrer if its intent was disallow pay-if-paid clauses under all circumstances.[12] Further, the Supreme Court would not have noted the value of case-by-case assessments if pay-if-paid provisions were never permissible.[13] So, for purposes of this litigation, this Court should consider whether the pay-if-paid provisions are appropriate under the unique circumstances of ***this case*** and reject any empty attempt by Helix, or the Joining Subcontractors, to impose a *per se* limitation that simply does not exist — especially when no facts or authenticated contracts have been presented to the Court for consideration.

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https://www.hollandhart.com/16931; Greg Gledhill, Nevada Supreme Court Declares Pay-If-Paid Clauses Unenforceable – Or Did It?, *available at*: http://www.gcila.org/publications/files/pub_en_97.pdf.

[11] Argentena Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009) ("A statement in a case is dictum when it is "'unnecessary to a determination of the questions involved.'" (Quoting Stanley v. Levy & Zentner Co., 60 Nev. 432, 448, 112 P.2d 1047, 1054 (1941)).

[12] See NRAP 40(c)(2) (providing that rehearing is only warranted "[w]hen it appears that [the Supreme Court] has overlooked or misapprehended a material matter in the record or otherwise, or . . . in such other circumstances as will promote substantial justice."); Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (a rehearing is proper "[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached").

[13] Vegas Franchises, Ltd. v. Culinary Workers Union, Local No. 226, 83 Nev. 422, 424, 433 P.2d 263, 265 (1967) (stating the Supreme Court will not perpetuate error); Nevada-California Transp. Co. v. Pub. Serv. Comm'n, 60 Nev. 310, 108 P.2d 850, 852 (1941) (holding that it is the Supreme Court's duty "to correct rather than perpetuate [ ] errors.").

B. THE PAY-IF-PAID PROVISIONS ARE VALID AND ENFORCEABLE UNDER THE FACTS AND CIRCUMSTANCES IN THIS CASE, BUT WITH NO EVIDENCE BEING PROVIDED TO THE COURT BY THE MOVING PARTIES, THE ISSUE IS NOT RIPE FOR SUMMARY JUDGMENT.

First and foremost, dicta is not controlling law, Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 282, 21 P.3d 16, 22 (2001) and, as such, there is a fair argument that the Lehrer decisions actually have no bearing on the instant matter. Nevertheless, even if this Court is inclined to treat the Supreme Court's reasoning as persuasive,[14] it is best to consider the pay-if-paid clause under the unique facts and circumstances in this case. Indeed, while the Supreme Court has yet to address how to assess the enforceability of a pay-if-paid clause, it has stated that a case-by-case assessment is appropriate where a contract includes a lien waiver provision. Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041 ("The enforceability of each lien waiver clause must be resolved on a case-by-case basis"). And, while the applicable law regarding liens differs from the prompt payment provisions in Chapter 624, the Supreme Court has indicated that its concerns regarding pay-if-paid provisions stem from the same public policy concerns regarding secure payment for contractors. Id. at 1116-18, 197 P.3d at 1041-42.

Here, none of the moving parties have provided the Court with any language applicable to APCO for the Court to consider, so it is impossible for the Court to conduct **ANY** analysis on a case-by-case basis and offer anything more than an advisory opinion. Moreover, to further evidence this point, NRS 624.628 provides guidance regarding pay-if-paid provisions, wherein subsection (c) directs the analysis to determine whether the clause is: (1) unreasonable under the circumstances, (2) was not within the contemplation of the parties at the time the agreement was entered into, or (3) for which the lower-tiered subcontractor is not responsible.[15] No moving party has provided any facts or evidence for the Court to consider the above factors.

[14] Humphrey's Ex'r v. United States, 295 U.S. 602, 627, 55 S. Ct. 869, 874 (1935) (holding that "dicta [ ] may be followed if sufficiently persuasive" even though it is "not controlling").

[15] See NRS 624.628(c).

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Further, public policy concerns weigh in favor of APCO rather than Helix. As the Supreme Court stated in Lehrer, public policy favors secure payment for contractors. The rationale for this public policy is easy to understand, as "contractors are generally in a vulnerable position because they extend large blocks of credit; invest significant time, labor, and materials into a project; and have any number of workers vitally depend upon them for eventual payment." Lehrer II, 124 Nev. at 1116, 197 P.3d at 1041. Here, following Helix and the Peel Brimley Lien Claimants' rationale would do nothing more than turn APCO into a *de facto* lender to the Owner in the event the project goes under and there becomes a situation of non-payment or insolvency – – which is exactly what occurred in this case, but while the Project was under the control of Camco, not APCO.

Nonetheless, the moving parties have failed to provide any evidence for the Court to conduct its analysis and, therefore, must deny the Motion in its entirety.

C. IN THE ALTERNATIVE, AND WHEN PROPERLY BEFORE THE COURT, SHOULD THE COURT RULE THAT THE SUBJECT CONTRACT LANGUAGE IS IN FACT PAY-IF-PAID LANGUAGE AGAINST PUBLIC POLICY, THE COURT SHOULD STILL ALLOW EVIDENCE OF THE CONTRACT LANGUAGE TO SUPPORT THE INTENT AND INTERACTIONS BETWEEN THE PARTIES.

The moving parties have asserted a borage of claims sounding in NRS 108, contract law, breach of the covenant of good faith and fair dealing, and unjust enrichment, to name a few. If the Court, when the pay-if-paid issue is properly before it, were to consider the contractual language to be a pay-if-paid provision against public policy — which we believe it will not when the Court conducts the case-by-case analysis — then alternatively the Court must still allow testimony and evidence at trial with regard to the contract language as it relates to the intensions and interactions between the Parties.

Here, the instant case is set for a bench trial. Likewise, there is no threat of confusing or contaminating a jury with regard to the ultimate determination by the Court on the application of pay-if-paid language, as the Court can rightfully discern the application of the language and how it affected the interactions of the Parties.

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V. CONCLUSION

Accordingly, based on the foregoing, APCO respectfully request that this Court Deny Helix and the Peel Brimley Lien Claimants' Motion for Summary Judgment, along with all joinders thereto, in their entirety.

Dated this 21st day of August, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APCO CONSTRUCTION'S OPPOSITION TO PEEL BRIMLEY LIEN CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 21st day of August, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[16]

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

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Exhibit A

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A. Correct.
Q. Is there any particular reason why Helix is saying APCO is responsible for the entire contract amount, and then going on and stating that Gemstone and CAMCO and other people are responsible for additional amounts?
A. Again, I don't know how they were exactly calculated, so I do not know.
(Exhibit 95 marked for identification.)
BY MR. MOUNTEER:
Q. All right. Andy, you've been handed what has been marked as Exhibit 95, with a beginning Bates stamp of Helix 00378. Do you recognize this document?
A. Yes.
Q. What is this document?
A. Progress billing.
Q. Does it appear to be a true and accurate representation of Helix's progress billing?
A. Yes.
Q. What is it for the period to?
A. One second. Need to fix them again.
MR. ZIMBELMAN: This is not in order again?
MR. MOUNTEER: Yes.
A. Through August 31 of 2008.

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BY MR. MOUNTEER:
Q. Okay. Going back, you had said earlier you think that APCO had control of the progress through August of 2008. Does this document or any other document you've been shown today refresh your recollection of a more sure date of that time period?
A. I would believe end of August of 2008.
Q. So this would be the last application, certificate for payment that would have gone to APCO; is that correct?
A. I believe so, yes.
Q. All right. Let's look at this just for a moment. I'm just looking at the numbers on the front here. We have the starting on line 1, 13 million number that matches up with the lien; is that correct?
A. Correct.
Q. And then we have net change by change orders. Do you see that, 341,000?
A. Yes.
Q. Why is that number different than the number on the lien amount, if you want to reference back to Exhibit 94? You may want to keep 94 open for just a short time here to Exhibit A on 94; do you know why that amount is different?
A. Change order 738257. It's possible that some

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change orders either did not start or pertained to other buildings that did not start on the lien amount versus the billing form.
Q. Just so I'm clear, what I believe you're saying is there's change orders that were approved for work to be done, but the work was not completed by August 31 of 2008?
A. I would think that the change orders were issued for future buildings, or the change orders -- I'm sorry, on the lien form that there were going to be changes on future buildings that were incorporated into the buildings performed under contract.
The ones on the billing form were for the buildings that were currently being constructed.
Q. Okay. So if we look at -- looks like someone had wrote some type of circle around it on number 4, total completed and stored to date. What does it mean, "and stored to date"?
A. There were fixtures on site, fixtures, distribution, materials that were sent to the site to be installed that for whatever reason weren't installed, but we were allowed to bill for --
Q. You were allowed to bill for having that material stored, correct?
A. -- having that materials stored, that's

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correct.
Q. So it looks like we have a 5,100,000 and change on that number. On number 5, we have the infamous word retainage. Do you see that?
A. Yes.
Q. Under there we have 500,000 and change. Is that the number that you're saying that Helix is seeking from APCO?
A. Yes.
Q. So just so we are clear, that is $513,120.71?
A. Correct.
Q. Going down to number 6, we have total earned less retainage. We subtract that retainage out, that brings the total completed work to that 4,618,000 and change?
A. Correct.
Q. And then under number 8, we have current payment due. So under this particular pay app, with all the above numbers and whatnot, Helix is saying APCO, here's the application for 326,610 dollars; am I right on that?
A. Correct.
Q. Was APCO ever paid the 326,610 dollars?
A. I do not know.
Q. You're not aware of whether they were paid or

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not?
A. APCO?
Q. I mean, I'm sorry, Helix. Was Helix ever paid that amount?
A. Yes.
Q. So you're not claiming that APCO owed you for that amount?
A. Correct.
Q. With this being the last payment application that was to APCO, who did the next payment application go to?
A. I believe CAMCO.
Q. So are you faulting APCO for any payments that weren't made under CAMCO?
A. I do not know. If that's a legal -- I'm not sure.
Q. I mean, you could ask your counsel. I don't think it's legal. I guess what I'm curious for is -- stated better -- is Helix claiming that APCO is responsible for any amounts, retainage, payment certificates, whatever, that went to CAMCO and not APCO?
A. I do not believe so.
Q. So as of August 31, 2008, you can't -- Helix doesn't fault APCO for any payments that would have

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been submitted to someone else after that date?
A. I believe so.
Q. So then is it Helix's position that Helix was paid 100 percent in full for everything -- when I say everything, I mean work completed and stored to date that APCO was responsible for on this project, except for the $513,120.71?
A. Correct.
MR. MOUNTEER: Let's take a five-minute break if that's all right.
(Whereupon, a recess was taken.)
BY MR. MOUNTEER:
Q. All right, so Andy, let's talk quickly about once APCO left the project, or around the time that APCO was leaving the project. Helix had some notice that APCO was going to leave; is that correct?
A. I believe so.
(Exhibit 96 marked for identification.)
BY MR. MOUNTEER:
Q. All right, I'm showing you a document that is Bates stamped NVPE002240. It appears to be --
A. No, I don't have that number. 000247.
MR. ZIMBELMAN: That's what I'm looking at as well.

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BY MR. MOUNTEER:
Q. Let me see. Yeah, 247.
A. Okay. That's not what I heard.
Q. I'll start from the beginning. NVPE000247, appears to be an e-mail from Craig Colligan. Do you know who Craig Colligan is?
A. Do not recall.
Q. It appears Craig has an e-mail address from Gemstone. Does that refresh your recollection at all of who Craig may be?
A. Obviously with Gemstone in some capacity.
Q. Okay. And then the first name on that e-mail list, is that you?
A. That is correct.
Q. So do you recall receiving this e-mail?
A. Oh, boy. No.
Q. Okay. I understand. This was a long time ago in 2008. Believe me, I've got e-mails in my e-mail account going back a long ways.
Do you believe, though, based upon the fact that your name is cited to this too, that you would have received this e-mail?
A. Yes.
Q. Do you recognize any of the handwriting that's up in the right-hand corner? It appears there

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are two sets of initials. Do you have any idea whose initials those may be?
A. Negative.
Q. This e-mail appears to be sent on August 12, 2008, during that last month of APCO's control of the project; would you agree with me?
A. Correct.
Q. In the body of the e-mail, could you read along with me, I'm going to start just at the very beginning, it says, "In light of recent work stoppage at ManhattanWest site." Were you aware of a work stoppage?
A. I believe so, yes.
Q. Do you know why the work was stopped?
A. The assumption would be payment.
Q. Are you aware it's because APCO had asserted from Gemstone that they were not getting paid?
A. I would assume so.
Q. Going back to the last sentence of that first paragraph, it says, "in contract, the recent work stoppage was actually a result of an ongoing dispute between Gemstone and its general contractor and had nothing do with Gemstone's financing for the project."
Do you know if that dispute between Gemstone, and I'm assuming, I'll represent to you the contractor

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **PEEL BRIMLEY LIEN CLAIMANTS' REPLY TO OPPOSITIONS TO MOTION FOR PARTIAL SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS**

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COME NOW the Lien Claimants represented by the undersigned counsel of the law firm of PEEL BRIMLEY LLP ("the Peel Brimley Lien Claimants")[1] and do hereby submit the following Reply to the Oppositions of Plaintiff/Cross-Claim Defendant APCO Construction ("APCO") and Defendant Camco Pacific Construction Co., Inc. ("Camco") to the Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements ("the Motion"). This Reply is based on the following Reply Memorandum of

/ / /

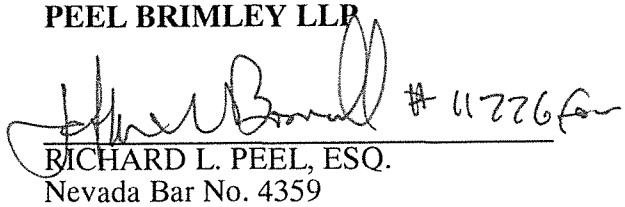
/ / /

[1] The Peel Brimley Lien Claimants are: Buchele Inc.; Cactus Rose Construction; Fast Glass Inc.; Heinaman Contract Glazing; Helix Electric of Nevada, LLC; and SWPPP Compliance Solutions, LLC.

Points and Authorities, the pleadings and papers on file, and such matters as may be considered by the Court.

DATED this 28th day of September 2017.

PEEL BRIMLEY LLP



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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

APCO and Camco expressly or impliedly acknowledge that they intend to defend against the claims of the Peel Brimley Lien Claimants based upon purported "pay-if-paid" agreements. APCO's Opposition attempts distract the Court as to matters not presented in the Motion while Camco's Opposition seems to argue that the various lien claimants' knowledge of and purported assent to the unlawful pay-if-paid agreements somehow alters their illegality.

Neither APCO nor Camco can, however, dispute the fact that (i) the Nevada Supreme Court declared "pay if paid" provisions in construction contracts void and unenforceable as against Nevada's public policy because "Nevada's public policy favors securing payment for labor and material contractors," *see Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008); or (ii) NRS 624.624(1), which cannot be waived (see NRS 624.628(3))[2]

[2] NRS 624.628(3) (with emphasis added) provides:

A condition, stipulation or provision in an agreement which:
(a) Requires a lower-tiered subcontractor to waive any rights provided in NRS 624.624 to 624.630, inclusive, or which limits those rights

It is simply folly to argue, as Camco does (*see* Camco Opposition 6:19), that the "Lien Claimants agreed to assume the risk of Gemstone's insolvency" because that is just another way of saying "pay-if-paid." It is similarly incorrect to argue that the Nevada Supreme Court's prohibition on pay-if-paid agreements only applies if they might impair liens (see Camco Opposition 7:28-8:1). Far from "reckless," the Peel Brimley Lien Claimants' reliance on *Bullock* is entirely consistent with that decision (holding pay-if-paid agreements to be "void and unenforceable."). Finally, Camco's argument that "pay-if-paid provisions were entirely consistent with [NRS Chapter 624]" absurdly ignores the actual provisions and plain language of the statute. Specifically, but without limitation, NRS 624.624 (applicable to contacts between higher-tiered contactors and lower-tiered subcontractors and thus at issue here) provides in part:

> 1. Except as otherwise provided in this section, if a higher-tiered contractor enters into:
>
> (a) A written agreement with a lower-tiered subcontractor that includes a schedule for payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:
>
> (1) On or before ***the date payment is due***; or
>
> (2) ***Within 10 days after the date the higher-tiered contractor receives payment*** for all or a portion of the work, materials or equipment described in a request for payment submitted by the lower-tiered subcontractor,
>
> ➥ ***whichever is earlier***.
>
> (b) A written agreement with a lower-tiered subcontractor that does not contain a schedule for payments, or an agreement that is oral, the higher-tiered contractor shall pay the lower-tiered subcontractor:
>
> (1) ***Within 30 days*** after the date the lower-tiered subcontractor submits a request for payment; or
>
> (2) ***Within 10 days after the date the higher-tiered contractor receives payment*** for all or a portion of the work, labor, materials, equipment or services described in a request for payment submitted by the lower-tiered subcontractor,
>
> ➥ ***whichever is earlier***.

NRS 624.624(1).

> (b) Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to NRS 624.624 to 624.630, inclusive; or
>
> (c) Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the lower-tiered subcontractor is not responsible,

□is against public policy and is void and unenforceable.

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In other words, and at the risk of reiterating the Peel Brimley Lien Claimants' opening brief, if there is a "schedule of payments" in an otherwise enforceable written agreement between the higher-tiered contractor (e.g., APCO or Camco) and the lower-tiered subcontractor (e.g., the Peel Brimley Lien Claimants), the higher-tiered contractor must pay the lower-tiered subcontractor – ***at the latest*** – on the ***date payment is due***. If there is no enforceable written agreement containing a schedule of payments, the payment is due to the lower-tiered subcontractor – ***at the latest*** - **within 30 days of its request** for payment. The statutory language referencing payment received by the higher-tiered contractor exists only to hasten the time within which payment must be made and does not extend the time, much less indefinitely. Here, all of the Peel Brimley Lien Claimants have been waiting for almost ***nine years*** without payment.

NRS 624,624(2) does allow a higher-tiered contractor to withhold payment for (i) retention and (ii) work not performed, costs necessary to repair or remedy defective work, trust fund benefits subject to a notice form a state agency and other reasons not presented here. However, NRS 624.624(3) also requires the higher-tiered contractor – "on or before the date the payment is due" - to issue a written notice of withholding giving a "reasonably detailed explanation of the condition or reason for the withholding. Even if monies were withheld for a permissible reason rather than because of a pay-if-paid provision (as APCO and Camco acknowledge is the case), neither APCO nor Camco has identified or presented any such timely and valid notice of withholding.

Importantly, and as set forth in NRS 624.624(5), "***Except as otherwise allowed in subsections 2, 3 and 4***, a higher-tiered ***contractor shall not withhold from a payment*** to be made to a lower-tiered subcontractor more than the retention amount. Finally, no contractual "condition stipulation or provision" can require a lower-tiered subcontractor to waive any rights afforded by the statute nor can any such condition, stipulation or provision relieve a higher-tiered contractor from "any obligation or liability imposed" by the statute (e.g., the obligation to promptly pay). *See* NRS 624.628(3) (rendering such conditions, stipulations or provisions "void and unenforceable").

Neither Camco nor APCO deny that they seek to defend the various lower-tiered claims against them on the basis of various pay-if-paid provisions. There is therefore no genuine issue of fact and the law of the State of Nevada is clear and unambiguous that such provisions are void and

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unenforceable after – ***at a maximum*** – 30 days after the date the lower-tiered subcontractor presented request for payment. APCO and Camco did not pay more than 9 years ago when presented requests for payment in the ordinary course of business, did not pay when Complaints against them were filed in the court beginning as early as 2008, did not pay once the Supreme Court awarded the lender priority over the proceeds of the sale of the property, and have not paid in response to the present motion.

While the Peel Brimley Lien Claimants expect to prove up their claims against Camco and APCO, the Court not waste the Court's valuable time receiving evidence and argument relating to pay-if-paid provisions of any kind. The law is clear that such provisions violate public policy, are void and unenforceable and strictly contrary to the prompt pay provisions of NRS 624.624. A partial summary judgment deeming any such provisions void and unenforceable is appropriate and should be entered.

CONCLUSION

Based on the foregoing, the Peel Brimley Lien Claimants respectfully request that the Court grant the foregoing Motion for Summary Judgment and rule that no pay-if-paid agreements may be used as a defense to claims against APCO and Camco for non-payment.

DATED this 28th day of September 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 28th day of September 2017, I caused the above and foregoing document entitled **PEEL BRIMLEY LIEN CLAIMANTS' REPLY TO OPPOSITIONS TO MOTION FOR PARTIAL SUMMARY JUDGMENT PRECLUDING DEFENSES BASED ON PAY-IF-PAID AGREEMENTS** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the party(ies) and/or attorney(s) listed below; and/or
- ☒ to registered parties via Wiznet, the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **PEEL BRIMLEY LIEN CLAIMAINTS' MOTIONS IN LIMINE NOS. 1-6 (Against Camco Pacific Construction, Inc.)** **Hearing Date (per prior Order):** **November 16, 2017** **9:00 A.M.**
AND ALL RELATED MATTERS.	

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PEEL BRIMLEY LIEN CLAIMAINTS' MOTIONS IN LIMINE NOS. 1-6
(Against Camco Pacific Construction, Inc.)

COME NOW the various lien claimants represented by the Peel Brimley LLO law firm ("the Peel Brimley Lien Claimants"[1]) and does hereby submit the following Motion in Limine No. 1 -6 against Camco Pacific Construction, Inc ("Camco"). This Motion is based on the Memorandum of Points and Authorities in Support of this Motion that follows, the pleadings and papers on file, and such matters as may be considered by the Court.

DATED this 6th day of November 2017.

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INTRODUCTION/SUMMARY OF ARGUMENT

By way of this Court's Order dated October 24, 2017,[2] "Motions in Limine can be filed on or by November 5, 2017."[3] The Order further provides that such motions in limine "shall be heard by the Court of November 16, 2017 at 9:00 a.m." [Id.]. the Peel Brimley Lien Claimants bring the present Motion in Limine Nos. 1-6 seeking to bar Camco Pacific Construction, Inc. ("Camco") from offering any evidence or asserting:

[1] For purposes of these motions in limine only, the "Peel Brimley Lien Claimants" are: Cactus Rose Construction; Fast Glass Inc.; Heinaman Contract Glazing; and Helix Electric of Nevada, LLC

[2] The Order, made orally at a hearing on October 5, 2017, was filed on October 26, 2017 and a Notice of Entry was made on October 30, 2017. [*See* **Exhibit 1**].

[3] Because November 5, 2017 is a Sunday, this Motion is timely if filed on Monday November 6, 2017.

1. That any of the Peel Brimley Lien Claimants' work on the Manhattan West Project that is the subject of this action ("the Project") was defective;

2. That any of the Peel Brimley Lien Claimants' work on the Project was not done in a workmanlike manner;

3. That any of the Peel Brimley Lien Claimants' work on the Project was not done in compliance with the terms of the parties' agreement; and

4. That any liens recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected and are otherwise valid and enforceable.[4]

These Motions in Limine should be granted because Camco's Person Most Knowledgeable testified that he is not aware of any facts to support such claims.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

As the Court is aware, this action arises out of the construction of the Manhattan West Condominiums in Las Vegas. Construction ceased in 2008 and this action wound its way through the District Court and the Nevada Supreme Court for the past nine years, culminating in the Nevada Supreme Court's determination that the lender has priority over the various lien claimants, including Helix, to the proceeds of the sale of the applicable property and improvements. Trial is now scheduled to commence on the remaining claims between and among the various subcontractors, including Helix, and the two prime contractors, APCO Construction and Camco.

On June 20-22, 2017, Camco presented its Persons Most Knowledgeable for deposition in response to notices of deposition issued by the Peel Brimley Lien Claimants. [*See* **Exhibit 2**]. Camco has not designated any individuals other than David Parry to testify on the noticed matters.[5]

///

[4] The Peel Brimley Lien Claimants acknowledge prior orders of the court regarding priority and that the proceeds of the sale of the subject property have been released to the lenders.

[5] Exhibit 1 is the Notice of Deposition issued by Helix Electric of Nevada, LLC ("Helix"). However, substantively identical PMK deposition notices were issued by the other Peel Brimley Lien Claimants. [*See* **Exhibit 3**, Parry Dep. Excerpts 7:4-24].

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Parry testified, among other things, as follows:

- His testimony regarding the following issues is identical as to all Peel Brimley Lien Claimants. [Parry Dep. 55:5-17].[6]
- The only breach of contract asserted by Camco as against the Peel Brimley Lien Claimants is Camco's position that they did not have a right to assert claims against Camco for non-payment because of pay-if-paid clauses in various subcontracts.[7] did not encounter any problems with Helix's work on the project. [Parry Dep. 44:16 – 46:16].
- He (as the PMK) was not aware of any facts to dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel Brimley Lien Claimants in their respective Requests for Admission.[8] [Parry Dep. 48:21-25; 49:16-20; 50:3-24].
- He (as the PMK) is not aware of any facts to dispute that the Peel Brimley Lien Claimants duly recorded and perfected their liens. [Parry Dep. 51:1 – 53:25].
- He (as the PMK) was not aware of any facts to support any claim that there are defects in the work, material and/or equipment provided by the Peel Brimley Lien Claimants. Helix. [Parry Dep. 54:2-9].
- He (as the PMK) was not aware of any facts to support any claim that the work provided by the Peel Brimley lien Claimants was not completed in a workmanlike manner. [Parry Dep. 54:10-21].
- He (as the PMK) was not aware of any facts to support any claim that the work provided by the Peel Brimley lien Claimants was not furnished in a timely manner. [Parry Dep. 54:22 – 55:4].

///

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[6] Parry was asked a series of questions about Helix, but acknowledges that his responses would be the same for the remaining Peel Brimley Lien Claimants.

[7] Not all of the Peel Brimley Lien Claimants entered into contracts with Camco containing "pay-if-paid" clauses. Regardless, that is issue is also pending on a motion for summary judgment.

[8] The applicable Requests for Admission are attached hereto as **Exhibits 4, 5, 6 and 7**.

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II. DISCUSSION

A. Camco Has No Evidence Of Defective Work by the Peel Brimley Lien Claimants

As demonstrated above, Camco's PMK was not aware of any evidence or even allegations of defective work by the Peel Brimley Lien Claimants. Based on this admission on behalf of Camco, Camco should be barred from presenting any contrary evidence or otherwise contesting the same at trial.

B. Camco Has No Evidence Of Unworkmanlike Work by the Peel Brimley Lien Claimants.

As demonstrated above, Camco's PMK was not aware of any evidence or even allegations of any work performed by the Peel Brimley Lien Claimants in other than a workmanlike manner. Based on this admission on behalf of Camco, Camco should be barred from presenting any contrary evidence or otherwise contesting the same at trial.

C. Camco Has No Evidence Of Non-Conforming Work by the Peel Brimley Lien Claimants.

As demonstrated above, Camco's PMK was not aware of any evidence or even allegations of any work performed by the Peel Brimley Lien Claimants that did not conform to the contract documents. Based on this admission on behalf of Camco, Camco should be barred from presenting any contrary evidence or otherwise contesting the same at trial.

D. Camco Has No Claim For Breach of Contract Against the Peel Brimley Lien Claimants Other Than As Relating To Pay-If-Paid.

As demonstrated above, Camco's PMK stated that its breach of contact claim is solely related to the issues relating to pay-if-paid. That issue is for another motion, but Camco should not be allowed to assert any other breach.

E. Camco Cannot Contest Amounts Billed, Paid and Owed Regarding the Peel Brimley Lien Claimants.

As demonstrated above, Camco is not aware of any facts to dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel Brimley Lien Claimants in their respective Requests for Admission. Camco should be barred from offering any contrary evidence or otherwise contesting the same at trial.

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F. Camco Cannot Contest Lien Perfection By the Peel Brimley Lien Claimaints.

As demonstrated above, Camco is not aware of any facts to dispute the recording and perfection of the Peel Brimley Lien Claimants' liens and should be barred from offering any contrary evidence or otherwise contesting the same at trial.

CONCLUSION

Based on the foregoing, the Peel Brimley Lien Claimants respectfully requests that the Court grant the foregoing Peel Brimley Lien Claimants Motions in Limine Nos. 1-6.

DATED this 6th day of November 2017.

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DECLARATION OF ERIC B. ZIMBELMAN IN SUPPORT PEEL BRIMLEY LIEN CLAIMAINTS' MOTIONS IN LIMINE NOS. 1-6
(Against Camco Pacific Construction, Inc.)

I, Eric B. Zimbelman, Esq., declare as follows:

1. I am a Partner at Peel Brimley LLP and represent Defendants Peel Brimley Lien Claimants ("Lien Claimants") in the above captioned matter. I have personal knowledge of the facts stated herein, and I am competent to testify to their truthfulness if called upon to do so.

2. Pursuant EDCR 2.47, on or about November 6, 2017, I conferred with counsel for Camco Pacific Construction ("Camco"), Steven L. Morris, Esq. regarding Lien Claimant's proposed Motions in Limine.

3. Counsel were unable to agree on the respective Motions in Limine and, therefore, the Lien Claimants are filing the same.

I declare under penalty of perjury as provided under the laws of the State of Nevada that the foregoing is true and correct and if called upon to testify, would do so.

Dated this 6th day of November, 2017.

Eric B. Zimbelman, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this this 16th day of November, 2017, I caused the above and foregoing document entitled **PEEL BRIMLEY LIEN CLAIMAINTS' MOTIONS IN LIMINE NOS. 1-6 (against Camco Pacific Construction, Inc.)** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the party(ies) and/or attorney(s) listed below; and/or

☒ to registered parties via Wiznet, the Court's electronic filing system;

☐ pursuant to EDCR 7.26, to be sent **via facsimile;**

☐ to be hand-delivered; and/or

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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: 13 *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319*

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order in reference to the Status Check of October 5, 2017, was entered in the above captioned matter on October 26, 2017, a copy of which is attached hereto.

Dated this 30th day of October, 2017.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of October, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

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

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

N/A

an employee of Marquis Aurbach Coffing

MARQUIS AURBACH COFFING
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Original

Electronically Filed
10/26/2017 9:29 AM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for APCO Construction

DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: XIII *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319*

ORDER

This matter has come on for hearing before this court on the Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements; Joinders thereto by Zitting Brothers, Steel Structures, Nevada Prefab Engineering, Interstate, E&E Fire Protection and Uintah Investments dba Sierra Reinforcing and Gerdau Reinforcing; Oppositions thereto by APCO and CAMCO; and for a status check. Based on the papers on file herein and oral arguments of counsel, the Court hereby finds, adjudicates and orders as follows:

1. During today's hearing, there was discussion among counsel outside the presence of the Court regarding trial dates, depositions and motions. The parties then informed the Court of counsels' respective positions. And, the parties informed the Court of what they disagreed and agreed regarding the trial dates, depositions and motions.

2. Having heard the positions of the parties, the Court hereby orders as follows:

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A. That discovery is re-opened, limited only to the depositions of the person the subcontractor/lien-claimant intends call at trial to prove up its case and defenses; and/or the NRCP 30(b)(6) PMK of its respective claims and defenses thereto for Zitting; Interstate; National Wood, Plaintiff in Intervention of Cabinetec; Uintah Investments LLC dba Sierra Reinforcing and Gerdau Reinforcing; United Subcontractors dba Skyline Insulation, Steel Structures and Nevada Prefab);

B. These depositions shall take place and be concluded on or by October 30, 2017;

C. Motion in Limines can be filed on or by November 5, 2017;

D. Motion in Limines shall be heard by the Court on November 16, 2017 at 9:00am;

E. The pending Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements and Zitting Brothers Construction Inc.'s Motion for Partial Summary Judgment shall be continued to November 16, 2017 at 9:00 am; and

F. The Bench trial of this case shall start on November 28, 2017.

ORDER

IT IS SO ORDERED.

Dated: Oct 24, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By _____
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MAC:05161-019 3213338_1

EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, Vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **CACTUS ROSE CONSTRUCTION, INC.'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.** Date : June 20, 2017 Time : 2:00 p.m. Date : June 22, 2017 Time : 2:00 p.m.

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

PLEASE TAKE NOTICE that CACTUS ROSE CONSTRUCTION, INC, will take the deposition of Defendant in Intervention, CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO" or "DEPONENT"), on June 20, 2017 and June 22, 2017, at 2:00 p.m. at the law offices of PEEL BRIMLEY LLP located at 3333 E. Serene Ave, Suite 200, Henderson, NV 89074.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between CACTUS ROSE and CAMCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

4. The term "CACTUS ROSE" shall mean lien claimant and Counter-Claimant CACTUS ROSE ELECTRIC OF NEVADA, a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

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5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "CAMCO" shall mean and refer to CAMCO Pacific Construction Company, Inc., a California corporation, Defendant to CACTUS ROSE's Lien Claim and Counter-Claimant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between CACTUS ROSE and any other PERSON regarding the PROJECT.

8. Any work performed by CACTUS ROSE under any CONTRACT between CAMCO and CACTUS ROSE concerning the PROJECT.

9. Any work performed by CACTUS ROSE under any CONTRACT between CACTUS ROSE and any PERSON concerning the PROJECT.

10. All work performed by CACTUS ROSE at the PROJECT.

11. Any and all materials supplied by CACTUS ROSE in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between CAMCO and CACTUS ROSE relating to the PROJECT.

13. Any disputes relating to any CONTRACT between CACTUS ROSE and any PERSON relating to the PROJECT

14. CAMCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

///

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15. Any claims and damages CAMCO has asserted against CACTUS ROSE relating to any supplies, materials or work provided by CACTUS ROSE at the PROJECT.

16. Any complaints made by CAMCO that the supplies, materials and/or work provided by CACTUS ROSE at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to CAMCO by any PERSON that the supplies, materials and/or work provided by CACTUS ROSE at the PROJECT were defective, incomplete or faulty.

18. Any and all payments made by or on behalf of CAMCO to CACTUS ROSE in connection with the PROJECT.

19. Any and all payments made by or on behalf of any PERSON to CACTUS ROSE in connection with the PROJECT.

20. Any payments demanded by CACTUS ROSE in connection with the PROJECT.

21. Any insurance proceeds received by CAMCO in connection with the PROJECT.

22. Any lawsuits filed against CAMCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by CAMCO in connection with the PROJECT.

24. Any and all revenues received by CAMCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of CAMCO in connection with the PROJECT.

26. All facts which support, evidence or refute CAMCO's affirmative defenses to HELIX'S Complaint.

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27. All facts which support, evidence or refute CAMCO's causes of action, if any, against HELIX.

Dated this 9th day of May, 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 9th day of May, 2017, I caused the above and foregoing document, **CACTUS ROSE CONSTRUCTION, INC.'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

E-Service Master List For Case
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An employee of PEEL BRIMLEY, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **FAST GLASS, INC.'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.** Date : June 20, 2017 Time : 3:00 p.m. Date : June 22, 2017 Time : 3:00 p.m.

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

PLEASE TAKE NOTICE that FAST GLASS, INC., will take the deposition of Defendant in Intervention, CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO" or "DEPONENT"), on June 20, 2017 and June 22, 2017, at 3:00 p.m. at the Law Offices of PEEL BRIMLEY LLP, located at 3333 E. Serene Ave, Suite 200, Henderson, NV 89074.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between FAST GLASS and CAMCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

4. The term "FAST GLASS" shall mean lien claimant and Counter-Defendant FAST GLASS, INC., a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

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5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "CAMCO" shall mean and refer to CAMCO Pacific Construction Company, Inc., a California corporation, Defendant to FAST GLASS' Lien Claim and Counter-Defendant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between FAST GLASS and any other PERSON regarding the PROJECT.

8. Any work performed by FAST GLASS under any CONTRACT between CAMCO and FAST GLASS concerning the PROJECT.

9. Any work performed by FAST GLASS under any CONTRACT between FAST GLASS and any PERSON concerning the PROJECT.

10. All work performed by FAST GLASS at the PROJECT.

11. Any and all materials supplied by FAST GLASS in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between CAMCO and FAST GLASS relating to the PROJECT.

13. Any disputes relating to any CONTRACT between FAST GLASS and any PERSON relating to the PROJECT

14. CAMCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

///

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15. Any claims and damages CAMCO has asserted against FAST GLASS relating to any supplies, materials or work provided by FAST GLASS at the PROJECT.

16. Any complaints made by CAMCO that the supplies, materials and/or work provided by FAST GLASS at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to CAMCO by any PERSON that the supplies, materials and/or work provided by FAST GLASS at the PROJECT were defective, incomplete or faulty.

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19. Any and all payments made by or on behalf of any PERSON to FAST GLASS in connection with the PROJECT.

20. Any payments demanded by FAST GLASS in connection with the PROJECT.

21. Any insurance proceeds received by CAMCO in connection with the PROJECT.

22. Any lawsuits filed against CAMCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by CAMCO in connection with the PROJECT.

24. Any and all revenues received by CAMCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of CAMCO in connection with the PROJECT.

26. All facts which support, evidence or refute CAMCO's affirmative defenses to HELIX'S Complaint.

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27. All facts which support, evidence or refute CAMCO's causes of action, if any, against HELIX.

Dated this 19th day of May, 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 17th day of May, 2017, I caused the above and foregoing document, **FAST GLASS, INC.'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

E-Service Master List For Case
Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **HEINAMAN CONTRACT GLAZING, INC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.** Date : June 20, 2017 Time : 1:00 p.m. Date : June 22, 2017 Time : 1:00 p.m.

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

PLEASE TAKE NOTICE that HEINAMAN CONTRACT GLAZING, INC., will take the deposition of Defendant in Intervention, CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO" or "DEPONENT"), on June 20, 2017 and June 22, 2017, at

1:00 p.m. at the Law Offices of PEEL BRIMLEY LLP, located at 3333 E. Serene Ave, Suite 200, Henderson, NV 89074.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between HEINAMAN and CAMCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

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4. The term "HEINAMAN" shall mean lien claimant and Counter-Defendant HEINAMAN CONTRACT GLAZING, INC., a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "CAMCO" shall mean and refer to CAMCO Pacific Construction Company, Inc., a California corporation, Defendant to HEINAMAN's Lien Claim and Counter-Defendant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between HEINAMAN and any other PERSON regarding the PROJECT.

8. Any work performed by HEINAMAN under any CONTRACT between CAMCO and HEINAMAN concerning the PROJECT.

9. Any work performed by HEINAMAN under any CONTRACT between HEINAMAN and any PERSON concerning the PROJECT.

10. All work performed by HEINAMAN at the PROJECT.

11. Any and all materials supplied by HEINAMAN in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between CAMCO and HEINAMAN relating to the PROJECT.

13. Any disputes relating to any CONTRACT between HEINAMAN and any PERSON relating to the PROJECT

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14. CAMCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

15. Any claims and damages CAMCO has asserted against HEINAMAN relating to any supplies, materials or work provided by HEINAMAN at the PROJECT.

16. Any complaints made by CAMCO that the supplies, materials and/or work provided by HEINAMAN at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to CAMCO by any PERSON that the supplies, materials and/or work provided by HEINAMAN at the PROJECT were defective, incomplete or faulty.

18. Any and all payments made by or on behalf of CAMCO to HEINAMAN in connection with the PROJECT.

19. Any and all payments made by or on behalf of any PERSON to HEINAMAN in connection with the PROJECT.

20. Any payments demanded by HEINAMAN in connection with the PROJECT.

21. Any insurance proceeds received by CAMCO in connection with the PROJECT.

22. Any lawsuits filed against CAMCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by CAMCO in connection with the PROJECT.

24. Any and all revenues received by CAMCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of CAMCO in connection with the PROJECT.

26. All facts which support, evidence or refute CAMCO's affirmative defenses to HELIX'S Complaint.

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27. All facts which support, evidence or refute CAMCO's causes of action, if any, against HELIX.

Dated this 19th day of May, 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of May, 2017, I caused the above and foregoing document, **HEINAMAN CONTRACT GLAZING, INC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.,** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, Vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.** Date : June 20, 2017 Time : 11:00 a.m. Date : June 22, 2017 Time : 11:00 a.m.

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

PLEASE TAKE NOTICE that Helix Electric of Nevada, LLC, will take the deposition of Defendant in Intervention, CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO" or "DEPONENT"), on June 20, 2017 and June 22, 2017, at

11:00 a.m. at the Law Offices of PEEL BRIMLEY LLP, located at 3333 E. Serene Ave, Suite 200, Henderson, NV 89074.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between HELIX and CAMCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

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PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
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4. The term "HELIX" shall mean lien claimant and Counter-Defendant HELIX ELECTRIC OF NEVADA, a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "CAMCO" shall mean and refer to CAMCO Pacific Construction Company, Inc., a California corporation, Defendant to HELIX's Lien Claim and Counter-Defendant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between HELIX and any other PERSON regarding the PROJECT.

8. Any work performed by HELIX under any CONTRACT between CAMCO and HELIX concerning the PROJECT.

9. Any work performed by HELIX under any CONTRACT between HELIX and any PERSON concerning the PROJECT.

10. All work performed by HELIX at the PROJECT.

11. Any and all materials supplied by HELIX in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between CAMCO and HELIX relating to the PROJECT.

13. Any disputes relating to any CONTRACT between HELIX and any PERSON relating to the PROJECT

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14. CAMCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

15. Any claims and damages CAMCO has asserted against HELIX relating to any supplies, materials or work provided by HELIX at the PROJECT.

16. Any complaints made by CAMCO that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to CAMCO by any PERSON that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

18. Any and all payments made by or on behalf of CAMCO to HELIX in connection with the PROJECT.

19. Any and all payments made by or on behalf of any PERSON to HELIX in connection with the PROJECT.

20. Any payments demanded by HELIX in connection with the PROJECT.

21. Any insurance proceeds received by CAMCO in connection with the PROJECT.

22. Any lawsuits filed against CAMCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by CAMCO in connection with the PROJECT.

24. Any and all revenues received by CAMCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of CAMCO in connection with the PROJECT.

26. All facts which support, evidence or refute CAMCO's affirmative defenses to HELIX'S Complaint.

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27. All facts which support, evidence or refute CAMCO's causes of action, if any, against HELIX.

Dated this 19th day of May, 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of May, 2017, I caused the above and foregoing document, **HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF CAMCO PACIFIC CONSTRUCTION COMPANY, INC.**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

E-Service Master List For Case
Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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	Eric Dobberstein	edobberstein@dickinsonwright.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
***Consolidated with* 80508**

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 8

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Docket 77320 Document 2020-37998

CHRONOLOGICAL APPENDIX OF EXHIBITS

Date	Description	Bates Number	Volume(s)
06-24-09	**Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint**	**JA000001-JA000015**	**1**
08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
04-26-10	**CAMCO and Fidelity's Answer and CAMCO's Counterclaim**	**JA000031-JA000041**	**1**
07-02-10	**Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default**	**JA000042-JA000043**	**1**
06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6

Date	Description	Bates Number	Volume(s)
06-13-13	**Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone**	**JA000327**	**6**
08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343-JA00379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380-JA000392	6
08-21-17	**APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000393-JA000409**	**6/7**
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410-JA000412	7
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.'s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC's	JA000436-JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
11-06-17	**Helix Electric of Nevada's Motion *in Limine* Nos. 1-4**	**JA000534-JA000542**	**8**
	Exhibit 1 – Notice of Entry of Order	JA000543-JA000549	8
	Exhibit 2 – Helix Electric of Nevada, LLC's Amended Notice of 30(b)(6) Deposition of APCO Construction	JA000550 JA000558	8/9

Date	Description	Bates Number	Volume(s)
	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

Date	Description	Bates Number	Volume(s)
	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.'s Initial Disclosures Pursuant to NRCP 16.1	JA000849-JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.'s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857-JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
11-14-17	**Camco Pacific Construction Company, Inc.'s Opposition to Lien Claimants' Motions in Limine Nos. 1-6**	**JA000898-JA000905**	**12**
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906-JA000907	12
	Exhibit B – Scott Financial Corporation's April 28, 2009 letter to the Nevada State Contractor's Board	JA000908-JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916-JA000917	13
	Exhibit D – Camco Pacific's letter dated December 22, 2008	JA000918-JA000920	13
	Exhibit E – Order Approving Sale of Property	JA000921-JA000928	13

Date	Description	Bates Number	Volume(s)
11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
11-14-17	**Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion *in Limine***	**JA000994-JA001008**	**20**
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009-JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043-JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056-JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060-JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	**APCO Construction, Inc.'s Reply in Support of its Omnibus *Motion in Limine***	**JA001133 JA001148**	**21**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149-JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152-JA001160	21
12-29-17	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion *in Limine* 1-6**	**JA001161-JA001169**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion *in Limine* 1-4**	**JA001170-JA001177**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
01-03-18	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001187-JA001198**	**22**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218-JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246-JA001263	24

Date	Description	Bates Number	Volume(s)
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264-JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282-JA001297	25
	Exhibit 5 - Amended NOL	JA001298-JA001309	25
	Exhibit 6 – Notice of Lien	JA001310-JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314-JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377-JA001380	26
	Exhibit 9 – Order Denying *En Banc* Reconsideration	JA001381-JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
	Exhibit 12 – Order Big D Construction Corp.'s Motion for Attorney's Fees, Costs and Interest Pursuant to Judgment	JA001431-JA001435	26
	Exhibit 13 – Appellant's Opening Brief (Padilla v. Big D)	JA001436-JA001469	26
	Exhibit 14 – Respondent's Answering Brief	JA001470-JA001516	26/27
	Exhibit 15 – Appellant's Reply Brief (Padilla v. Big D)	JA001517-JA001551	27
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order**	**JA001552-JA001560**	**27**

Date	Description	Bates Number	Volume(s)
	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-12-18	**Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]**	**JA001574-JA001594**	**27/28**
	Exhibit 1 – Exhibit List APCO	JA001595-JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615-JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617-JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636-JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638-JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640-JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642-JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA001644-JA001647	28

Date	Description	Bates Number	Volume(s)
	Exhibit 9 - Amended *nunc pro tunc* order regarding APCO Construction, Inc.'s Omnibus Motion *in Limine* No. 7	JA001648-JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions *in Limine* 1-4 (Against APCO Construction)	JA001651-JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654-JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661-JA00167	28/9/29
01-17-18	**Transcript Bench Trial (Day 1)**[1]	**JA001668-JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803-JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826-JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869-JA001884	30

[1] Filed January 31, 2018

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885-JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975-JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979-JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981-JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36

Date	Description	Bates Number	Volume(s)
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222-JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224-JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244-JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283-JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307-JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309-JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311-JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313-JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41

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	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346-JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357-JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359-JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418-JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
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	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447-JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43

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	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 "pending"	JA002501-JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting ($27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44

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	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46

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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
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	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48

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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
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	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733-JA003813	60/61

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	Trial Exhibit 510 - Unsigned Subcontract	JA003814-JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928-JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035-JA005281	63/64/65/66/67/68/69/70/71/72/73/74/75/76/77
01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
01-18-18	**Transcript – Bench Trial (Day 2)[2]**	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)[3]**	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80

[2] Filed January 31, 201879
[3] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[4]**	**JA005820-JA005952**	81
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
03-23-18	**Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief**	**JA006173-JA006193**	**84**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**

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Date	Description	Bates Number	Volume(s)
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-JA006442	87/88

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	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
05-08-18	**Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements**	**JA006509-JA006521**	**89**
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90

Date	Description	Bates Number	Volume(s)
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581-JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
	Exhibit 5 – Summary of Fees	JA006589-JA006614	90
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
06-15-18	**Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA006917 – JA006942**	**96**
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943-JA006948	96

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	Exhibit 2 – Notice of Entry of Denying APCO Construction's Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949-JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955-JA006958	96
	Exhibit 4 – Order Denying *En Banc* Reconsideration	JA006959-JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964-JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC's Response to Special Master Questionnaire	JA006977-JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.'s Response to Special Master Questionnaire	JA006981-JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.'s Response to Special Master Questionnaire	JA006985-JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal's Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC's Special Master Questionnaire	JA007002-JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006-JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037-JA007060	97

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	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042-JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054-JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057-JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA007060-JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion in Limine (against APCO Construction)	JA007070-JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions' Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079-JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary	JA007085-JA007087	97

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	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088-JA007094	97
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007190-JA007192**	**99**
06-21-18	**Helix Electric of Nevada, LLC's Notice of Non-Opposition to its Motion for Attorney's Fees, Interest and Costs**	**JA007193-JA007197**	**99**
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99

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06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225-JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238-JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246-JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262-JA007280	100
09-28-18	Notice of Entry of (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	JA007281-JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300-JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313-JA007315	101

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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332-JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395-JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401-JA007517	102/103

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	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518-JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520-JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524-JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
	Exhibit 10 (Part Two)	JA008142-JA008149	109

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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150-JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168-JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff's Motion to Dismiss	JA008171-JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178-JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215-JA008230	109
	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts	JA008323-JA008338	110

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	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111

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	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
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	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
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	Exhibit 10OO – Amended Notice of Appeal	JA008724-JA008729	113
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08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
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	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	JA008925-JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966-JA008986	117/118

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	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119
08-29-19	**Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)**	**JA009117-JA009123**	**119**

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01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**
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	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120
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05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
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	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
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	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
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06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's	JA009168-JA009182	114

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11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615-JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625-JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647-JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679-JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731-JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809-JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827-JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832-JA000837	12
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	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
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	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925-JA008947	116/117

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	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
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06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
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11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
08-21-17	**APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000393-JA000409**	**6/7**
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410-JA000412	7
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
11-15-17	**APCO Construction, Inc.'s Reply in Support of its Omnibus *Motion in Limine***	**JA001133 JA001148**	**21**

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06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
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04-26-10	**CAMCO and Fidelity's Answer and CAMCO's Counterclaim**	**JA000031-JA000041**	**1**
11-14-17	**Camco Pacific Construction Company, Inc.'s Opposition to Lien Claimants' Motions in Limine Nos. 1-6**	**JA000898-JA000905**	**12**
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906-JA000907	12
	Exhibit B – Scott Financial Corporation's April 28, 2009 letter to the Nevada State Contractor's Board	JA000908-JA000915	2/13
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06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
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04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**
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	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
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06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
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	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
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	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
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	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108 109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150-JA008167	109
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	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008323-JA008338	110
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110

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	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111
	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111

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	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008602-JA008621	112
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622-JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112

Date	Description	Bates Number	Volume(s)
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686-JA008693	112
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03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
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	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
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01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
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06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
09-28-18	**Notice of Entry of 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**	**JA007281-JA007299**	**100**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
07-02-18	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA007238-JA007245**	**100**
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01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
07-12-19	**Order Dismissing Appeal (Case No. 76276)**	**JA007332-JA007334**	**101**
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08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
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11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**
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	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001552-JA001560**	**27**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition**	**JA007190-JA007192**	**99**

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01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
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	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
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	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
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	Helix Trial Exhibits:		

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/67/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	**Transcript Bench Trial (Day 1)**[5]	**JA001668- JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981- JA001987	32

[5] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36
01-18-18	**Transcript – Bench Trial (Day 2)**[6]	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)**[7]	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80

[6] Filed January 31, 201879
[7] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[8]**	**JA005820-JA005952**	81
01-24-19	**Transcript for All Pending Fee Motions on July 19, 2018**	**JA007300-JA007312**	**100/101**

[8] Filed January 31, 2018

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EXHIBIT 3

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	CASE NO.: 08A571228 Consolidated with: A57192, A574391, A577623, A580889, A583289, A584730, and A587168

DEPOSITION OF DAVID E. PARRY

30(b)(6) of CAMCO PACIFIC CONSTRUCTION COMPANY, INC.

LAS VEGAS, NEVADA

TUESDAY, JUNE 20, 2017

REPORTED BY: KAREN L. JONES, CCR NO. 694
JOB NO.: 395562

DEPOSITION OF DAVID E. PARRY, taken at PEEL BRIMLEY, located at 3333 E. Serene Avenue, Suite 200, Las Vegas, Nevada, on Tuesday, June 20, 2017, at 9:13 a.m., before Karen L. Jones, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:

For Camco Pacific Construction Company:

GRANT MORRIS DODDS
BY: STEVEN L. MORRIS, ESQ.
10161 West Park Run Drive, Suite 230
Las Vegas, Nevada 89145

For Various Lien Claimants:

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BY: ERIC B. ZIMBELMAN, ESQ.
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CERTIFICATE OF REPORTER

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Karen L. Jones, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, DAVID E. PARRY, commencing on Tuesday, June 20, 2017, at 9:13 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 2nd day of July, 2017.

Karen L. Jones

KAREN L. JONES, CCR NO. 694

for a person most knowledgeable?

A. You're going back historically or going forward?

Q. No, I mean for today's purposes. There are a number of parties involved and a number of deposition notices that were issued by different parties.

A. Yes.

Q. Your understanding is you're the person designated for all of those, right?

A. Yes.

Q. I represent Helix Electric, among others, Heinaman, Fast Glass and Cactus Rose and a couple others, but I issued deposition notices for those four parties. They're essentially identical.

But I want to start by showing you one of them. We're going to go through the issues that I've asked the person to be designated to testify about, meaning you today, and confirm that you're the person most knowledgeable.

At least with respect to the deposition notices that I issued to you, they're identical, substantively identical except it might name a different party, the requesting party.

So with that --

Are you aware of any facts that would demonstrate that Helix failed to timely furnish its work, material or equipment on the project?

A. No.

Q. I have submitted to Camco virtually identical or at least substantively identical interrogatories, requests for permission, request for admission and request for production on behalf of Helix, Fast Glass, Inc., Cactus Rose Construction, Inc. and Heinaman Contract Glazing, Inc. And I'm happy to go through each one of those and ask these same questions of you.

But perhaps it would be simpler to just ask you whether your answer to the last series of questions would be any different for any of the other subcontractors I've just listed?

A. No.

MR. ZIMBELMAN: Why don't we take a short break.

(A discussion is held off the record.)

MR. ZIMBELMAN: Back on.

BY MR. ZIMBELMAN:

Q. We discussed Cactus Rose earlier and I think you said you don't even remember who they are.

Is that --

Q. When?

A. Years ago when this went to lawsuit.

Q. And did you produce any kind of documents or analysis that would explain what that value was that you had --

A. We submitted everything we had. I don't recall specifically what was included in the files.

Q. Was that some kind of a litigation document that wouldn't have been necessarily produced in discovery or would it have been a project-related document?

A. I don't know the answer to that.

Q. That's not something I've seen in your discovery responses, so ...

A. Okay.

Q. Interrogatory No. 14 asks you if you "have asserted or intend to assert any causes of action, counter-claims, cross-claims or any other similar claim against Helix."

Your response is that "Helix breached its agreement with Camco by seeking to hold Camco liable for Gemstone's and/or the project's failure to pay and/or secure payment for the work, materials and/or equipment allegedly furnished by Helix to the project."

I understand that Camco's position is that there's a pay-if-paid agreement, correct?

A. Yes.

Q. Do you know what a pay-if-paid agreement is?

A. Yes.

Q. What is your understanding?

MR. MORRIS: Objection. Calls for a legal conclusion.

You can answer.

THE WITNESS: It means that when Camco receives payment, we pay the subcontractor and if Camco does not, then we don't, in a nutshell.

BY MR. ZIMBELMAN:

Q. Right. And that's a fair answer from a contractor's perspective. I'm not looking for more than that.

Was it your understanding that all of the subcontractors agreed to only look to the owner or Nevada Construction Services for payment?

A. We always allowed subcontractors their lien rights. We never took legal rights away from them.

Q. That wasn't my question. My question was, was it your understanding that every

subcontractor agreed to only look directly to Gemstone or Nevada Construction Services for payment?

A. I believe so.

Q. And is there a written agreement with every subcontractor to that effect?

A. I believe that's correct.

Q. Now, other than -- and your response to Interrogatory No. 14 basically says that Helix breached the agreement by seeking payment from Camco in spite of the pay-if-paid agreement. Is that a fair restatement?

A. Yes.

Q. Are you aware of any other provision of the contract that Helix breached?

A. I don't recall any other.

(Exhibit 25 marked.)

MR. ZIMBELMAN: Counsel, Exhibit 25 is going to be the Camco Reply to Helix's Request For Admissions.

BY MR. ZIMBELMAN:

Q. Exhibit 25 is Camco's Reply to Helix's Request For Admission. And were you also involved in responding to these requests?

(Witness and counsel confer out of

Are you disputing the amount of the invoice or are you disputing to whom Helix invoiced those amounts?

A. I'm not sure how to answer that.

Q. Do you have any knowledge, evidence, facts that Helix did not invoice Camco or Gemstone for work when Camco was the general contractor --

A. No.

Q. -- in the amount of 760,471.58, can you dispute that?

A. I don't know about the amount. I know they did invoice. I can't tell you about the amount.

Q. Who did Helix invoice? Did they send invoices to Camco?

A. Yes.

Q. And those invoices, did Camco use those invoices in part to help prepare Camco's own payment application documents such as we looked at earlier?

A. Yes.

Q. So just so I'm clear, Camco has denied that Helix invoiced Camco 760,471.58. But as you sit here today, you're not aware of any facts that would dispute that?

A. No.

Q. And you, again, are the person most knowledgeable with respect to Helix's invoicing to Camco, correct?

A. Yes.

Q. No. 9 asks Camco to "Admit that Gemstone and/or Camco and/or Nevada Construction Services paid Helix 175,778.80 for its work at the project." And, again, Camco has denied this request.

Do you -- without consulting with your counsel, do you have the ability to state whether Helix was paid 175,778.80 for its work on the project by Gemstone and/or Camco and/or Nevada Construction Services?

A. I don't know. I know they were not paid by Camco.

Q. That they were paid by somebody. Can you dispute the amount that Helix is alleging it was paid?

A. I can't without going through the documents.

Q. And the documents would be those that are in, that were produced pursuant to our Rule 16.1?

A. Right.

Q. The 3,122 pages of materials, correct?

A. I don't know how many pages there are, but the documents we produced, correct.

Q. Request No. 10, asks Camco to "Admit that Helix is still owed at least 584,778.80 from Camco for work performed at the project."

Other than your position that Camco was not obligated to pay Helix because of the pay-if-paid agreement, what basis do you have to deny that Helix is still owed at least 584,778.80?

MR. MORRIS: Object to form.

You can answer if you know.

THE WITNESS: Camco -- all payments on this project were paid directly to subcontractors, so Camco never received this money to pay Helix.

BY MR. ZIMBELMAN:

Q. Right. And other than the fact that -- and I understand the legal position that Camco is taking that there's no obligation to pay because -- because of a pay-if-paid agreement.

Other than that, are you aware that the number that Helix claims it is still owed is incorrect?

A. I don't know what the number is that Helix is still owed.

Q. Looking at Interrogatory -- excuse me,

Request for Admission No. 14, "Admit that Helix duly recorded its Mechanic's Lien on the project in the official records of Clark County."

Camco's response is "Camco responds to Request No. 14 by stating that Camco admits that many subcontractors and suppliers recorded their Mechanic's Liens on the project, but Camco cannot admit or deny that Helix duly recorded its Mechanic's Lien on the project.

What effort have you undertaken on behalf of Camco, if any, to determine whether or not Helix duly recorded a Mechanic's Lien on the project?

A. I haven't done anything to.

Q. And, therefore, you can't dispute that they did so, correct?

A. Correct.

Q. Furthermore, Request No. 15 asks Camco to admit that Helix's Mechanic's Lien on the project was served as required by Nevada law."

"Camco responds to this Request No. 15 by stating that Camco admits that many subcontractors and suppliers served their Mechanic's Liens on the project, but Camco cannot admit or deny that Helix served its Mechanic's Lien on the project

as required by Nevada law."

Same question, what effort, if any, did you take to evaluate whether or not Helix served its Mechanic's Lien on the project as required by Nevada law?

A. I did nothing.

Q. And, therefore, you cannot dispute that they have done so, correct?

A. No -- yes, correct.

Q. And Request No. 16 asks Camco to "Admit that Helix has complied with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the project."

"Camco responds to Request No. 16 by stating that Camco admits that many subcontractors and suppliers perfected their Mechanic's Liens on the project, but Camco cannot admit or deny that Helix properly perfected its Mechanic's Lien on the project."

Same question what effort, if any, did you take to evaluate whether or not Helix properly perfected its Mechanic's Lien on the project?

A. I did nothing.

Q. And, again, that means that you can also not dispute that, correct?

A. That's correct.

Q. Request No. 17 asks Camco to "Admit that you are not in possession of any facts that Helix has failed to comply with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the project."

Camco has denied this.

So my question for you is what facts are you aware of that Helix failed to comply with the -- all the requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien?

MR. MORRIS: Object to form to the extent it calls for legal conclusions.

THE WITNESS: I'm not aware of any facts.

BY MR. ZIMBELMAN:

Q. Request No. 18 asks Camco to "Admit that Camco does not dispute that Helix's Mechanic's Lien on the project is a valid and enforceable lien."

Camco has denied this request, as well.

What facts are you aware that that would support the conclusion that Helix's Mechanic's Lien is not valid and enforceable?

MR. MORRIS: Same objection.

THE WITNESS: I have no facts.

BY MR. ZIMBELMAN:

Q. Request 19 says "Admit that there are no defects in the work, material and/or equipment furnished by Helix on the project."

And Camco has denied this request.

What facts are you aware of as to any defects in the work, material or equipment furnished by Helix on the project?

A. I'm not aware of any facts at this time.

Q. And similarly, No. 20 asks to you "Admit that you are not in possession of any facts that Helix's work at the project was defective, not completed in a workmanlike manner, and/or not in compliance with the subcontract and the plans and specifications."

Camco has denied that request.

Are you aware of any facts demonstrating that Helix's work was defective or not completed in a workmanlike manner or not in compliance with the subcontract or the plans and specifications?

A. No.

Q. Lastly, Request 21 asks Camco to "Admit that Helix timely furnished its work material and/or equipment on the project."

And Camco again denied that request.

Are you aware of any facts that would demonstrate that Helix failed to timely furnish its work, material or equipment on the project?

A. No.

Q. I have submitted to Camco virtually identical or at least substantively identical interrogatories, requests for permission, request for admission and request for production on behalf of Helix, Fast Glass, Inc., Cactus Rose Construction, Inc. and Heinaman Contract Glazing, Inc. And I'm happy to go through each one of those and ask these same questions of you.

But perhaps it would be simpler to just ask you whether your answer to the last series of questions would be any different for any of the other subcontractors I've just listed?

A. No.

MR. ZIMBELMAN: Why don't we take a short break.

(A discussion is held off the record.)

MR. ZIMBELMAN: Back on.

BY MR. ZIMBELMAN:

Q. We discussed Cactus Rose earlier and I think you said you don't even remember who they are.

Is that --

EXHIBIT 4

ELECTRONICALLY SERVED
04/14/2017 03:58:47 PM

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, Vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **CACTUS ROSE CONSTRUCTION, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

///

///

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Cactus Rose Construction, Inc. ("Cactus Rose"), by and through its counsel of record, Eric Zimbelman of the law firm PEEL BRIMLEY, LLP, requests that Camco Pacific Construction Co., Inc. ("Camco"), respond to Cactus Rose's First Set of Requests for Admissions set forth below under oath and within thirty (30) days of service hereof in accordance with the provisions of Rule 36 of Nev. R. Civ. P.

GENERAL INSTRUCTIONS

Pursuant to Nev. R. Civ. P. Rule 36, you must serve your written answer to objection to each request upon the requesting parties' attorney within thirty (30) days of service of this Request for Admissions upon you. The answers or objections must be signed by you or your attorney. Failure to answer or object within thirty (30) days is deemed an admission.

An answer shall admit the Request, specifically deny the matter or set forth in detail the reason why you cannot truthfully admit or deny the matter.

You may not give lack of information or knowledge as a reason for failing to admit or deny unless you have made a reasonable inquiry and after such reasonable inquiry the information known or readily obtainable is still insufficient for you to admit or deny.

If you fail to admit the genuineness of any document or truth of any matter requested in this Request for Admission, and if the adverse party thereafter proves the genuineness of the document or the truth of the matter, they may apply to the court for an order requiring you to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

If you respond to a Request for Admission with a response that is complete when made, you are nevertheless under a duty to supplement the response to include information thereafter acquired:

a. With respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or to the identity of each person excepted to be called as a witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

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b. If you obtain information that shows (failure to amend your response in light of such information is in substance a knowing concealment) your earlier response was incorrect when made, or your earlier response, although correct when made, is no longer true.

DEFINITIONS

1. "You" and "Your" means the names of the party or parties to whom these Request for Admissions are directed and all parties acting on behalf of such party or parties, including but not limited to, attorneys and their associates and employees, investigators, agents, employee, representatives, or other who are in possession of or who may have obtained information for or on behalf on the party or parties to whom these Request for Admissions are directed.

2. The singular number and the masculine gender include the plural or the feminine or neuter, as circumstances may make appropriate.

3. The word "person" means, in the plural as well as in the singular, any natural person, firm, association, partnership or other form of legal entity, as the case may be.

4. "Document" or "Documents" shall have their customary broad meanings and shall include, without limitations, all originals, copies and drafts of any written, typewritten, recorded, transcribed, printed, taped, photographic, or graphic matter, however reproduced, whether reports, records, studies, transcripts, diaries, formal, informal, audited and unedited financial statements, account statements, brokerage slips, working papers, notes, notations, charts, lists. Comparisons, telegrams, cables, telefax, telegraph, and telex messages, communication, including reports, notes notations, and memorandum of, or relating to, telephone cogenerations and conferences, minutes, transcription, correspondence, or offering circulars, graphs, tabulations, analyses, evaluation, projections, statements, summaries, desk calendars, appointment books, telephone logs, questionnaires, surveys, tapes, computer inputs, and outputs, microfilm, magnetic tapes and photographs within the possession or custody, or under the control of defendants. Different versions of the same documents,

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handwritten notation or marks not found in the original or on other copies are different documents.

5 Reference herein to an entity included reference to the current and former officers, directors, agents, partners, managers and attorneys of such entities.

These requests are continuing Request for Admissions and require additional or supplemental answers if you obtain further information with respect to the same between the time of your initial answers are served and the time of trial.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1:

Admit that You were hired by Gemstone Development West, Inc. ("Gemstone") to act as the general contractor for the Manhattan West Multi-Mix Development Project ("Project").

REQUEST NO. 2:

Admit that, after you were hired by Gemstone, You hired Cactus Rose to perform work at the Project.

REQUEST NO. 3:

Admit that You directed Cactus Rose to perform work at the Project.

REQUEST NO. 4:

Admit that You were aware Cactus Rose was performing work at the Project.

REQUEST NO. 5:

Admit that in exchange for performing the work at the Project, Cactus Rose was to be paid.

REQUEST NO. 6:

Admit that Cactus Rose did, in fact, furnish work, materials and/or equipment on the Project while you were working for Gemstone as its general contractor.

REQUEST NO. 7:

Admit that Cactus Rose was unable to complete its work at the Project through no fault of its own.

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REQUEST NO. 8:

Admit that Cactus Rose invoiced Camco $363,591.44 for its work at the project.

REQUEST NO. 9:

Admit that Gemstone and/or Camco and/or Nevada Construction Services paid Cactus Rose $124,964.19 for its work at the project.

REQUEST NO. 10:

Admit that Cactus Rose is still owed at least $238,627.25 from Camco for work performed at the Project.

REQUEST NO. 11:

Admit that Camco violated NRS 624.609 by improperly withholding payments due to Cactus Rose.

REQUEST NO. 12:

Admit that Camco knew, or should have known, that Cactus Rose expected to be paid for its work at the Project.

REQUEST NO. 13:

Admit that by not paying Cactus Rose, Camco has been unjustly enriched to the detriment of Cactus Rose.

REQUEST NO. 14:

Admit that Cactus Rose duly recorded its Mechanic's Lien on the Project in the official records of Clark County.

REQUEST NO. 15:

Admit that Cactus Rose's Mechanic's Lien on the Project was served as required by Nevada law.

REQUEST NO. 16:

Admit that Cactus Rose has complied with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

///

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REQUEST NO. 17:

Admit that You are not in possession of any facts that Cactus Rose has failed to comply with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

REQUEST NO. 18:

Admit that Camco does not dispute that Cactus Rose's Mechanic's Lien on the Project is a valid and enforceable lien.

REQUEST NO. 19:

Admit that there are no defects in the work, material, and/or equipment furnished by Cactus Rose on the Project.

REQUEST NO. 20:

Admit that You are not in possession of any facts that Cactus Rose's work at the Project was defective, not completed in a workmanlike manner and/or not in compliance with the subcontract or the plans and specifications.

REQUEST NO. 21:

Admit that Cactus Rose timely furnished its work, material and/or equipment on the Project.

Dated this 14 day of April, 2017.

PEEL BRIMLEY LLP

Steven Meacham #9863

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 14th day of April, 2017, I caused the above and foregoing document, **CACTUS ROSE CONSTRUCTION, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

E-Service Master List For Case
Apco Construction, Plaintiff(s) vs. Gemstone Development West Inc, Defendant(s)

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Marisa L. Maskas, Esq.	mmaskas@pezzillolloyd.com

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Lani Maile	Lani.Maile@wilsonelser.com
I-Che Lai	I-Che.Lai@wilsonelser.com

An employee of PEEL BRIMLEY, LLP

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EXHIBIT 5

ELECTRONICALLY SERVED
04/14/2017 03:59:46 PM

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RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
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rpeel@peelbrimley.com
Attorneys for Fast Glass, Inc.

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **FAST GLASS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

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Fast Glass, Inc. ("Fast Glass"), by and through its counsel of record, Eric Zimbelman of the law firm PEEL BRIMLEY, LLP, requests that Camco Pacific Construction Co., Inc. ("Camco"), respond to Fast Glass's First Set of Requests for Admissions set forth below under oath and within thirty (30) days of service hereof in accordance with the provisions of Rule 36 of Nev. R. Civ. P.

GENERAL INSTRUCTIONS

Pursuant to Nev. R. Civ. P. Rule 36, you must serve your written answer to objection to each request upon the requesting parties' attorney within thirty (30) days of service of this Request for Admissions upon you. The answers or objections must be signed by you or your attorney. Failure to answer or object within thirty (30) days is deemed an admission.

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If you fail to admit the genuineness of any document or truth of any matter requested in this Request for Admission, and if the adverse party thereafter proves the genuineness of the document or the truth of the matter, they may apply to the court for an order requiring you to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

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DEFINITIONS

1. "You" and "Your" means the names of the party or parties to whom these Request for Admissions are directed and all parties acting on behalf of such party or parties, including but not limited to, attorneys and their associates and employees, investigators, agents, employee, representatives, or other who are in possession of or who may have obtained information for or on behalf on the party or parties to whom these Request for Admissions are directed.

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3. The word "person" means, in the plural as well as in the singular, any natural person, firm, association, partnership or other form of legal entity, as the case may be.

4. "Document" or "Documents" shall have their customary broad meanings and shall include, without limitations, all originals, copies and drafts of any written, typewritten, recorded, transcribed, printed, taped, photographic, or graphic matter, however reproduced, whether reports, records, studies, transcripts, diaries, formal, informal, audited and unedited financial statements, account statements, brokerage slips, working papers, notes, notations, charts, lists. Comparisons, telegrams, cables, telefax, telegraph, and telex messages, communication, including reports, notes notations, and memorandum of, or relating to, telephone cogenerations and conferences, minutes, transcription, correspondence, or offering circulars, graphs, tabulations, analyses, evaluation, projections, statements, summaries, desk calendars, appointment books, telephone logs, questionnaires, surveys, tapes, computer inputs, and outputs, microfilm, magnetic tapes and photographs within the possession or custody, or under the control of defendants. Different versions of the same documents,

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5 Reference herein to an entity included reference to the current and former officers, directors, agents, partners, managers and attorneys of such entities.

These requests are continuing Request for Admissions and require additional or supplemental answers if you obtain further information with respect to the same between the time of your initial answers are served and the time of trial.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1:

Admit that You were hired by Gemstone Development West, Inc. ("Gemstone") to act as the general contractor for the Manhattan West Multi-Mix Development Project ("Project").

REQUEST NO. 2:

Admit that, after you were hired by Gemstone, You hired Fast Glass to perform work at the Project.

REQUEST NO. 3:

Admit that You directed Fast Glass to perform work at the Project.

REQUEST NO. 4:

Admit that You were aware Fast Glass was performing work at the Project.

REQUEST NO. 5:

Admit that in exchange for performing the work at the Project, Fast Glass was to be paid.

REQUEST NO. 6:

Admit that Fast Glass did, in fact, furnish work, materials and/or equipment on the Project while you were working for Gemstone as its general contractor.

REQUEST NO. 7:

Admit that Fast Glass was unable to complete its work at the Project through no fault of its own.

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REQUEST NO. 8:

Admit that Fast Glass invoiced Camco $199,000.00 for its work at the project.

REQUEST NO. 9:

Admit that Gemstone and/or Camco and/or Nevada Construction Services paid Fast Glass $0.00 for its work at the project.

REQUEST NO. 10:

Admit that Fast Glass is still owed at least $199,000.00 from Camco for work performed at the Project.

REQUEST NO. 11:

Admit that Camco violated NRS 624.609 by improperly withholding payments due to Fast Glass.

REQUEST NO. 12:

Admit that Camco knew, or should have known, that Fast Glass expected to be paid for its work at the Project.

REQUEST NO. 13:

Admit that by not paying Fast Glass, Camco has been unjustly enriched to the detriment of Fast Glass.

REQUEST NO. 14:

Admit that Fast Glass duly recorded its Mechanic's Lien on the Project in the official records of Clark County.

REQUEST NO. 15:

Admit that Fast Glass's Mechanic's Lien on the Project was served as required by Nevada law.

REQUEST NO. 16:

Admit that Fast Glass has complied with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

///

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REQUEST NO. 17:

Admit that You are not in possession of any facts that Fast Glass has failed to comply with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

REQUEST NO. 18:

Admit that Camco does not dispute that Fast Glass's Mechanic's Lien on the Project is a valid and enforceable lien.

REQUEST NO. 19:

Admit that there are no defects in the work, material, and/or equipment furnished by Fast Glass on the Project.

REQUEST NO. 20:

Admit that You are not in possession of any facts that Fast Glass's work at the Project was defective, not completed in a workmanlike manner and/or not in compliance with the subcontract or the plans and specifications.

REQUEST NO. 21:

Admit that Fast Glass timely furnished its work, material and/or equipment on the Project.

Dated this 14 day of April, 2017.

PEEL BRIMLEY LLP

Steven Meacham #9863

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of April, 2017, I caused the above and foregoing document, **FAST GLASS, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, Vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **HEINAMAN CONTRACT GLAZING, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

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Heinaman Contract Glazing, Inc. ("Heinaman"), by and through its counsel of record, Eric Zimbelman of the law firm PEEL BRIMLEY, LLP, requests that Camco Pacific Construction Co., Inc. ("Camco"), respond to Heinaman's First Set of Requests for Admissions set forth below under oath and within thirty (30) days of service hereof in accordance with the provisions of Rule 36 of Nev. R. Civ. P.

GENERAL INSTRUCTIONS

Pursuant to Nev. R. Civ. P. Rule 36, you must serve your written answer to objection to each request upon the requesting parties' attorney within thirty (30) days of service of this Request for Admissions upon you. The answers or objections must be signed by you or your attorney. Failure to answer or object within thirty (30) days is deemed an admission.

An answer shall admit the Request, specifically deny the matter or set forth in detail the reason why you cannot truthfully admit or deny the matter.

You may not give lack of information or knowledge as a reason for failing to admit or deny unless you have made a reasonable inquiry and after such reasonable inquiry the information known or readily obtainable is still insufficient for you to admit or deny.

If you fail to admit the genuineness of any document or truth of any matter requested in this Request for Admission, and if the adverse party thereafter proves the genuineness of the document or the truth of the matter, they may apply to the court for an order requiring you to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

If you respond to a Request for Admission with a response that is complete when made, you are nevertheless under a duty to supplement the response to include information thereafter acquired:

a. With respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or to the identity of each person excepted to be called as a witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

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b. If you obtain information that shows (failure to amend your response in light of such information is in substance a knowing concealment) your earlier response was incorrect when made, or your earlier response, although correct when made, is no longer true.

DEFINITIONS

1. "You" and "Your" means the names of the party or parties to whom these Request for Admissions are directed and all parties acting on behalf of such party or parties, including but not limited to, attorneys and their associates and employees, investigators, agents, employee, representatives, or other who are in possession of or who may have obtained information for or on behalf on the party or parties to whom these Request for Admissions are directed.

2. The singular number and the masculine gender include the plural or the feminine or neuter, as circumstances may make appropriate.

3. The word "person" means, in the plural as well as in the singular, any natural person, firm, association, partnership or other form of legal entity, as the case may be.

4. "Document" or "Documents" shall have their customary broad meanings and shall include, without limitations, all originals, copies and drafts of any written, typewritten, recorded, transcribed, printed, taped, photographic, or graphic matter, however reproduced, whether reports, records, studies, transcripts, diaries, formal, informal, audited and unedited financial statements, account statements, brokerage slips, working papers, notes, notations, charts, lists. Comparisons, telegrams, cables, telefax, telegraph, and telex messages, communication, including reports, notes notations, and memorandum of, or relating to, telephone cogenerations and conferences, minutes, transcription, correspondence, or offering circulars, graphs, tabulations, analyses, evaluation, projections, statements, summaries, desk calendars, appointment books, telephone logs, questionnaires, surveys, tapes, computer inputs, and outputs, microfilm, magnetic tapes and photographs within the possession or custody, or under the control of defendants. Different versions of the same documents,

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handwritten notation or marks not found in the original or on other copies are different documents.

5 Reference herein to an entity included reference to the current and former officers, directors, agents, partners, managers and attorneys of such entities.

These requests are continuing Request for Admissions and require additional or supplemental answers if you obtain further information with respect to the same between the time of your initial answers are served and the time of trial.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1:

Admit that You were hired by Gemstone Development West, Inc. ("Gemstone") to act as the general contractor for the Manhattan West Multi-Mix Development Project ("Project").

REQUEST NO. 2:

Admit that, after You were hired by Gemstone, You hired Heinaman to perform work at the Project.

REQUEST NO. 3:

Admit that You directed Heinaman to perform work at the Project.

REQUEST NO. 4:

Admit that You were aware Heinaman was performing work at the Project.

REQUEST NO. 5:

Admit that in exchange for performing the work at the Project, Heinaman was to be paid.

REQUEST NO. 6:

Admit that Heinaman did, in fact, furnish work, materials and/or equipment on the Project while you were working for Gemstone as its general contractor.

REQUEST NO. 7:

Admit that Heinaman was unable to complete its work at the Project through no fault of its own.

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REQUEST NO. 8:

Admit that Heinaman invoiced Camco $302,252.11 for its work at the project.

REQUEST NO. 9:

Admit that Gemstone and/or Camco and/or Nevada Construction Services paid Heinaman $114,826.85 for its work at the project.

REQUEST NO. 10:

Admit that Heinaman is still owed at least $187,525.26 from Camco for work performed at the Project.

REQUEST NO. 11:

Admit that Camco violated NRS 624.609 by improperly withholding payments due to Heinaman.

REQUEST NO. 12:

Admit that Camco knew, or should have known, that Heinaman expected to be paid for its work at the Project.

REQUEST NO. 13:

Admit that by not paying Heinaman, Camco has been unjustly enriched to the detriment of Heinaman.

REQUEST NO. 14:

Admit that Heinaman duly recorded its Mechanic's Lien on the Project in the official records of Clark County.

REQUEST NO. 15:

Admit that Heinaman's Mechanic's Lien on the Project was served as required by Nevada law.

REQUEST NO. 16:

Admit that Heinaman has complied with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

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REQUEST NO. 17:

Admit that You are not in possession of any facts that Heinaman has failed to comply with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

REQUEST NO. 18:

Admit that Camco does not dispute that Heinaman's Mechanic's Lien on the Project is a valid and enforceable lien.

REQUEST NO. 19:

Admit that there are no defects in the work, material, and/or equipment furnished by Heinaman on the Project.

REQUEST NO. 20:

Admit that You are not in possession of any facts that Heinaman's work at the Project was defective, not completed in a workmanlike manner and/or not in compliance with the subcontract or the plans and specifications.

REQUEST NO. 21:

Admit that Heinaman timely furnished its work, material and/or equipment on the Project.

Dated this 14 day of April, 2017.

PEEL BRIMLEY LLP

Steven Meacham #9863

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 14th day of April, 2017, I caused the above and foregoing document, **HEINAMAN CONTRACT GLAZING, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

Vs.

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

Defendants.

AND ALL RELATED MATTERS.

Case No. : 08A571228
Dept. No. : XIII

Consolidated with:
A571792, A574391, A577623, A580889, A583289, A584730, and A587168

HELIX ELECTRIC OF NEVADA, LLC'S FIRST SET OF REQUESTS FOR ADMISSIONS CAMCO PACIFIC CONSTRUCTION

TO: CAMCO PACIFIC CONSTRUCTION CO., INC.; and

TO: Steven L. Morris, Esq. of GRANT MORRIS DODDS, its attorneys of record

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Helix Electric of Nevada, LLC, ("Helix), by and through its counsel of record, Eric Zimbelman of the law firm PEEL BRIMLEY, LLP, requests that Camco Pacific Construction Co., Inc. ("Camco"), respond to Helix's First Set of Requests for Admissions set forth below under oath and within thirty (30) days of service hereof in accordance with the provisions of Rule 36 of Nev. R. Civ. P.

GENERAL INSTRUCTIONS

Pursuant to Nev. R. Civ. P. Rule 36, you must serve your written answer to objection to each request upon the requesting parties' attorney within thirty (30) days of service of this Request for Admissions upon you. The answers or objections must be signed by you or your attorney. Failure to answer or object within thirty (30) days is deemed an admission.

An answer shall admit the Request, specifically deny the matter or set forth in detail the reason why you cannot truthfully admit or deny the matter.

You may not give lack of information or knowledge as a reason for failing to admit or deny unless you have made a reasonable inquiry and after such reasonable inquiry the information known or readily obtainable is still insufficient for you to admit or deny.

If you fail to admit the genuineness of any document or truth of any 1natter requested in this Request for Admission, and if the adverse party thereafter proves the genuineness of the document or the truth of the matter, they may apply to the cou1t for an order requiring you to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

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a. With respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or to the identity of each person excepted to be called as a witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

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b. If you obtain information that shows (failure to amend your response in light of such information is in substance a knowing concealment) your earlier response was incorrect when made, or your earlier response, although correct when made, is no longer true.

DEFINITIONS

1. "You" and "Your" means the names of the party or parties to whom these Request for Admissions are directed and all parties acting on behalf of such party or parties, including but not limited to, attorneys and their associates and employees, investigators, agents, employee, representatives, or other who are in possession of or who may have obtained information for or on behalf on the party or parties to whom these Request for Admissions are directed.

2. The singular number and the masculine gender include the plural or the feminine or neuter, as circumstances may make appropriate.

3. The word "person" means, in the plural as well as in the singular, any natural person, firm, association, partnership or other form of legal entity, as the case may be.

4. "Document" or "Documents" shall have their customary broad meanings and shall include, without limitations, all originals, copies and drafts of any written, typewritten, recorded, transcribed, printed, taped, photographic, or graphic matter, however reproduced, whether reports, records, studies, transcripts, diaries, formal, informal, audited and unedited financial statements, account statements, brokerage slips, working papers, notes, notations, charts, lists. Comparisons, telegrams, cables, telefax, telegraph, and telex messages, communication, including reports, notes notations, and memorandum of, or relating to, telephone cogenerations and conferences, minutes, transcription, correspondence, or offering circulars, graphs, tabulations, analyses, evaluation, projections, statements, summaries, desk calendars, appointment books, telephone logs, questionnaires, surveys, tapes, computer inputs, and outputs, microfilm, magnetic tapes and photographs within the possession or custody, or under the control of defendants. Different versions of the same documents,

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handwritten notation or marks not found in the original or on other copies are different documents.

5 Reference herein to an entity included reference to the current and former officers, directors, agents, partners, managers and attorneys of such entities.

These requests are continuing Request for Admissions and require additional or supplemental answers if you obtain further information with respect to the same between the time of your initial answers are served and the time of trial.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1:

Admit that You were hired by Gemstone Development West, Inc. ("Gemstone") to act as the general contractor for the Manhattan West Multi-Mix Development Project ("Project").

REQUEST NO. 2:

Admit that, after you were hired by Gemstone, You hired Helix to perform work at the Project.

REQUEST NO. 3:

Admit that You directed Helix to perform work at the Project.

REQUEST NO. 4:

Admit that You were aware Helix was performing work at the Project.

REQUEST NO. 5:

Admit that in exchange for performing the work at the Project, Helix was to be paid.

REQUEST NO. 6:

Admit that Helix did, in fact, furnish work, materials and/or equipment on the Project while you were working for Gemstone as its general contractor.

REQUEST NO. 7:

Admit that Helix was unable to complete its work at the Project through no fault of its own.

///

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REQUEST NO. 8:

Admit that Helix invoiced Camco $760,471.58 for its work at the project.

REQUEST NO. 9:

Admit that Gemstone and/or Camco and/or Nevada Construction Services paid Helix $175,778.80 for its work at the project.

REQUEST NO. 10:

Admit that Helix is still owed at least $584,778.80 from Camco for work performed at the Project.

REQUEST NO. 11:

Admit that Camco violated NRS 624.609 by improperly withholding payments due to Helix.

REQUEST NO. 12:

Admit that Camco knew, or should have known, that Helix expected to be paid for its work at the Project.

REQUEST NO. 13:

Admit that by not paying Helix, Camco has been unjustly enriched to the detriment of Helix.

REQUEST NO. 14:

Admit that Helix duly recorded its Mechanic's Lien on the Project in the official records of Clark County.

REQUEST NO. 15:

Admit that Helix's Mechanic's Lien on the Project was served as required by Nevada law.

REQUEST NO. 16:

Admit that Helix has complied with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

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REQUEST NO. 17:

Admit that you are not in possession of any facts that Helix has failed to comply with all requirements of the Nevada Revised Statutes to perfect its Mechanic's Lien against the Project.

REQUEST NO. 18:

Admit that Camco does not dispute that Helix's Mechanic's Lien on the Project is a valid and enforceable lien.

REQUEST NO. 19:

Admit that there are no defects in the work, material, and/or equipment furnished by Helix on the Project.

REQUEST NO. 20:

Admit that you are not in possession of any facts that Helix's work at the Project was defective, not completed in a workmanlike manner and/or not in compliance with the subcontract or the plans and specifications.

REQUEST NO. 21:

Admit that Helix timely furnished its work, material and/or equipment on the Project.

Dated this 14 day of April, 2017.

PEEL BRIMLEY LLP

Steven Meachan #9863

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of April, 2017, I caused the above and foregoing document, **HELIX ELECTRIC OF NEVADA, LLC'S FIRST SET OF REQUESTS FOR ADMISSIONS TO CAMCO PACIFIC CONSTRUCTION**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **HELIX ELECTRIC OF NEVADA'S MOTIONS IN LIMINE NOS. 1-4 (Against APCO Construction)** **Hearing Date (per prior Order):** **November 16, 2017** **9:00 A.M.**
AND ALL RELATED MATTERS.	

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HELIX ELECTRIC OF NEVADA'S MOTIONS IN LIMINE NOS. 1-4
(Against APCO Construction)

COMES NOW HELIX ELECTRIC OF NEVADA, LLC ("Helix") and does hereby submit the following Motions in Limine Nos. 1-4 against APCO Construction("APCO"). This Motion is based on the Memorandum of Points and Authorities in Support of this Motion that follows, the pleadings and papers on file, and such matters as may be considered by the Court.

DATED this 6th day of November 2017.

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INTRODUCTION/SUMMARY OF ARGUMENT

By way of this Court's Order dated October 24, 2017,[1] "Motions in Limine can be filed on or by November 5, 2017."[2] The Order further provides that such motions in limine "shall be heard by the Court of November 16, 2017 at 9:00 a.m." [Id.]. Helix brings the present Motion in Limine Nos. 1-4 seeking to bar APCO Construction ("APCO") from offering any evidence or asserting:

1. That any of Helix's work on the Manhattan West Project that is the subject of this action ("the Project") was defective;

///

[1] The Order, made orally at a hearing on October 5, 2017, was filed on October 26, 2017 and a Notice of Entry was made on October 30, 2017. [*See* **Exhibit 1**].

[2] Because November 5, 2017 is a Sunday, this Motion is timely if filed on Monday November 6, 2017.

2. That any of Helix's work on the Project was not done in a workmanlike manner;

3. That any of Helix's work on the Project was not done in compliance with the terms of the parties' agreement; and

4. That any of the pay applications submitted by Helix – and the amounts claimed to be earned on the same - were in any way incorrect, overstated or otherwise subject to dispute.

These Motions in Limine should be granted because APCO's Person Most Knowledgeable testified that he is not aware of any facts to support such claims.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

As the Court is aware, this action arises out of the construction of the Manhattan West Condominiums in Las Vegas. Construction ceased in 2008 and this action wound its way through the District Court and the Nevada Supreme Court for the past nine years, culminating in the Nevada Supreme Court's determination that the lender has priority over the various lien claimants, including Helix, to the proceeds of the sale of the applicable property and improvements. Trial is now scheduled to commence on the remaining claims between and among the various subcontractors, including Helix, and the two prime contractors, APCO and Camco Pacific.

On June 5, 2017 and July 18-19, 2017, APCO presented its Persons Most Knowledgeable for deposition in response to a notice of deposition issued by Helix. [*See* **Exhibit 2**]. APCO designated Brian Benson to testify on all matters other than payments and financial issues. [*See* **Exhibit 3**, Benson Dep. Excerpts, 66:9-14 and Ex. 14]. APCO designated Mary Jo Allen for all of those issues. [*See* **Exhibit 4**, Allen Dep., Vol. I, Excerpts, 5:18-22].

Benson testified, among other things, as follows:

- APCO did not encounter any problems with Helix's work on the project. [Benson Dep. 57:9-12].
- He (as the PMK) was not aware of any specific defective work performed by Helix. [Benson Dep. 75:3-5].4

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- He (as the PMK) was not aware that the project owner had alleged any specific defective work performed by Helix. [Benson Dep. 75:6-8].
- He (as the PMK) was not aware that anyone else at APCO was aware of any defective work having been performed by Helix. [Benson Dep. 75:9-13].
- He (as the PMK) was not aware that the project owner had alleged any specific defective work performed by Helix. [Benson Dep. 75:6-8].
- His supervisor, APCO Project Manager Randy Nickerl, never made him aware of any defective work by Helix. [Benson Dep. 75:22-24].
- Similarly, he was not aware of, not did anyone make him aware of any work done by Helix that was not done in a workmanlike manner or in compliance with the subcontract. [Benson Dep. 75:24 – 76:21].

For her part, Ms. Allen testified that APCO received, compiled and submitted Helix's certified pay applications with APCO's own certified pay applications to the project owner, Gemstone. [See Allen Dep., Vol. I, 11:12–16:8]. More specifically, APCO compiled every line item for every subcontractor (including Helix) and inputted that information into APCO's percentage of completion document that accompanied APCO's pay applications. [Allen Dep., Vol. I, 16:4-8]. Further, Allen acknowledged that APCO's pay applications to Gemstone included a certification to the owner that the application includes work which has been completed in accordance with the contract documents and should be paid. [Allen Dep., Vol. II, 198:9-24]. APCO chose to accept the owner's approval of subcontractors' percentages of completion without substantial review by APCO and pass those approved percentages through. [Allen Dep., Vol. II, 198:5-8].

II. DISCUSSION

A. APCO Has No Evidence Of Defective Work by Helix

As demonstrated above, APCO's PMK was not aware of any evidence or even allegations of defective work by Helix. Based on this admission on behalf of APCO, APCO should be barred from presenting any contrary evidence.

///

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B. APCO Has No Evidence Of Unworkmanlike Work by Helix

As demonstrated above, APCO's PMK was not aware of any evidence or even allegations of any work performed by Helix in other than a workmanlike manner. Based on this admission on behalf of APCO, APCO should be barred from presenting any contrary evidence.

C. APCO Has No Evidence Of Non-Conforming Work by Helix

As demonstrated above, APCO's PMK was not aware of any evidence or even allegations of any work performed by Helix that did not conform to the contract documents. Based on this admission on behalf of APCO, APCO should be barred from presenting any contrary evidence.

D. APCO Certified And Affirmed Helix's Pay Applications And Cannot Contest Them Now.

In its own payment applications to the Owner APCO, certified and affirmed Helix's payment applications by adopting the information provided by Helix (and approved by the owner). Having so certified, APCO should be barred from now seeking to contest the information Helix submitted more than 9 years ago.

CONCLUSION

Based on the foregoing, Helix respectfully requests that the Court grant the foregoing Helix Motions in Limine Nos. 1-4.

DATED this 6th day of November 2017.

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DECLARATION OF ERIC B. ZIMBELMAN IN SUPPORT OF HELIX ELECTRIC OF NEVADA'S MOTIONS IN LIMINE NOS. 1-4 (Against APCO Construction)

I, Eric B. Zimbelman, Esq., declare as follows:

1. I am a Partner at Peel Brimley LLP and represent Defendant Helix Electric of Nevada ("Helix") in the above captioned matter. I have personal knowledge of the facts stated herein, and I am competent to testify to their truthfulness if called upon to do so.

2. Pursuant EDCR 2.47, on or about November 6, 2017, I conferred with counsel for APCO Construction ("APCO"), Mary Bacon, Esq. regarding Helix's proposed Motions in Limine.

3. Counsel were unable to agree on the respective Motions in Limine and, therefore, Helix is filing the same.

I declare under penalty of perjury as provided under the laws of the State of Nevada that the foregoing is true and correct and if called upon to testify, would do so.

Dated this 17 day of November, 2017.

Eric B. Zimbelman, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 6th day of November, 2017, I caused the above and foregoing document entitled **HELIX ELECTRIC OF NEVADA'S MOITION IN LIMINE NOS. 1-4 (Against APCO Construction)** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the party(ies) and/or attorney(s) listed below; and/or

☒ to registered parties via Wiznet, the Court's electronic filing system;

☐ pursuant to EDCR 7.26, to be sent **via facsimile;**

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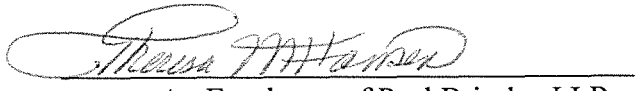

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EXHIBIT 1

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10/30/2017 2:24 PM
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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: 13 *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319*

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order in reference to the Status Check of October 5, 2017, was entered in the above captioned matter on October 26, 2017, a copy of which is attached hereto.

Dated this 30th day of October, 2017.

MARQUIS AURBACH COFFING

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of October, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

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Party: Camco Pacific Construction Co Inc - Intervenor Defendant
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Party: Camco Pacific Construction Co Inc - Counter Claimant
Steven L. Morris steve@gmdlegal.com

Party: Fidelity & Deposit Company Of Maryland - Intervenor Defendant
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Party: Interstate Plumbing & Air Conditioning Inc - Intervenor Plaintiff
Jonathan S. Dabbieri dabbieri@sullivanhill.com

Party: Cactus Rose Construction Inc - Intervenor Plaintiff
Eric B. Zimbelman ezimbelman@peelbrimley.com

Party: National Wood Products, Inc.'s - Intervenor
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[1] Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

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

N/A

an employee of Marquis Aurbach Coffing

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Original

Electronically Filed
10/26/2017 9:29 AM
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DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: XIII *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319*

ORDER

This matter has come on for hearing before this court on the Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements; Joinders thereto by Zitting Brothers, Steel Structures, Nevada Prefab Engineering, Interstate, E&E Fire Protection and Uintah Investments dba Sierra Reinforcing and Gerdau Reinforcing; Oppositions thereto by APCO and CAMCO; and for a status check. Based on the papers on file herein and oral arguments of counsel, the Court hereby finds, adjudicates and orders as follows:

1. During today's hearing, there was discussion among counsel outside the presence of the Court regarding trial dates, depositions and motions. The parties then informed the Court of counsels' respective positions. And, the parties informed the Court of what they disagreed and agreed regarding the trial dates, depositions and motions.

2. Having heard the positions of the parties, the Court hereby orders as follows:

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DISTRICT COURT DEPT# 13

Case Number: 08A571228

A. That discovery is re-opened, limited only to the depositions of the person the subcontractor/lien-claimant intends call at trial to prove up its case and defenses; and/or the NRCP 30(b)(6) PMK of its respective claims and defenses thereto for Zitting; Interstate; National Wood, Plaintiff in Intervention of Cabinetec; Uintah Investments LLC dba Sierra Reinforcing and Gerdau Reinforcing; United Subcontractors dba Skyline Insulation, Steel Structures and Nevada Prefab);

B. These depositions shall take place and be concluded on or by October 30, 2017;

C. Motion in Limines can be filed on or by November 5, 2017;

D. Motion in Limines shall be heard by the Court on November 16, 2017 at 9:00am;

E. The pending Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-If-Paid Agreements and Zitting Brothers Construction Inc.'s Motion for Partial Summary Judgment shall be continued to November 16, 2017 at 9:00 am; and

F. The Bench trial of this case shall start on November 28, 2017.

ORDER

IT IS SO ORDERED.

Dated: Oct 24, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

MARQUIS AURBACH COFFING

By _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, Vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF APCO CONSTRUCTION** Date : June 5, 2017 Time: : 9:00 a.m. Date : June 6, 2017 Time : 9:00 a.m.

TO: APCO CONSTRUCTION; and

TO: Jack Juan, Esq. and Cody S. Mounteer, Esq. of MARQUIS, AURBACH & COFFING, its attorneys of record

PLEASE TAKE NOTICE that Helix Electric of Nevada, LLC, will take the deposition of, APCO CONSTRUCTION ("APCO" or "DEPONENT"), on June 5, 2017 and June 6, 2017, at 9:00 a.in., at Esquire Deposition Solutions located at 2300 W. Sahara Ave, Suite 770, Las Vegas, NV 89102.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between HELIX and APCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

4. The term "HELIX" shall mean lien claimant and Counter-Defendant HELIX ELECTRIC OF NEVADA, a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

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5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "APCO" shall mean and refer to APCO Construction, Defendant to HELIX's Lien Claim and Counter-Defendant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between HELIX and any other PERSON regarding the PROJECT.

8. Any work performed by HELIX under any CONTRACT between APCO and HELIX concerning the PROJECT.

9. Any work performed by HELIX under any CONTRACT between HELIX and any PERSON concerning the PROJECT.

10. All work performed by HELIX at the PROJECT.

11. Any and all materials supplied by HELIX in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between APCO and HELIX relating to the PROJECT.

13. Any disputes relating to any CONTRACT between HELIX and any PERSON relating to the PROJECT

14. APCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

15. Any claims and damages APCO has asserted against HELIX relating to any supplies, materials or work provided by HELIX at the PROJECT.

///

///

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16. Any complaints made by APCO that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to APCO by any PERSON that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

18. Any and all payments made by or on behalf of APCO to HELIX in connection with the PROJECT.

19. Any and all payments made by or on behalf of any PERSON to HELIX in connection with the PROJECT.

20. Any payments demanded by HELIX in connection with the PROJECT.

21. Any insurance proceeds received by APCO in connection with the PROJECT.

22. Any lawsuits filed against APCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by APCO in connection with the PROJECT.

24. Any and all revenues received by APCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of APCO in connection with the PROJECT.

26. All facts which support, evidence or refute APCO 's affirmative defenses to HELIX'S Complaint.

27. All facts which support, evidence or refute APCO's causes of action, if any, against HELIX.

Dated this 19th day of May, 2017.

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 19th day of May, 2017, I caused the above and foregoing document, **HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF APCO CONSTRUCTIONG,** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
***Consolidated with* 80508**

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 9

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	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48

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	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733-JA003813	60/61

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01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
01-18-18	**Transcript – Bench Trial (Day 2)[2]**	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)[3]**	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80

[2] Filed January 31, 201879
[3] Filed January 31, 2018

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	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[4]**	**JA005820-JA005952**	81
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
03-23-18	**Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief**	**JA006173-JA006193**	**84**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**

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05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-JA006442	87/88

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	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
05-08-18	**Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements**	**JA006509-JA006521**	**89**
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90

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	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581-JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
	Exhibit 5 – Summary of Fees	JA006589-JA006614	90
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
06-15-18	**Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA006917 – JA006942**	**96**
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943-JA006948	96

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	Exhibit 2 – Notice of Entry of Denying APCO Construction's Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949-JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955-JA006958	96
	Exhibit 4 – Order Denying *En Banc* Reconsideration	JA006959-JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964-JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC's Response to Special Master Questionnaire	JA006977-JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.'s Response to Special Master Questionnaire	JA006981-JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.'s Response to Special Master Questionnaire	JA006985-JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal's Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC's Special Master Questionnaire	JA007002-JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006-JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037-JA007060	97

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	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042-JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054-JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057-JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA007060-JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion in Limine (against APCO Construction)	JA007070-JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions' Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079-JA007084	97
	Exhibit 14 – Notice of Entry of Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary	JA007085-JA007087	97

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	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088-JA007094	97
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007190-JA007192**	**99**
06-21-18	**Helix Electric of Nevada, LLC's Notice of Non-Opposition to its Motion for Attorney's Fees, Interest and Costs**	**JA007193-JA007197**	**99**
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99

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06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225-JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238-JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246-JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262-JA007280	100
09-28-18	Notice of Entry of (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	JA007281-JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300-JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313-JA007315	101

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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332-JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395-JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401-JA007517	102/103

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	Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518-JA007519	103
	Exhibit 7 – Order to Show Cause	JA007520-JA007542	103
	Exhibit 8 -Order Dismissing Appeal (Case No. 76276)	JA007524-JA007527	103
	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
	Exhibit 10 (Part Two)	JA008142-JA008149	109

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	Exhibit 10E – 131 Nev. Advance Opinion 70	JA008150-JA008167	109
	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168-JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff's Motion to Dismiss	JA008171-JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178-JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215-JA008230	109
	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts	JA008323-JA008338	110

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	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111

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	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602-JA008621	112

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	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622-JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686-JA008693	112

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	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694-JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724-JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730-JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737-JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747-JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875-JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759-JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment	JA008762-JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789-JA008798	113

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	Exhibit 16 – Notice of Appeal	JA008799-JA008810	113
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	JA008925-JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966-JA008986	117/118

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	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119
08-29-19	**Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)**	**JA009117-JA009123**	**119**

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	Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO		
01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137-JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168-JA009182	120

Date	**Description**	**Bates Number**	**Volume(s)**
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
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	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654-JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661-JA00167	28/9/29
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218-JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246-JA001263	24

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	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264-JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282-JA001297	25
	Exhibit 5 - Amended NOL	JA001298-JA001309	25
	Exhibit 6 – Notice of Lien	JA001310-JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314-JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377-JA001380	26
	Exhibit 9 – Order Denying *En Banc* Reconsideration	JA001381-JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
	Exhibit 12 – Order Big D Construction Corp.'s Motion for Attorney's Fees, Costs and Interest Pursuant to Judgment	JA001431-JA001435	26
	Exhibit 13 – Appellant's Opening Brief (Padilla v. Big D)	JA001436-JA001469	26
	Exhibit 14 – Respondent's Answering Brief	JA001470-JA001516	26/27
	Exhibit 15 – Appellant's Reply Brief (Padilla v. Big D)	JA001517-JA001551	27
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention	JA009137-JA009166	120

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	National Wood Products, Inc.'s Against APCO Construction, Inc.]		
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
09-28-18	**Notice of Entry of 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**	**JA007281-JA007299**	**100**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
07-02-18	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA007238-JA007245**	**100**
01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**

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01-03-18	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001187-JA001198**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion *in Limine* 1-4**	**JA001170-JA001177**	**22**
12-29-17	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion *in Limine* 1-6**	**JA001161-JA001169**	**22**
01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
07-12-19	**Order Dismissing Appeal (Case No. 76276)**	**JA007332-JA007334**	**101**
07-02-10	**Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default**	**JA000042-JA000043**	**1**
08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343-JA00379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380-JA000392	6
11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**
	Exhibit 1 – Notice of Entry of Order	JA000429	7

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		JA000435	
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.'s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC's	JA000436-JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001552-JA001560**	**27**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition**	**JA007190-JA007192**	**99**

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	to APCO Construction's Motion for Attorneys' Fees and Costs		
06-15-18	**Plaintiff in Intervention National Wood Products, Inc.'s Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007095-JA007120**	**97/98**
07-19-18	**Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs**	**JA007246-JA007261**	**100**
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222-JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224-JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244-JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283-JA002284	38

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	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307-JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309-JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311-JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313-JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40

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	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346-JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357-JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359-JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
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	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422-JA002423	43
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
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	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501-JA002503	44

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	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting ($27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44

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	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
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	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48

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	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/67/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	**Transcript Bench Trial (Day 1)**[5]	**JA001668- JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981- JA001987	32

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	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35

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	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36
01-18-18	**Transcript – Bench Trial (Day 2)**[6]	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)**[7]	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80

[6] Filed January 31, 201879
[7] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[8]**	**JA005820-JA005952**	81
01-24-19	**Transcript for All Pending Fee Motions on July 19, 2018**	**JA007300-JA007312**	**100/101**

[8] Filed January 31, 2018

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EXHIBIT 3

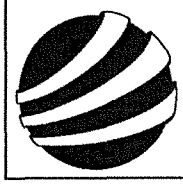
In the Matter Of:

APCO CONSTRUCTION vs GEMSTONE DEVELOPMENT WEST

A571228

BRIAN BENSON

June 05, 2017



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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

CASE NO. A571228
DEPT. NO. XIII

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

Defendants.

AND ALL RELATED MATTERS.

THE DEPOSITION OF

BRIAN DAVID BENSON

PMK on behalf of APCO Construction

Monday, June 5, 2017

9:07 a.m.

2300 West Sahara Avenue, Suite 770

Las Vegas, Nevada

June W. Seid, CCR No. 485

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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

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

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

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

June W. Seid

JUNE W. SEID, CCR NO. 485

Q. Again, great answer. Thank you.

All right, just so I'm clear on what is it you're going to testify to today, I understand that there have been two individuals designated as the person most knowledgeable and you're one of those.

I'm sorry, what was the name again?

MR. CHEN: Mary Jo.

BY MR. ZIMBELMAN:

Q. Mary Jo is going to testify about payment applications and payments, financial issues, correct?

A. Yes, sir.

Q. And then you are designated for essentially everything else; is that fair?

A. Unfortunately, but yes.

Q. And believe it or not, yours is probably going to last less time than Mary Jo's.

(Exhibit 14 marked for identification.)

BY MR. ZIMBELMAN:

Q. What I'm showing you is Helix Electric's amended notice of deposition, and specifically I want to direct you to the issues that were planned for the deponent or the person most knowledgeable deponent starting on page 2. I want to understand whether you would be the person and whether there's anybody more

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

Vs.

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

Defendants.

AND ALL RELATED MATTERS.

Case No. : 08A571228
Dept. No. : XIII

Consolidated with:
A571792, A574391, A577623, A580889, A583289, A584730, and A587168

HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF APCO CONSTRUCTION

Date : June 5, 2017
Time: : 9:00 a.m.

Date : June 6, 2017
Time : 9:00 a.m.

Gerson
EXHIBIT NO. 14
J.W. SEID 6/5/17

TO: APCO CONSTRUCTION; and

TO: Jack Juan, Esq. and Cody S. Mounteer, Esq. of MARQUIS, AURBACH & COFFING, its attorneys of record

PLEASE TAKE NOTICE that Helix Electric of Nevada, LLC, will take the deposition of, APCO CONSTRUCTION ("APCO" or "DEPONENT"), on June 5, 2017 and June 6, 2017, at 9:00 a.in., at Esquire Deposition Solutions located at 2300 W. Sahara Ave, Suite 770, Las Vegas, NV 89102.

Said deposition shall be taken before a notary public or other officer authorized to administer oaths in the state of Nevada and continue from day-to-day, excluding Saturdays, Sundays and holidays, until completed. The proceedings will be recorded stenographically. Noticing party reserves the right to videotape the deposition.

PLEASE TAKE FURTHER NOTICE that DEPONENT is not a natural person. Pursuant to Nevada Rule of Civil Procedure 30(b)(6), DEPONENT is required to designate and produce at the deposition those of its officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters set forth below to the extent of any information known or reasonably available to DEPONENT:

1. The PROJECT. For purposes of this deposition notice, the term "PROJECT" shall mean and refer to the Manhattan West development project which is the subject of the instant litigation.

2. All CONTRACTS between HELIX and APCO concerning or relating to the PROJECT. For purposes of this deposition notice, the term "CONTRACT" or "CONTRACTS," whether used in the singular or plural, means and refers to any contract, deal, agreement and/ or mutual commitment, express or implied, oral, or contained (in whole or in part) in a DOCUMENT or DOCUMENTS.

3. The term "DOCUMENT" or "DOCUMENTS," whether used in the singular or plural, means all "writings," "recordings" and "photographs" as defined in N.R.S. 52.225. Additionally, pursuant to Nevada Rules of Civil Procedure Rule 34, the term "DOCUMENTS" includes all writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form.)

4. The term "HELIX" shall mean lien claimant and Counter-Defendant HELIX ELECTRIC OF NEVADA, a Nevada corporation, and each of its agents, employees, contractors, officers, directors, managers, members, owners, representatives, attorneys, affiliates, and any other PERSON or entity acting on its behalf.

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5. The term "PERSON" or "PERSONS," whether used in the singular or plural, shall mean and refer to any and every type of natural person or other entity (specifically including, but not limited to, a firm, association, organization, general or limited partnership, business, trust, corporation, limited liability company, limited partnership, joint venture, governmental department or agency, other public entity, and any other business or public entity form, whether domestic, foreign, or international).

6. The term "APCO" shall mean and refer to APCO Construction, Defendant to HELIX's Lien Claim and Counter-Defendant and to any PERSON acting or purporting to act on its behalf: including but not limited to its officers, directors, employees, agents, representatives, independent contractors and consultants.)

7. Any CONTRACTS between HELIX and any other PERSON regarding the PROJECT.

8. Any work performed by HELIX under any CONTRACT between APCO and HELIX concerning the PROJECT.

9. Any work performed by HELIX under any CONTRACT between HELIX and any PERSON concerning the PROJECT.

10. All work performed by HELIX at the PROJECT.

11. Any and all materials supplied by HELIX in connection with the PROJECT.

12. Any disputes relating to any CONTRACT between APCO and HELIX relating to the PROJECT.

13. Any disputes relating to any CONTRACT between HELIX and any PERSON relating to the PROJECT

14. APCO's accounting and billing practices and procedures in connection with the PROJECT at any time.

15. Any claims and damages APCO has asserted against HELIX relating to any supplies, materials or work provided by HELIX at the PROJECT.

///

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16. Any complaints made by APCO that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

17. Any complaints made to APCO by any PERSON that the supplies, materials and/or work provided by HELIX at the PROJECT were defective, incomplete or faulty.

18. Any and all payments made by or on behalf of APCO to HELIX in connection with the PROJECT.

19. Any and all payments made by or on behalf of any PERSON to HELIX in connection with the PROJECT.

20. Any payments demanded by HELIX in connection with the PROJECT.

21. Any insurance proceeds received by APCO in connection with the PROJECT.

22. Any lawsuits filed against APCO in connection with the PROJECT at any time.

23. Any proceeds of any lawsuits or other actions filed or pursued by APCO in connection with the PROJECT.

24. Any and all revenues received by APCO in connection with the PROJECT.

25. Any guarantee of any PERSON of any obligation of APCO in connection with the PROJECT.

26. All facts which support, evidence or refute APCO 's affirmative defenses to HELIX'S Complaint.

27. All facts which support, evidence or refute APCO's causes of action, if any, against HELIX.

Dated this 19th day of May, 2017.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 10th day of May, 2017, I caused the above and foregoing document, **HELIX ELECTRIC OF NEVADA, LLC'S AMENDED NOTICE OF 30(b)(6) DEPOSITION OF APCO CONSTRUCTIONG,** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address, facsimile number, and/or email as indicated below:

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

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Q. And you're still employed by APCO?
A. Yes.
Q. So the other work with Helix post ManhattanWest was for APCO, correct?
A. Yes, sir.
Q. Have you generally found Helix to be a quality contractor?
A. Yes.
Q. Did you encounter any specific problems with Helix's work on the ManhattanWest project as you sit here today that you can recall?
A. No.
Q. So if I ask you a few questions that maybe you've been asked before, please forgive me, I had a hard time hearing at the other end of the table. So I understand that your position at -- on ManhattanWest was you worked below Randy Nickerl, correct?
A. Yes.
Q. So what was your exact title?
A. General superintendent.
Q. Did you then have interaction with all of the subcontractors?
A. Yes.
Q. There wasn't a specific area that you were assigned to, and there may be somebody that was

Q. Subject to change order?
A. Correct.
Q. Are you aware of any specific defective work performed by Helix?
A. No.
Q. Are you aware that Gemstone alleged some defective work by Helix?
A. I was not.
Q. Do you know if anybody else is aware of defective work by Helix on this project?
A. Anyone else in regards to APCO?
Q. Yeah, anybody from APCO.
A. Not that I'm aware of.
Q. Do you know of anyone who would be aware of any allegations by Gemstone of defective work by Helix?
A. Probably only our legal team.
Q. Nobody at Gemstone made you aware during the time of the project?
A. No.
Q. Of any defective work by Helix, correct?
A. Correct.
Q. And Randy didn't make you aware of any such allegations, correct?
A. Correct.
Q. Are you aware of any work done by Helix that

was not done in a workmanlike manner?

A. No.

Q. Or in compliance with the subcontract?

A. No.

Q. Are you aware of any allegations by Gemstone that Helix did not complete any work in a workmanlike manner?

A. I am not.

Q. Or not in compliance with the subcontract or the prime contract?

A. I am not.

Q. Again, Mr. Nickerl never made you aware of any such allegations, correct?

A. Yes.

Q. And you're not aware directly that Gemstone has made such allegations, correct?

A. Correct.

Q. Other than your legal team, are you aware of anybody else that would have more knowledge about those questions?

A. No.

Q. Are you aware of negotiations that took place between APCO and Helix with respect to a subcontract amendment?

A. I've seen the amendment.

EXHIBIT 4

In the Matter Of:

APCO CONSTRUCTION vs GEMSTONE

A571228

MARY JO ALLEN

July 18, 2017

ESQUIRE
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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

CASE NO. A571228
DEPT. NO. XIII

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

Defendants.

AND ALL RELATED MATTERS.

THE DEPOSITION OF

MARY JO ALLEN

PMK on behalf of APCO

VOLUME I

Tuesday, July 18, 2017
9:19 a.m.

2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada

June W. Seid, CCR No. 485

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, June W. Seid, a Certified Court Reporter licensed by the State of Nevada, certify: That I reported the deposition of MARY JO ALLEN, on Tuesday, July 18, 2017, at 9:19 a.m.;

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

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 28th day of July, 2017.

JUNE W. SEID, CCR NO. 485

Deposition of MARY JO ALLEN

July 18, 2017

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

Thereupon--

MARY JO ALLEN,

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

EXAMINATION

BY MR. ZIMBELMAN:

Q. Okay. Good morning, Ms. Allen. My name is Eric Zimbelman, we introduced ourselves earlier. I represent Helix and a number of other contractors on the ManhattanWest project lawsuit.

I understand you are here today as the person most knowledgeable for APCO with respect to essentially financial issues, payments and pay applications and the like, correct?

A. Yes, sir.

Q. We are going to have a copy of Exhibit 14, which was my earlier deposition notice, we are going to come out and go through that so I understand precisely

to be typed, I can type. I do whatever has to be done.

Q. Okay.

A. Take care of the Verizon bills, do HR work now to a certain extent.

Q. But your primary duties are bookkeeping?

A. Yes, sir.

Q. That would be accounts payable and accounts receivable?

A. Yes, sir.

Q. Do you review payment applications by subcontractors in connection with projects?

A. Review in what way?

Q. Review with respect to processing them, making the payments?

A. I have no authority to approve, only to make sure that the numbers are correct.

Q. How do you do that?

A. First of all, I'm given a subcontractor agreement, so I know how much their contract is. If I'm given change orders that are approved, then I can add that to the contract, revise the contract some.

I can look at what was paid previously to make sure if it matches what they were billed previously, and I can add math.

Q. Are you familiar with the AIA forms --

A. Yes.
Q. -- for percentage of work completion?
A. Yes, sir.
Q. And you review those documents regularly, correct?
A. The numbers, yes, sir.
Q. And when you say "determining the contract amount and change orders," that would be the -- those two amounts together would be the maximum amount a subcontractor could bill or could submit by way of payment application, correct?
A. Normally, yes, sir.
Q. Are you looking to make a determination about what percentage of work has been completed?
A. No, sir, never.
Q. Who makes that determination?
A. For what job, sir?
Q. Well, let's focus on ManhattanWest.
A. The owner.
Q. In this case who would that be?
A. Gemstone.
Q. Did APCO take any -- have any role in determining percentage of completion of work by subcontractors?
A. Not to my knowledge. It was all determined

by the owner.

Q. Is that Alec Edelstein in particular, or someone on his behalf?

A. Yes.

Q. And so how -- did APCO submit payment applications to Gemstone?

A. Yes.

Q. Did APCO's payment applications include payment applications submitted by subcontractors?

A. Yes.

Q. How did APCO determine its own percentage of completion?

A. In what phase?

Q. Well, didn't APCO need to provide a percentage of completion estimate to Gemstone with respect to its own payment applications?

A. The only thing we billed the owner for was for our fees, and they were based on the percentage of -- it was driven by the percentage of the entire job that was completed.

Q. So you would need to know what percentage complete the job is in its entirety as far as --

A. It was --

Q. Let me finish.

-- in order to make payment applications?

A. It was the last number that was calculated once the owner approved what was by the subcontractors, that number would be a percentage of the entire -- what was billed by the subs.

Q. Okay. Let me ask you to walk through the process in its entirety. In order to make a payment application to the owner for APCO, you needed to know what percentages had been approved for the subcontractors, right?

A. Yes, sir.

Q. And subcontractors would submit payment applications to APCO, wouldn't they?

A. Yes.

Q. And those took the form of percentage of completion documents?

A. Yes, sir.

Q. Then did APCO review those, or did APCO just pass those directly to Gemstone?

A. Those were passed directly to Gemstone. They would give us a billing, we would take their numbers and put them on our billing. There would be a draft pay application at that point.

Q. Okay.

A. That then would go to the owner. They would go through it and approve it, or disapprove on a

number. They would let us know. We, in turn, would have to let the sub know what change they're billing to, based on what the owner approved.

Q. The way you determined what to put on your pay application -- did your pay applications list out a percentage of completion by scope of work for subcontractor or both?

A. The subcontractor's pay application was mirrored on APCO's pay application.

Q. So for example, if Helix submitted a pay application showing they were 30 percent complete with their work, APCO would in turn put that 30 percent on its application to the owner, correct?

A. Yes.

Q. And, in fact, some of the pay apps I've seen show specific line items where a subcontractor is identified, and then a scope of work that is not the entirety of that subcontractor's scope is listed out. So, for example, might be Helix and, you know, temporary power, and there's a percentage of completion or Helix and some other scope of Helix's contractor work?

A. Helix's contract was -- their AIA billing that they gave to APCO was identical to APCO's billing to the owners. Every line item on their billing was on

our billing exactly. Did not include any other subcontractor's money in their line items, or contractor's fees in any line items.

Q. Right. So you would essentially compile every line item submitted to you by every subcontractor into your own line item pay app and percentage of completion document?

A. Yes, sir.

Q. So anything that, at least with respect to approved pay applications, anything that appeared on your pay app would have been presented to you either initially or as revised by the subcontractors, correct?

A. Yes.

Q. How often did you have to revise the pay applications before you got paid by Gemstone?

A. Sometimes two, sometimes three times. Depends.

Q. Did they ever approve the pay application on the first submission?

A. You know...

Q. Don't remember?

A. It's difficult.

Q. It's been a while, I understand.

A. Yes, sir.

Q. And we are just here to get the best

In the Matter Of:

APCO CONSTRUCTION vs GEMSTONE DEVELOPMENT

A571228

MARY JO ALLEN

July 19, 2017

Volume II

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

CASE NO. A571228
DEPT. NO. XIII

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

Defendants.

AND ALL RELATED MATTERS.

THE DEPOSITION OF

MARY JO ALLEN

PMK on behalf of APCO

VOLUME II

Wednesday, July 19, 2017
9:15 a.m.

2300 West Sahara Avenue, Suite 770
Las Vegas, Nevada

June W. Seid, CCR No. 485

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, June W. Seid, a Certified Court Reporter licensed by the State of Nevada, certify: That I reported the deposition of MARY JO ALLEN, on Wednesday, July 19, 2017, at 9:15 a.m.;

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

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 30th day of July, 2017.

June W. Seid

JUNE W. SEID, CCR NO. 485

would that change order work be included in the APCO application which was submitted a few days later to the owner?

A. Yes.

Q. And if I understand it correctly, it was essentially included without substantial review by APCO, it was simply passed on; is that correct?

A. Correct.

Q. Now, the certification on the APCO application to the owner has the certification that the application includes work which has been completed in accordance with contract documents and should be paid for. How do you reconcile that with the pass-through attitude that APCO apparently took?

A. Per the prime contract, the owner had the ultimate decision, and the subcontract agreements, as to what was approved. It was the owner -- the owner was the one that approved the percentage of completion and the payment of the subcontractors. That's a standard form that's used, and until it's verified and it's approved, those are just -- those are -- it's just a form until the final amount. Then the owner approves it, and then the billings have to be revised based on their approval, and that's what's paid.

Q. Did you keep any record of the amount in

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, v. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: XIII *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960; A608717; A608718; and A590319* **APCO CONSTRUCTION, INC.'S OMNIBUS MOTION IN LIMINE** **Hearing Date: November 16, 2017** **Hearing Time: 9AM**

APCO Construction, Inc. ("APCO"), by and through its attorneys, Spencer Fane LLP and Marquis Aurbach Coffing, hereby submits its motions in limine to exclude factually and legally irrelevant evidence and for the limitations set forth below. This Motion is made and based upon NRCP 30 and 37, the attached Declaration of Mary E. Bacon, Esq., the following Memorandum of Points and Authorities, the exhibits attached hereto, the papers and pleadings on file herein, and any argument presented at the time of hearing on this matter.

DATED: November 6, 2017.

SPENCER FANE LLP

By: _____

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing on the 16th of November 2017, in Department XIII of the above-entitled Court at the hour of 9 A.M., or as soon thereafter as counsel may be heard.

DATED: November 6, 2017.

SPENCER FANE LLP

By: _____

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DECLARATION OF MARY BACON, ESQ. IN SUPPORT OF APCO'S OMNIBUS MOTIONS IN LIMINE

I, MARY BACON, ESQ., do hereby declare:

1. I am an attorney duly licensed to practice law in the State of Nevada.

2. I am an attorney at the law firm of Spencer Fane LLP, and am an attorney of record for APCO in the above-captioned action.

3. If called upon to testify, I could and would testify competently to the following facts that are true within my personal knowledge.

4. On November 6, 2017, APCO's counsel had meet and confer telephone conferences with counsel for Zitting Brothers Construction, Inc. ("Zitting"), National Wood Products, Inc. ("National Wood"), and Helix Electric of Nevada, LLC ("Helix") and Buchele, Inc. ("Buchele"), during which the parties attempted to resolve the issues presented in this motion.

5. The parties were unable to resolve these issues. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6th day of November 2017, in Clark County, Las Vegas, Nevada.

MARY BACON, ESQ.

I. LEGAL STANDARD

A motion in limine may be used to admit or exclude evidence of any kind.[1] Motions in limine serve multiple useful purposes, including precluding inadmissible and prejudicial evidence, permitting more careful consideration of evidentiary issues than would occur during trial, and minimizing sidebars and disruption during trial.[2] The district court has broad discretion in admitting or excluding evidence.[3]

1. Motion in limine no. 1 to exclude evidence of the topics that Zitting's PMK could not address.

On October 27, 2017, APCO noticed the NRCP 30(b)(6) deposition of Zitting. That notice listed the following topics for designation and examination:

> 1. Your claims and facts as alleged against APCO either in the lawsuit or statement of claim;
> 2. Documents that you have disclosed in support of your claims or damages against APCO;
> . . .
> 5. The payment process, payment details, scope of payments, parties involved, and standard practices of payment, including, but not limited to, all payment applications, approvals, amounts, checks, and releases; related to the Manhattan West Project ("Project").
> 6. Each fact related to your contract agreement with APCO in regard to the Project at issue in this matter, including, but not limited to original contact(s), change orders, and ratification agreement(s);
> 7. Each fact related to your scope of work at the Project;
> . . .

---

[1] See *Luce v. United States*, 469 U.S. 38, 40, n. 2, 105 S.Ct. 460 (1984) (providing that a motion in limine is "any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered"); *Black's Law Dictionary* (2014) (defining a motion in limine as "[a] pretrial request that certain inadmissible evidence not be referred to or offered at trial"); *Clemens v. Am. Warranty Corp.*, 193 Cal. App. 3d 444, 451, 238 Cal. Rptr. 339, 342 (Ct. App. 1987) (explaining that a motion in limine may be used to exclude "any kind of evidence which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly prejudicial").

[2] *R & B Auto Ctr., Inc. v. Farmers Grp., Inc.*, 140 Cal. App. 4th 327, 371-72, 44 Cal. Rptr. 3d 426 (Ct. App. 2006).

[3] *FGA, Inc. v. Giglio*, 128 Nev., Ad. Op. 26 278 P.3d 490, 497 (2012).

> 9. All facts and documents that support your entitlement and amount of claim against APCO, all lien releases signed by your company in favor of Apco, all billings to APCO, all retention billings to Apco, or that otherwise relate to the project, and all billings to and payments from Camco, and the discussions related to the ratification agreements.[4]

Zitting produced its owner, Sam Zitting, as the designee for all topics listed in the notice. Zitting is claiming $403,365.85 for retention and $347,441.67 for disputed and unauthorized verbal changes.[5] Zitting was asked specific questions about topics related to liability and damages and responded no less than 35 times that he did not know the answer and 40 times he said he did not recall. The following topics are not exhaustive but only illustrative:

1. Section 1.3 of the Subcontract, confirming Zitting would be bound to APCO the same as APCO was bound to the Owner;[6]
2. Liens that Zitting signed;[7]
3. Contractual terms regarding the Owner's potential insolvency;[8]
4. Zitting obtaining the final approval and acceptance of its work by the Owner, as required in Section 3.8 of the Subcontract;[9]
5. APCO receiving final payment from the Owner for Zitting's work, as required by Section 3.8 of the Subcontract;[10]
6. Zitting providing as-builts or other closeout documents, as required in Section 3.8 of the Subcontract;[11]
7. The payment process on the Project related to funds control procedures;[12]

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[4] Zitting's Deposition Notice attached as **Exhibit 1.**
[5] See Zitting Brother's Motion for Partial Summary Judgment Against APCO Construction, Inc. at Exhibit A, Declaration of Sam Zitting at ¶ 10-12 attached as **Exhibit 2.**
[6] Zitting Deposition at 15:15-19:25 attached as **Exhibit 3.**
[7] Zitting Deposition at 20:16-25 attached as **Exhibit 3.**
[8] Zitting Deposition at 21:1-25 attached as **Exhibit 3.**
[9] Zitting Deposition at 31:9-16 attached as **Exhibit 3.**
[10] Zitting Deposition at 31:17-20 attached as **Exhibit 3.**
[11] Zitting Deposition at 31:21-32:6 attached as **Exhibit 3.**

8. Information regarding whether APCO was paid retention or disputed change orders by the Owner;[13]

9. Knowledge of change order request forms, field directive forms or field notes that would support its change orders;[14]

10. The factual basis for the change orders it is seeking against APCO beyond the minimal description provided on the quotation form supplied to APCO;[15]

11. The first time Zitting billed APCO for retention;[16] and

12. Zitting's daily work reports before and after the period of January 2008 through April 2008.[17]

Under NRCP 30(b)(6), an organization must designate individuals to "testify as to matters known or reasonably available to the organization."[18] "The testimony of Rule 30(b)(6) designee represents the knowledge of the corporation, not of the individual deponents."[19]

While a Rule 30(b)(6) deposition is not a memory contest, "a corporation has a duty to make a conscientious, good-faith effort to designate knowledgeable persons for NRCP 30(b)(6) depositions and to prepare them to fully and unevasively answer questions about the designated subject matter."[20] A Rule 30(b)(6) designee must be "thoroughly educated

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[12] Zitting Deposition at 34:9-35:2 attached as **Exhibit 3**.
[13] Zitting Deposition at 39:24-40:8 attached as **Exhibit 3**.
[14] Zitting Deposition at 44:9-15 attached as **Exhibit 3**.
[15] Zitting Deposition at 55:21-56:10 attached as **Exhibit 3**.
[16] Zitting Deposition at 77:2-6 attached as **Exhibit 3**.
[17] Zitting Deposition at 102:5-23 attached as **Exhibit 3**.
[18] NRCP 30(b)(6).
[19] *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 538 (D. Nev. 2008) (providing an exhaustive overview of the principles behind a Rule 30(b)(6) deposition) (internal quotation marks omitted).
[20] *Id.* at 539 (internal quotation marks omitted).

about the noticed deposition topics."[21] The designee "may not take the position that its documents state the company's position."[22]

Adequately preparing a Rule 30(b)(6) designee can be burdensome, however, "this is merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business."[23] To prepare, the deponent must, if necessary, "use documents, past employees, and other resources."[24] "[E]ven if the documents are voluminous and the review of those documents would be burdensome, the deponents are still required to review them in order to prepare themselves to be deposed."[25] Here, Zitting was not "educated about the noticed deposition topics."[26] Indeed, Zitting could not have been less prepared for the deposition.

If a party produces an unprepared Rule 30(b)(6) designee, a court has the authority to prevent the offending party "from offering evidence at trial on the subjects of examination [the 30(b)(6) designee] could not address."[27] NRCP 37(d) provides that if a Rule 30(b)(6) designee fails to appear at its Rule 30(b)(6) deposition, a court may, inter alia, "prohibit [ ] that party from introducing designated matters in evidence."[28] Producing an unprepared 30(b)(6) designee "is tantamount to a failure to appear."[29]

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[21] *Id.*
[22] *Id.*
[23] *Id.* at 540 (internal quotation marks omitted).
[24] *Bridell v. Saint Gobain Abrasives Inc.*, 233 F.R.D. 57, 60 (D. Mass. 2005).
[25] *Bd. Of Trustees of Leland Stanford Junior Univ. v. Tyco Int'l Ltd.*, 253 F.R.D. 534, 526 (C.D. Cal. 2008).
[26] *Great Am. Ins. Co.* 251 F.R.D. at 539.
[27] *Great Am. Ins. Co.*, 251 F. R. D. at 543.
[28] NRCP 37(d) (quoting NRCP 37(b)(2)(B)).
[29] *Great Am. Ins. Co.*, 251 F.R.D. at 542 (citing *Black Horse Lane Assoc., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000)); *see also Resolution Trust Corp v S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993) (concluding that an unprepared 30(b)(6) designee amounted to a non-appearance); *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y 1997) (same). It should be noted that the 9th Circuit has held that FRCP 37(d) sanctions can only be imposed if the witness literally fails to show up for the deposition. *Estrada v. Rowland*, 69 F.3d 405, 406 (9th Cir. 1995). However, multiple courts have expressly concluded that this holding only applies to normal

"[S]anctions that preclude a party from introducing evidence are typically reserved for flagrant discovery abuses."[30]

Here, Zitting's designee must be treated as if he failed to appear for the deposition because he was completely unprepared on critical topics. Zitting's utter lack of preparation clearly rises to the level of a flagrant discovery abuse. Despite being represented by counsel, Zitting chose not to prepare on the topics listed in the notice. Accordingly, preclusion of any evidence related to the referenced topics is warranted.

Alternatively, Zitting should be bound to its deposition answers at trial. Courts regularly find that corporations are bound to answers like "I don't know" and cannot introduce any evidence at trial that would change that answer. *See e.g., Aldridge v. Lake Cnty. Sheriff's Office,*[31] ("Regardless of whether defendant failed to prepare its witnesses, or whether there was a genuine lack of knowledge, defendant will not be able to take a position at trial on those issues where one of its Rule 30(b)(6) designees did not provide testimony."); *Great Am. Ins. Co.,*[32] (providing that a Rule 30(b)(6) designee's answers are "binding" on the corporation). In *QBE Ins. Corp. v. Jorda Enterprises, Inc.,*[33] the court explained that "[i]t would be patently unfair to permit [the plaintiff insurance company] to avoid providing a corporate deposition designee on certain topics (because its insured refuses to cooperate) yet allow it to take a position at trial on those very same issues by

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fact witness, not a Rule 30(b)(6) designee. *See black Horse*, 228 f.3d at 3043; *Pioneer Drive, LLC v. Nissan Diesel Am., Inc.*, 2622 F.R.D. 552, 560 (D. Mont. 2009).

[30] *Great Am. Ins. Co.*, 251 F.R.D. at 543.

[31] 2012 WL 3023340, at *5 (N.D. Ill. July 24, 2012)

[32] 251 F.R.D. at 538

[33] 277 F.R.D. 676, 681 (S.D. Fla. 2012).

introducing testimony which [the defendant] was unable to learn about during a pre-trial, 30(b)(6)deposition."[34]

In *Ierardi Lorillard, Inc. v. Lorillard, Inc.,*[35] the federal district court addressed this issue as follows: "The court notes further that if [the company] chooses to designate witnesses who, because of failing memory or lack of knowledge say that '[the company] does not know the answer' to a given question, **that is itself an answer and [the company] will be bound by that answer."**[36] On a subsequent motion for clarification, the same court stated:

> Under Rule 30(b)(6), defendant has an obligation to prepare its designee to be able to give binding answers on behalf of [the company]. **If the designee testifies that [the company] does not know or the answer to plaintiffs' questions, [the company] will not be allowed effectively to change its answer by introducing evidence during trial.**[37]

At a minimum, Zitting should be bound to its deposition answers on the topics where the designee simply responded that he did not know or could not recall the answer. Those answers go beyond the topics listed above.

2. Motion in limine No. 2 to strike pleadings of parties that do not appear at pre-trial conference.

Both EDCR 2.67 and 2.69 require designated trial counsel to attend the pre-calendar call meeting and calendar call. The language found in EDCR 2.67(a) provides that "Prior to any calendar call or final pretrial conference, the designated trial attorneys for all the parties must meet together to exchange their exhibits and list of witnesses, and arrive at

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[34] *QBE Ins. Corp. v. Jorda Enterprises, Inc.,* 277 F.R.D. 676, 681 (S.D. Fla. 2012).
[35] 1991 WL 66799 (E.D. Pa. Apr. 15, 2991)
[36] *Ierardi v. Lorillard, Inc.,* 1991 WL 66799, at *2 (E.D. Pa. Apr. 15, 2991) (emphasis added).
[37] *Ierardi,* 1991 WL 158911, at *3 (emphasis added).

stipulations and agreements, all for the purpose of simplifying the issues to be tried."[38] EDCR 2.67(c) provides that, "[s]hould the designated trial attorney ... fail to comply, ... default or other appropriate judgment may be entered or other sanctions imposed."[39] This rule makes attendance by designated trial counsel at the pre-calendar call meeting mandatory, and provides for severe sanctions for failure of designated trial counsel to attend, including judgment of dismissal or default being entered by the court for failure to comply.[40] The fact that the rule includes sanctions as severe as those listed in the rule demonstrates the importance and significance the courts have placed on compliance, and the mandate that designated trial counsel attend. EDCR 2.69 also mandates that trial counsel attend the calendar call. More specifically, subsection (c) provides, "[f]ailure of trial counsel to attend calendar call ... **shall result in ...** (2) Default judgment; (3) Monetary sanctions; [and/or] (5) Any other appropriate remedy or sanction."[41]

This motion in limine seeks to exclude any parties that are not represented at the pre-trial calendar call, and requests that the Court dismiss any party's claims or defenses that fail to appear at either the calendar call or the pre-trial conference in this case.

3. Motion in limine No. 3 to exclude evidence of unjust enrichment damages since there was a contract.

Zitting, National Wood, Helix and Buchele all asserted breach of contract *and* unjust enrichment damages against APCO.[42] APCO has a contract with all four

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[38] EDCR 2.67(a). (emphasis added)
[39] EDCR 2.67(c) (emphasis added).
[40] *See* EDCR 2.67.
[41] EDCR 2.69(c) (emphasis added).
[42] **Exhibit 4**, Zitting, Helix, National Wood, and Buchele complaints against APCO.

subcontractors.[43] An action based upon a theory of unjust enrichment is not available when there is an express, written contract because no agreement can be implied when there is an express agreement.[44] As such, APCO respectfully requests that the Court exclude evidence or argument of any unjust enrichment damages against APCO.

4. Motion in limine No. 4 to exclude evidence of purported changes that were not in writing and signed by both parties as required by Zittings's specific change to the subcontract.

APCO drafted the initial version of the subcontract between APCO and Zitting.[45] Zitting, on its own accord, heavily negotiated the subcontract, and added many provisions including defining when its work would be considered completed, and deleted other important provisions requiring bonds, insurance, etc.[46] Section 3.9 of the initial draft of the subcontract provided: "Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner." Zitting added the qualification language in bold below:

> Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner **unless Contractor has executed and approved change order directing subcontractor to perform certain changes in writing and certain changes have been completed by subcontractor.** [47]

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[43] **Exhibit 5**, APCO's fully executed contracts with Zitting, Helix, National Wood, and Buchele.
[44] *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182 (1997).
[45] **Exhibit 6**, APCO-Zitting Subcontract at 3.8.
[46] **Exhibit 6**, Zitting Subcontract.
[47] **Exhibit 6**, Section 3.9 of Subcontract.

This change is consistent with Section 5.1 of its Subcontract wherein Zitting and APCO agreed that "No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing."[48]

"[C]onstruction of a contractual term is a question of law."[49] It has long been the policy in Nevada that "contracts will be construed from the written language and enforced as written."[50]

Zitting found the initial language unacceptable and added the language requiring that all changes be in writing and signed by both parties. Zitting expressly agreed that it was only entitled to change order payments if APCO received payment for same from the owner or there was an "executed and approved change order directing subcontractor to perform certain changes in writing."[51] Zitting admitted this limitation and waiver in the following testimony:

> Q: So if I understand your testimony, your entitlement to a change order could be determined separate, apart from whether the owner paid APCO, if you executed approved change orders?
>
> A: That was my intention here.
>
> Q: My statement is correct, yes?
>
> A: Yes. [52]

As such, APCO is seeking an order in limine precluding Zitting from introducing evidence of purported changes that are not reflected in an executed and approved change order or for which the Owner did not pay APCO.

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[48] **Exhibit 6**, Section 5.1 of Subcontract.
[49] *NGA#2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).
[50] *Ellison v. California State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).
[51] See Section 3.9 of Subcontract.
[52] **Exhibit 3**, Zitting Deposition at 38.

5. Motion in limine No. 5 to exclude evidence of claims that were not delineated on lien releases.

In Nevada, "[c]onstruction of a contractual term is a question of law."[53] It has long been the policy in Nevada that "contracts will be construed from the written language and enforced as written."[54] "A waiver is an intentional relinquishment of a known right . . . To be effective, a waiver must occur with full knowledge of all material facts."[55]

It is undisputed that each subcontractor signed clear and unambiguous periodic releases corresponding to the Owner's payments on the project. The APCO subcontract clearly required each subcontractor to specifically delineate and identify every pending or claimed additional amount that was at issue as of the periodic payment:

> As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, **save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty.**[56]

Accordingly, APCO respectfully requests that the Court enter an order precluding any evidence or argument relating to alleged changes that were not reflected in an executed change order per MIL No. 4, or those that were not itemized or noted on the lien releases as required by the subcontract.

6. Motion in limine No. 6 to strike evidence of damages of parties that were not made available for a deposition.

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[53] *NGA#2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).
[54] *Ellison v. California State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).
[55] *State v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8, 18, 2004 Nev. LEXIS 129, 27, 120 Nev. Adv. Rep. 99 (Nev. 2004).
[56] Zitting Subcontract at Section 3.4.

APCO moves for an Order *in limine* barring any party from introducing any witnesses or opinions not previously disclosed. Any witness who has not been previously identified and made available for a deposition should be barred from testifying in the trial of this matter in accordance with NRCP 16.1, which governs disclosure of witnesses.

This motion in limine specifically includes Buchele. On October 16, 2017, APCO's counsel sent an email to Buchele's counsel to select a mutually agreeable date for Buchele's NRCP 30(b)(6) deposition.[57] On October 17, APCO requested that Buchele's counsel confirm a time and date for the deposition, or APCO would set the deposition unilaterally.[58] In response to APCO's email, Buchele's counsel confirmed, "I have no witness to provide to you."[59]

Buchele's counsel confirmed that no witness would be forthcoming, and that setting his client's deposition would be a waste of time. Because Buchele was unable to produce an NRCP 30(b)(6) designee on its damages, Buchele should be prohibited from producing a 30(b)(6) witness at trial to prosecute its claims.

Accordingly, APCO respectfully request an Order *in limine* prohibiting and barring any party from calling any witness not previously disclosed or whom any other party have not produced for deposition from testifying at the time of trial.

7. Motion in limine No. 7 to strike evidence or argument of damages greater than what the parties listed in their special master questionnaires or official damage disclosures.

As the Court knows, this case is the consolidated action of a large number of individual cases. In most of the subcontractors complaints, the subcontractors lumped together

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[57] **Exhibit 7**, October 16, 2017 Email from APCO's Counsel to Buchele's Counsel.
[58] **Exhibit 8**, October 17, 2017 Email from APCO's Counsel to Buchele's Counsel.

allegations against APCO, Camco (the replacement general contractor), and Gemstone (the owner). Special Master Hale ordered that each of the subcontractors answer a special master questionnaire identifying each defendant and the amount of those respective claims.[60] The remaining claimants should be held to their formally disclosed damages.

A. The Court should preclude evidence or argument of National Wood's damages over $30,110.95.

National Wood filed its initial disclosures on September 30, 2016.[61] It disclosed $30,110.95 against APCO.[62] On March 3, 2017, National Wood filed a supplement to its disclosures, and kept the same damage figure against APCO: $30,110.95.[63] As a result, APCO requests that National Wood be limited to the damages it disclosed in its special master questionnaire or formal damage disclosures.

B. This court should exclude evidence or argument regarding Helix's damages above $505,021.00.

On June 7, 2017, APCO noticed the NRCP 30(b)(6) deposition of Helix Electric of Nevada, LLC.[64] In the notice, APCO specifically requested that Helix's designee come prepared to testify about its damages.[65] Andrew Rivera was designated as the NRCP 30(b)(6) designee for Helix. Throughout the deposition, Mr. Rivera confirmed that it was only seeking $513,120.71 in damages against APCO:

> Q: Are you aware of the specific allegations that Helix has made against APCO in this matter?
> A: General, Yes.

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[59] **Exhibit 9**, October 17, 2017 Email from Buchele's counsel to APCO's counsel.
[60] **Exhibit 10**, Order Requiring Special Master Form.
[61] **Exhibit 11**, National Wood's Initial Disclosures.
[62] Id.
[63] **Exhibit 12**, National Wood's Supplemental Disclosures.
[64] **Exhibit 13**, APCO's Notice of Deposition to Helix.
[65] See Notice of Deposition, attached as **Exhibit 13**.

Q: What is your understanding of that?
A: Outstanding monies owed to Helix.
Q: When you say outstanding monies owed to Helix, how much would that value be?
A: Half a million dollars.[66]
. . .
Q: The 500,000 dollars that you spoke of earlier, just in general, are you speaking of retainage or is there other outstanding money that you believe is owed to Helix? When we are saying five hundred, I think we are talking about a general number, not a specific number.
A: Correct, plus or minus 5,000. It would be money for work performed.
Q: Money owed for work performed in what way?
A: Based on our progress billing.
Q: Base on your progress billing. So are you saying there is half a million dollars that was not paid to Helix outside of retainage, or are we specifically talking about retainage?
A: It's retainage.[67]
. . .
Q: --or reserved. So basically we are saying that while APCO had control of the project, Helix had billed approximately half – or 5 million dollars?
A: Correct.
Q: And there's 500,000 of that, that was held in retention that Helix never got paid?
A: Correct.[68]
. . .
Q: So then it is Helix's position that Helix was paid 100 percent in full for everything – when I say everything, I mean for work completed and stored to date that APCO was responsible for on the project, except for the $513,120.71.
A: Correct.[69]
. . .
Q: But as you testified earlier, any money due Helix at the end of August, except for retention, was paid and done?
A: Correct.[70]

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[66] **Exhibit 14**, NRCP 30(b)(6) deposition of Helix Electric of Nevada, LLC at 13:5-12.
[67] Id. at 32:12-33:2.
[68] Id. at 33:8-15.
[69] Id. at 54: 3-8.
[70] Id. at 60:13-16.

Further questioning from Helix's own counsel confirmed that the unpaid retention amount was only $505,021:

> MR. MOUNTEER: Wait. I want to make sure I understand your response to that question while we are doing the math here. So what you're saying is the 784 number needs to be subtracted from the -- or the 279 needs to be subtracted from the 784 and that's your balance due?
> THE WITNESS: That's correct. And the number is 505,021.
> BY MR. ZIMBELMAN:
> Q. And that's the retention that was unpaid as billed to APCO, correct?
> A. Correct.
> MR. MOUNTEER: Thank you for clarifying.
> MR. ZIMBELMAN: Certainly.[71]

Since Helix has identified retention as its only damage component, and while APCO disputes that even that amount is due, Helix should not be allowed to present evidence of other damages beyond its claimed $505,021 in retention.

NRCP 16.1(a)(1)(c) requires that a plaintiff "**must**, *without awaiting a discovery request*, provide to other parties . . . [a] **a computation of any category of damages claimed by the disclosing** party, making available for inspection and copying under Rule 34 of the documents or other evidentiary matter... on which such computation is based, including materials bearing on the nature and extent of injuries suffered..."[72] The damages computation "**must** be made 14 days after the Rule 16.1(b) conference unless a different time is set by stipulation or court order."[73] Early disclosure of damages is mandatory. The rule is clear—a plaintiff "is not excused from making its disclosures because it has not fully completed its investigation of the case."[74]

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[71] See Helix's Deposition at 66:7-20.
[72] NRCP16.1(a)(1)(c)(emphasis added).
[73] *Id.* (emphasis added).
[74] *Id.*

The disclosure obligations imposed by NRCP 16.1(a) are designed to prevent parties from sandbagging their adversaries with new evidence.[75] NRCP 16.1(a)(c) requires that parties voluntarily disclose "[a] computation of any category of damages claimed by the disclosing party" and documents to support the computation.[76] To satisfy this disclosure obligation, a plaintiff must actually prepare and disclose "a document containing calculations computing the total damages claimed for each category of damages." *Walters v. Meeks*,[77] ("by its very terms [the rule] requires more than providing—without any explanation—undifferentiated financial statements; it requires a 'computation' supported by documents"). Early disclosure of damages is necessary because it: (1) accelerates the exchange of information about the case so that parties may effectively engage in discovery, (2) assists parties in preparing for trial, (3) allows parties to make an informed decision about settlement, (4) provides the opposing party with an early understanding of the basis and amount of any damages claim it is facing, so that it may conduct meaningful discovery as to the underpinning of such a claim, and (5) enables the parties to more efficiently formulate discovery requests and assist the parties in focusing and prioritizing their organization of discovery.[78] The deadline to produce a computation of damages and supporting documents is 14 days after the early case conference unless a different time is set by stipulation or court order.[79]

Under NRCP 26(e)(1), a plaintiff must immediately supplement its initial damages computation if it "learns that in some material respect the information disclosed is incomplete or incorrect."[80] Importantly, Rule 26(e)(1) does not create a "loophole" for a party who wishes to revise its initial damages disclosures to its advantage after the

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[75] *Hewlett-Packard Co. v. Factory Mut. Ins. Co.*, 2006 U.S. Dist. LEXIS 44365, *43, 2006 WL 1788946 (S.D.N.Y. June 27, 2006) *citing Ebewo v. Martinez*, 309 F. Supp. 2d 600, 607 (S.D.N.Y. 2004).
[76] NRCP 16.1(a)(1)(c).
[77] 127 Nev. 1184, 2011 WL 4527714 at *1 (2011) (internal citations omitted)
[78] *Hewlett-Packard Co. v. Factory Mut. Ins. Co.*, 2006 U.S. Dist. LEXIS 44365, *39-41, 2006 WL 1788946 (S.D.N.Y. June 27, 2006)(internal citations and quotations omitted)
[79] NRCP 16.1(a).
[80] NRCP 26(e)(1).

deadline has passed.[81] Supplementation under NRCP 26(e) merely means "correcting the inaccuracies ...based on information that was not available at the time of the initial disclosure."[82] *See Keener v. United States*,[83] (finding a second disclosure so substantially different from the first that it could not qualify as a correction of an incomplete or inaccurate expert report). Indeed, Rule 26(e) creates a duty to supplement initial disclosures, not a right. *See e.g. Calvert v. Ellis*,[84] ("[Federal] Rule 26(e) creates a duty to supplement, not a right").

Pursuant to NRCP 37(c)(1), "[a] party that without substantial justification fails to disclose information required by Rule 16.1 or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at trial... any witness or information not so disclosed." Additionally, NRCP 16.1(e)(3) requires the District Court to impose appropriate sanctions, including the exclusion of evidence under NRCP 37(b)(2), if an attorney fails to timely produce a computation of damages disclosures. The burden is on the party facing sanctions to prove that its failure to comply was either substantially justified or harmless.[85] *See also, Hewlett-Packard Co. v. Factory Mut. Ins. Co.*,[86] (approving, under Rule 37(c)(1), the imposition on plaintiff of all reasonable legal fees and costs incurred by defendants in connection with additional discovery, where had failed to timely disclose information required by Rule 26(a)).

National Wood initially disclosed its damages on September 30, 2016 and has never changed its formal disclosures above the original $30,110.95. As such, this Motion seeks

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[81] *E.G. Patton v. Wal-Mart Stores, Inc.*, 2013 WL 6158461, at *3 (D. Nev. 2013).
[82] *Id.* (internal citations omitted).
[83] 181 F.R.D. 639, 640 (D. Mont. 1998)
[84] 2015 WL 631284, at *2 (D. Nev. Feb 12, 2015)
[85] *Oracle USA*, 264 F.R.D. at 545. *See also, Wapato Heritage, LLC v. Evans*, 2008 U.S. Dist. LEXIS 53510, *12, 2008 WL 2403653 (E.D. Wash. June 11, 2008) ("Unless the nondisclosure is substantially justified or harmless, Rule 37 bars information that was required to be disclosed.").
[86] 2006 U.S. Dist. LEXIS 44365, *45, 2006 WL 1788946 (S.D.N.Y. June 27, 2006) *citing Oceans Cuisine Ltd. V. Fishery Prods. Int'l, Inc.*, 2006 U.S. Dist. LEXIS 22133

to exclude any evidence or argument regarding National Wood's damages above this amount.

Based on the foregoing, the Court should exclude all evidence and any future computation of National Wood's damages above what it previously represented to APCO pursuant to NRCP 37(c)(1) since these requirements are mandatory. The Court also should exclude evidence of Helix's damages above the $505,021 it testified to since a party's NRCP 30(b)(6) designee's answers are binding. *See also Great Am. Ins. Co.,*[87] (providing that a Rule 30(b)(6) designee's answers are "binding" on the corporation).

DATED: November 6, 2017.

SPENCER FANE LLP

By: _____

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[87] 251 F.R.D. at 538

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Marquis Aurbach Coffing and that a copy of the foregoing **APCO CONSTRUCTION, INC.'S OMNIBUS MOTION IN LIMINE** was served by electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 6th day of November, 2017, as follows:

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Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc
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Plaintiff: Apco Construction
Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC
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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	Case No.: A571228 Dept. No.: 13 *Consolidated with:* *A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960;A608717; A608718 and A590319*

SECOND AMENDED NOTICE OF TAKING NRCP RULE 30(B)(6) DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR ZITTING BROTHERS CONSTRUCTION, INC.

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Nevada Rules of Civil Procedure, Plaintiff, APCO Construction, by and through its attorneys, Marquis Aurbach Coffing, will take the deposition of Zitting Brothers Construction, Inc. upon oral examination **on October 27, 2017 at 9:00a.m.** before a Notary Public, or before some other officer authorized by law to administer oaths. The deposition will take place at **Litigation Services located at 3770 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169.**

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Pursuant to NRCP 30(b)(6), Plaintiffs are to required to designate one or more officers, directors, managing agents or other consenting persons most knowledgeable to testify on its behalf with respect to the topics set forth in the attached **Exhibit A.**

The deposition will be recorded by stenographic means, and oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Dated this 23rd day of October, 2017.

MARQUIS AURBACH COFFING

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EXHIBIT A

RULE 30. DEPOSITIONS BY ORAL EXAMINATION

(B) NOTICE OF EXAMINATION: GENERAL REQUIREMENTS; SPECIAL NOTICE; METHOD OF PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

[As amended; effective January 1, 2005.]

TOPICS

1. Your claims and facts as alleged against APCO either in the lawsuit or statement of claim;

2. Documents that you have disclosed in support of your claims or damages against APCO;

3. Your assertion that APCO is liable for any portions of your general and/or lien claims;

4. The percentage/allocation of your general and/or lien claims against APCO versus CAMCO;

5. The payment process, payment details, scope of payments, parties involved, and standard practices of payment, including, but not limited to, all payment applications, approvals, amounts, checks, and releases related to the Manhattan West Project ("Project");

6. Each fact related to your contract agreement with APCO in regard to the Project at issue in this matter, including, but not limited to original contact(s), change orders, and ratification agreement(s);

7. Each fact related to your scope of work at the Project;

8. The structure of your business; and your viability and business status from the time you entered into the subject contract until the date of your deposition, including, but not

limited to, whether your company has been sold, transferred control, wound down, and/or claimed bankruptcy.

9. All facts and documents that support your entitlement and amount of claim against APCO, all lien releases signed by your company in favor of APCO, or that otherwise relate to the project, and all billing to and payments from Camco, and the discussions related to the ratification agreements.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SECOND AMENDED NOTICE OF TAKING NRCP RULE 30(b)(6) DEPOSITION OF PERSON MOST KNOWLEDGEABLE FOR ZITTING BROTHERS CONSTRUCTION, INC.** was submitted electronically for service with the Eighth Judicial District Court on the ____ day of October, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:[1]

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

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EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

DATED this 31st day of July, 2017

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NOTICE OF HEARING ON ZITTING BROTHERS CONSTRUCTION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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

DATED this 31st day of July, 2017.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

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

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

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

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

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

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

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

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

III. STANDARD FOR SUMMARY JUDGMENT

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

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

[1] The Nevada Supreme Court has adopted the federal standard for summary judgment as Nevada's standard. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

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

IV. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> (1) [w]ithin 30 days after the date the lower-tiered subcontractor submits a request for payment; or
>
> (2) [w]ithin 10 days after the date the higher-tiered contractor receives payment for all or a portion of the work, labor, materials, equipment or services described in a request for payment submitted by the lower-tiered subcontractor, ***whichever is earlier.***

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

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

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

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

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

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

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

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

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

Nev. Rev. Stat. 108.237(2).

Although Zitting can successfully argue that the amount owed by APCO was due by the time APCO departed the Project, it is indisputable that the full unpaid balance—the lien amount—was due by the Project's shutdown date of December 15, 2008. Consequently, in order to simplify the analysis, Zitting uses this date by which interest is calculated under the statute. Judicial notice is requested of the fact that the prime rate has as determined by the Commissioner of Financial Institutions for the time period from December 15, 2008, to the present to be 3.75%.[2] *See* Nev. Rev. Stat. 47.130, 47,140, 47.170. As such, the rate to be used for the calculation of the applicable interest is 4% plus 7.75% or 7.75%. Based on this rate, the amount of interest accrued per day on the $750,807.16 due to Zitting is $159.31. Additionally, Zitting has incurred attorney's fees and costs. Thus, Zitting hereby requests a judgment against APCO in this amount plus $159.31 per day in interest from December 15, 2008 until the lien is paid as well as all attorney's fees and costs incurred after that date.[3]

V. CONCLUSION

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

DATED this 31st day of July, 2017

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[2] See This Nevada State Bar Website at http://fid.nv.gov/uploadedFiles/fidnvgov/content/Resources/Prime%20Interest%20Rate%20January%201,%202017-PDF.pdf

[3] Zitting requests leave to submit a memorandum of fees and costs if this Court grants summary judgment in favor of Zitting.

CERTIFICATE OF SERVICE

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

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

☐ via hand-delivery to the addressees listed below;

☐ via facsimile;

☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

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An Employee of WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

I, Sam Zitting, declare as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. To date. Zitting had only received $3.282,849.00 for its work on the Project.

15. APCO had refused to pay any of the amount owed under the Change Order Payment Application and the Retention Payment Application. $750.807.16 remained owed for those applications. Attached as Exhibit "I" to the Motion is a true and correct copy of the statement of account indicating the amount owed for those two applications.

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

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

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

SAM ZITTING

EXHIBIT 3

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., A Nevada corporation, Defendant. AND ALL RELATED MATTERS	)	CASE NO: A571228 DEPT NO: 13

DEPOSITION OF SAMUEL ZITTING

PERSON MOST KNOWLEDGEABLE OF

ZITTING BROTHERS CONSTRUCTION COMPANY

LAS VEGAS, NEVADA

FRIDAY, OCTOBER 27, 2017

REPORTED BY: VANESSA LOPEZ, CCR NO. 902

JOB NO.: 427127

DEPOSITION OF SAMUEL ZITTING, PERSON MOST KNOWLEDGEABLE OF ZITTING BROTHERS CONSTRUCTION COMPANY, held at Litigation Services & Technologies, located at 3770 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada, on Friday, October 27, 2017, at 9:00 a.m., before Vanessa Lopez, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:

For APCO Construction:

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For Zitting:

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Also Present: Lisa Lynn, APCO
Joe Pelan

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WITNESS: SAMUEL ZITTING

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LAS VEGAS, NEVADA; FRIDAY, OCTOBER 27, 2017

9:00 A.M.

-oOo-

(The Reporter was relieved of her duties under NRCP 30(b)(4).)

Whereupon,

SAMUEL ZITTING,

having been first duly sworn by the court reporter to testify to the truth, the whole truth, and nothing but the truth, was examined and testified under oath as follows:

EXAMINATION

BY MR. JEFFERIES:

Q. Sir, will you state your full name for the record please.

A. Samuel Zitting.

Q. Have you had your deposition taken before?

A. Yes.

Q. How many times?

A. I don't recall.

Q. More than five?

A. Possibly.

Q. Okay. So you're familiar with the process?

A. Yes.

Q. I'm not going to waste time going through all of

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the ground rules. There are a few that are important to me, but I do want to emphasize -- you understand you're under oath --

A. Yes.

Q. -- and is -- your testimony today -- as if you were testifying in a court of law?

A. Yes.

Q. If you don't understand my questions, let me know. I'll try and clarify it for you. If you answer the question, I'm going to assume that you understood it as asked. Okay?

A. Okay.

Q. In conversation, we tend to know where the other person is going. So if you let me finish my question before you start your answer, I'm going to let you finish your answer before I move on to my next question. Okay?

A. Fair enough.

Q. So if I say, Were you through with your answer? I'm not trying to be rude. I just want to make sure you were done, because when I ask my questions, I have some awkward pauses in my head. And so if you're answering the same way, I just want to make sure we're through with the answer. Okay?

A. Okay.

Q. What is your position with Zitting Brothers

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Construction, Inc.?

A. President.

Q. How long have you held that position?

A. Around 25 years.

Q. Are you an owner of the company?

A. Yes.

Q. Are you the sole owner?

A. No.

Q. Who are the other owners?

A. Leroy Zitting, Jared Zitting, and William Zitting.

Q. Brothers?

A. Yes.

Q. What type of business is Zitting Brothers in?

A. Wood framing subcontractor.

Q. I'm going to shorthandedly use the term "the project." And when I do, please understand I'm referring to the Manhattan West project that brings us here today. Okay?

A. Okay.

Q. And unless I specify otherwise, as I use the term "project," it will refer to work that I believe Zitting did pre and post APCO being involved with the project. Okay?

A. Okay.

Q. What did you do to prepare for your deposition today?

A. Went over some of the documents that were

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provided.

Q. Which documents?

A. I think -- I think the subcontract was in there, the schedule of -- the original schedule of change orders that is outstanding and the retention amount owing that's outstanding.

Q. When you say "schedule of change orders," what are you referring to?

A. There's a -- somewhere there was produced a list of change orders that we were saying we were still owed for when the project shut down.

Q. Is that something that you transmitted to APCO?

A. I think it's something that was produced -- produced in document production.

Q. Fair enough. Let me make sure my record is clear. The list that you're talking about, is it something that you transmitted to APCO prior to the litigation?

A. I believe so.

Q. Do you know how it was transmitted?

A. I don't without looking at it.

Q. Do you guys, by chance, have a copy of what you're referring to here today?

MR. DREITZER: That's exactly what I'm looking for right now. Let's see if I can -- I do know it had a Bates stamp number on it.

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MR. JEFFERIES: All right.

MR. DREITZER: So it was produced.

MR. JEFFERIES: Okay. I -- again, for my purposes, I'm going to try and clarify it pre and post litigation.

Q. (By Mr. Jefferies) Okay. So while Rich is looking, you looked at the subcontract, schedule of change orders, and then?

A. Some e-mails.

Q. E-mail, okay. Do you recall what the e-mails -- and in asking you all these questions, I do intend to exclude e-mails with your counsel and discussions you had with your counsel. So please understand that. Okay?

A. Okay.

Q. Do you recall what e-mails you looked at?

A. I believe there were some e-mails between my office and Joe -- Joe Pelo (phonetic), I believe. I don't remember who all was included in the e-mail chain.

Q. Do you recall what the subject was?

A. Getting together final change order amounts and final contract amounts.

Q. Would this have been a list or a submission after you revised the labor rate?

A. It was actually some e-mails that were dealing with the labor rate.

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MR. DREITZER: Go off the record for just one moment?

MR. JEFFERIES: Sure.

(Pause in proceedings.)

Q. (By Mr. Jefferies) You understand, sir, you're here today as the corporate designee for the topics in my PMK designation?

A. Yes.

Q. Okay. What was your personal role on the project, if any?

A. I mostly managed the office and made sure that change orders and payments were being processed appropriately, and came down, did job walks every couple weeks --

Q. Okay.

A. -- to make sure that things were running smoothly.

Q. So when you say you managed the office, you're doing it from your office in Utah?

A. Hurricane, yes.

Q. Who -- strike that.

How did your company staff the project on-site?

A. My brother Roy was the on-site project superintendent.

Q. Okay.

A. And he had a group of superintendents under him

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and then a bunch of carpenters under them that were all Zitting Brothers employees.

Q. So Roy, if I can call him Roy --

A. Yeah.

Q. Just for clarity, Roy was the most senior person on your project?

A. That was on a day-to-day basis. I was more senior, but I wasn't there every day.

Q. Who had responsibility for documenting changes in the supporting cost labor time?

A. Roy.

Q. Roy, okay. Have you worked with APCO before?

A. Yes.

Q. How many times?

A. I thought we did one other job with APCO. So probably just one other job and it was actually successful.

Q. Okay. Obviously there were problems on the project with the owner, its financing. As you sit here today, do you have any complaints of APCO that are unrelated to the owner?

A. Yes.

Q. What are those?

A. They had a project manager named Shawn that was absolutely, in my mind, horrible -- what he was doing -- and unethical.

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Q. What are you referring to?

A. He would direct -- direct you to do stuff on-site and then didn't seem like he was being transparent with the owner on the owner's side. And so it seemed like we could never get approval for the things he was directing us to do in an appropriate time.

Q. What type of things was he directing you to do?

A. The changes that are in question that he would never approve.

Q. Okay. Anything else in terms of a complaint against APCO?

A. No.

Q. Okay. Did you negotiate the subcontract --

A. Yes.

Q. -- with APCO? Who did you negotiate with?

A. I believe it was with Shawn and Joe.

Q. Okay. Are you the person that assumes that role for your company?

A. Yes.

Q. How many -- prior to the project, how many subcontracts would you say you negotiated, estimate?

A. In the hundreds.

Q. Okay.

MR. JEFFERIES: Mark that.

(Pause in proceedings.)

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(Exhibit 1 was marked.)

Q. (By Mr. Jefferies) Sir, I'm going to show you what I've marked as Exhibit 1 to your deposition. Can you tell me what this is?

A. Looks like a subcontract agreement.

Q. Okay. There are handwritten changes in the text. Is that your handwriting?

A. I believe these are my initials, but I don't know if this is my handwriting or not. I don't believe that this is my handwriting. It's just my initials.

Q. Would this handwriting have been inserted at your request?

MR. DREITZER: Objection. Calls for speculation. You can answer.

MR. JEFFERIES: Well, that's fair. Let me rephrase.

Q. (By Mr. Jefferies) Do the handwritten changes reflect modifications to the subcontract that Zitting requested from APCO?

A. It appears to.

Q. Okay. And is that an SZ that represents your signature?

A. Yes.

Q. Okay. Do you know whose signature that is for APCO?

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A. I do not.
MR. JEFFERIES: Who is that?
MS. LYNN: Shawn.
MR. JEFFERIES: Shawn.
Q. (By Mr. Jefferies) Okay. Some of these changes have Shawn's initials next to yours. Some of them don't. Do you see that?
A. Yes.
Q. Do you attribute any significance to the fact that Shawn did not initial any of those changes -- strike that.
Do you attribute any significance to the fact that Shawn did not initial some of your changes?
A. I do not, because he still initialed the bottom of each page.
Q. Can you explain why he even -- on the same page -- I'm looking at page 2 as an example -- he would have initialed specifically your change in the right-hand margin to paragraph 3.1 but not 2.1?
A. I don't -- I don't know why he would have done it.
Q. Did you ever discuss that with him?
A. No, not that I recall. I know that my -- my changes and markups were done prior to him initialing the pages at the bottom. So everything that I marked up happened previous to him in initialing the bottom of the page. So by initialing that page, you're essentially

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agreeing to what's on that page previous to it. So I didn't deem it as significant.
Q. Had you or your company done work for Gemstone prior to the project?
A. We had never contracted with Gemstone, but we had worked on a Gemstone owned project.
Q. What is that?
A. We had worked on a different project that Gemstone owned, but we didn't contract directly with Gemstone before.
Q. What was the name of that other Gemstone project?
A. Manhattan Condominiums or Manhattan Apartments.
Q. When was that in relation to the project?
A. It was previous to this project by a couple years --
Q. Okay.
A. -- if I recall.
Q. Other than Gemstone, had you done work for any of Gemstone's principals prior to the project?
A. Other than Gemstone?
Q. Yeah, like Alex -- I'm drawing a blank on his name. You know who Alex is?
A. Edelstein?
Q. Yes. Had you done work for him before?
A. I had done a project, like I said earlier, that he was an owner of. The -- the Manhattan, but that was the

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only other one.
Q. Did you do any work for Alex or any of his related entities after the project?
A. No.
Q. Would you agree that Exhibit 1 to your deposition reflects the final negotiated terms and conditions for your work on the project?
A. It would not.
Q. And why do you disagree with that statement?
A. Well, it's not the final -- it's not the final dollar amount, because it doesn't include any changes that were requested throughout, for -- for one -- for instance. Other than -- other than that, I would agree that it's the agreement that we settled on.
Q. Okay. Pursuant to Article 1.2, prior to starting work on the project, did Zitting review the design documents for sufficiency and accuracy?
A. I would assume we did.
Q. That's a yes?
A. Yes.
Q. Okay. And do you recall reporting any issues regarding the design documents to APCO prior to the start of your construction on-site?
A. I don't recall.
Q. Are you aware of any such paperwork in your

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company files?
A. I don't recall.
Q. My question is a little different. Are you aware of the existence of any such documents?
A. I'm not.
Q. Okay. Pursuant to subparagraph 1.3, you understood that Zitting was bound to APCO to the same extent that APCO was bound to the owner. Correct?
A. As far as Nevada law allows.
Q. What do you mean by that?
A. I'm not an attorney, but there's certain statutes that require the contracting parties to be bound to each other, regardless of what happens with APCO or with -- with Gemstone.
Q. Give me an example.
MR. DREITZER: I'm going to object to the line of questioning as calling for a legal conclusion, but you can answer.
MR. JEFFERIES: It did spin off into one.
THE WITNESS: For instance, a pay if paid.
MR. JEFFERIES: Okay.
THE WITNESS: Or pay when paid.
MR. JEFFERIES: All right.
THE WITNESS: They're welcome to put that kind of stuff in writing, but it's not supported by Nevada statute.

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Q. (By Mr. Jefferies) And did you know that before you negotiated and signed the subcontract?
A. I don't recall.
Q. Well, this is -- when did you sign this? Oh April 17, 2007. Prior to that time, were you aware that Nevada law precluded or somehow dealt with pay if paid provisions?
A. I don't recall.
MR. DREITZER: Same objection. Sorry. You can answer.
Q. (By Mr. Jefferies) When did you -- this contract says April of 2007. When did you actually start work on the project?
A. I don't recall.
Q. Okay. In paragraph 1.3, tell me what those first two sentences meant to you when you agreed to be bound to APCO to the same extent that APCO was bound to the owner?
A. I don't recall.
Q. Okay. Sir, you do realize you're the designee of the company to testify about these things?
A. I do.
Q. Okay. And --
A. We covered that earlier.
Q. Okay. And you're telling me you can't answer my question?

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A. I told you I don't recall what that meant to me at the time I signed this.
Q. Okay. Well, sitting here as the corporate designee, what does that mean to you?
A. What does it mean to me now --
Q. Yeah.
A. -- or when I signed it?
Q. Well --
A. Because that's a different question.
Q. It is and that's fair. You're telling me you don't recall what it meant to you at the time you signed it. I get that.
But sitting here as the corporate designee, what does that sentence mean, that subcontractor is bound to the contractor to the same extent and duration that contractor is bound to owner?
MR. DREITZER: Same objection. It calls for a legal conclusion, but you can answer.
THE WITNESS: I think it means exactly what it says.
Q. (By Mr. Jefferies) How does it relate to APCO's obligation to pay you?
A. I -- I don't know. That's --
Q. Okay.
A. That's above my pay grade.

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Q. Now, as I understand it, the work you did for APCO was called phase 1, which was Buildings 8 and 9. Is that right?
A. I don't recall how they phased it. I know that, primarily, our scope was in 8 and 9.
Q. For APCO?
A. Yes.
Q. Would you go to paragraph 3.4 within Exhibit 1. I've got a jump on you guys because mine's highlighted. Looking at about the third of the way down, it starts, As a condition precedent. Do you see that?
A. Yes.
Q. Why don't you read that to yourself.
A. Okay.
Q. Are you -- strike that.
As the corporate representative, you understand that, to the extent Zitting had outstanding claims -- that those were to be listed on the releases that you signed. Correct?
A. I didn't -- I didn't have that understanding.
Q. Do you see that language in paragraph 3.4?
A. I do.
Q. Okay. Did Zitting ever identify any outstanding claims, CORs on any of the releases that it signed?
A. I don't recall.

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Q. The last two sentences reference the fact that, Any payments to subcontractors shall be conditioned upon receipt of the actual payments by contractor from owner. Subcontractor herein agrees to assume the same risks that the owner may become insolvent that contractor has assumed by entering into the prime contract with the owner.
Do you recall assuming that risk when you signed this subcontract?
A. I don't.
Q. As you sit here today as the corporate designee, do you agree that Zitting assumed that risk of owner nonpayment or insolvency?
A. I do not.
Q. Why not?
A. Because I -- at this point, sitting here today, I have the knowledge of a statute that exists that says the pay if paid, which this basically is, is not supported by Nevada law.
Q. You signed a lot of those type of pay if/pay when paid clauses, haven't you?
A. I don't know.
Q. Wouldn't you agree, sir, that in the hundreds of subcontract forms that you negotiated, that that is a pretty standard clause?
A. I don't --

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MR. DREITZER: Objection.
THE WITNESS: -- recall.
MR. DREITZER: Calls for a legal conclusion.
THE WITNESS: I don't recall.
Q. (By Mr. Jefferies) Would you look at paragraph 3.5. First two sentences of Exhibit 1 state, Progress payments will be made by contractor to subcontractor within 15 days after contractor actually receives payment for subcontractor's work from owner.
A. Yes.
Q. Progress payment to subcontractor shall be 100 percent of the value of subcontract work completed, less 10 percent retention during the preceding month, as determined by the owner.
Would you agree that Zitting agreed to that payment schedule for the progress payments?
A. I agree that it's in this contract.
Q. Yes?
A. I agree that it's -- I -- I agree with what you -- I agree that what you just read exists in this contract.
Q. Okay. And that was the payment schedule that Zitting agreed to at the time. Correct?
A. Apparently.
Q. Is that a yes?
A. It appears that that was the case, yes.

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Q. The bottom of page 3, still within paragraph 3.5, the subcontract states, Any payments to subcontractor shall be conditioned upon receipt of the actual payments by contractor from owner. Zitting agreed to that precondition at the time. Correct?
A. It appears that it was in the document I signed when I signed it.
Q. So that's a yes?
A. Yes.
Q. The next sentence, you -- do you agree that Zitting knowingly assumed the risk that the owner may become insolvent?
MR. DREITZER: Objection. Calls for a legal conclusion.
THE WITNESS: I agree that I signed this document that had this verbiage in it.
Q. (By Mr. Jefferies) Okay. Would you look at paragraph 3.8. Why don't you take a minute and review that provision. Then I'm going to ask you about it.
MR. JEFFERIES: Now you're giving me the sniffles.
MR. DREITZER: Sorry.
MR. JEFFERIES: It's all in my head.
MR. DREITZER: It's actually allergies.
THE WITNESS: All right. I've read it.
Q. (By Mr. Jefferies) Did Zitting agree to this

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payment schedule for the retention?
A. I signed this document.
Q. Is that a yes?
A. I signed the document. You can take that however you want it.
Q. All right. As the corporate designee for today's deposition, would you agree that, by signing this document, Zitting agreed to that payment schedule for retention?
A. I would not.
Q. And why do you disagree with what I said?
A. I -- just saying that I signed this document the way -- the way it's stated, the way it's changed.
Q. Okay. I thought I was accounting for that in my question. So I'm going to have her re-read my question. I'm not trying to be difficult. So --
MR. JEFFERIES: And when you do the transcript, don't just say, Question re-read. Actually plug it in, so I have his answer, if you would. You know what I mean?
All right. I'm going to have her re-read my last question to you. Okay?
A. Okay.
MS. REPORTER: Let me know if this is the question.
(Question on page 24, line 6 was read back.)
THE WITNESS: Sorry. Yes.

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MR. JEFFERIES: Okay. And that's why I like it plugged back in, so you and I know what you're re-reading. Thank you.
Q. (By Mr. Jefferies) You actually -- strike that.
There are five requirements for the release of retention, subparagraphs A through E. Agreed?
A. It appears to be.
Q. And to your -- your change actually clarified the handwritten addition of F, actually. You clarified when a building is to be considered complete for purposes of your retention. Right?
A. It appears so.
Q. Okay. I mean, that is a change you requested. Right?
A. Yes.
Q. Okay. As we sit here today, have -- strike that.
As we sit here today, has Zitting satisfied those requirements for release of retention?
A. To my knowledge, we did.
Q. Okay. Let's go through them. Maybe what I should do -- let's book in -- during what dates approximately -- I don't need specific, but if you can give me month and year -- did Zitting work for APCO on the project?
A. I don't recall.
Q. Is there somebody else at the company that would

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know this type of information? Because this was within the scope of my PMK designation.

A. I'm your guy, but it's been roughly ten years. So for me to give accurate dates is difficult.

Q. And I respect that. The reason we lawyers do PMK notices is because, in my view of the world -- Rich doesn't have to agree or disagree -- you kind of -- it's incumbent on the person to kind of get prepared to talk about those topics.

So as I -- as you sit here today, are you prepared or able to tell me when Zitting worked for APCO on the project?

A. To the best of my memory.

Q. Okay. Tell me what that is.

A. I don't recall if we started before 2007 ended on this project or if we started in 2008.

Q. Okay.

A. I also don't recall if we did anything for APCO, specifically, into 2009 or not. So it's in the time frame of 2007 to 2009.

Q. Okay. Now we're getting somewhere.

A. The bulk of it was 2008.

Q. Okay.

A. So for me to tell you anything more finite than that, I wouldn't remember.

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Q. Are you able to testify today -- well, strike that.

Your addition F to paragraph 3.8, tell me what that was intended to mean.

A. That was intended to mean that we -- we were entitled to being paid our retention when drywall was substantially complete, not when the entire project, including landscaping and furniture, was complete, like this contract originally stated.

So we were clarifying that, really, the rough carpentry retention didn't have any right to be held after it was all covered up. And if it's covered up, it's accepted.

Q. Okay. And that's your language in subparagraph F, Building is considered complete as soon as drywall is completed. Right?

A. Yes.

Q. Okay. Doesn't say "substantially complete," does it?

A. No, it doesn't.

Q. Okay. So as you sit here today, are you able to testify as to whether the drywall was complete prior to the time you stopped working for APCO on the project?

A. I can testify that the first layer, if you will, of drywall was complete and the only thing that was, to my

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knowledge, not complete was some soffits in the kitchens, that there was an issue with the assembly -- the fire assembly or something. So they were not done, but they had done flooring under them and they had even done some cabinets in some areas.

And so there was some open soffits that they were still waiting for clarification or design on. And to my knowledge, that's the only thing that was not complete, in terms of drywall.

Q. So the bottom line is the drywall was not complete when you stopped working for APCO. Correct?

MR. DREITZER: Objection. Calls for a legal conclusion.

THE WITNESS: My belief is that the drywall was complete, but they had to add some more soffit steel. So the drywaller was still doing whatever changes he was being directed to do or whatever changes the assembly needed. So I don't know how -- how to really dice that any different than that.

Q. (By Mr. Jefferies) So based on your answer, the drywaller wasn't finished. Right?

MR. DREITZER: Objection. Misstates his testimony. You can answer.

THE WITNESS: I'm not -- I'm not the one that was administering his contract. So APCO would be a little

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better person to ask that question to.

MR. JEFFERIES: Okay.

THE WITNESS: I know the building was covered up with drywall, which was the intent of this -- this change in this contract. So the intent of what was written was complied with.

Q. (By Mr. Jefferies) Okay. Did you go to work for CAMCO after APCO?

MR. DREITZER: Objection. Calls for a legal conclusion.

THE WITNESS: I remember -- I remember CAMCO coming onto the site and we were pretty much done with everything in our scope. And I believe they asked us to do a few things for them which we did. I don't remember if there was any kind of a formal agreement or anything or any understanding that they would be paying us versus APCO paying us. I don't recall any of that, but I do remember, for instance, like, they asked us to put up some safety rails which we complied with. I don't remember what the arrangements were though.

Q. (By Mr. Jefferies) Okay. One of my topics in the notice -- I think we've got . . . the notice . . .

MR. DREITZER: Counsel, is that the second amended --

MR. JEFFERIES: Yes.

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MR. DREITZER: Okay. I've got it.
MR. JEFFERIES: I'm just going to mark it, just so I got it tagging along with the depo.
MR. DREITZER: So that will be 2.
(Exhibit 2 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 2 to your deposition, just for the record, this is the topics. Topic 9. Did you -- it relates to CAMCO. Did you have a ratification agreement with CAMCO?
MR. DREITZER: Objection. Calls for a legal conclusion.
THE WITNESS: I don't know of any. I don't recall any ratification agreement with CAMCO.
Q. (By Mr. Jefferies) How much work did you do after APCO left the project for CAMCO or Gemstone?
A. Almost none. Very little.
Q. Okay. Were you paid for that work you did after APCO?
A. I don't believe so.
Q. Do you have any photographs, video, or other documentation that would show the state of the drywall at the point that you stopped work for APCO?
A. I believe that we've turned over any -- any documentation that we have along those lines, if any.
Q. Okay. My question was a little different. Are

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you aware of any photos that would show the state of the drywall when you stopped working for APCO?
A. I don't believe so.
Q. Okay.
A. It would be interesting to see how much of the -- there's -- the drywaller's scope they had billed APCO for.
Q. Okay.
A. I don't know if that's ever been produced.
Q. While you -- let's look back at paragraph 3.8 of the subcontract, Exhibit 1. We've talked about subparagraph A, the completion as you further defined it in subparagraph F. Subparagraph B was the approval and final acceptance of the building work by owner.
While you were working for APCO, did that occur, to your knowledge?
A. I have no knowledge of that.
Q. Okay. Next item is, See receipt of final payment by contractor from owner. Do you have any personal knowledge or information to suggest whether that occurred?
A. I do not.
Q. Item D is delivery to contractor from subcontractor, all as-built drawings for its scope of work, and other closeout documents.
Did Zitting ever satisfy that requirement?
A. I don't recall.

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Q. Do you know?
A. I don't recall.
Q. Prior to today, have you seen any records in your file that would reflect the transmittal of that type of closeout documentation and as-builts?
A. Not that I recall.
Q. Subparagraph E, it says, Delivery to contractor from subcontractor, release and waiver of all claims from all subcontractors, laborers, material and equipment suppliers, and subcontractors providing labor or materials or services to the project. Did you do that?
A. I don't recall.
Q. Do you know if you did that?
A. I don't recall if I did or not.
MR. JEFFERIES: Rich, it seems like as the corporate designee, he should be better prepared to talk about some of this --
MR. DREITZER: Well, I think he is prepared and I think that as you -- as you rephrased a couple of questions before and you got into the topic, he was able to kind of meet you where you wanted to go on some of the stuff. So I think if you rephrase it, he may be able to get there.
MR. JEFFERIES: Fair enough.
Q. (By Mr. Jefferies) As the corporate designee -- strike that. And that's probably a fair clarification.

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So what I'm going to try and do is ask a question that I think that accounts for his comment, that I don't have to reask paragraphs -- question about paragraphs B through E. Okay?
A. Okay.
Q. As the corporate designee sitting here today, are you aware of any documentation or other information to suggest that the conditions referenced in B through E were satisfied by Zitting?
A. I know that every draw request that we put in, we had to submit conditional labors for the period we were submitting from any supplier, sub, and -- and a final for the period previous to that. So I know that we complied with that. I just don't recall specific ones that I've seen.
Q. Okay. And, admittedly, I think the record reflects there are periodic conditionals and unconditionals. I get that. You would agree, though, that this subparagraph E in paragraph 3.8 is dealing with a final from your lower tier people. Right?
A. Yes.
Q. Okay. So since you called out the releases, let me make sure my record is clear. Sitting here today as the corporate designee, do you have any information to suggest that Zitting satisfied the conditions in B, C, and D of

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paragraph 3.8?
A. I believe that I could go to my files and find lien waivers from all the suppliers --
Q. Okay.
A. -- for the draws that we submitted.
Q. No, I respect that. I -- I carved E out. E relates -- E relates to the releases. Do you see that?
A. Yeah, I do.
Q. Okay. So I'm carving those out. I hear your words and I understand what you're telling me. So I'm going to exclude that. So let me make sure my record is clear.
Sitting here as the corporate designee, are you aware of any documents, facts, information to suggest that Zitting met the conditions of subparagraphs B, C, and D of paragraph 3.8?
A. Let me re-read them.
(Pause in proceedings.)
THE WITNESS: I don't know of any documents that we have in our files that pertain to these sections.
Q. (By Mr. Jefferies) All right. So our record is clear for both of us, I'm going to have her re-read the question now that you've reviewed the document and I think you're able to answer it.
MR. JEFFERIES: So, again, plug it in here.
MR. DREITZER: Thank you.

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(Question on page 34, line 9 was read back.)
THE WITNESS: I'm not aware of any.
Q. (By Mr. Jefferies) And then with regard to E, there are periodic releases that I have seen in the file.
A. Okay.
Q. So my question is: Prior to today, do you have any facts, information, documents to suggest that Zitting has tendered final releases from its lower tier subs or suppliers?
A. I believe there has been final releases submitted for lower tier suppliers.
Q. Okay.
A. We actually paid our bills. That's not where the problem occurred.
Q. Sitting here today, do you have any personal knowledge as to -- well, strike that.
Describe for me, sir, what you understood to be the payment application process on the project?
A. I understood it to be each month on a designated date. We submit progress billing for work that was completed for the previous period. And along with that, we submitted conditional waivers from all of our lower tier subs and suppliers and then we also submitted final labors for the previous period from -- from the same set of people.
Q. Okay. And you were paid by APCO or the owner

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through funds control?
A. I don't recall how the -- how that was set up on the job.
Q. Okay. Do you recall there being a Nevada Construction Services that facilitated the release? Is that the proper name?
MS. LYNN: Mm-hmm.
Q. (By Mr. Jefferies) Release of money.
A. I don't recall how this particular job was handled that way.
Q. Okay. Do you recall, over the last approximate two months that APCO was on the project, there was joint checks being issued?
A. I don't recall that.
Q. How -- strike that.
What was your standard practice for delivering the pay applications to APCO?
A. I believe back then we were just using a good old fax.
Q. In paragraph 3.9 of Exhibit 1, it states, Subcontractor agrees that contractor shall have no obligation to pay subcontractor for any changed or extra work performed by subcontractor, until or unless contractor has actually been paid for such work by the owner.
Did you agree to that -- strike that.

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Sitting here as the corporate designee, would you agree that Zitting accepted that payment schedule for change orders?
A. With some changes and modifications, it appears that I did.
Q. Okay. Tell me -- so that our record is clear, what did you add to that paragraph 3.9?
A. Unless a contractor has executed and approved change order directing subcontractor to pull -- perform certain changes in writing and certain changes have been completed by subcontractor.
Q. What was your intention in adding that language?
A. Intention was to state that, if I'm directed to do a change by APCO, then I'm going to get paid for that change, regardless of whether the owner pays them for it or not.
Q. I don't see the reference to owner payment in there, in that language.
A. But it was a continuation of the first sentence in 3.9. So it was finishing that thought that was expressed in 3.9.
Q. Oh, I see. So you're saying it's a continuation of the sentence before or is it -- and I'm not trying to be argumentative. I want to make sure I understand what your intent was.

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A. Yeah, that's why I started with, Unless.
Q. Okay. So you're -- unless what?
A. Unless subcontractor has an executed or approved change order.
Q. Okay.
A. So I was trying to continue the sentence.
Q. All right.
A. The first sentence of 3.9.
Q. So your -- if I understand your testimony, your entitlement to a change order could be determined separate, apart from whether the owner paid APCO, if you had executed approved change orders?
A. That was my intention here.
Q. My statement is correct, yes?
A. Yes.
Q. Okay. Did you --
MR. DREITZER: Hold on one second. Go -- you don't have to go off. Do you need a break, because we're about at an hour.
THE WITNESS: Yeah, whatever is --
MR. DREITZER: Do you mind if we take a minute?
MR. JEFFERIES: Sure. No, we can do that.
(Pause in proceedings.)
MR. JEFFERIES: Let me ask it.
Q. (By Mr. Jefferies) Did you get -- I'm going to

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use your term -- executed and approved changers from APCO?
A. On some stuff we did. On other stuff, we got -- we got asked to do -- do the work and we were told that it would be approved and -- by Shawn and told it would be approved and told that it was approved, but he would never produce a document showing that it was approved. And so we had that struggle throughout the second part of the project with him. So verbally, yes, he approved them.
MR. JEFFERIES: Okay. I'll make this the last one. Then we can break.
MR. DREITZER: Sure.
Q. (By Mr. Jefferies) Given the list of schedule and change orders that you reviewed -- that you contend you weren't paid for, I assume --
A. Yes.
Q. -- okay -- do you have executed and approved change order forms from APCO on those?
A. Not on all of them.
Q. On some of them do you?
A. I believe so.
MR. JEFFERIES: All right. Let's take a break.
(Pause in proceedings.)
MR. JEFFERIES: Let's go back on the record.
Q. (By Mr. Jefferies) Sir, do you have -- as the corporate designee, do you have any information,

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documentation, evidence to suggest that APCO was paid your retention that you're seeking in this action?
A. Not that I know of.
Q. As you sit here today as the corporate designee, do you have any documents, facts, information to suggest that APCO received payment for the change orders you're seeking payment for in this action?
A. Not that I know of.
Q. Did you ever prepare any correspondence to APCO, transmitting claims or change order requests?
A. I'm sorry. Can you re-ask that?
MR. JEFFERIES: Why don't you read it. I can never do it the same twice. So I'm going to have her repeat.
(Question on page 40, line 9 was read back.)
THE WITNESS: I believe so. I believe they've been produced.
Q. (By Mr. Jefferies) A letter where you asserted a claim against APCO?
A. Well, we filed a lien.
Q. I respect that. I have the lien. Did you ever submit a written notice of claim to APCO?
A. I believe we sent them a change order log which was a claim, yes.
Q. Okay.

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A. I believe we were looking at it earlier.
MR. JEFFERIES: Do you mind if we mark that, just because he keeps referring to it?
MR. DREITZER: No, let me fish it out. For the record, it's document ZBC1178.
MR. JEFFERIES: Thank you.
MR. DREITZER: Sure.
MR. JEFFERIES: Why don't you mark it. I'll see if we can get a copy of it.
(Exhibit 3 was marked.)
(Exhibit 4 was marked.)
(Pause in proceedings.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 4 to your deposition, have you seen this before today? And by "this," I will represent to you Exhibit 4 -- I have pulled some -- some handwritten notes. It's just one of a few in the file that I saw. And then I also pulled what looked to be, like, some field change directives and change requests that look -- so they're not -- you can tell by the Bates they're not sequential. I just pulled some examples to ask you about. Okay?
A. Okay.
MR. DREITZER: Oh, I thought they were.
MR. JEFFERIES: No, they're not.
MR. DREITZER: Okay. Glad you mentioned that.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 77320
***Consolidated with* 80508**

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

JOINT APPENDIX
VOLUME 10

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CHRONOLOGICAL APPENDIX OF EXHIBITS

Date	Description	Bates Number	Volume(s)
06-24-09	**Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint**	**JA000001-JA000015**	**1**
08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
04-26-10	**CAMCO and Fidelity's Answer and CAMCO's Counterclaim**	**JA000031-JA000041**	**1**
07-02-10	**Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default**	**JA000042-JA000043**	**1**
06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6

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08-02-17	**Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and *Ex Parte* Application for Order Shortening Time**	**JA000328-JA000342**	**6**
	Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories	JA000343-JA00379	6
	Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories	JA000380-JA000392	6
08-21-17	**APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000393-JA000409**	**6/7**
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410-JA000412	7
09-28-17	**Peel Brimley Lien Claimants' Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA000413-JA00418**	**7**
11-06-17	**Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6**	**JA000419-JA000428**	**7**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Notice of Entry of Order	JA000429 JA000435	7
	Exhibit 2 – Amended Notices of 30(b)(6) Deposition of Camco Pacific Construction Company, Inc. from Cactus Rose Construction, Inc., Fast Glass, Inc.'s, Heinaman Contract Glazing, Inc. and Helix Electric of Nevada, LLC's	JA000436-JA000472	7/8
	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
	Exhibit 5 – Fast Glass, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000501-JA000511	8
	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
	Exhibit 7 – Helix Electric of Nevada, LLC's First Set of Request for Admissions to Camco Pacific Construction	JA000523-JA000533	8
11-06-17	**Helix Electric of Nevada's Motion *in Limine* Nos. 1-4**	**JA000534-JA000542**	**8**
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	Exhibit 3 - Excerpts from Brian Benson Deposition Transcript taken June 5, 2017	JA000559 JA000574	9
	Exhibit 4 – Excerpts from Mary Jo Allen's Deposition Transcript taken July 18, 2017	JA000575- JA000589	9
11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615- JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625- JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647- JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679- JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731- JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809- JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827- JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832- JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838- JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845- JA000848	12

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	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.'s Initial Disclosures Pursuant to NRCP 16.1	JA000849-JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.'s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857-JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
11-14-17	**Camco Pacific Construction Company, Inc.'s Opposition to Lien Claimants' Motions in Limine Nos. 1-6**	**JA000898-JA000905**	**12**
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906-JA000907	12
	Exhibit B – Scott Financial Corporation's April 28, 2009 letter to the Nevada State Contractor's Board	JA000908-JA000915	2/13
	Exhibit C – E-mail from Alex Edelstein dated December 15, 2008 Re: Letter to Subs	JA000916-JA000917	13
	Exhibit D – Camco Pacific's letter dated December 22, 2008	JA000918-JA000920	13
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Date	Description	Bates Number	Volume(s)
11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
11-14-17	**Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion *in Limine***	**JA000994-JA001008**	**20**
	Exhibit 1 – Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001009-JA001042	20
	Exhibit 2 - Excerpts from the Deposition Transcript of Brian Benson taken June 5, 2017	JA001043-JA001055	20
	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056-JA001059	20
	Exhibit 4 – Excerpts from the Deposition Transcript of the 30(b)(6) Witness for Helix Electric of Nevada taken July 20, 2017	JA001060-JA001064	20
	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
11-15-17	**APCO Construction, Inc.'s Reply in Support of its Omnibus *Motion in Limine***	**JA001133 JA001148**	**21**

Date	Description	Bates Number	Volume(s)
	Exhibit 1 – Special Master Report Regarding Discovery Status	JA001149-JA001151	21
	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152-JA001160	21
12-29-17	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion *in Limine* 1-6**	**JA001161-JA001169**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion *in Limine* 1-4**	**JA001170-JA001177**	**22**
12-29-17	**Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine***	**JA001178-JA001186**	**22**
01-03-18	**Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001187-JA001198**	**22**
01-04-18	**Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses based on Pay-if-Paid provision on an Order Shortening Time**	**JA001199-JA001217**	**22**
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218-JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246-JA001263	24

Date	Description	Bates Number	Volume(s)
	Exhibit 3 – Subcontract Agreement (CabineTec)	JA001264-JA001281	24/25
	Exhibit 4 – Amended Notice of Lien	JA001282-JA001297	25
	Exhibit 5 - Amended NOL	JA001298-JA001309	25
	Exhibit 6 – Notice of Lien	JA001310-JA001313	25
	Exhibit 7 – Order Approving Sale of Property	JA001314-JA001376	25/26
	Exhibit 8 – Order Releasing Sale Proceeds from Court Controlled Escrow Account	JA001377-JA001380	26
	Exhibit 9 – Order Denying *En Banc* Reconsideration	JA001381-JA001385	26
	Exhibit 10 – Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001386-JA001392	26
	Exhibit 11 – Notice of Entry of Findings of Fact and Conclusions of Law and Judgment	JA001393-JA001430	26
	Exhibit 12 – Order Big D Construction Corp.'s Motion for Attorney's Fees, Costs and Interest Pursuant to Judgment	JA001431-JA001435	26
	Exhibit 13 – Appellant's Opening Brief (Padilla v. Big D)	JA001436-JA001469	26
	Exhibit 14 – Respondent's Answering Brief	JA001470-JA001516	26/27
	Exhibit 15 – Appellant's Reply Brief (Padilla v. Big D)	JA001517-JA001551	27
01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order**	**JA001552-JA001560**	**27**

Date	Description	Bates Number	Volume(s)
	Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-12-18	**Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]**	**JA001574-JA001594**	**27/28**
	Exhibit 1 – Exhibit List APCO	JA001595-JA001614	28
	Exhibit 2 – Helix Trial Exhibits	JA001615-JA001616	28
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617-JA001635	28
	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636-JA001637	28
	Exhibit 5 – Heinaman Trial Exhibits	JA001638-JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640-JA001641	28
	Exhibit 7 – SWPPP Trial Exhibits	JA001642-JA001643	28
	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA001644-JA001647	28

Date	Description	Bates Number	Volume(s)
	Exhibit 9 - Amended *nunc pro tunc* order regarding APCO Construction, Inc.'s Omnibus Motion *in Limine* No. 7	JA001648-JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions *in Limine* 1-4 (Against APCO Construction)	JA001651-JA001653	28
	Exhibit 11 - order granting Peel Brimley Lien Claimants' Motion in Limine Nos.1-6 (against Camco Pacific Construction, Inc.)	JA001654-JA001657	28
	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion *in Limine*	JA001658-JA001660	28
	Exhibit 13 - Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA001661-JA00167	28/9/29
01-17-18	**Transcript Bench Trial (Day 1)**[1]	**JA001668-JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803-JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826-JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869-JA001884	30

[1] Filed January 31, 2018

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885-JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975-JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979-JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981-JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36

Date	Description	Bates Number	Volume(s)
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
	Exhibit 2 – Helix Trial Exhibits	JA002222-JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224-JA002242	36/37
	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
	Trial Exhibit 7 - Letter from Scott Financial to APCO re: Loan Status	JA002243	37
	Trial Exhibit 8 - APCO Pay Application No. 10 as submitted to Owner	JA002244-JA002282	37/38
	Trial Exhibit 12 and 107 - Email from C. Colligan to Subcontractors re: Subcontractor Concerns	JA002283-JA002284	38
	Trial Exhibit 17 – Video (Construction Project)	JA002285	N/A
	Trial Exhibit 18 – Video (Construction Project)	JA002286	N/A
	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 29 - Email from J. Robbins to Subcontractors re: Billing Cut-Off for August Billing	JA002285	39
	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
	Trial Exhibit 32 and 125 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixture installed)	JA002307-JA002308	39
	Trial Exhibits 33 and 126 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002309-JA002310	39
	Exhibit 34 and 128 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed)	JA002311-JA002312-	40
	Trial Exhibit 35 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002313-JA002314	40
	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
	Trial Exhibit 47 - Helix Pay Application No. 16713-009R1 with Proof of Payment	JA002346-JA002356	41
	Trial Exhibit 48 - Email from R. Nickerl to B. Johnson Re: Work Suspension Directive	JA002357-JA002358	41
	Trial Exhibit 49 -Helix Pay Application No. 16713-010R2 with Proof of Payment	JA002359-JA002364	41/42
	Trial Exhibit 50 - Unconditional Waiver and Release re: Pay Application No. 8 with Copy of Payment	JA002365-JA002366	42
	Trial Exhibit 51 - Photo re: Building 8 & 9, South (No Exterior fixtures installed. Helix billed out at 90%)	JA002367-JA002368	42
	Trial Exhibit 52 -Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002369-JA002370	42
	Trial Exhibit 53 -Photo re: Building - 2 & 3, West (No Exterior fixtures installed. Helix billed out at 90%)	JA002371-JA002372	42

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
	Trial Exhibit 59 - Helix Pay Application No. 16713-011R1 given to Camco with Proof of Payment	JA002392-JA002405	43
	Trial Exhibit 60 - Helix Retention Rolled to Camco	JA002406-JA002415	43
	Trial Exhibit 61 - Unconditional Waiver and Release re: all Invoices through June 30, 2008 with Proof of Payment	JA002413-JA002415	43
	Trial Exhibit 62 - Photo re: Building 8 & 9, South	JA002416-JA002417	43
	Trial Exhibit 63 - Photo re: Building 2 & 3, West	JA002418-JA002419	43
	Trial Exhibit 64 - Photo re: Building 2 & 3, West	JA002420-JA002421	43
	Trial Exhibit 65 - Photo re: Building 2 & 3, South	JA002422-JA002423	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 66 - Letter of transmittal from Helix to APCO re: Helix Pay Application No. 16713-011R1	JA002424-JA002433	43
	Trial Exhibit 67 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002435-JA002436	43
	Trial Exhibit 68 -Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002437-JA002438	43
	Trial Exhibit 69 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002439-JA002440	43
	Trial Exhibit 70 - Photo re: Building 8 & 9, South (No exterior fixtures installed. Helix billed out 90%)	JA002441-JA002442	43
	Trial Exhibit 71 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002443-JA002444	43
	Trial Exhibit 72 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002445-JA002446	43
	Trial Exhibit 73 - Photo re: Building 8 & 9, West (No exterior fixtures installed. Helix billed out 90%)	JA002447-JA002448	43
	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
	Exhibit 77 - Helix Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA002457-JA002494	43
	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 "pending"	JA002501-JA002503	44
	Trial Exhibit 103- Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour	JA002504-JA002505	44
	Trial Exhibit 104 - Email from R. Zitting to R. Nickerl re: change orders adjusted to $30 per hour with copies of change orders	JA002506-JA002526	44
	Trial Exhibit 105 - Ex. C to the Ratification – Zitting Quotes	JA002527-JA002528	44
	Trial Exhibit 106 - Unconditional Lien Release – Zitting ($27,973.80)	JA002529	44
	Trial Exhibit 108 - Photo of Video (Construction Project)	JA002530-JA002531	44
	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 110 - Photo of Video (Construction Project)	JA002534-JA002535	44
	Trial Exhibit 111 - Photo of Video (Construction Project)	JA002536-JA002537	44
	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
	Trial Exhibit 128 - Photo of Video (Construction Project)	JA002578-JA002579	46
	Trial Exhibit 129 - Photo of Video (Construction Project)	JA002580-JA002581	46

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
	Helix Related Exhibits:		47
	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733-JA003813	60/61

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 510 - Unsigned Subcontract	JA003814-JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928-JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035-JA005281	63/64/65/66/67/68/69/70/71/72/73/74/75/76/77
01-19-18	**Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA005282-JA005283**	**78**
01-18-18	**Transcript – Bench Trial (Day 2)[2]**	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)[3]**	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80

[2] Filed January 31, 201879
[3] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[4]**	**JA005820-JA005952**	81
03-08-18	**Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law**	**JA005953-JA005985**	**81**
03-08-18	**Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law**	**JA005986-JA006058**	**8/821**
03-08-18	**APCO Construction Inc.'s Post-Trial Brief**	**JA006059-JA006124**	**82/83**
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
03-23-18	**Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief**	**JA006173-JA006193**	**84**
04-25-18	**Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO**	**JA006194-JA006264**	**84/85**

[4] Filed January 31, 201883

Date	Description	Bates Number	Volume(s)
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-JA006442	87/88

Date	Description	Bates Number	Volume(s)
	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
05-08-18	**Helix Electric of Nevada, LLC's Motion to Retax Costs Re: Defendant APCO Construction's Memorandum of Costs and Disbursements**	**JA006509-JA006521**	**89**
05-31-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]**	**JA006522 JA006540**	**89**
06-01-18	**Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]**	**JA006541 JA006550**	**90**
06-01-18	**Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs**	**JA006551-JA006563**	**90**
	Exhibit 1 – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA006564-JA006574	90

Date	Description	Bates Number	Volume(s)
	Exhibit 2 – Memorandum of Costs and Disbursements (Helix Electric of Nevada, LLC)	JA006575-JA006580	90
	Exhibit 3 – Prime Interest Rate	JA006581-JA006601	90
	Exhibit 4 – Declaration of Eric B. Zimbelman in Support of Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA006583-JA006588	90
	Exhibit 5 – Summary of Fees	JA006589-JA006614	90
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
06-15-18	**Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA006917 – JA006942**	**96**
	Exhibit 1 – Notice of Entry of Staying the Case, Except for the Sale of the Property, Pending Resolution of the Petition before the Nevada Supreme Court	JA006943-JA006948	96

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	Exhibit 2 – Notice of Entry of Denying APCO Construction's Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA006949-JA006954	96
	Exhibit 3 – Supreme Court filing notification Joint Petition for Writ of Mandamus filed	JA006955-JA006958	96
	Exhibit 4 – Order Denying *En Banc* Reconsideration	JA006959-JA006963	96
	Exhibit 5 – Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements	JA006964-JA006978	96
	Exhibit 6A – Interstate Plumbing and Air Conditioning, LLC's Response to Special Master Questionnaire	JA006977-JA006980	96
	Exhibit 6B – Nevada Prefab Engineers, Inc.'s Response to Special Master Questionnaire	JA006981-JA006984	96
	Exhibit 6C – Zitting Brothers Construction, Inc.'s Response to Special Master Questionnaire	JA006985-JA006993	96/97
	Exhibit 6D – Noorda Sheet Metal's Notice of Compliance	JA006994 JA007001	97
	Exhibit 6 E – Unitah Investments, LLC's Special Master Questionnaire	JA007002-JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006-JA007036	97
	Exhibit 7B – Letter from Floyd A. Hale dated August 2, 2016	JA007037-JA007060	97

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	Exhibit 7C – Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation and District Court Order Amended Case Agenda	JA007042-JA007046	97
	Exhibit 8 – Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	JA007047 JA007053	97
	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054-JA007056	97
	Exhibit 10 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA007057-JA007059	97
	Exhibit 11 – Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion *in Limine*	JA007060-JA007088	97
	Exhibit 12 – Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion in Limine (against APCO Construction)	JA007070-JA007078	97
	Exhibit 13 – Notice of Entry of Order Denying APCO Constructions' Motion for Partial Summary Judgment Re: Lien Foreclosure Claims	JA007079-JA007084	97
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	Exhibit 15 – Notice of Association of Counsel	JA007088-JA007094	97
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06-15-18	**Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007121-JA007189**	**98**
06-18-18	**Plaintiff in Intervention National Wood Products, Inc.'s Joinder to Helix Electric of Nevada, LLC's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs**	**JA007190-JA007192**	**99**
06-21-18	**Helix Electric of Nevada, LLC's Notice of Non-Opposition to its Motion for Attorney's Fees, Interest and Costs**	**JA007193-JA007197**	**99**
06-29-18	**APCO Construction, Inc.'s Reply in Support of its Motion for Attorney's Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.**	**JA007198-JA007220**	**99**
	Exhibit 1 – Invoice Summary by Matter Selection	JA007221-JA007222	99
	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223-JA007224	99

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06-29-18	Helix Electric of Nevada, LLC's Reply Re: Motion to Retax	JA007225-JA007237	100
07-02-18	Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs	JA007238-JA007245	100
07-19-18	Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs	JA007246-JA007261	100
08-08-18	Court's Decision on Attorneys' Fees and Cost Motions	JA007262-JA007280	100
09-28-18	Notice of Entry of (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	JA007281-JA007299	100
01-24-19	Transcript for All Pending Fee Motions on July 19, 2018	JA007300-JA007312	100/101
07-12-19	Order Dismissing Appeal (Case No. 76276)	JA007313-JA007315	101

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08-06-19	**Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA007316-JA007331**	**101**
	Exhibit 1 – Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	JA007332-JA007335	101
	Exhibit 2 – ORDER: (1) Granting APCO Construction, Inc. 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 and all related matters (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	JA007336-JA007344	101
	Exhibit 3 - Notice of Appeal	JA007345-JA007394	101/102
	Exhibit 4 – Amended Notice of Appeal	JA007395-JA007400	102
	Exhibit 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of Nevada, LLC, SWPPP Compliance	JA007401-JA007517	102/103

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	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518-JA007519	103
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	Exhibit 9 – Notice of Entry of Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA 007528-JA007541	103
	Exhibit 10 (Part One)	JA007537-JA007542	103
	Exhibit 10A – Docket 09A587168 (Accuracy Glass & Mirror v. APCO)	JA007543-JA007585	103
	Exhibit 10B -Docket 08A571228 (APCO v. Gemstone)	JA007586-JA008129	103/104/105/106/107/108/109
	Exhibit 10C – Notice of Entry of Order to Consolidate this Action with Cases Nos A57. 4391, A574792, A577623, A583289, A584730, A587168, A580889 and A589195	JA008130-JA008138	109
	Exhibit 10D – Notice of Entry of Joint Order Granting, in Part, Various Lien Claimants' Motions for Partial Summary Judgment Against Gemstone Development West	JA008139-JA008141	109
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	Exhibit 10F – Special Master Report Regarding Remaining Parties to the Litigation and Discovery Status	JA008168-JA008170	109
	Exhibit 10EG – Notice of Entry of Granting Plaintiff's Motion to Dismiss	JA008171-JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178-JA008214	109
	Exhibit 10I – First Amended Complaint re Foreclosure	JA008215-JA008230	109
	Exhibit 10J – APCO Construction's Answer to Accuracy Glass & Mirror Company's First Amended Complaint re Foreclosure	JA008231-JA008265	109/110
	Exhibit 10K –Answer to Accuracy Glass & Mirror Company, Inc.'s Complaint and Camco Pacific Construction, Inc.'s Counterclaim	JA008266-JA008285	110
	Exhibit 10L – Accuracy Glass & Mirror Company, Inc.'s Answer to Camco Pacific Construction Company's Counterclaim	JA008286-JA008290	110
	Exhibit 10M – Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008291-JA008306	110
	Exhibit 10N – APCO Construction's Answer to Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307-JA008322	110
	Exhibit 10O – Answer to Helix Electric's Statement of Facts	JA008323-JA008338	110

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	Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company Inc.'s Counterclaim		
	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs	JA008339 JA008347	110
	Exhibit 10Q – Notice of Entry of Judgment [As to the claims of Helix Electric of Nevada, LLC Against Camco Construction Co., Inc.]	JA008348-JA008367	110
	Exhibit 10R – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc. Against APCO Construction, Inc.]	JA008368-JA008378	110
	Exhibit 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenetec Against APCO	JA008379-JA008450	110/111
	Exhibit 10T -WRG Design, Inc.'s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008451-JA008486	111
	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468-JA008483	111
	Exhibit 10V -Answer to WRG Design, Inc.'s Statement of Facts Constituting Lien, Third-Party Complaint and Camco Pacific Construction, Inc's Counterclaim	JA008484-JA008504	111

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	Exhibit 10W – Notice of Entry of Stipulation and Order Dismissal	JA008505-JA008512	111
	Exhibit 10X – WRG Design, Inc.'s Answer to Camco Pacific Construction Company, Inc.'s Counterclaim	JA008513 JA008517	111
	Exhibit 10Y – Heinaman Contract Glazing's Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008518-JA008549	111
	Exhibit 10Z – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint, and Camco Pacific Construction's Counterclaim	JA008531-JA008551	111
	Exhibit 10AA – Notice of Entry of Granting Heinaman Glazing's Motion for Attorneys's Fees, Interest and Costs	JA008552-JA008579	111/112
	Exhibit 10BB -Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against Camco Construction Co., Inc.]	JA008561-JA008582	112
	Exhibit 10CC – Heinaman Contract Glazing's Answer to Camco Pacific Construction Company's Counterclaim	JA008583 JA008588	112
	Exhibit 10DD - Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	JA008589-JA00861	112
	Exhibit 10EE – Answer to Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party	JA008602-JA008621	112

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	Complaint and Camco Pacific Construction, Inc.'s Counterclaim		
	Exhibit 10FF – Voluntary Dismissal of Fidelity and Deposit Company of Maryland Only from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint Without Prejudice	JA008622-JA008624	112
	Exhibit 10GG – HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008625-JA008642	112
	Exhibit 10HH – APCO Construction's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008643-JA008657	112
	Exhibit 10II – Amended Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008658-JA008664	112
	Exhibit 10JJ -Defendants Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008665-JA008681	112
	Exhibit 10KK – Stipulation and Order to Dismiss E & E Fire Protection, LLC Only Pursuant to the Terms State Below	JA008682-JA008685	112
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686-JA008693	112

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	Exhibit 10MM – Scott Financial Corporation's Answer to HD Supply Waterworks' Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008694-JA008717	112/113
	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
	Exhibit 10OO – Amended Notice of Appeal	JA008724-JA008729	113
	Exhibit 10PP – Notice of Cross Appeal	JA008730-JA008736	113
	Exhibit 10QQ – Motion to Suspend Briefing Pending Outcome of Order to Show Cause in Supreme Court Case No. 76276	JA008737-JA008746	113
	Exhibit 11 – Order to Consolidate this Action with Case Nos. A574391, A574792, A57623. A58389, A584730, A58716, A580889 and A589195	JA008747-JA008755	113
	Exhibit 12 – Stipulation and Order to Dismiss Third-Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction, Inc. with Prejudice	JA00875-JA008758	113
	Exhibit 13 – Stipulation and Order with Prejudice	JA008759-JA008780	113
	Exhibit 14 – Docket/United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment	JA008762-JA008788	113
	Exhibit 15 – Notice of Entry of Order Granting Motion for 54(b) Certification and for Stay Pending Appeal	JA008789-JA008798	113

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	Exhibit 16 – Notice of Appeal	JA008799-JA008810	113
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction Company, Inc.'s Counterclaim	JA008925-JA008947	116/117
	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008966-JA008986	117/118

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	Pacific Construction's Counterclaim		
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119
08-29-19	**Helix Electric of Nevada LLC's Reply to APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II)**	**JA009117-JA009123**	**119**

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01-03-20	**Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification**	**JA009124-JA009131**	**119**
01-29-20	**Notice of Appeal**	**JA009132-JA009136**	**119/120**
	Exhibit A – Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.]	JA009137-JA009166	120
	Exhibit [C] – Notice of Entry of Order Granting Helix Electric of Nevada's Rule 54(b) Certification	JA009148-JA009156	120
02-11-20	**Case Appeal Statement**	**JA009157-JA009163**	120
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's 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 Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply	JA009168-JA009182	120

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	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120

ALPHABETICAL APPENDIX OF EXHIBITS

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08-05-09	**APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint**	**JA000016 – JA000030**	**1**
05-08-18	**APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc**.	**JA006265-JA006284**	**85**
	Exhibit 1 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA006285-JA006356	85/86
	Exhibit 2 – National Wood Products, Inc.'s Notice of Motion and Motion to Intervene and Memorandum of Points and Authorities in Support Thereof	JA006357-JA006369	86
	Exhibit 3 – Plaintiff in Intervention, National Wood Products, Inc.'s Findings of Fact and Conclusions of Law (Proposed)	JA006370-JA006385	86/87
	Exhibit 4 – Plaintiff in Intervention, National Wood Productions, Inc.'s Findings of Fact and Conclusions of Law Re Camco	JA006386-JA006398	87
	Exhibit 5 – Offer of Judgment to Helix Electric of Nevada, LLC	JA006399-JA006402	87
	Exhibit 6 – Offer of Judgment to Plaintiff in Intervention National Wood Products, Inc.	JA006403-JA006406	87
	Exhibit 7 – Declaration of John Randall Jefferies, Esq. in Support of APCO Construction, Inc.'s Motion for Attorney's Fees and Costs	JA006407-JA006411	87
	Exhibit 7A – Billing Entries	JA006412-	87/88

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	Exhibit 7B – Time Recap	JA006443-JA006474	88
	Exhibit 8 – Declaration of Cody S. Mounteer, Esq. in Support of Motion for Attorney's Fees and Costs	JA006475-JA006478	88
	Exhibit 9 – APCO Construction, Inc.'s Memorandum of Costs and Disbursements [Against Helix Electric of Nevada, LLC, and Plaintiff in Intervention National Wood Products, LLC]	JA006479-JA006487	88
	Exhibit 10 – Depository Index	JA006488-JA006508	88/89
06-06-13	**APCO's Limited Motion to Lift Stay for Purposes of this Motion Only; (2) APCO's Motion for Summary Judgment Against Gemstone Only; and (3) Request for Order Shortening Time**	**JA000044-JA000054**	**1**
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (I) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	JA000055-JA000316	1/2/4/5/6
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	JA000317-JA000326	6
02-11-20	**APCO's Notice of Cross Appeal**	**JA009164-JA010310**	120
	Exhibit 1 – Notice of Entry of Order (1) Granting APCO Construction, Inc.'s Motion for Attorney's Fees and Costs; (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part (3) Granting Helix Electric of Nevada, LLC's	JA009168-JA009182	114

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	Motion to Retax in Party (4) Granting Plaintiff-in-Intervention National Wood Productions, LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc.'s Motion to File a Surreply		
	Exhibit 2 – Notice of Entry of Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	JA009183-JA00991	120
11-06-17	**APCO Construction, Inc.'s Omnibus Motion *in Limine***	**JA000590 JA000614**	**9**
	Exhibit 1 – Second Amended Notice of taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA000615-JA000624	9
	Exhibit 2 – Zitting Brothers Construction, Inc.'s Motion for Partial Summary Judgment Against APCO Construction	JA000625-JA000646	9
	Exhibit 3 – Excerpts from Samuel Zitting's Deposition Transcript taken October 27, 2017	JA000647-JA000678	9/10
	Exhibit 4 – Statement of Facts Constituting Lien on Behalf of Buchele, Inc.	JA000679-JA000730	10
	Exhibit 5 – Subcontract Agreement dated April 17, 2007	JA000731-JA000808	10/11
	Exhibit 6 – Subcontract Agreement dated April 17, 2007	JA000809-JA000826	11/12
	Exhibit 7 – Email from Mary Bacon dated October 16, 2017	JA000827-JA000831	12
	Exhibit 8 – Email from Mary Bacon dated October 17, 2017	JA000832-JA000837	12
	Exhibit 9 – Email from Eric Zimbelman dated October 17, 2017	JA000838-JA000844	12
	Exhibit 10 – Special Master Report, Recommendation and District Court Order	JA00845-JA000848	12

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	Exhibit 11 – Plaintiff in Intervention, National Wood Products, Inc.'s Initial Disclosures Pursuant to NRCP 16.1	JA000849-JA000856	12
	Exhibit 12 – Plaintiff in Intervention, National Wood Products, Inc.'s First Supplemental Disclosures Pursuant to NRCP 16.1	JA000857-JA000864	12
	Exhibit 13 – Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada, LLC	JA000865-JA000873	12
	Exhibit 14 – Excerpts from Helix Electric of Nevada, LLC's 30(b)(6) Witness Deposition Transcript taken July 20, 2017	JA000874-JA000897	12
03-23-18	**APCO Opposition to Helix Electric of Nevada, LLC's Findings of Fact and Conclusions of Law**	**JA006125-JA006172**	**83/84**
08-16-19	**APCO's Opposition to Helix Electric of Nevada LLC's Motion to (I) Re-Open Statistically Closed Case, (II) Dismiss All Unresolved Claims and/or (III) In the Alternative for a Rule 54(B) Certification as to Helix and APCO**	**JA008811-JA008821**	**114**
	Exhibit 1 – Order to File Amended Docketing Statement	JA008822-JA008824	114
	Exhibit 2 – Order to Show Cause	JA008825-JA008828	114
	Exhibit 3 – Appellant/Cross-Respondent's Response to Order to Show Cause	JA008829-JA008892	114/115/116
	Exhibit 4 – Order Dismissing Appeal	JA008893-JA008896	116
	Exhibit 5 – Chart of Claims	JA008897-JA008924	116
	Exhibit 6 – Answer to Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint and Camco	JA008925-JA008947	116/117

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	Exhibit 7 – Answer to Cactus Rose's Statement of Facts Constituting Notice of Lien and Complaint and Camco Pacific Construction Company Inc.'s Counterclaim	JA008948-JA008965	117
	Exhibit 8 – Answer to Heinaman Contract Glazing's Statement of Facts Constituting Lien and Third-Party Complaint and Camco Pacific Construction's Counterclaim	JA008966-JA008986	117/118
	Exhibit 9 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	JA008987-JA008998	118
	Exhibit 10 – Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	JA008998-JA009010	118
	Exhibit 11 – Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	JA009011-JA009024	118
	Exhibit 12 – Notice of Entry of Decision, Order and Judgment on Defendant Scott Financial Corporation's Motion for Summary Judgment as to Priority of Liens	JA009025-JA009038	118
	Exhibit 13 – Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	JA009039-JA009110	118/119
	Exhibit 14 – Order Granting Motion to Deposit Bond Penal Sum with Court, Exoneration of Bond and Dismissal	JA009111-JA009113	119
	Exhibit 15 – Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	JA009114-JA009116	119

Date	Description	Bates Number	Volume(s)
06-15-18	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs**	**JA006615-JA006637**	**90/9**1
	Exhibit 1-A Declaration of Mary Bacon in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006635 JA006638	91
	Exhibit 1-B – Declaration of Cody Mounteer in Support of APCO's Supplement to its Motion for Attorney's Fees	JA006639-JA006916	91/92/93 94/95/96
11-14-17	**APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions *in Limine* Nos. 1-4**	**JA000929-JA000940**	**13/14**
	Exhibit 1 – Excerpts from the Deposition Transcript of Mary Jo Allen taken July 18, 2017	JA000941-JA000966	14/15/16
	Exhibit 2 – Helix Electric's Manhattan West Billing/Payment Status through August 2008	JA000967-JA000969	16/17
	Exhibit 3 – Excerpts from the Deposition Transcript of Andrew Rivera taken July 20, 2017	JA000970-JA000993	17/18/19
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	Exhibit 3 – Excerpt from David E. Parry's Deposition Transcript taken June 20, 2017	JA000473 JA00489	8
	Exhibit 4 – Cactus Rose Construction, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA00490 JA000500	8
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	Exhibit 6 – Heinaman Contract Glazing, Inc.'s First Set of Request for Admissions to Camco Pacific Construction	JA000512-JA000522	8
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01-09-18	**Peel Brimley Lien Claimants' Opposition to APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements**	**JA001552-JA001560**	**27**
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07-19-18	**Plaintiff-in-Intervention National Wood Products, Inc.'s Surreply to APCO Construction's Reply to Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to Motion for Attorney's Fees and Costs**	**JA007246-JA007261**	**100**
01-10-18	**Reply in Support of Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimants' Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time**	**JA001561-JA001573**	**27**
01-18-18	**Stipulation and Order Regarding Trial Exhibit Admitted into Evidence**	**JA002199-JA002201**	**36**
	Exhibit 1 – Exhibit List APCO	JA002208-JA002221	36
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	APCO TRIAL EXHIBITS:		
	APCO Related Exhibits:		
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	Trial Exhibit 19 – Video (Construction Project)	JA002287	N/A
	Trial Exhibit 20 – Video (Construction Project)	JA002288	N/A
	Trial Exhibit 21 – Video (Construction Project)	JA002289	N/A
	Trial Exhibit 22 – Video (Construction Project)	JA002290	N/A
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	Trial Exhibit 30 - Camco Pay Application No. 11 NCS-Owner Approved with NCS Draw Request	JA002286-JA002306	39
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	Exhibit 36 and 130 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002315-JA002316	40

Date	Description	Bates Number	Volume(s)
	Trial Exhibits 37 and 131 -Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002317-JA002318	40
	Trial Exhibits 38 and 132 - Photo re: Building 8 & 9, Interior (Showing drywall still not completed and no electrical trim or fixtures installed)	JA002319-JA002320	41
	Trial Exhibit 39 -Email from K. Costen to Subcontractors informing that Manhattan West Project no longer open	JA002321-JA002322	41
	Trial Exhibit 40- Letter from D. Parry to Subcontractors Re: Funding Withdrawn	JA002323 JA002326	41
	HELIX Related Exhibits:		41
	Trial Exhibit 46 - Helix Pay Application No. 16713-008R1 with Proof of Payment	JA002327-JA002345	41
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Date	Description	Bates Number	Volume(s)
	Trial Exhibit 54 - Photo re: Building - 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002373-JA002374	42
	Trial Exhibit 55 - Photo re: Building 2 & 3, East (No Exterior fixtures installed. Helix billed out at 90%)	JA002375-JA002376	42
	Trial Exhibit 56 - Photo re: Building 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002377-JA002378	42
	Trial Exhibit 57 - Photo re: Building 2 & 3, and 8 & 9, North (No Exterior fixtures installed. Helix billed out at 90%)	JA002379-JA002381	42
	Trial Exhibit 58 - Helix Pay Application No. 16713-011R1 submitted to Owner	JA002382-JA002391	42
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Date	Description	Bates Number	Volume(s)
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	Trial Exhibit 74 - Photo re: Building 2 & 3, East (No exterior fixtures installed. Helix billed out 90%)	JA002448-JA002449	43
	Trial Exhibit 75 - Unconditional Release re: Pay Application No. 16713-011R1 with Proof of Payment	JA002450-JA002456	43
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	Zitting Brothers Related Exhibits:		
	Trial Exhibit 100 - Check No. 14392 payable to Zitting ($27,973.80); Progress Payment No. 7	JA002495-JA002497	44
	Trial Exhibit 101 - Email from R. Nickerl to R. Zitting re: Change Orders	JA002498-JA002500	44
	Trial Exhibit 102 -Email from L. Lynn to J. Griffith, et al. re: Change Order No. 00011 “pending”	JA002501-JA002503	44

Date	Description	Bates Number	Volume(s)
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	Trial Exhibit 109 - Photo of Video (Construction Project)	JA002532-JA002533	44
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	Trial Exhibit 112 - Photo of Video (Construction Project)	JA002538-JA002539	44
	Trial Exhibit 113 -Photo of Video (Construction Project)	JA002550-JA002541	44
	Trial Exhibit 114 -Photo of Video (Construction Project)	JA002542-JA002543	44
	Trial Exhibit 115 - Progress Payment No. 9 Remitted to Zitting	JA002544-JA002545	44
	Trial Exhibit 116 - Ratification and Amendment of Subcontract Agreement between Buchele and Camco	JA002546-JA002550	44
	Trial Exhibit 117 - C to the Ratification	JA002551-JA002563	44
	Trial Exhibit 118 - Q&A from Gemstone to subcontracts	JA002564-JA002567	44
	Trial Exhibit 119 - Check No. 528388 payable to APCO ($33,847.55) – Progress Payment No. 8.1 and 8.2	JA002568-JA002571	44

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 120 - Tri-City Drywall Pay Application No. 7 to APCO as submitted to Owner. Show percentage complete for Zitting	JA002572-JA002575	44/45
	Trial Exhibit 127 - Photo of Video (Construction Project)	JA002576-JA002577	45/46
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	Trial Exhibit 138 - Memo from Scott Financial to Nevada State Contractors Board Re: Explanation of Project Payment Process	JA002582-JA002591	46
	Trial Exhibit 152 -Terms & Conditions modified by APCO, Invoices and Check Payment	JA002592-JA002598	46
	National Wood Products Related Exhibits:		
	Trial Exhibit 160 - Documents provided for settlement	JA002599-JA002612	46
	CAMCO Related Exhibits:		
	Trial Exhibit 163 - Camco Pay Application No. 12 to Gemstone	JA002613-JA002651	46/47
	Trial Exhibit 165 - Letter from D. Parry to A. Edelstein re: Gemstone losing funding for project	JA002652-JA002653	47
	Trial Exhibit 166 - Letter from D. Parry to G. Hall re: withdrawal of funding	JA002654 JA002656	47
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	Trial Exhibit 169 - Helix Exhibit to Standard Subcontract Agreement with Camco	JA 002665 JA002676	47/48
	Trial Exhibit 170 - Subcontract Agreement between Helix and Camco (unsigned)	JA002677-JA002713	48

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 171 - Work Order No. 100	JA002714-JA002718	48
	Trial Exhibit 172 - Letter from J. Griffith to Victor Fuchs Re: Gemstone's intention to continue retention of Helix w/copy of Ratification and Amendment of Subcontract Agreement	JA002719-JA002730	48
	Trial Exhibit 173 - Helix Pay Application No. 16713-012 to Camco with proof of payment	JA002731-JA002745	48
	Trial Exhibit 174 - Helix Change Order Request No. 28	JA002746-JA002747	48
	Trial Exhibit 175 - Change Notice No. 41	JA002748-JA002751	48
	Trial Exhibit 176 - Helix Pay Application No. 16713-013 to Camco	JA002752-JA002771	48/49
	Trial Exhibit 177 - Helix Pay Application No. 16713-014 to Camco	JA002772-JA002782	49
	Trial Exhibit 178 - Camco's letter to Helix rejecting Pay Application No. 16713-015 with attached copy of Pay Application	JA002783 JA002797	49
	National Wood/Cabinetec Related Exhibits:		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798-JA002825	49
	General Related Exhibits:		
	Trial Exhibit 218 - Camco/Owner Pay Application No. 11 w/Backup	JA002826-JA003028	50/51/52
	Trial Exhibit 220 - Camco/Owner Pay Application No. 12 w/Backup	JA003029-JA003333	52/53/54/55
	Trial Exhibit 313 - Letter from A. Edelstein to R. Nickerl re: NRS 624 Notice	JA003334-JA003338	55
	Helix Trial Exhibits:		

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57/ 58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61
	Trial Exhibit 510 - Unsigned Subcontract	JA003814- JA003927	61/62
	Trial Exhibit 512 - Helix's Lien Notice	JA003928- JA004034	62/63
	Trial Exhibit 522 - Camco Billing	JA004035- JA005281	63/64/65/66/67/ 68/69/70 /71/72 /73/74/75/ 76/77
01-17-18	**Transcript Bench Trial (Day 1)**[5]	**JA001668- JA001802**	**29/30**
	Trial Exhibit 1 - Grading Agreement ***(Admitted)***	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ***(Admitted)***	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ***(Admitted)***	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ***(Admitted)***	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ***(Admitted)***	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ***(Admitted)***	JA001981- JA001987	32

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Date	Description	Bates Number	Volume(s)
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) ***(Admitted)***	JA001988-JA002001	32
	Trial Exhibit 14 - Letter from W. Gochnour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause ***(Admitted)***	JA002002-JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices ***(Admitted)***	JA002011-JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks ***(Admitted)***	JA002014	33
	Trial Exhibit 23 - APCO Subcontractor Notice of Stopping Work and Letter from J. Barker to A. Edelstein Re: Notice of Stopping Work and Notice of Intent to Terminate Contract ***(Admitted)***	JA002015-JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ***(Admitted)***	JA002017-JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ***(Admitted)***	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ***(Admitted)***	JA002025-JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ***(Admitted)***	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ***(Admitted)***	JA002082-JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ***(Admitted)***	JA002121-JA002146	35

Date	**Description**	**Bates Number**	**Volume(s)**
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ***(Admitted)***	JA002147-JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ***(Admitted)***	JA002177-JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ***(Admitted)***	JA002182-JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ***(Admitted)***	JA002186-JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ***(Admitted)***	JA002189 – JA002198	36
01-18-18	**Transcript – Bench Trial (Day 2)**[6]	JA005284-JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ***(Admitted)***	JA005371-JA005623	78/79/80
01-19-18	**Transcript – Bench Trial (Day 3)**[7]	JA005624-JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ***(Admitted)***	JA005786-JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ***(Admitted)***	JA005802-JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ***(Admitted)***	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ***(Admitted)***	JA005806-	80

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[7] Filed January 31, 2018

Date	Description	Bates Number	Volume(s)
	Trial Exhibit 536 – Lien math calculations (handwritten) ***(Admitted)***	JA005807-JA005808	80
	Trial Exhibit 804 – Camco Correspondence ***(Admitted)***	JA005809-JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ***(Admitted)***	JA005817-JA005819	81
01-24-18	**Transcript – Bench Trial (Day 5)[8]**	**JA005820-JA005952**	81
01-24-19	**Transcript for All Pending Fee Motions on July 19, 2018**	**JA007300-JA007312**	**100/101**

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Q. (By Mr. Jefferies) So please take a minute and look at those and then I want to ask you some general questions about it.

MR. DREITZER: Counsel, would it be okay if I just put the Bates number on the record really quick?

MR. JEFFERIES: Absolutely.

MR. DREITZER: So for Exhibit 4, it's ZBC2082, 2085, 2078, 2079, 2089, and 2086.

MR. JEFFERIES: Thank you.

MR. DREITZER: Thank you. Thanks.

THE WITNESS: Okay.

Q. (By Mr. Jefferies) Okay. So it's my understanding that, by at least September 6 of '08, Zitting was doing work for CAMCO. Would you agree with that?

A. It appears that way, yes.

Q. Okay. And tell me what the first page of Exhibit 4 is.

A. It appears to be an accounting of hours spent by Zitting employees doing change order work that was signed off by somebody with CAMCO, it looks like.

Q. Okay. As the corporate designee, do you have similar type of source documents for the change order requests that you have made against APCO, as are summarized in Exhibit 3?

A. Which is Exhibit 3? Oh, thanks. I believe we've

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turned over all the source documents we have in our files. So whatever has been turned over is what we have. I don't believe there's any documentation we've withheld in regards to any of these change orders.

Q. So if I understand your answer, to the extent this type of source document or -- documentation or support for the amounts in a change order request -- those would be in the Bate-labeled documents that have been produced in this litigation?

A. Correct.

Q. Second page of Exhibit 4 is a field change directive. Actually, pages 2 and 3 of the exhibit are just different examples of the same form. Field change directive. Do you have any similar field change directives signed off by APCO for any of the change order requests that you're seeking in this action?

A. Anything that I have has been submitted as -- in the document request.

Q. Okay. Go to the last three pages of Exhibit 4 and tell me what form that is.

A. That's a change request form that's generated in our software system.

Q. What -- how do you use this form?

A. We use it as a way to document changes.

Q. Okay. As you sit here today as the corporate

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designee, do you have any such forms issued to APCO for the change order requests that are outstanding in this litigation?

A. Anything that we have has been submitted in the document request.

Q. Okay. So it would have been Bates labeled and produced prior to today?

A. Yes.

Q. As the corporate designee today, have you seen any change order requests form, field directive form, or field notes that would support any of the change order requests you're seeking from APCO?

A. I don't recall.

Q. You don't recall seeing any?

A. I don't. It's been a long time.

Q. The -- what is the difference between a quote form and a change order request form?

A. Can you show me a quote form.

Q. Sure.

MR. JEFFERIES: Let's mark this.

MR. DREITZER: Exhibit 5?

MR. JEFFERIES: I think so.

Q. (By Mr. Jefferies) Sir, I'm showing you what I've marked as Exhibit 5, which this is an example of -- you'll see some of the Zitting forms.

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MR. DREITZER: Right. No, I see that the -- this is roughly a eight- or nine-page exhibit. The cover page has a Bates on it of 2098, but everything else -- it's obviously Zitting paperwork, but it's unBatesed. So I'm assuming it has been produced and I'm assuming it lies elsewhere in the case, but we don't have Bates numbers for it at this point.

MR. JEFFERIES: That's my assumption as well. I don't want to -- the other thing I will represent to you is these were not sequential. I pulled these together --

MR. DREITZER: Okay.

MR. JEFFERIES: -- so that I could try and make some semblance of what I think is the summary sheet. And we will have them all together in one.

MR. DREITZER: Could I ask this just so -- as a favor of -- as you're talking about each document, if you can, you know, refer to dates and amounts just so we can key it back to something that's been Batesed later on. And if we have that as part of the record, we should be able to do that.

MR. JEFFERIES: Sure. Fair enough.

MR. DREITZER: Thank you.

Q. (By Mr. Jefferies) Okay. Sir, I assembled Exhibit 5. I was going to get to this, but you asked a question. If you go -- pick one of these, I believe these

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are Zitting Brother bid forms. Is that right?
A. Yes.
Q. And they say "quote" in the upper right-hand corner, after -- or before a numerical designation. Do you see that?
A. Yes.
Q. Okay. What are these forms?
A. These are a field change form or a quote form. So when Roy was asked by APCO to do -- perform a certain change, he would summarize it in this form. And then if they told him to go ahead and do the work and -- then he would send these forms to me, and then I would typically summarize it into a change request form in our system or into a change order form.
Q. Okay.
A. So it would eventually get from the field copy into the software, basically.
Q. Okay. So these particular forms, because they say "quote" and then some of the language says "bid includes," this is -- this is kind of what your estimate of what this change could --
A. I don't know if this is reflecting an estimate or actual time and he was just using a form that said "quote" on it.
Q. Okay.

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A. But it appears that he was actually summarizing actual time that was spent.
Q. How can you --
A. But I -- I'm just assuming that.
Q. That was going to be my question is: How can somebody tell whether this work has been done or not? Strike that.
Procedurally, given your standard practice, if this -- if the purported or extra change order work was actually performed, would you have processed it from these forms that are included in Exhibit 5 into a change order request like I have, for example, in Exhibit 4?
A. I would -- if -- if this -- if -- if this was actually performed, I would either put it into a change order request or write into a change order.
Q. And do you have change order -- okay. Strike that.
Change order form different than Bates label 2086, within Exhibit 4, or is that your change order form?
A. That's a change request.
Q. Okay.
A. And a change request -- the only difference, really, between a change request and a change order is a change request doesn't adjust our contract amount. Once you switch it into a change order, then that adjusts the

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contract amount. So this is a little more preliminary than a change order --
Q. The change request --
A. -- in our system.
Q. Okay. So the progression would be from the . . . Document has "quote" written on it in Exhibit 5 to potentially either a change request, like we have in Exhibit 4, or a change order form?
A. Correct.
Q. All right. Okay. I'm going to come back to this, Exhibit 5, just because I want to understand -- well, shoot, we can do it while we're here. Do you have Exhibit 5 in front of you?
A. I do.
Q. Seen this document before today. Right?
A. I don't recall seeing it before today or before the topics. And I actually went over it today, this morning.
Q. Exhibit 5?
A. Yeah, this (gesturing) document.
MR. DREITZER: Do you mean the first page or the entire document?
THE WITNESS: First page. First page.
Q. (By Mr. Jefferies) I wasn't that nice to send over all my exhibits. So you wouldn't have seen Exhibit 5

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in its entirety. Okay. Tell me what the first page of Exhibit 5 is?
A. It looks like an Exhibit C to the ratification. Submitted change orders.
Q. Okay. What ratification?
A. I do not know.
Q. Somebody on the first page of Exhibit 5 has been -- has gone through and listed change order requests, and some of them have an AR by them which is APCO responsibility. Do you see that?
A. I do.
Q. Do you know what that represents?
A. It appears that it represents somebody's interpretation of which ones were APCO responsibilities.
Q. Okay.
A. I don't know who generated this document originally though. I don't recognize it previous to today.
Q. Okay. As the corporate designee today, do you know if Zitting received payment for those items that are not designated AR on the first page of Exhibit 5?
A. I don't believe so.
Q. Did Zitting submit those items -- strike that.
Did Zitting submit any of the items on the first page of Exhibit 5 to CAMCO or Gemstone for payment?
A. I don't recall.

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Q. As the corporate designee, do you know if Zitting received any payments from CAMCO or Gemstone after Zitting stopped working for APCO?
A. I don't believe so.
Q. Did you agree to reduce your labor rate down to $30 per hour for your change order request?
A. I saw some documentation in e-mails of such this morning that appears that I did.
Q. Is that a yes?
A. It appears that I did.
Q. Okay.
A. I don't have a personal memory of it, but based on the e-mails that I reviewed, it appears that I did.
Q. Okay. As the corporate designee, would you agree that Zitting agreed to reduce its labor rate to $30 per hour on whatever the outstanding change order requests were?
A. From the -- from the e-mails that I -- the e-mail chain that I reviewed this morning, it appears that . . .
MR. DREITZER: Counsel, could we possibly identify which e-mails we're talking about? I mean, if there's e-mails that firm that up, I'd like to have that part of the record.
MR. JEFFERIES: I don't know what -- he keeps referring to e-mails. I'm just trying to establish the fact.

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MR. DREITZER: Okay.
MR. JEFFERIES: So that's why I'm asking it the way I am.
Q. (By Mr. Jefferies) I don't care what you looked at. I'm just trying to -- for purposes of today -- make sure we're on the same page. So as the corporate designee, would you agree that APCO rejected certain change order requests because it objected to your labor rate?
A. Based on an e-mail chain that I read, it appeared that that was the case.
Q. So that's a yes?
A. I don't have a memory of it. So I'm just going off of this limited e-mail chain and what was going on in it. I don't know if there was other conversation had outside. I don't know if somebody got mad and picked up the phone and called and had a discussion. I don't recall that.
And the e-mail chain isn't inclusive of -- of a conclusion, but that looks like that's the direction it was going. And I just -- unfortunately, it's been so long and there's so many -- so many phone conversations and so forth that -- that I don't have the benefit of recalling.
Q. Okay. Isn't it true, sir, that as the corporate representative for Zitting today, that APCO -- whether you agreed or not, APCO did reject some change order requests. Correct?

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A. It appeared that they had.
Q. Okay. And as a result, Zitting repriced certain change order requests using a labor rate of $30 an hour. Correct?
A. Correct.
Q. Okay. Can you identify any -- well, let's see. I'm not sure how the list of change order requests . . . in Exhibit 3 and 5 . . .
MR. DREITZER: Well, Counsel, I can show you -- I can say that on Exhibit 3, No. 15 for 155,896 --
MR. JEFFERIES: I'm sorry. One more time.
MR. DREITZER: Sure. In Exhibit 3, Item 15 for 155,896 --
MR. JEFFERIES: Yeah.
MR. DREITZER: -- can be found on Exhibit 5, third line from the bottom, but I haven't matched them up one to one though.
THE WITNESS: Does anyone know who generated this document originally?
Q. (By Mr. Jefferies) Exhibit 5?
A. The cover of Exhibit 5.
Q. I can't personally represent to you. I found it in your document production. It has your Bates on it.
A. Okay.
MR. DREITZER: Can we go off the record for a

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moment.
MR. JEFFERIES: Sure.
(Pause in proceedings.)
Q. (By Mr. Jefferies) Just while we were off the record, we compared the summary in Exhibit 3 and the summary in Exhibit 5, and it appears what you're designating as Nos. 22, 23, 24, and 25 on Exhibit 3 are not included in Exhibit 5. Correct?
A. Correct.
Q. And just looking at the timing, would you agree that Change Order Request 22, 23, 24, and 25 were done at the direction of CAMCO?
A. I would come to that conclusion based off of Exhibit 5 -- is it Exhibit 5? Somewhere I saw some actual CAMCO verbiage.
Q. I think it was Exhibit 4.
A. Is it Exhibit 4?
Q. First page.
A. Well -- but if you look further in, you've got . . .
MR. DREITZER: Oh, you're right.
THE WITNESS: CAMCO somewhere.
MR. DREITZER: Actually, in Exhibit 4, if you go to the fourth page in, which is ZBC2079, that's Change Request 24 which -- with a dollar figure of 19,9 and then --

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MS. REPORTER: I'm sorry? Which will then?
MR. DREITZER: With -- which -- with a dollar figure of 19,900 that matches up to No. 22 on Exhibit 3.
THE WITNESS: And then going down, you get the same thing on the next page, 3750. So it would appear that these -- these last four changes were done after CAMCO showed up on-site.
Q. (By Mr. Jefferies) Okay. Let me make sure my record is clear. We've got a lot of rambling in there when we read this. Would you agree, sir, that what you're showing is Change Order Request 22, 23, 24, and 25 in Exhibit 3 were actually performed for CAMCO?
A. Performed under their direction. I don't know, contractually, how -- how that works. To my knowledge, I didn't have a contractual obligation to CAMCO. I had a contractual obligation to APCO. And so I don't know -- I don't know where that -- we did work for the project, work for the project under the contract that I had signed.
And I don't know if I had a real clear understanding of how APCO and CAMCO were interacting with each other or if they were interacting with each other, but it does appear that those were done after CAMCO showed up on-site.
Q. Okay. Let me -- let me -- I'm going to try and account for your answer in this next question. Would you

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agree, sir, that the items that are designated 22, 23, 24, and 25 on Exhibit 3 were performed after APCO stopped working on the project and after CAMCO came onboard?
A. I would agree with that.
Q. Didn't you receive copies of correspondence from APCO and/or Gemstone -- words to the effect, There's a dispute between those two parties and APCO was stopping work on the project?
A. I don't recall.
Q. Did you take any steps to confirm what CAMCO's role was on the project?
A. I don't recall.
Q. Just given the issues on the project, you would have likely had to have confirmed their involvement before you performed extra work. Correct?
A. Correct. I just don't recall what their involvement, in my understanding, was.
Q. Was Zitting paid for Items 22 through 25 on Exhibit 3?
A. I don't believe so.
Q. May save us a lot of time with this question. As the corporate designee here today, if I were to walk you through the individual change order requests that are outlined Items 3 through 20, would you be able to explain to me the underlying factual basis as to why it was a change in

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scope?
A. All I could do is rely on the description to lead me to believe what it was, but I would have to have a set of plans in front of me to -- to see what was -- what was shown or not shown and what prompted the change.
Q. Would you -- okay. So you can't do that sitting here today, other than just reading to me what I can read --
A. Mm-hmm.
Q. -- as the heading. Right?
A. Correct.
Q. Okay. Do you, as the corporate designee today, have the ability to explain to me how the amounts reflected in Change Order Request 3 through 20 on Exhibit 3 were calculated?
A. Without going and finding the supporting documentation, I don't have that ability.
Q. Okay. If you look at Exhibit 5 -- we can pick an example. Go to Quote No. 18 for $3,300.
A. What page is that? Oh, I'm sorry. It's not . . . 3300?
Q. Yes.
A. Okay. I got it.
Q. Can you tell, looking at this, if this work was actually performed?
A. I cannot, other than it says "presnap lines" on

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No. 7, as per Herschel and Shawn's instructions. So this indicates that the work was done. And it was instructed verbally by John -- by Shawn. So beyond that, I can't verify it. From this document, that is.
Q. And go to the Quote No. 3, page before it, in the amount of $30,412. Can you tell, looking at this, whether this work was actually done or is this an estimate?
A. I can tell this work was actually done.
Q. Okay. How?
A. Because the description here says, Install, tighten screws for 8 and 9 in concrete, as directed by Shawn Bounds, in order to eliminate the problem with finishing the concrete around them and having them kicked out of place and not end up in the wall. This also fixes the problem of having the bolts come up under the studs.
Q. Okay.
A. So I know that that work was done. All the inspections were passed off. The bolts had to be in there in order to be passed off.
Q. Okay. Should there be a change order request or -- in your system or your files implementing this change or --
A. Not necessarily.
Q. No? Do you recall that APCO had rejected change order requests because of a lack of supporting

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documentation?
A. I don't recall that.
Q. Do you recall the owner receiving copies of -- communications from the owner to APCO, that APCO then forwarded to you, that the owner was requesting further support for certain change order requests?
A. I don't recall that. Unfortunately, probably for everyone, in a sense, Shawn Bounds' method was verbal request, oftentimes. And he, oftentimes, failed to go and put his request in writing. Sometimes it's kind of a challenge to get as complete a picture of his changes as would -- otherwise would have.
Q. Well, you knew from your own change to the subcontract that, in order for you to get paid, you needed to have something signed off on by APCO. Correct?
A. That's what the contract states and that's why we kept pushing for something more than verbal. All the way through the job, we kept pushing him to get something more than verbal. Yeah, I'll get it. Yeah, I'll get it. Yeah, I'll get it. Do the work. I'll get it. Do the work. I'll get it. All the way through.
Q. Didn't you reach a point where you actually advised APCO that you're not performing any change order work unless you get something in writing?
A. I don't recall, but that sounds like something

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that we possibly could have done based on the frustration we were having from them not -- from Shawn not producing something in writing for what he was asking us to do.
Q. Is it your testimony that, despite your saying that, you went ahead and continued to do change order work without anything in writing?
A. There may be some instances where we did changes without anything in writing, just verbally. And that's the frustrating thing about a contract is that verbiage relates to both parties.
Is APCO -- is APCO denying that this work was done?
MR. DREITZER: Let me -- let's let him ask the questions.
THE WITNESS: Okay.
Q. (By Mr. Jefferies) That's the nice thing about this process is I get to ask the questions.
A. Fine.
MR. DREITZER: We'll have our day.
THE WITNESS: All right.
Q. (By Mr. Jefferies) Okay. Why don't we flip through these. So you think Quote 3 has been performed historically?
A. Yes.
Q. Okay. I wasn't clear on Quote 18, the next

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one, 3300 bucks. Can you tell?
A. That was performed.
Q. Okay. How about Quote 16?
A. That was performed.
Q. How about Quote 15?
A. That was performed. That was per Joe's instruction.
MR. PELAN: Wrong Joe. Joe Dehaas.
THE WITNESS: Oh, you're right.
Q. (By Mr. Jefferies) So you're concluding that these were performed because what, they have a date?
A. I'm concluding they were performed because of the inscription down here that says who instructed them to do it. And I'm also saying that based on the fact that I know that the work was completed which allowed the framing portion of the work to be -- receive final inspection pass off.
Q. Looking at the first page of Exhibit 5, I want to make sure the record is clear. You don't know who prepared this?
A. I don't recall who prepared this.
Q. Did you see a ratification agreement during the course of the project?
A. I don't recall any kind of a ratification agreement. Ratification of what?

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Q. Well, I'm going to . . .
MR. JEFFERIES: Let's mark this.
MS. LYNN: Yeah.
MR. DREITZER: You need copies? Or we can take a minute.
MR. JEFFERIES: I have --
MS. LYNN: No, we have it.
MR. JEFFERIES: Thank you.
(Exhibit 5 was marked.)
(Exhibit 6 was marked.)
Q. (By Mr. Jefferies) Sir, I'm going to show you what I've marked as Exhibit 6 and this was in some Bates-numbered production.
MR. DREITZER: Okay.
Q. (By Mr. Jefferies) But showing you what's entitled Ratification and Amendment of Subcontract Agreement. This one is for . . .
MS. LYNN: Buckley.
MR. JEFFERIES: Buckley.
THE WITNESS: Really? I wouldn't have never come to that.
Q. (By Mr. Jefferies) Do you see that?
A. I do.
Q. Okay. In fact, if you look at the first page under change orders --

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A. Mm-hmm.
Q. -- it references, Change orders. And attached hereto as Exhibit C are all the change orders that have been submitted by subcontractor to APCO prior to the effective date of this agreement which will correspond to what I marked as Exhibit 5, the first page.
A. Okay.
Q. Which is what prompted the question in my mind: Did Zitting have a ratification agreement like Exhibit 6 for the project?
A. I don't believe so.
Q. Have you ever seen a document form of agreement like this in relation to the project?
A. I don't believe so.
Q. Now, if you look at -- would you put Exhibit 3 in front of you and also Exhibit 5. Put that out of the way. And if you go to the Quote No. 3 within Exhibit 5, it totals 30,412. And if I'm reading the description, it says, Install, tighten screws. Do you see that?
A. Yes.
Q. Does that correspond with Item 20 on Exhibit 3?
A. I don't know if it's inclusive of, because the dollar amount changed. So apparently there was some jockeying back and forth between the time this was generated and the time this was generated.

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Q. Well, that's why I'm asking the question: Would the difference be the difference in the labor rate?
A. I don't know the answer to that right off the bat. Might be a completely different scenario. I'm not sure.
Q. Well, let's look at -- go to the next one, Presnap lines.
A. Okay.
Q. I think it's Item 19 on Exhibit 3 and then Quote No. 18 within Exhibit 5. That number that looks to be the same scope of work, but it's now been reduced to 3300. Do you see that?
A. Yes.
Q. And would you agree that is based on the change in the labor rate?
A. It would appear to be. I'd have to take a calculator and see --
Q. If you don't mind --
A. -- what the labor rate would be.
Q. -- if you could back into it. If you're able to answer the question --
A. It appears to be the same change with a different price amount. And I know this one states $30 an hour. So it appears that that's the case. I just -- I haven't done the math backwards to --
Q. Do you mind?

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A. No. It appears that this one was based off of $50 an hour for 110 hours and this one is based off of $30 an hour for 110 hours.
Q. Would you be able to do that same calculation on the first one we looked at for the tightened screws?
A. Let's try that. It appears that that's the case as well.
Q. Okay. I don't want to take the time to walk through all of these in Exhibit 5, but the numbers in Exhibit 5 do appear to be different from what you're showing on Exhibit 3, generally. Correct?
A. It -- it appears to be. It appears that there was some reduction in the field that didn't get translated into the office for work that was completed, on at least some of them.
Q. Well, all of the items that I included in Exhibit 5 are all based on the $30 rate, as you've calculated it.
A. Okay.
Q. Do you see that?
A. Yes.
Q. Isn't it true, sir, that you understood that APCO was rejecting your change order request unless and until they would get owner approval for those items?
A. It is not.

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Q. And why do you say that?
A. That wasn't my understanding.
Q. APCO did reject your change orders. Right?
A. I don't recall.
Q. I thought we went through this.
A. There was some of them that they wanted a reduction in rate; they didn't reject it. And then there's some that were approved. So to throw them all in that one basket --
Q. Okay.
A. -- I don't agree with.
Q. Fair enough. Which ones do you believe were approved by APCO?
A. I'd have to go through them individually. I assume there was some that they actually approved early on that we billed for. And then I believe that there was some that they approved verbally that we were waiting to bill for until they brought their paperwork through which Shawn was horrible at. So they verbally approved all of them. So when you say "approved," then I have to try to define what that means.
Q. Okay. Would you look at Exhibit 1, the subcontract.
A. Okay.
Q. Paragraph 5 talks about changes and claims.

A. Which section?
Q. Five. Page 6.
A. Okay. Okay.
Q. Did -- does that comply with paragraph 5.1 and 5.2 by providing written notice of these claims to APCO?
A. This documentation shows that we did.
Q. Okay.
A. And the problem is we couldn't get anything in writing from APCO. So it kind of takes two parties to make a contract work. It's just not fair for APCO to list all of the terms of the contract and then not uphold any of the terms themselves and then hold us liable for that.
Q. Describe for me the process that you would go by, in terms of what change orders you would bill on a pay application.
A. Typically we wouldn't bill for any change orders until we've got a change order form from APCO that shows they've adjusted our contract amount. Then we would put it in our system as a change order which would change our contract amount and then we'd immediately bill for it if it was done.

Unfortunately, APCO, mostly Shawn, was not keeping up his end of that process. So it stalled our ability to bill them out, but he was still directing us to do everything and verbally approving them. And so all we could

do is send them a piece of paper from our side and . . .
Q. Why did Zitting comply with directions that it considered to be changes in scope if it wasn't getting anything in writing?
A. Because he was verbally telling us to do it and verbally telling us he'd get it in writing.

MR. JEFFERIES: No.
MS. LYNN: No, I just had it out . . .
MR. DREITZER: This one has the -- okay.
MR. JEFFERIES: Has all the answers on it.
THE WITNESS: Cheat sheet.
MR. DREITZER: Is this Exhibit 7?
(Exhibit 7 was marked.)

Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 7. Appears to be an e-mail exchange, starts on April 2, 2008. Do you see that?
A. Yes.
Q. And at the bottom -- Roy, that's your brother? --
A. Yes.
Q. -- is stating one approved change order on this job. If we can't get this resolved in the next week, we will stop all extra work on Manhattan West. Is it your testimony that you proceeded with extra work from and after April 2, 2008, even without anything in writing?
A. I -- we may have gotten some stuff in writing, but

for the most part, we did not get change orders revising our contract amount from APCO after this date.
Q. Did you ever bill APCO for retention?
A. I believe so.
Q. Did you ever send APCO an invoice or pay application for retention while APCO was working on the project?
A. I don't believe so.
Q. Don't believe so?
A. I don't believe so.
Q. Did you ever send any correspondence or communications to APCO indicating that it was your position that APCO was somehow responsible for retention to Zitting?
A. I believe I sent them an invoice. That would suggest that I feel like they're responsible to pay it.
Q. Did you ever send any follow-up e-mail letter after you sent that invoice?
A. A lien.
Q. Okay. The lien went to the owner. Right?
A. I believe APCO got a copy of it.
Q. Let me make sure my record is clear. And when you're -- do you know what date you sent the pay application for the retention?
A. I don't recall.

MR. JEFFERIES: You got this?

MS. LYNN: Is it this one . . .
Q. (By Mr. Jefferies) Do you have proof that you delivered the pay application for retention to APCO?
A. I don't recall.
Q. Okay. Sitting here today as the corporate designee, do you have proof that Zitting delivered an application for payment for retention to APCO?
A. I don't know of proof right -- just from sitting here, but I'm under the assumption that we e-mailed it to them.
Q. E-mail, okay.
A. Or, excuse me, faxed probably back then.
Q. Did you -- that's why I was asking the question. When that amount obviously didn't get paid, did you send any follow-up letter or e-mail to APCO saying, APCO, you're somehow responsible for retention?
A. A lien.
Q. Other than the lien document?
A. I don't recall.
Q. Are you aware of any --
A. I don't --
Q. -- such --
A. -- recall any.
Q. All right.
A. If I was aware of it, I'd recall it,

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theoretically.
Q. As the corporate designee here today, are you presently aware of any communications, letters, e-mails to APCO saying, You owe me retention, you haven't paid it, other than the lien?
A. None that I recall. None that I'm aware of.
Q. I'm going to show you, sir, what was previously marked as Exhibits 85 and 86 to Ms. Allen's deposition.
MR. DREITZER: Counsel?
MR. JEFFERIES: Yes.
MR. DREITZER: Go off the record for a second.
MR. JEFFERIES: Yeah.
(Pause in proceedings.)
Q. (By Mr. Jefferies) Okay. Do you have Allen Exhibit 85 in front of you?
A. Yes.
Q. Tell me what you're billing here.
A. Looks like we're billing for window installation and change orders.
Q. Okay. Can you walk me through the items you're billing here?
A. On the very last page --
Q. Okay.
A. -- down under the first place, it says Subtotal. And if you go across the top heading, it says, This period.

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Q. Yep.
A. Everything under this period.
Q. So $20,500 for window installation?
A. Yes.
Q. Is that change order work or . . .
A. I'm not sure. The description is cut off, but it appears that it is, yes.
Q. The reason I ask, because it doesn't say changes. It just says, Window installation.
A. I think it's cut off. I think the description is cut off, but window installation was not in our original scope. So I would assume it's a change order.
Q. And you're only billing half, again, some schedule value?
A. Where are you seeing that?
Q. Well, if you look at --
A. Oh, I got you. Yeah, we had previously billed half. So we were billing the -- the final half.
Q. When was this work completed?
A. I don't recall.
Q. Your -- you didn't sign this pay application until January 30, 2009. Correct?
A. Correct.
Q. Why did you wait so long to submit this?
A. I don't recall.

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Q. The next item says, Changes to plans, and then you have star AR. Do you see that?
A. Yes.
Q. Does that refer to APCO responsibility?
A. That appears to be kind of what has been going on throughout the documents.
Q. Okay. So that -- so that my record is clear, that AR reference, 257,957, is the same AR that is reflected on Exhibit 5. Correct?
A. I'd have to do a calculation to see if the two correlate amount-wise.
Q. Well, we can do that. I was trying to --
A. Because there's not a total on this exhibit.
Q. Okay. I was trying to simplify our respective lives. The AR designation is consistent between your pay application, 509, Allen Exhibit 85, and the AR designation in Exhibit 5. Correct?
A. Appears to be. I just don't know if the dollar amounts correlate.
MR. DREITZER: Counsel, can I just clarify? So are you asking him whether he's conceding that AR, as used in Allen Exhibit 85, stands for APCO's responsibility as it does in Exhibit 5?
MR. JEFFERIES: Yes.
MR. DREITZER: Oh, okay. Do you understand that

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question?
THE WITNESS: And I -- yeah, I understand that question. I believe it does.
Q. (By Mr. Jefferies) Okay. Was Exhibit Allen 85 the first time that you formally did a pay application for those change order requests to the tune of 257,957?
A. I don't recall.
Q. You have another item, Options on Buildings 8, 9, 7 -- that's not being billed this period. Strike that.
If I go further down, you've got changes to plans. Looks like it should be GR. Is that right?
A. Yes.
Q. Okay. Is that Gemstone responsibility?
A. That's consistent with some of the -- well, I don't see GR here. I see APCO. So I don't know the answer to that.
Q. Well, that's your -- isn't that what you intended by "GR"?
A. I don't know.
Q. What did you mean when you used the term "changes to plans"?
A. That would mean change orders that were -- plan change orders. So revisions to the plan. So it looks to me like -- and -- it looks to me like everything was split up between AR and GR and it would -- it would -- it would make

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sense that that's a Gemstone responsibility designation. I just don't know that indefinitely. And that would possibly be a way for APCO to split the stuff that they're paying for in-house and the stuff that they're billing Gemstone for, but I just don't know the answer to that.

Q. Okay. But however you did it, it was Zitting that did the AR and the GR designations on Allen Exhibit 85. Correct?

A. I don't know. I -- and I don't know what the GR -- I don't know for sure what that even stands for. We could make assumptions here.

Q. Well --

A. But I don't know if this is the right exercise for assumptions.

MR. DREITZER: And that also assumes that's an abbreviation, because it's cut off. It could be a whole other word.

MR. JEFFERIES: Yeah. Well, let me make sure my record is clear. I thought we did this earlier.

Q. (By Mr. Jefferies) You would agree that it looks like it's GR. Correct?

A. It looks like it could be an R, yeah. It looks like it's GR. I'm just making assumptions as to what that would mean. I don't know who created Exhibit C in Exhibit 5, but at the bottom they gave a little key that

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says, AR equals APCO's responsibility. So I don't see a key anywhere that there's anything about that.

Q. Okay. If I asked you this, I apologize. In Allen Exhibit 85, you say Period 2, 6/30/2008. Why did you pick that time period?

A. I don't know the answer to that.

Q. And do you know why you waited until the end of January 2009 to submit this pay application?

A. I don't know if this was the first time this was submitted or not. I may have been repetitively billing it with no response. I just don't know.

Q. Are you able to tell me where the 423,654.85 comes on Allen Exhibit 85 for change orders?

A. I'd have to do a calculation, but I'm assuming it's those bottom two subtotals.

Q. The 107 and the 316?

A. Mm-hmm. That is correct. That's -- that total correlates.

Q. Would the 107,589.30 that is shown for changes to plans on Allen Exhibit 85 correspond to the item difference in bid set to permitted construction set on Exhibit 5?

A. Well, that's 155,000 on Exhibit 5. So the dollar amounts don't correlate.

Q. I respect that. I'm asking because I don't see any other reference to plan changes on your itemization of

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outstanding change order requests either on your Exhibit 3 that we marked today or Exhibit 5. Would you agree?

A. That's probably because it wasn't outstanding. It was approved, potentially.

Q. Okay. Maybe I'm not being clear. I'm just trying to find an apple to an apple.

A. Okay.

Q. I recognize the dollars don't tie out, but topically and substantively, are those the same claims, if you will -- the difference in bid set to permitted construction set depicted on Exhibit 5 and what you've billed as changes to plans for 107,000 on Allen Exhibit 85?

A. I don't know the answer to that.

Q. Okay. In looking at Allen Exhibit 85, how much had you been paid as of January 30, 2009?

A. I don't think this reflects how much I've been paid. I think it reflects how much I've billed. So I don't think I can answer that question from this document.

Q. Okay. Let's look at Allen Exhibit 86. Now you're showing the billing period still under Application No. 509, but you're showing November 30, 2008. Do you know why you picked that date?

A. I don't.

Q. But you signed this document on January 30, 2009. Correct?

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A. It appears so, yes.

Q. What are you billing in this pay application?

A. Retention.

Q. Is this the first time you've sought to bill retention?

A. I don't know the answer to that. I don't recall.

Q. What documentation do you have to confirm how much you've been paid on the project?

A. I believe any documentation that I would have for that would have been submitted in document request.

MS. LYNN: What's the date on the document . . .

MR. JEFFERIES: Before that, I think.

(Exhibit 8 was marked.)

Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 8 to your deposition, can you identify that for me, please.

A. Looks like a statement of account for the Manhattan West project.

Q. Are these -- well, the first page shows an invoice dated 6/30/2008 for 347,441.67. Do you see that?

A. I do.

Q. That's the number reflected in Allen Exhibit 85. Right?

A. Yes.

Q. And it wasn't billed on June 30, 2008, was it?

A. I don't believe it was. I believe that it's an error. When you go in to create an invoice, you -- you can change the period.

Q. Okay.

A. And I believe someone failed to do that.

Q. Now, if you go to the second page of Exhibit 8, this doesn't have the cutoff on some of the letters we were looking at earlier. Is this a summary of all of the outstanding change orders in your mind?

A. It appears to be.

Q. Okay. Can you -- the first item is window installation. And I'm not asking you this to be obnoxious. Is there any way that you can find that reference in either Exhibit 3 or 5 or was it a prior change order that was actually signed?

A. I believe it was one that actually did get sent all the way through the system.

Q. Okay.

A. So it wasn't hanging out there.

Q. Okay. Item No. 2 is changes to plans and it has the AR. Now, this is your terminology in your system. So that's APCO responsibility, in your mind. Right?

A. I don't know where that came from. I don't know if that came off of this document, and I was just trying to conform with this document.

Q. Exhibit --

A. And I don't know who created this (gesturing) document. So this (gesturing) document says AR equals APCO's responsibility. So I don't know if -- if we sent all the changes into APCO and they -- they internally sorted and decided, Okay. This one goes to the owner, this one's us, this is owner, this is us, sent this back to us and said, Bill these in separate line items, so that we can bill the owner for this one. I just don't recall that. That seems logical.

Q. Okay. I didn't want to interrupt you, but in your answer, you were pointing to this document. You were pointing to Exhibit 5. Right?

A. Yes.

Q. Okay. As the corporate designee here today, would it be reasonable for us to conclude that the AR, as used in Zitting's internal accounting, corresponds to those items that you're designating as APCO's responsibility, consistent with Exhibit 5?

A. I would say yes.

Q. Okay. The next item in Exhibit 8 in the change order summary says, Options at Buildings 8 and 9. Is there a corresponding item in Exhibits 3 or 5 or do you believe that to be a change order?

A. I believe that to be something that was actually

processed through and our contract amount increased on APCO's books.

Q. Okay.

A. So I don't believe that it would have a reason to be on either of these lists.

Q. Three and five?

A. Correct.

Q. Then the last item is -- well, strike that.

Before I -- the APCO responsibility -- strike that.

Item No. 2 that has the AR designated on page 2 of Exhibit 8 -- when we take a break for lunch and so we don't have to do it on the record, would you all be willing to at least see if that 257,957 ties out to the ARs on Exhibit 5?

A. Yes.

Q. Okay. And which brings me to the last item and that was changes to plans, GR on page 2 of Exhibit 8. And I'm -- still have this lingering question as to whether that topical, slash, substantive issue is the item that was priced out at 155,896. So I'm rambling. I don't even think that's a question.

Does any of this refresh your recollection as to whether those two tie out?

A. It does not.

Q. Okay. If you go to page 3 of Exhibit 8, what does

this show that Zitting was paid on the project?

A. This document shows that we paid 3. -- $3,282,849.

Q. Okay. Which ties out pretty closely to the dollar amount on the less previous certificates for payment of Allen Exhibit 65. Correct?

A. Correct.

Q. Okay. So given the fact that those two numbers tie out, would it be fair to conclude prior to the July -- strike that.

Given those two payment numbers, between Exhibit 8, page 3 and Allen Exhibit 85, that, in fact, Zitting was paid everything that had billed prior to November -- excuse me, prior to January 30, 2009?

MR. JEFFERIES: Can you fix that? Fix that.

Q. (By Mr. Jefferies) Correct?

A. It shows there's an open amount of 750,807. So . . .

Q. I get that. I'm asking a different question. Given the fact that the numbers for payments received correspond, wouldn't it be fair to conclude that prior to you signing Allen Exhibits 85 and 86 on or about January 30, 2009, that everything you had submitted in the pay application had been paid?

A. I don't think that I would draw that conclusion. I'd rather go and look up actual cash receipts and come to a

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number based off of that, in case there's an accounting error with accounts -- with the receivables. We may have been paid more than that at that point. I mean, payments to date, 3.2. As of 2 -- 4/6 of 2010, it seems too low on a $14 million contract.

Q. Well, as far as APCO goes, your -- the scope you did -- worked on for APCO was only Building 8 and 9 and that --

A. That was 14 million.

Q. -- original scope --

A. No.

Q. -- was approximately 3.6 million --

A. Oh, I'm sorry. Where is the subcontract?

MR. DREITZER: Exhibit 1.

MR. JEFFERIES: Or 3.2.

THE WITNESS: Where is the amount? What page is your dollar amount on, Joe?

MS. LYNN: I think 16.

MR. JEFFERIES: Sixteen.

THE WITNESS: What am I missing? I'm seeing a $14 million contract here.

Q. (By Mr. Jefferies) Well, I think you're right. When you -- when you factor in all the buildings, but --

A. So you're referring to Buildings 8 and 9?

Q. Yeah, but I don't want to talk you into anything.

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I want to make sure our record is clear. Your phase 1 that brought us to this point was your work on Buildings 8 and 9 under the APCO subcontract. Correct?

A. Yes.

Q. Okay. So I'm showing you a document. APCO's position is that the original contract amount, based on your subcontract pricing, was 3 million --

A. 310.

Q. -- 610,000. Do you agree with that?

A. I'd have to go back and verify it, because I'm -- I've got the contract set up for the full 14,400,000. So . . .

Q. Can you confirm it based on page 16 and 17 of Exhibit 1?

A. So how does Building Type 4 and 5 correlate with Buildings 8 and 9? Does anyone know? Was Buildings 8 and 9 Building Type -- Building Types 4 and 5?

Q. If he answers, I'll have to swear him in. So we can do it off the record.

A. I was just thinking out loud. I was talking out loud. So 3.6 -- 311. What was that amount that APCO was claiming?

MR. JEFFERIES: Oh, let's go off the record. Do you mind?

MR. DREITZER: No.

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(An off-the-record discussion was had.)

Q. (By Mr. Jefferies) Sir, while we were off the record, we had a discussion about -- while you're pricing in the original scope of Exhibit 1, the subcontract included in excess of $14 million, you would agree that your original scope, as directed, only included Buildings 8 and 9 which would be one Building Type 4 and two Type 5?

A. Yeah, that's my understanding.

Q. Okay. For an approximate 3,600,000 original contract price for phase 1?

A. That's what it appears to me, yes.

Q. All right. So we started down this path because I get these thoughts in my brain, but to firm up that -- you had been paid $3,282,849 as of April 6, 2010, the date of Exhibit 8, which --

A. Sorry. Which exhibit?

Q. Eight.

A. That appears to be correct.

Q. Which, given the billings, Allens Exhibit 85 and 86 would mean you had been paid everything you had submitted in a pay application. Correct?

A. Up to this point, correct.

Q. This point being April 6, 2010?

A. The only -- the only things that I show open are these -- are Exhibits Allen 86 and Exhibits Allen 85.

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Q. Okay.

A. Everything else I show as paid.

Q. Okay. That's why I asked you this the way I did. Then I'm going to close this out, we'll go grab something to eat real quick.

A. Okay.

Q. So given your answer, Allen 80- -- Exhibit 85, it shows almost the exact amount that you -- showing you got paid in Exhibit 8. Right?

A. That is correct.

Q. Okay. Given that fact, doesn't that confirm to you that, as of January 30, 2009, you have been paid everything you had invoiced in a pay application prior to your issuance of Allen Exhibits 85 and 86?

A. That would appear to be the case.

Q. All right. Okay. I -- before we end, let's finish Exhibit 8. Go to the next two pages. Am I understanding that, in fact, Zitting has written off the retention and the change order billings?

A. It appears that I made a note of such. I don't -- I'd have to verify whether that actually happened on our books or not.

Q. That's what you're showing here. Right?

A. It appears that that was -- that's what I was shown, but I'd have to verify if that happened or not.

Q. What would you need to look at, because it actually looks like it's being done here in this aging detail. Would you agree?
A. It looks like the aging detail's showing a write-off of 403,365.
Q. Okay. That would be the retention?
A. I believe that number correlates with retention.
Q. Okay. And then go to page Bates label 120 within Exhibit 8. It looks like that 347,441 for change orders has, in fact, been written off. Correct?
A. It appears that way.
Q. Okay. All right.
A. The thing I would have to verify is our tax returns to make sure that, in terms of IRS purposes, it truly was written off. It appears that -- that it was on this document, but I'd have to verify.
Q. Okay. Let's grab a quick bite. If you guys -- before we go off the record, if you guys could -- if you wouldn't mind -- looking at Exhibit 5 and seeing if the ARs equate to the numbers you were showing on Exhibit 8.
A. Okay.
Q. And what I will do is make the corresponding commitment to go through my stack of remaining documents, seeing how much I truly need or what I can save for trial.
THE WITNESS: Okay.

MR. JEFFERIES: Let's go off the record.
(A lunch recess was taken.)
Q. (By Mr. Jefferies) Okay. Sir, while we were off the record for our lunch break, I had shown you my cheat sheet that's included in my version of Exhibit 5, and I will represent to you that what we did is we had Mary Jo put the corresponding August 8th, 2008, quote from you, from Zitting -- that, to my understanding, is based on the $30-an-hour rate and those quotes are what I've included in Exhibit 5.
So I know it's not fair to ask you this today, but as I understand it, based on our discussion off the record, you-all will confirm or look at this and get back to me on -- because, by our calculation, even the 257 in Exhibit --
MR. DREITZER: Five?
MR. JEFFERIES: -- 8 --
MR. DREITZER: Oh, 8.
MR. JEFFERIES: -- would actually -- using your revised pricing -- go down to 176. That's -- you don't have to respond to that. That's just me popping off for the record.
MR. DREITZER: Okay.
MR. JEFFERIES: Okay.
MR. DREITZER: I understand how you get there. We need to run through it. So we'll do that.

(Exhibit 9 was marked.)
(Exhibit 10 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 10. Is -- it's Mr. Pelan's letter of April 18, 2008. I think I alluded to this earlier. Do you recall seeing this before today?
A. Let me read it real quick. I don't recall seeing this.
MR. JEFFERIES: Okay. Let's do this one.
(Exhibit 11 was marked.)
MR. DREITZER: Thanks.
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 11, is that your signature? No, that's --
A. That's my brother Roy's --
Q. -- Roy's.
A. -- signature.
Q. Roy's.
MS. LYNN: Roy's signature.
Q. (By Mr. Jefferies) Do you recognize that being Roy's signature?
A. Yes.
Q. Okay. Have you seen this before today?
A. Let me look through it.
Q. Not all of them are yours, if you go to the next page.

MR. DREITZER: Oh, by the way, I should -- while we're on the record, I do want to raise the same concern about this not having been Batesed anywhere, but, you know, we're confident it's got to be in the record somewhere with a stamp on it.
MR. JEFFERIES: Well, I hope so. Obviously, that's -- he's confirmed that's Roy's signature. So I don't think there's any question that --
MR. DREITZER: Well, there's no -- yeah, I mean, I get that, but I just -- the issue is that if it had never been produced before today, that's my concern, but we'll see where it turns up.
THE WITNESS: I don't recall seeing this before today.
MR. JEFFERIES: Okay.
(Exhibit 12 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 12. You know what, I'm going to withdraw 12.
MR. DREITZER: Okay.
Q. (By Mr. Jefferies) Just leave it in. I'm not going to ask you about it. There's a cleaner one that's more worth our time. And let's go with this one.
MR. JEFFERIES: Could you be a little quicker next

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time.
THE WITNESS: Chop, chop.
MR. JEFFERIES: Man, why don't you just do this.
(Exhibit 13 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 13, is that your signature?
A. Yes.
Q. Okay. Tell me what this is.
A. It's a lien. Unconditional lien waiver --
Q. Up through what date?
A. -- upon progress payment. Through May of 2008 is what it says.
Q. And did you make any attempt to itemize any pending or unresolved claims or change order requests?
A. It doesn't appear that I did on this document.
Q. Would you have done so in any corresponding letter, e-mail, transmitting Exhibit 13 to APCO?
A. I don't -- I don't recall. I -- I could have.
(Exhibit 14 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 14, for the record, is an August 12, 2008, e-mail from Gemstone to various subcontractors. And if you look a couple of lines from the bottom, you'll see Roy Zitting. See that?
A. Oh, yeah.

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Q. Just confirming --
A. Yes.
Q. Tell me if you've seen this before today.
A. I don't recall seeing this.
Q. Does it refresh your recollection as to any -- well, strike that.
You'll notice in the e-mail Gemstone says, We're going to start reaching out to the subcontractor to try and resolve change orders, et cetera. Does it refresh your recollection as to discussions you may have had with Gemstone about some of your change order requests?
A. It doesn't.
MR. DREITZER: Counsel, while we're on the record on this one, it looks like it references an attachment. Do we know what -- do we have that or know what it is?
MR. JEFFERIES: I don't have it with me.
MR. DREITZER: Okay.
MR. JEFFERIES: We didn't copy it.
MR. DREITZER: Okay. I just wanted to note that.
Q. (By Mr. Jefferies) Do you recall after APCO left that the permits -- I don't know what the right word is -- were rescinded or cancelled in APCO's name for the project?
A. I don't recall anything about that.
MR. JEFFERIES: Let's do this one.

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(Exhibit 15 was marked.)
Q. (By Mr. Jefferies) Sir, showing you what I've marked as Exhibit 15, which I'll represent to you is the executed agreement between Gemstone and CAMCO after APCO left the project. Do you see that?
A. That's what -- if that's what you represent. I . . .
Q. I will represent -- it is -- you can tell on the first paragraph -- Gemstone and CAMCO. It's signed on page 19.
A. Okay.
Q. Have you seen this document before today?
A. Never.
Q. Okay. If you go to the second page, it talks about third party service providers, and you will note that there is a list of third party service providers that the general contractor is to engage to continue working on the project in Exhibit C.
If you go to page 23 within the exhibit, you'll see a listing of existing third party service providers. And you'll see Zitting Construction at the bottom. Do you see that?
A. I do.
Q. Does that refresh your recollection as to any discussions you may have had with Gemco [sic] -- I don't

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know why I want to say that. Strike that.
Does that refresh your recollection as to any discussions you may have had with Gemstone and/or CAMCO in August 2008 about continuing on after APCO?
A. Does not.
Q. Okay. If you go to page 6 of the agreement, Exhibit 15, paragraph 5.02, you'll see a completed work reference. And the document says, Set forth on Exhibit E hereto is an update of the status of the work as of the effective date. Then if you would, sir, go to Exhibit E. It's found on page 26 of Exhibit 15.
A. Which building did we decide I was working on?
Q. Well, that's what I was going to ask you. I think we --
MR. JEFFERIES: Yeah, but . . .
Q. (By Mr. Jefferies) I believe it's 8 and 9.
A. Okay.
Q. My question was: Did you do any work on Buildings 2, 3, or 7?
A. There's a potential that I installed some windows in one of the other buildings. I just don't know right now.
Q. Okay. Go to page 27. And, again, I've got a head start on you. Mine's highlighted, but if you look under Buildings 8 and 9, you'll see references to drywall.
A. Okay.

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Q. And there's some percentages complete for the various floors in those two buildings, 8 and 9.
A. Okay.
Q. Continuing on to the next page, 28, under Building 9, it says, Corridors, drywall has not started. First floor corridor lid framing is 70 percent complete and then the drywall itself is shown as being 55 to 70 percent complete depending upon the building.
My question to you is: Sitting here as the corporate designee for Zitting, do you have any facts, documents, or information to rebut these purported percentages of completion for the drywall on Buildings 8 and 9?
A. I don't. I can't help but notice that it shows framing complete on both Buildings 8 and 9 too.
Q. Did you have -- did you do any of the soffits -- framing for the soffits?
A. I don't recall. That could have been done by the drywaller, light gauge steel.
Q. Then how about the shafts? Did you do any framing for the shafts?
A. That could have been drywall, light gauge steel. It typically is.
Q. If I asked you this, I apologize. How about first floor lid framing? Is that something you would do?

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A. That would be drywaller.
Q. Okay.
MR. JEFFERIES: Let's mark this.
(Exhibit 16 was marked.)
MR. DREITZER: Sixteen?
Q. (By Mr. Jefferies) Sir, I marked as Exhibit 16 what I believe is a payment -- well, strike that.
Why don't you tell me what Exhibit 16 is.
A. Looks like some sort of accounting report on a couple checks that were cut to Zitting for the Manhattan West project and then a copy of a check that corresponds.
Q. If you go to the last page, I think I need to clear up the record, because I was mistaken when I read your subcontract pricing in those pods we went over --
A. Mm-hmm.
Q. -- to get to the -- if you look at the top of the third page of Exhibit 16, it shows lump -- one lump sum for Building 8, Building 9 at 1.805 million. The total is 3,610,000. Would you agree that's how your original phase 1 contract price was arrived at?
A. I'd have to go back in this contract. This number is different than these two added together.
Q. It is. I think I screwed the record up when I said that earlier.
A. I would -- I would have to say that this looks

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like how the contract amount was derived.
Q. Okay. Let me make sure my record is clear. Your phase 1 pricing under the subcontract for Buildings 8 and 9 totaled $3,610,000 based on one building each at $1,805,000. Correct?
A. Correct.
Q. All right.
A. Previous to change orders, of course.
Q. Sure.
A. And then I'm noticing here, Install windows on 2 and 3. So I did do some work on other buildings, as I had thought.
Q. Okay. Which I wanted to ask you. You're getting this check for $33,847. Does this resolve the 17,000 that you were shown as owed in Exhibit 8?
A. Which page are you referring to?
Q. Page 2 of Exhibit 8 shows --
A. Well, this isn't saying what's owed. It's saying what's approved.
Q. But I'm -- I guess my point is, through Exhibit 16, if I'm reading this correctly, you were paid the 17108.
A. It appears that's the case.
Q. Okay.
A. Yeah, it shows it in this draw request it was

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previously drawn . . .
Q. In which one?
A. In --
MR. DREITZER: Allen 85.
THE WITNESS: Eighty-five.
MR. JEFFERIES: Okay.
Q. (By Mr. Jefferies) I guess what threw me -- why is it showing up in Exhibit 8? Do you know?
A. It's just an approved change order log.
Q. But --
A. It's not talking about payment status in Exhibit 8.
Q. All right.
A. So they did actually approve some change orders and it's reflected in Exhibit A -- 8 in writing and the rest were just verbally approved and in the process of approval.
Q. Okay. Exhibit 5. I know you told me that you didn't prepare it. Did you have negotiations concerning Exhibit 5 with CAMCO and/or Gemstone?
A. I don't recall any at this time.
Q. If you had received verbal directions from Shawn, did Zitting ever follow up with any type of e-mail confirmation or -- or letter or fax?
A. I think that these work orders we've been discussing is evidence that we did follow up in writing.

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Q. Okay. Prior to performing the work, would you have -- would Zitting have -- strike that.

Would it have been Zitting's company practice to confirm verbal directions to perform what you consider to be extra work prior to the work being performed?

A. Not always.

Q. Okay. Did you -- did Zitting do that on this project?

A. Do what?

Q. Send a fax, letter, e-mail confirming verbal direction before you did the work?

A. Not always.

Q. Are you aware of any?

A. None that I can think of right now.

Q. Isn't it true, sir, that you filed the lien before you billed APCO for the retention in those change orders, Allen Exhibits 85 and 86?

A. I don't recall the date of the lien.

Q. Did you ever provide APCO with actual invoices for the materials you used for claimed extra work?

A. I don't recall. I don't recall being asked for them.

Q. How did you track disputed change order requests in your accounting system?

A. The only ones that I put in my accounting system

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were the ones that were approved. And the ones that were still being disputed were in the little worksheets that we've been looking at.

MR. JEFFERIES: I'm not going to mark this.

MR. DREITZER: What is it?

MR. JEFFERIES: It's your complaint for foreclosure.

MR. DREITZER: Okay.

MR. JEFFERIES: Exhibit 1.

MR. DREITZER: Mm-hmm. You're going after the date it was recorded? I mean, we can stipulate that it was recorded on December 23rd of 2008. So . . .

MR. JEFFERIES: The lien?

MR. DREITZER: Yeah, the lien. Mechanics lien. Yeah, that's when it was recorded.

Q. (By Mr. Jefferies) Given that stipulation, would you agree that you recorded the lien before you billed retention in change orders to APCO in a pay application?

A. There may have been a previous pay application sent to them previous to this one. I don't know, but that certainly is previous to the date that's on these two pay applications. The date on these is January 30th, 2009.

Q. Why would you have done Allen Exhibits 85 and 86 -- i.e., those pay applications -- on January 30, 2009, if you had previously billed those?

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A. Maybe as a reminder that we still need it paid.

MR. DREITZER: Did you want to see the mechanics lien? Would that help you at all?

THE WITNESS: No.

MR. DREITZER: Okay. Just want to make sure.

Q. (By Mr. Jefferies) Do you know if APCO ever received final payment from the owner?

A. I don't know.

Q. Are you aware of when APCO last received a payment from Gemstone?

A. I'm not.

Q. In looking at the paperwork that I marked as Exhibit 16, does that confirm for you that that project used construction funds control?

A. It does.

Q. And you're familiar -- generally familiar with that process?

A. Yes.

Q. And given the mechanics of those systems, APCO, as the general contractor, would not have received your retention until final completion of the project. Correct?

A. I don't know their arrangement with the owner in regards to retention.

Q. Okay. Did you review the prime contract between Gemstone and APCO?

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A. I don't recall.

Q. Ever?

A. I don't recall ever doing it.

Q. Exhibit 16 reflects a joint check from funds control to Zitting and APCO. Correct?

A. Correct.

Q. How did Zitting learn that CAMCO was going to be acting as a replacement contractor for APCO?

A. I don't recall.

Q. Do you know if there was ever a certificate of occupancy for Building 8?

A. I didn't -- I do not know.

Q. Do you know if there was ever a certificate of occupancy for Building 9?

A. I do not know.

Q. Do you know if those buildings were ever completed to the point where they could have been beneficially used and occupied?

A. They're being lived in right now. Is that what you're asking?

Q. No.

A. I'm sure they got a C of O in order to do that.

Q. Did you do any work on the project after Gemstone lost the project and it was sold?

A. No.

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Q. Are you aware of Buildings 8 and 9 ever being completed in 2009?
A. They were not.
Q. Did your field crews prepare daily reports?
A. I don't recall -- I -- on this job, if they did or not.
Q. Would it have been Zitting's standard practice and procedure for its field crews and/or project superintendents or project manager to prepare daily reports for a project like this one?
A. Typically we do.
Q. That's a yes?
A. Yes.
Q. I'm going to represent to you that, in the documents that have been produced in this case, there are only Zitting daily reports between January and April 2008. Can you explain why there would be gaps and the lack of daily reports?
A. I cannot.
Q. You would agree that your daily reports have a spot for extra work that's being either directed and/or tracked. Correct?
A. Yes.
Q. As the company designee, have you seen any of the Zitting daily reports where that extra work that is being

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performed is being noted on a daily report and/or being tracked for compensation?
A. We typically don't utilize that piece of the form. We typically utilize an external document.
Q. Did you assemble the change order -- I don't know what to call them. They're not change order requests. They're not field directives. The bids or quote designations that are included in Exhibit 5, did you do the quantification for those items?
A. That was typically done by Roy on this job.
Q. Did you do any of them?
A. I don't believe so.
Q. If Ms. Allen testified that every pay application that was submitted by Zitting during the course of construction -- and by "course of construction," I mean when APCO was on the project into August of '08 -- was actually received from Zitting via e-mail, do you have any reason to dispute that?
A. No, this job was happening kind of in that whole e-mail/fax transition. So we did some of each.
Q. You say you did some of each. Some projects were fax; some were e-mail?
A. Some people in the office were faxing. Some people were e-mailing. Some customers wanted to receive them via fax or via e-mail.

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Q. If I were to represent to you that the Zitting records produced to us in this case show that Zitting actually performed over $200,000 in work after APCO left the project, would you have any reason to dispute that?
A. I would have to add up the change orders that -- that we identified as CAMCO change orders to quantify that number. I thought it was less than that.
Q. And you're referring to the non-AR items in Exhibit 5?
A. I believe it was Exhibit 5. Scattered, it looks like. Thank you. Okay. There's some back here that actually say CAMCO on them, I thought.
Q. Well, I may have misled you. I think you're referring to -- Exhibit 3 has CAMCO.
A. Okay. That's --
Q. Let me strike the question.
A. That's the only place that I've seen it.
Q. Look at Exhibit 3, if you would. You're killing me, Smalls. Here.
A. I got it, man.
MR. DREITZER: Exhibit 3, Counsel?
MR. JEFFERIES: Yeah.
Q. (By Mr. Jefferies) And let me ask you a question. That's usually how this proceeds best, instead of me just talking. In looking at Exhibit 3 -- it looks like we went

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through this -- Nos. 22, 23, 24, and 25 are the change orders you did for CAMCO. Right?
A. I wouldn't say that I did them for CAMCO. I'd say I did them while CAMCO was on-site.
Q. Fair enough. Those approximate 28 grand?
A. Yeah, which is a lot less than the number you're trying to quantify here.
Q. So back to my question. Do you have any reason to dispute that Zitting did over $200,000 in work after APCO left the project?
A. I don't believe we did.
Q. Did Zitting ever punch list phase 1, Buildings 8 and 9?
A. Yes.
Q. Wouldn't it be true, sir, that -- well, strike that.
MR. JEFFERIES: Why don't we go off the record and let's take a quick break and I think I'm close to done.
MR. DREITZER: Okay.
(Pause in proceedings.)
Q. (By Mr. Jefferies) Sir, I'm going to show you Exhibit 11.
A. Okay.
Q. And one of the large change orders that Zitting submitted was a change order regarding the differences

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between the bid set and -- bid set and the permanent set, I believe. That's your position. Right? It's the largest change order.

A. I'd have to -- which exhibit are you referring to?

Q. We could do it on any. We could do it on Exhibit 3 if you wanted.

A. Seems to be the only one -- here we go.

MR. DREITZER: Are you talking about Item 15?

MR. JEFFERIES: Yeah.

Q. (By Mr. Jefferies) And you recall seeing that Gemstone approved, like, $16,000 for that?

A. I don't recall seeing that.

Q. It was on Exhibit 5. See that reference to 16,000?

A. Okay.

Q. My question to you is: After Zitting was advised that that change order was rejected, did Zitting ever respond back and support the balance of that change order?

A. Well, the whole change order's still listed as 155,000. It's just only -- only 16,000 is being allocated to Gemstone in this -- in Exhibit 5. The rest is being allocated to APCO.

Q. Okay. Go to -- do you have Exhibit 11?

A. Yes. Okay.

Q. This is the transmittal from APCO back to Zitting,

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enclosing the owner's review of Change Order 11. Do you see -- at the bottom of page --

A. Yes.

Q. -- 3 of the exhibit? And if you look at the writeup, you can see the owner and APCO are rejecting it because there's no breakout of cost. I won't read all that on the record for time's sake. And they -- Gemco confirms the structural portion is 8,056 and consists of header and beam revisions to after 5/25/07 set. So if they're going to double that for the two buildings, that's where you get the 16,000?

A. Right.

Q. Do you get that?

A. Yeah, I get that.

Q. Okay. So my question is: From and after the point that you got this rejection, did Zitting ever respond back to APCO saying, The balance of COR 11 is justified because of X, Y, or Z?

A. I don't have anything in front of me that says that we did, and I don't recall anything.

Q. Okay. I'm going to show you -- I don't mean this to sound unreasonable, as it's going to initially. I have your job cost, Bates label ZBCI1231 --

MR. JEFFERIES: Is it consecutive?

MS. LYNN: Yeah.

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Q. (By Mr. Jefferies) -- through 1733. And my question to you is: Anywhere in your job cost for the project do you track time or materials for the disputed change order request at issue?

A. No.

Q. Do you want to look at it before --

A. No, we don't.

MR. JEFFERIES: Okay. All right. Sir, I think that's all the questions I have. I will ask that you read and sign.

MR. DREITZER: That's fine.

MR. JEFFERIES: So she will get -- you've been through this before.

Q. (By Mr. Jefferies) She'll get the draft to your counsel.

A. Okay.

Q. And I ask that you read and sign it and make any changes you deem necessary or proper. Understand that at trial I'll be able to comment on any changes you might make.

A. Okay.

MR. JEFFERIES: Okay.

MR. DREITZER: Just have a few questions. Very briefly.

MR. JEFFERIES: You do or don't?

MR. DREITZER: I do.

Page 109

MR. JEFFERIES: Okay.

MR. DREITZER: Just a couple.

EXAMINATION

BY MR. DREITZER:

Q. Earlier on in the deposition, counsel showed you documents with regard to the change in the labor rate. Is it your recollection that the labor rate was, in fact, changed or are you just relying on the documents that were put in front of you?

A. I'm just relying on the documents that are put in front of me.

Q. So is it possible that there was history either before those documents or after it which changes the contours of what was agreed on, as far as the labor rate is concerned?

A. Yeah, absolutely. And a lot of -- unfortunately, a lot of our communication on change orders on this job was verbal, because we couldn't get Shawn to do his job and put it in writing.

Q. Right. Okay. And then if you go back to Exhibit 3, which is right in front of you, with regard to Items 22, 23, 24, 25, those have dates in the date column of 10/9/08 and 10/10/08. What does the date refer to on this document?

Page 110

A. That would be the date that I would -- I believe that's the date that the actual change request was entered into our system.

Q. Okay. But that is not the date -- is that the date the work was performed?

A. No.

Q. Okay. So do you know what kind of lag time there is between when the work is performed and when the date the change order is submitted or could -- does that vary?

A. It could be months and months, because we were trying to wait for Shawn to approve them in writing before we put them in our system.

Q. Okay.

A. But when we got to the point where we realized he wasn't going to do that, then we just put them in the system and billed for them.

Q. So just because item -- counsel before talked to you in terms of change orders that were the responsibility of APCO and change orders that -- what they claim were the responsibility of CAMCO. And so what I'm wondering is: Is it possible that the CAMCO change orders he was discussing with you could reference work that was done while APCO was still the general on the project?

A. Yes.

Q. Okay. Then if you go to Exhibit 15, please --

Page 111

MS. LYNN: What's the date of that? Sorry.

Q. (By Mr. Dreitzer) Yep, that's the one.

A. Okay.

Q. Then if you go to page 26 --

A. Okay.

Q. -- where it talks about previously completed work --

A. Yes.

Q. -- we -- do you know how this was compiled?

A. I assume that --

Q. Do you have any knowledge how this was --

A. I don't.

Q. Is it possible that as of August 25th, 2008, that this -- the information in Exhibit E might be incorrect?

A. That's possible.

Q. Okay. And -- but you were never consulted as far as what your percentages were --

A. Not that I recall.

MR. DREITZER: Okay. I have no more questions.

MR. JEFFERIES: I've got one follow-up. I'm going to show you -- there's . . .

(Exhibit 17 was marked.)

MR. DREITZER: Is this 19?

(An off-the-record discussion was had.)

///

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EXAMINATION

BY MR. JEFFERIES:

Q. Sir, showing you what's been marked as Exhibit 17, I think. Take a minute and look at that.

MR. DREITZER: And, again, I voiced the same concern before about this being an unBates-stamped document. Notwithstanding that, it appears to be involved Mr. Zitting.

THE WITNESS: Okay.

Q. (By Mr. Jefferies) Okay. Are you -- in light of Exhibit 17, are you standing behind your $30 hourly rate that you quoted?

A. It appears that he gave them a one-week time frame to pay them -- to pay -- pay the $30 rate. And obviously that didn't happen. So . . .

Q. That's why I asked you the question the way I did. Are you honoring the $30 as you sit here today?

A. In light of this new exhibit that I'm seeing, it looks like it had a one-week offer which expired, so no.

Q. So you understood that APCO rejected the change orders because it rejected the $50 per hour that was claimed. Right?

A. I don't believe that I've seen that. Does it state that in the -- in -- in the exhibit we were just looking at?

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(Exhibit 18 was marked.)

MR. DREITZER: This will be 18?

MR. JEFFERIES: Yeah.

Q. (By Mr. Jefferies) Take a minute, sir, and review Exhibit 18.

A. Okay.

Q. You'll note that APCO is rejecting the $50, because, at least in APCO's position or mind, the $50 didn't comply with the contract. Right?

A. That's what it appears as, yes.

Q. Okay. So it was actually Roy who explained how the $50 was calculated and then proposed the $30. Right?

A. Yes.

Q. There's no -- strike that.

Is it your testimony that the $50 is supported by the contract or the $30?

MR. DREITZER: Objection. Calls for a legal conclusion.

THE WITNESS: I don't believe the contract called -- calls for either dollar amount, does it?

Q. (By Mr. Jefferies) Well, you'll see down below where Ms. Lynn is quoting the contract or paraphrasing the contract, stating that it calls for actual costs -- actual cost plus 10 percent markup plus your labor burden. Do you see that?

A. Yeah, I see that.
Q. Okay.
A. So you're indicating that Roy didn't have the right to give them a one-week time line to -- to pay them?
Q. No, I'm not getting there yet. As the company designee today -- and we can pull out Exhibit 1 if we need to -- does the contract support the $50 or the $30?
MR. DREITZER: Objection. Calls for a legal conclusion.
THE WITNESS: I don't know if I have the expertise to tell you the answer to that.
Q. (By Mr. Jefferies) Yes, you do.
Okay. Whether you agreed with APCO or not, they rejected the change orders based on the labor rate. Right?
A. That's what it appears.
Q. Okay. So you submitted the $30. And is it your testimony today that -- $30 per hour you're not honoring because it expired?
A. That's what Roy's e-mail here states.
Q. Okay.
A. That's what I'm testifying.
Q. But as the company rep sitting here today, are you going to charge $50 or $30?
MR. DREITZER: Counsel, I'm not going to have him negotiate the case on the record. I mean, it's been asked

and answered. So if there's, you know, some other factual question, let's do it, but I don't -- there's no reason to negotiate this while we have a court reporter.
MR. JEFFERIES: I'm not negotiating and I haven't asked that question that way before.
Q. (By Mr. Jefferies) So go ahead.
A. Right now, the way that our claim stands, it appears that we're charging the $50 rate on all of the change orders --
Q. Okay.
A. -- that are --
Q. After --
A. -- outstanding.
Q. -- the one week expired, did you resubmit any of your change order requests?
A. I don't recall.
MR. JEFFERIES: Okay. I have nothing.
MR. DREITZER: Just a follow-up.

EXAMINATION

BY MR. DREITZER:
Q. So Exhibit 18, the second exhibit that counsel just talked about with you, that references a July 30, 2008, e-mail. Did you see that?
A. Yes.

Q. You looked at that before. Okay. Now, reading up, Randy Nickerl is telling Roy and Lisa that -- you know, how the -- how the labor cost was supposed to be calculated on the project. And then if you go to 17, 17 appears to be later on in time where it's on -- it references an e-mail from August 8th, 2008, and that is Roy attaching the condition that they will -- you will only agree to the reduced per-labor-hour rate if payment is made within a week. Is that right?
A. Yes.
Q. So after this was communicated to APCO, did you hear anything back from APCO basically saying, to the effect of, We're not playing games here. Your contract doesn't call for this and we want the $30 rate?
A. I don't think they ever did.
MR. DREITZER: Okay. I have nothing further.
MR. JEFFERIES: We're done.
(The proceedings concluded at 2:05 p.m.)

-oOo-

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON

* * * * *

I, SAMUEL ZITTING, Deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition, under penalty of perjury.

SAMUEL ZITTING, Deponent

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

CERTIFICATE OF REPORTER

I, Vanessa Lopez, a duly commissioned and licensed court reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of SAMUEL ZITTING, commencing on Friday, October 27, 2017, at the hour of 9:00 a.m.;

That the witness was, by me, duly sworn to testify to the truth and that I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes;

I further certify that I am not a relative or employee of any of the parties involved in said action, nor a relative or employee of an attorney involved in said action, nor a person financially interested in said action;

That the reading and signing of the transcript was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 30th day of October, 2017.

VANESSA LOPEZ, CCR NO. 902

EXHIBIT 4

Mark J. Connot (10010)
John H. Gutke (10062)
HUTCHISON & STEFFEN, LLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
Email: mconnot@hutchlegal.com
jgutke@hutchlegal.com

Attorneys for Buchele, Inc.

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06/01/2009 02:25:04 PM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

UINTAH INVESTMENTS, LLC a Nevada Limited Liability company d/b/a SIERRA REINFORCING, Plaintiff, vs. APCO CONSTRUCTION, a Nevada corporation; GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation; and DOESI through X, Defendants.	CASE NUMBER A583289 DEPT NUMBER XXIII **STATEMENT OF FACTS CONSTITUTING LIEN ON BEHALF OF BUCHELE, INC.**

COMES NOW Buchele, Inc. ("Buchele"), by and through its attorneys of record of the law firm Hutchison & Steffen, LLC, and makes the following statement of facts constituting lien. This Statement is being made pursuant to NRS 108.239(3) .

DATED this 29 day of May, 2009.

HUTCHISON & STEFFEN, LLC

Mark J. Connot
John H. Gutke
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Buchele, Inc.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

STATEMENT OF FACTS

Buchele is a Nevada corporation engaged in the business of, among other things, providing labor and materials in the area of concrete demolition, grading, supply and installation to various commercial construction projects. *See* affidavit of Tom Buchele, attached hereto as exhibit 1. Buchele entered into a subcontract agreement with defendant APCO Construction for concrete work to be performed at the Property described in the litigation herein, which is owned by defendant Gemstone Development West, Inc. ("Gemstone"). *Id.* At the specific request of the named defendants herein, Buchele performed labor and installed improvements at the Property at various times from June 5, 2008 through December 17, 2008. *Id.* On or about August 26, 2008, Camco Pacific Construction Company, Inc. ("Camco") ratified Buchele's subcontract with defendant APCO and assumed the terms of Buchele's subcontract with APCO. *Id.* Buchele continued completing the work at the Property until it was announced that Camco terminated its contract for cause with Gemstone. *Id.* Despite forwarding invoices to the defendants and to Camco reflecting the charges for the materials and supplies delivered, and labor performed, defendants and Camco failed, neglected and refused to pay the sums owed. *Id. See also* demand for payment attached hereto as exhibit 2. Accordingly, on December 17, 2008, Buchele filed its notice of lien (mechanic's lien) with the Clark County Recorder's Office, reflecting the total sum of $77,220.70 due and owing to Buchele. *See* exhibit 1. *See also* Notice of Lien attached hereto as exhibit 3.

DATED this 29 day of May, 2009.

HUTCHISON & STEFFEN, LLC

Mark J. Connot (10010)
John H. Gutke (10062)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Buchele, Inc.

HUTCHISON & STEFFEN
A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this 1st day of June, 2009, I caused the above and foregoing document entitled **STATEMENT OF FACTS CONSTITUTING LIEN ON BEHALF OF BUCHELE, INC.** to be served as follows:

[X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

[ ] Pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

[ ] to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Glenn F. Meier
Meier & Fine, LLC
2300 West Sahara Ave., Suite 430
Las Vegas, NV 89102
Attorneys for Defendant
Scott Financial Corporation

Gwen Rutar Mullins
Howard & Howard
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Las Vegas, NV 89169
Attorneys for APCO Construction

Nikola Skrinjaric
Nevada Title Company
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Las Vegas, NV 89128
Attorney for Nevada Construction Services

Donald H. Williams
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Attorneys for Harsco Corporation

Jeffrey R. Albregts
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Attorneys for Gemstone Development West, Inc.

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Attorneys for Ahern Rentals, Inc.

An employee of Hutchison & Steffen, LLC

HUTCHISON & STEFFEN
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PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

EXHIBIT 1

AFFIDAVIT OF TOM BUCHELE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

TOM BUCHELE, being first duly sworn, deposes and states as follows:

1. I am a resident of Clark County, Nevada, and am over the age of legal majority in this State and competent to testify to the facts set forth herein.

2. I make this affidavit in support Buchele, Inc.'s statement of facts constituting lien, filed in the action *Uintah Investments, LLC v. APCO Construction; Gemstone Development West*, Clark County District Court Case No. A583289.

3. I am the owner and president of Buchele, Inc.

4. Buchele, Inc. ("Buchele") is a Nevada corporation engaged in the business of, among other things, providing labor and materials in the area of concrete demolition, grading, supply and installation to various commercial construction projects.

5. Buchele entered into a subcontract agreement with defendant APCO Construction for grading work to be performed at the Property described in the litigation herein, which is owned by defendant Gemstone Development West, Inc. ("Gemstone").

6. At the specific request of the named defendants herein, Buchele performed labor and installed improvements at the Property at various times from June 5, 2008 through December 17, 2008.

7. On or about August 26, 2008, Camco Pacific Construction Company, Inc. ("Camco") ratified Buchele's subcontract with defendant APCO and assumed the terms of Buchele's subcontract with APCO. Buchele continued completing the work at the Property until it was announced that Camco terminated its contract for cause with Gemstone.

8. Despite forwarding invoices to the defendants and to Camco reflecting the charges for the materials and supplies delivered, and for the labor performed, defendants and Camco failed, neglected and refused to pay the sums owed.

9. On December 17, 2008, Buchele filed its notice of lien (mechanic's lien) with the Clark County Recorder's Office, reflecting the total sum of $77,220.70 due and owing to Buchele.

Further, your affiant sayeth naught.

Tom Buchele

Tom Buchele

Subscribed and sworn to before me,
this 21st day of May, 2009.

KATIE CHILDS
Notary Public State of Nevada
No. 06-109347-1
My appt. exp. Aug. 10, 2010

Notary Public, in and for said
County and State

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

EXHIBIT 2

BUCHELE INC.
P.O. Box 570025
Las Vegas, Nv. 89157-0025
Ph. 702 656-5383
Fax 656-4665

Nv.Lic. #46797

(SBE,NBE)

Date: Dec. 30, 08

TO: Camco Pacific
Fax 798-6655

Re: Manhattan West Project, Recap of pay applications submitted to Gemstone.

Pay app. # 3 Oct. 21,08 for $36,000.00	Due Now.
Pay app. #4 Nov. 30,08 for $19,411.70	Due Now.
Retention due from pay app. $21,809.00	Due Now

Total due at this time for completed operations and materials stored on site. $77,220.70

FAXED TO: Gemstone 8:18AM Dec 30, 08

EXHIBIT 3

(21

20081230-0003196

Fee: $15.00
N/C Fee: $0.00
12/30/2008 13:13:18
T20080325322
Requestor:
BUCHELE INC

Debbie Conway JJF
Clark County Recorder Pgs: 2

APN: 16332101019

Recording requested by and mail documents to:

Name: Buchele, Inc.

Address: P.O.Box 570025

City/State/Zip: Las Vegas, NV. 89157

LIN101mk
Nevada Legal Forms & Books, Inc. (702) 870-8977
www.legalformsrus.com

NOTICE OF LIEN

(Mechanic Lien)

NOTICE IS HEREBY GIVEN:

1. That Buchele, Inc., hereinafter known as "Claimant", hereby claims a lien pursuant to the provisions of N.R.S., 108.221 to 108.246 inclusive, on property located in Clark County, Nevada. *(Set forth legal description and commonly known address)*

2. The amount of the original contract is $ 262,900.00.

3. The total amount of all changes and additions, if any, is $ (44,810).

4. The total amount of all payments received to date is $ 140,869.30.

5. The amount of the lien, after deducting all just credits and offsets is $ 77,220.70.

6. The name of the owner(s), if known, of the property is/are Gemstone Apache LLC, Gemstone Development West Inc, (owner) Alex Edelstein.

7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials, or equipment is Gemstone Development West, Inc. (Cameo Pacific - acting as Contractor for Gemstone Development West)

8. A brief statement of the terms of payment of the lien claimant's contract: To be paid by Gemstone or its agents. For all labor and materials supplied to job site. Jobsite address 9205-9255 W. Russell Rd., and development of Russell Rd and Rocky Hill Rd. adjoining site. Total amount due for all work provided. Contract Terminated after work was performed.

9. That the claim herein is entitled to a reasonable attorney's fee, statutory interest on the amount of this lien claim and costs incurred in perfecting this lien claim.

10. THIS FORM COMPLIES WITH NRS 108.226.

In Witness Whereof, I/We have hereunto set my hand/our hands this 30 day of Decemeber, 20 08.

Buchele, Inc
Print name of Claimant
By: Thomas Buchele
Thomas Buchele
Authorized Signature

STATE OF NEVADA)
COUNTY OF CLARK)

Tom Buchele, being first duly sworn on oath according to law, deposes and says:

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

Tom Buchele
Authorized Signature of Claimant
Thomas Buchele, President

Subscribed and sworn to before me ths 30 day of December, 20 08.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CHARLES ACREE
Appt. No. 06-107617-1
My Appt. Expires June 16, 2010

Notary Public
My commission expires: 6/16/2010
Consult an attorney if you doubt this forms fitness for your purpose.

ORIGINAL

FILED

Feb 6 12 59 PM '09

CLERK OF THE COURT

COMP
JUSTIN L. WATKINS
Nevada Bar No. 009217
WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.
3993 Howard Hughes Parkway, Suite 400
Las Vegas, NV 89169
Telephone: 702-789-3100
Facsimile: 702-822-2650

Attorneys for Intervenor/Lien Claimant

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A571228
DEPT. NO.: XVI

CABINETEC, INC'S STATEMENT OF FACTS CONSTITUTING LIEN CLAIM AND COMPLAINT IN INTERVENTION

(Exempt from Arbitration Pursuant to NAR 3(A) - Mechanic's Lien Foreclosure)

CABINETEC, INC., a Nevada corporation,

Intervenor/Lien Claimant,

vs.

CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; APCO CONSTRUCTION, a Nevada corporation; GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation and; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants in Intervention.

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FEB - 6 2009
CLERK OF THE COURT

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COMES NOW, CABINETEC, INC., a Nevada corporation, by and through its counsel, JUSTIN L. WATKINS, ESQ. of the law firm WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P., and for its Statement of Facts Constituting Lien and Complaint in Intervention, complains and alleges as follows:

GENERAL ALLEGATIONS

1. CABINETEC, INC. ("CABINETEC") is a Nevada corporation duly authorized and qualified to do business in Clark County, Nevada. CABINETEC holds a Nevada State Contractor's License No. 0027189, Classification C-3 Carpentry.

2. Upon information and belief, Defendant/Defendant in Intervention GEMSTONE DEVELOPMENT WEST, INC. ("GEMSTONE") is a Nevada corporation, and is the owner of 9205 W. Russell Road, Clark County, Nevada, described as Clark County Assessor's Number 163-32-101-019, further described as PT NE4 NW4 SEC 32 31 60, SEC 32 TWP 21 RNG 60, and more fully described in that certain Grant Bargain Sale Deed recorded on February 7, 2008 in Book 20080207 as Instrument No. 01481 of the Official Records of Clark County (the "Property"), and commonly known as the ManhattanWest mix-use development project (the "Project").

3. Upon information and belief, Plaintiff/Defendant in Intervention APCO Construction ("APCO") is a Nevada corporation, and at all times relevant herein was duly authorized and qualified to conduct business in Clark County, Nevada.

4. Upon information and belief, Defendant in Intervention CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("CAMCO") is a California corporation, and at all times relevant herein was duly authorized and qualified to conduct business in Clark County, Nevada.

5. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants In Intervention Does I through X, inclusive, and Roe Corporations I through X, inclusive, are unknown to CABINETEC who therefore sues those Defendants by such fictitious names, but are believed to be agents, contractors, servants, employees, representatives, affiliates, bond companies, successors or assigns of the other Defendants in Intervention named in

this Complaint in Intervention. Defendants in Intervention Does I through X, inclusive, Roe Corporations I through X, inclusive, Plaintiff/Defendant in Intervention APCO, Defendant/Defendant in Intervention GEMSTONE, Defendant in Intervention CAMCO will be collectively referred to herein as "All Defendants in Intervention".

6. CABINETEC is informed and believes, and thereupon alleges that each of the Defendants in Intervention Does I through X, inclusive, and Roe Corporations I through X, inclusive is a party claiming an interest in the Property and/or is liability for CABINETEC's accounts stated. CABINETEC asks leave of this Court to amend this Complaint in Intervention and insert the true names and capacities of said Does I through X and Roe Corporations I through X, inclusive, when the same have been ascertained by CABINETEC, together with the appropriate charging allegations, and to join these Defendants in this action.

7. Upon information and belief, APCO and GEMSTONE entered into the ManhattanWest General Construction Agreement for GMP, dated September 6, 2007 (the "Prime Contract").

8. Pursuant to the Prime Contract, APCO was to act as the general contractor the construction of the Project.

9. On or about April 28, 2008, APCO and CABINETEC entered into a Subcontract Agreement, whereby CABINETEC would supply and install kitchen and bath cabinets for buildings 8 & 9 of the Project (the "APCO Subcontract").

10. On or about August 26, 2008, pursuant to Gemstone's request CABINETEC entered into a Ratification and Amendment of Subcontract Agreement (the "Ratification) with CAMCO, whereby CAMCO agreed to the terms of the APCO Subcontract and to replace APCO as the "Contractor" under the APCO Contract.

11. CABINETEC performed its work on the Project pursuant to the APCO Subcontract.

. . .

FIRST CAUSE OF ACTION

(Breach of Contract against All Defendants in Intervention, DOES and ROES)

12. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 11 of this Complaint in Intervention as though fully set forth herein.

13. CABINETEC entered into the Subcontract with APCO wherein CABINETEC agreed to provide services and materials for and on behalf of APCO, and APCO agreed to pay CABINETEC for said services and materials.

14. CABINETEC entered into the Ratification with CAMCO, pursuant to GEMSTONE's request, wherein CAMCO agreed to pay CABINETEC for the services and materials on the Project.

15. Pursuant to, and in reliance upon, the aforementioned Subcontract, Ratification and representations, CABINETEC performed the work of providing services and materials (the "Work").

16. Despite APCO's, CAMCO's and GEMSTONE's representations that they would pay for the Work provided by CABINETEC, and despite demands upon each of them to pay the amount owed for the Work, APCO, CAMCO and GEMSTONE have failed and refused, and continue to fail and refuse to pay CABINETEC the sums due and owing CABINETEC.

17. APCO breached the terms of the Subcontract with CABINETEC and there is now due and owing to CABINETEC an amount in excess of $10,000.00, together with interest accruing thereon, for which judgment should now be entered against APCO in favor of CABINETEC.

18. GEMSTONE breached the terms of its agreement with CABINETEC and there is now due and owing to CABINETEC and amount in excess of $10,000.00, together with interest accruing thereon, for which judgment should now be entered against GEMSTONE in favor of CABINETEC.

19. CAMCO breached the terms of the Ratification with CABINETEC and there is now due and owing to CABINETEC an amount in excess of $10,000.00, together with interest

accruing thereon, for which judgment should now be entered against CAMCO in favor of CABINETEC.

20. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing against All Defendants in Intervention, DOES and ROES)

21. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 20 of this Complaint in Intervention as though fully set forth herein.

22. The Subcontract between APCO and CABINETEC contained an implied covenant of good faith and fair dealing.

23. The agreement between GEMSTONE and CABINETEC contained an implied covenant of good faith and fair dealing.

24. The Ratification between CAMCO and CABINETEC contained an implied covenant of good faith and fair dealing.

25. APCO, GEMSTONE and CAMCO breached the covenant of good faith and fair dealing by refusing to pay money owed to CABINETEC for the Work. As a result of the breach, CABINETEC has sustained damages in an amount in excess of $10,000.00.

26. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

THIRD CAUSE OF ACTION

(Unjust Enrichment against All Defendants in Intervention, DOES and ROES)

27. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 26 of this Complaint in Intervention as though fully set forth herein.

28. As a result of the Work as set forth above, APCO, CAMCO and GEMSTONE have been unjustly enriched all to the detriment of CABINETEC, and this Court should grant judgment to CABINETEC against APCO, CAMCO and GEMSTONE, jointly and severally, in

an amount in excess of $10,000.00, together with interest accruing thereon, costs and attorney's fees incurred herein.

FOURTH CAUSE OF ACTION

(Violation of NRS 624 against All Defendants in Intervention, DOES and ROES)

29. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 28 of this Complaint in Intervention as though fully set forth herein.

30. Upon information and belief, APCO, CAMCO and GEMSTONE violated NRS 624.609 by improperly withholding payments due to CABINETEC.

31. CABINETEC is entitled to the remedies set forth in NRS 624.610.

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

33. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

FIFTH CAUSE OF ACTION

(Monies Due and Owing against All Defendants in Intervention, DOES and ROES)

34. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 33 of this Complaint in Intervention as though fully set forth herein.

35. APCO and/or GEMSTONE owes CABINETEC the sum of $19,547.00, together with interest accruing thereon, for portions of the Work, and although demand has been made upon APCO and GEMSTONE for payment of said sum, APCO and GEMSTONE have failed, neglected and refused and continue to fail, neglect and refuse to pay the same.

36. CAMCO and/or GEMSTONE owes CABINETEC the sum of $730,555.00, together with interest accruing thereon, for portions of the Work, and although demand has been made upon CAMCO and GEMSTONE for payment of said sum, CAMCO and GEMSTONE have failed, neglected and refused and continue to fail, neglect and refuse to pay the same.

37. CABINETEC is entitled to judgment against APCO and/or GEMSTONE in the amount of $19,547.00, together with interest thereon at the highest legal rate until paid in full.

38. CABINETEC is entitled to judgment against CAMCO and/or GEMSTONE in the amount of $730,555.00, together with interest thereon at the highest legal rate until paid in full.

39. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

SIXTH CAUSE OF ACTION

(Quantum Meruit against All Defendants in Intervention, DOES and ROES)

40. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 39 of this Complaint in Intervention as though fully set forth herein.

41. CABINETEC performed the Work.

42. APCO, CAMCO and GEMSTONE had knowledge that CABINETEC was performing the Work.

43. APCO, CAMCO and GEMSTONE accepted the benefits of the Work, materials and improvements, and expressly and impliedly promised to pay CABINETEC a reasonable compensation therefore.

44. The Work has a reasonable value of $750,102.00, but CABINETEC has not been paid this amount. As a result, CABINETEC has sustained damages in the amount of $750,102.00.

45. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

(Account Stated against All Defendants in Intervention, DOES and ROES)

46. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 45 of this Complaint in Intervention as though fully set forth herein.

47. There was, and has been, an account stated by APCO setting forth the sums due and owing to CABINETEC, which account as stated by APCO is the amount of $19,547.00.

48. There was, and has been, an account stated by CAMCO setting forth the sums due and owing to CABINETEC, which account as stated by CAMCO is the amount of $730,555.00.

49. Despite CABINETEC's demands for payment, and APCO's and CAMCO's failure to dispute the amounts owing, APCO and CAMCO have refused to pay the account as required under the Subcontract and the Ratification, respectively.

50. As a result of the foregoing, and in accordance with the principles of equity and common law, CABINETEC is entitled to judgment in its favor, and against APCO in the amount of $19,547.00, together with interest thereon at the highest legal rate.

51. As a result of the foregoing, and in accordance with the principles of equity and common law, CABINETEC is entitled to judgment in its favor, and against CAMCO in the amount of $730,555.00, together with interest thereon at the highest legal rate.

52. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

(Lien Foreclosure against GEMSTONE, DOES and ROES)

53. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 52 of this Complaint in Intervention as though fully set forth herein.

54. CABINETEC is a licensed contractor in the State of Nevada. CABINETEC performed the Work at the request and special instance of APCO, CAMCO and GEMSTONE.

55. CABINETEC demanded payment of all sums due and owing for the Work. However, CABINETEC has not received payment for its work and materials and as a result, the amount of $750,102.00 remains past due and owing.

56. On January 12, 2009, CABINETEC sent APCO, CAMCO and GEMSTONE a Notice of Intent to Lien and demanded payment.

57. Having received no response to the Notice of Intent to Lien, on February 2, 2009, CABINETEC recorded a Mechanics Lien in Book Number 20090202 as Instrument Number 0001657.

58. CABINETEC served the Lien via certified mail.

59. CABINETEC is entitled to recover in this action the costs and fees incurred in

preparing, recording, and serving its Notice of Intent to Lien and its Lien.

60. CABINETEC's Lien is charged against the Property and has been properly perfected pursuant to NRS 108, et seq. CABINETEC is therefore entitled to an Order from this Court directing that the Property be sold and foreclosed upon and that from the proceeds of the sale, CABINETEC be paid the principal sum of $750,102.00, together with interest accrued thereon, plus reimbursement of the costs of suit and attorneys fees that CABINETEC has incurred and continues to incur in connection with this action.

NINTH CAUSE OF ACTION

(Negligent Misrepresentation against GEMSTONE, DOES and ROES)

61. CABINETEC repeats and realleges each and every allegation contained in paragraphs 1 through 60 of this Complaint in Intervention as though fully set forth herein.

62. GEMSTONE, in the course of an action in which it had a pecuniary interest, failed to exercise reasonable care or competence in obtaining or communicating information to CABINETEC.

63. CABINETEC justifiably relied on this information.

64. CABINETEC suffered damages as a result of GEMSTONE's misrepresentation.

65. CABINETEC has been required to engage the services of an attorney to prosecute this matter and is entitled to payment of attorneys' fees and costs.

WHEREFORE, CABINETEC prays as follows:

1. That this Court enter a Judgment in favor of CABINETEC and against Defendants, jointly and severally, in the amount of $750,102.00, plus interest thereon at the highest legal rate from the date the amount became due until paid;

2. That this Court enter judgment against the Defendants, jointly and severally, for a reasonably sum as and for the costs of preparing, verifying, serving, and filing of CABINETEC's Lien;

3. That the Lien be enforced according to law;

4. That the Court direct a foreclosure sale of the Property;

5. That the Property be sold and the proceeds be applied to the payment of sums found due to CABINETEC;

6. That the Court enter such deficiency judgment against the Defendants, jointly and severally, as my be proper in the premises;

7. That the Court enter judgment in favor of CABINETEC and against Defendants, jointly and severally, for reasonable attorney's fees and costs of suit incurred herein; and

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

Dated: February 6, 2009

WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.

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Attorneys for Intervenor/Lien Claimant

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation, Plaintiff, vs. ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive, Defendants.	CASE NO.: A 587168 DEPT. NO.: XXII **HELIX ELECTRIC'S STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT**
HELIX ELECTRIC OF NEVADA, LLC, a Nevada limited-liability company, d/b/a HELIX ELECTRIC, Plaintiff in Intervention, vs. ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT	**EXEMPTION FROM ARBITRATION: Title to Real Estate**

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

Defendants.

HELIX ELECTRIC OF NEVADA, LLC d/b/a HELIX ELECTRIC ("Helix") by and through its attorneys PEEL BRIMLEY LLP, as for its Complaint re Foreclosure ("Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

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

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

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: See Attached Exhibit 1
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-112-001 thru 163-32-112-246, 163-32-101-020, 163-32-101-022 & 163-32-101-023 (formerly known as 163-32-101-019) including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

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

4. Helix is informed and believes and therefore alleges that Defendant ASPHALT PRODUCTS CORP., a Nevada corporation ("Asphalt"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

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

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

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

8. Helix does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES 1 through 10, ROE CORPORATIONS 1 through 10, BOE BONDING COMPANIES 1 through 10 and LOE LENDERS 1 through 10. 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

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this 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 Asphalt and APCO)

9. Helix 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 Helix entered into an Agreement with Asphalt and APCO (the "APCO Agreement") to provide certain electrical related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada.

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

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

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

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

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

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

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

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

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

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

16. Helix has been required to engage the services of an attorney to collect the 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 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 ("Ratification Agreement") with CPCC, who replaced Asphalt and APCO as the general contractor on the Project, to continue the Work for the Property.

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

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

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

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

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

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

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

d. Failing and/or refusing to comply with the Ratification Agreement and Nevada law; and

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

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

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

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against Asphalt, APCO & CPCC)

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

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

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

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

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29. Due to the actions of Asphalt, APCO and CPCC, Helix suffered damages in an amount to be determined at trial for which Helix is entitled to judgment plus interest.

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

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

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

32. Helix furnished the Work for the benefit of and at the specific instance and request of the Defendants.

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

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

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

36. Helix has demanded payment of the Outstanding Balance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SIXTH CAUSE OF ACTION
(Claim of Priority)

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

51. Helix is informed and believes and therefore alleges that construction on the Property commenced before the recording of Defendant LOE LENDERS' Deed(s) of Trust and/or other interest(s) in the Property.

52. Helix's claim against the Property is superior to the claim(s) of LOE LENDERS and/or any other Defendant.

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

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

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

55. 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).

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

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

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

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

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60. 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.

61. CPCC and the CPCC Surety owe Helix the penal sum of the Bond.

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

EIGHTH CAUSE OF ACTION
(Violation of NRS 624)

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

64. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as Asphalt and APCO and/or CPCC), to, among other things, timely pay their subcontractors (such as Helix), as provided in the in the Statute.

65. In violation of the Statute, Asphalt and APCO and/or CPCC have failed and/or refused to timely pay Helix monies due and owing.

66. Asphalt's and APCO's and/or CPCC's violation of the Statute constitutes negligence per se.

67. By reason of the foregoing, Helix is entitled to a judgment against Asphalt and APCO and/or CPCC in the amount of the Outstanding Balance

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

WHEREFORE, Helix prays that this Honorable Court:

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

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

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

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

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

Dated this 14 day of April 2009.

PEEL BRIMLEY LLP

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FILED
APR 30 2 04 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ZITTING BROTHERS CONSTRUCTION, INC., a Utah corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC., a Nevada Corporation; APCO CONSTRUCTION, a Nevada corporation; and DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X and LOE LENDERS I through X, inclusive,

Defendants.

Case No. A-09-589195-C
Dept. No. V

ZITTING BROTHERS CONSTRUCTION, INC.'S COMPLAINT RE: FORECLOSURE

(Exemption from Arbitration - Concerns Title to Real Estate)

Plaintiff Zitting Brothers Construction (hereinafter "Zitting Brothers"), by and through its attorneys Lewis Brisbois Bisgaard & Smith LLP, as for its Complaint against the above-named Defendants complains, avers and alleges as follows:

THE PARTIES

1. Zitting Brothers is and was at all times relevant to this action a Utah corporation, duly authorized and qualified to do business in Clark County, Nevada.

2. Zitting Brothers is informed and believes and therefore alleges that Defendant Gemstone Development West, Inc. ("Gemstone"), and Doe/Roe Defendants are and were at all times relevant to

this action, the owners, reputed owners, or the persons, individuals and/or entities who claim an ownership interest in that certain real property commonly referred to as Manhattan West mixed use development project and generally located at 9205 W. Russell Road, Clark County, Nevada, and more particularly described as set forth in the Legal Description of the Notice of Lien attached hereto as **Exhibit 1**; and further more particularly described as Clark County Assessor Parcel Number 163-32-101-019, and including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space which may be required for the convenient use and occupation thereof, upon which Owner caused or allowed to be constructed certain improvements (the "Property").

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

4. Zitting Brothers is informed and believes and therefore alleges that Defendant APCO Construction ("APCO") and Doe/Roe Defendants, are and were at all times relevant to this action, doing business as licensed contractors authorized to conduct business in Clark County, Nevada.

5. Zitting Brothers 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 though X, Boe Bonding Companies I through X, and Loe Lenders I through X, Zitting Brothers alleges that such Defendants claim an interest in or to the Project and/or are responsible for damages suffered by Zitting Brothers as more full discussed under the claims for relief set forth below. Zitting Brothers will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Zitting Brothers discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract - Against All Defendants)

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

7. Zitting Brothers entered into an Agreement with APCO Construction and/or Gemstone (the "Agreement") to provide certain construction services and other related work, materials, and equipment for a project located in Clark County, Nevada (the "Work").

. . .

8. Zitting Brothers furnished the Work for the benefit of and at the specific instance and request of APCO.

9. Pursuant to the Agreement, Zitting Brothers was to be paid an amount in excess of Ten Thousand Dollars ($10,000) (hereinafter "Outstanding Balance") for the Work.

10. Zitting Brothers furnished the Work and has otherwise performed its duties and obligations as required by the Agreement.

11. APCO and/or Gemstone as well as Doe/Roe Defendants, have breached the Agreement by, among other things:

a. failing and/or refusing to pay the monies owed to Zitting Brothers for the Work.

b. failing to adjust the Agreement price to account for extra work and/or changed work, as well as suspensions, delays of Work caused or ordered by APCO, Gemstone, and/or their representatives.

c. failing and/or refusing to comply with the Agreement; and

d. negligently or intentionally preventing, obstructing, hindering, or interfering with Zitting Brothers performance of the Work.

12. Zitting Brothers is owed an amount in excess of Ten Thousand Dollars ($10,000) for the Work.

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

SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing - Against All Defendants)

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

15. There is a covenant of good faith and fair dealing implied in every agreement, including the Agreement between Zitting Brothers and APCO and/or Gemstone.

. . .

. . .

16. APCO and/or Gemstone breached their duty to act in good faith by performing the Agreement in a manner that was unfaithful to the purpose of the Agreement, thereby denying Zitting Brothers's justified expectations.

17. Due to the actions of APCO and/or Gemstone, Zitting Brothers suffered damages in an amount to be determined at trial for which Zitting Brothers is entitled to judgment plus interest.

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

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

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

20. Zitting Brothers furnished the Work for the benefit of and at the specific instance requested of the Defendants.

21. As to APCO and/or Gemstone, this cause of action is being pled in the alternative.

22. APCO and/or Gemstone accepted, used and enjoyed the benefit of Zitting Brothers's Work.

23. APCO and/or Gemstone knew or should have known that Zitting Brothers expected to be paid for the Work.

24. Zitting Brothers has demanded payment of the Outstanding Balance.

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

26. The Defendants have been unjustly enriched, to the detriment of Zitting Brothers.

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

. . .

FOURTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien - Against All Defendants)

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

29. The provision of the Work was at the special instance and request of APCO and/or Gemstone for the improvement of the Property.

30. As provided by NRS 108.245, APCO and/or Gemstone had actual knowledge of Zitting Brothers's delivery of the Work to the Property or Zitting Brothers provided a Notice of Right to Lien, as prescribed by Nevada law.

31. Zitting Brothers demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000), which amount remains past due and owing.

32. On or about December 23, 2008, Zitting Brothers timely recorded a Notice of Lien in Book 20081223 of the Official Records of Clark County, Nevada, as Instrument No. 0003690 (the " Lien"), attached hereto as **Exhibit 1.**

33. The Lien was in writing and was timely recorded against the Property for the outstanding balance due to Zitting Brothers in the amount of Seven Hundred Eighty Eight Thousand Four Hundred and Five Dollars and Forty-One Cents ($788,405.41), with payment to be made upon Project progress.

34. The Lien was served upon the record Owners and/or their authorized agents, as required by law.

35. Zitting Brothers is entitle to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

FIFTH CAUSE OF ACTION
(Claim for Priority - Against LOE LENDER Defendants)

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

37. Zitting Brothers is informed and believes and therefore alleges that physical work of the improvement to the Property commenced before the recording of Defendant Loe Lenders' Deed(s) of Trust and/or other interest(s) in the Property and/or any leasehold estates.

. . .

38. Zitting Brothers's claims against the Property and/or any leasehold estates are superior to the claim(s) of Loe Lenders and/or any other Defendant.

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

SEVENTH CAUSE OF ACTION
(Violation of NRS 624)

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

41. 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 Zitting Brothers), as provided in the Statute.

42. In violation of the Statute, APCO has failed and/or refused to timely pay Zitting Brothers monies due and owing.

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

44. By reason foregoing, Zitting Brothers is entitled to a judgment against APCO in the amount of the Outstanding Balance.

45. Zitting Brothers has been required to engage the services of an attorney to collect the outstanding Balance and Zitting Brothers is entitled to recover its reasonable costs, attorney's fees and interests therefore.

WHEREFORE, Zitting Brothers prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, for Zitting Brothers's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance;

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

. . .

3. Enters a judgment declaring that Zitting Brothers has a valid and enforceable mechanic's lien against the Property, with priority over all Defendants, in an amount of the Outstanding Balance;

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

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

Dated this 30th day of April, 2009.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____
Michael M. Edwards, Esq.
Nevada Bar No. 006281
Reuben H. Cawley, Esq.
Nevada Bar No. 009384
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101
Attorneys for Plaintiff
Zitting Brothers Construction, Inc.

EXHIBIT 1

EXHIBIT 1

Recorded at the Request of and Return
Recorded Document to:

Ryan B. Simpson
File No.: 12462
2115 South Dallin Street
Salt Lake City, Utah 84109
163-32-101-019

20081223-0003690
Fee: $17.00 RPTT: $0.00
N/C Fee: $25.00
12/23/2008 13:29:43
T20080319140
Requestor:
PREMIUM TITLE
Debbie Conway ADF
Clark County Recorder Pgs: 4

NOTICE OF LIEN

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

1. The amount of the original contract is: $14,461,000.00
2. The total amount of all additional or changed work, materials and equipment, if any, is: $423,644.55
3. The total amount of all payments received to date is: $3,647,608.55
4. The amount of the lien, after deducting all just credits and offsets, is: $788,405.41
5. The name of the owner, if known, of the property is: Gemstone Development West, Inc., a Nevada corporation, of 9121 West Russell Road #117, Las Vegas, Nevada 89148.
6. The name of the person by whom the lien claimant was employed or to whom the line claimant furnished or agreed to furnish work, materials or equipment is: APCO of 3432 North Fifth Street, Las Vegas, Nevada 89032.
7. A brief statement of the terms of payment of the lien claimant's contract is: progress payment with a retention.
8. A description of the property to be charged with the lien is: See Exhibit "A"

Dated this 23 day of December, 2008.

Ryan B. Simpson
Agent for Zitting Brothers Construction

STATE OF UTAH)
)ss
COUNTY OF SALT LAKE)

Ryan B. Simpson, being first duly sworn on oath according to law deposes and says: I have read the foregoing Notice of Intent to Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon the information and belief, and, as to those matters, I believe them to be true.

Notary Public
PAUL R OSBORN
Commission #573409
My Commission Expires
June 27, 2012
State of Utah

Ryan B. Simpson
Agent for Zitting Brothers Construction

Subscribed and sworn to before me this 23 day of December, 2008.

EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

PARCEL 1:
The West Half (W1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224982 of the Official Records.

AND EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004782 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

PARCEL 2:
The East Half (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM the Southerly 396 feet thereof.

AND EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224981 of Official Records.

TOGETHER WITH that property shown in Order of Vacation recorded August 23, 2007 in Book 20070823 as Document No. 0004781 and re-recorded August 28, 2007 in Book 20070828 as Document No. 0004280 of Official Records.

PARCEL 3:
The Southerly 396 feet of the East Hast (E1/2) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

PARCEL 4:
The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

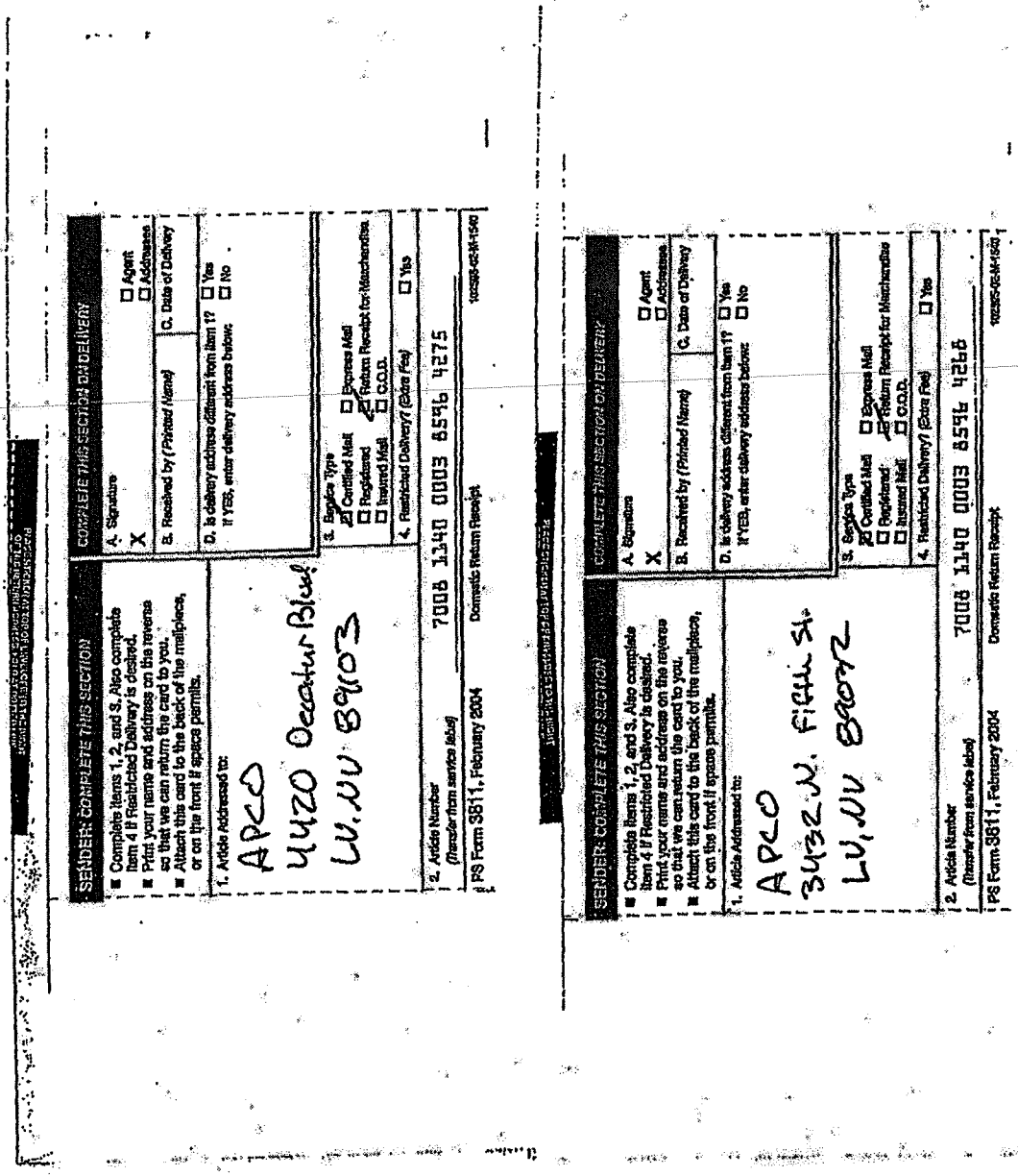
EXCEPTING THEREFROM that property conveyed to Clark County by Grant Deed recorded September 22, 1972 in Book 265 as Document No. 224994 of Official Records.

FURTHER EXCEPTING THEREFROM that property shown in the Final Order of Condemnation recorded November 20, 1998 in Book 981120 as Document No. 00763 of Official Records.

PARCEL 5:
The East Half (E1/2) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 32, Township 21 South, Range 60 East, M.D.B. & M.

EXCEPTING THEREFROM that property conveyed to the County of Clark by Grant, Bargain, Sale and Dedication Deed recorded August 23, 2007 in Book 20070823 as Document No. 0004783 of Official Records.

PARCEL NO. FOR ALL OF THE ABOVE IS 163-32-101-019


SENDER: COMPLETE THIS SECTION
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.
1. Article Addressed to:
APCO
4420 Decatur Blvd
Lv, NV 89103
COMPLETE THIS SECTION ON DELIVERY
A. Signature
X
Agent
Addressee
B. Received by (Printed Name)
C. Date of Delivery
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3. Service Type
Certified Mail
Express Mail
Registered
Return Receipt for Merchandise
Insured Mail
C.O.D.
4. Restricted Delivery? (Extra Fee) Yes
2. Article Number (Transfer from service label) 7008 1140 0003 8596 4275
PS Form 3811, February 2004 Domestic Return Receipt
102595-02-M-1540
SENDER: COMPLETE THIS SECTION
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.
1. Article Addressed to:
APCO
3432 W. Fifth St.
Lv, NV 89107
COMPLETE THIS SECTION ON DELIVERY
A. Signature
X
Agent
Addressee
B. Received by (Printed Name)
C. Date of Delivery
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3. Service Type
Certified Mail
Express Mail
Registered
Return Receipt for Merchandise
Insured Mail
C.O.D.
4. Restricted Delivery? (Extra Fee) Yes
2. Article Number (Transfer from service label) 7008 1140 0003 8596 4268
PS Form 3811, February 2004 Domestic Return Receipt
102595-02-M-1540

CERTIFIED MAIL

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

TURNER & SIMPSON
ATTORNEYS AT LAW

7008 1140 0003 8595 4268

SALT LAKE CITY UT DEC.24.08

00000020043

U.S.POSTAGE
PSTAGE MTR 382181
05.66

APCO
3432 North Fifth Street
Las Vegas, Nevada 89032

CERTIFIED MAIL

2115 SOUTH DALLIN STREET, SALT LAKE CITY, UTAH 84109

TURNER & SIMPSON
ATTORNEYS AT LAW

7008 1140 0003 8595 4275

SALT LAKE CITY UT DEC.24.08

00000020041

U.S.POSTAGE
PSTAGE MTR 382181
05.66

APCO
4420 Decatur Blvd
Las Vegas, Nevada 89103

2115 SOUTH BALLIN STREET, SALT LAKE CITY, UTAH 84109

TURNER & SIMPSON
ATTORNEYS AT LAW

7008 1140 0003 8576 4282

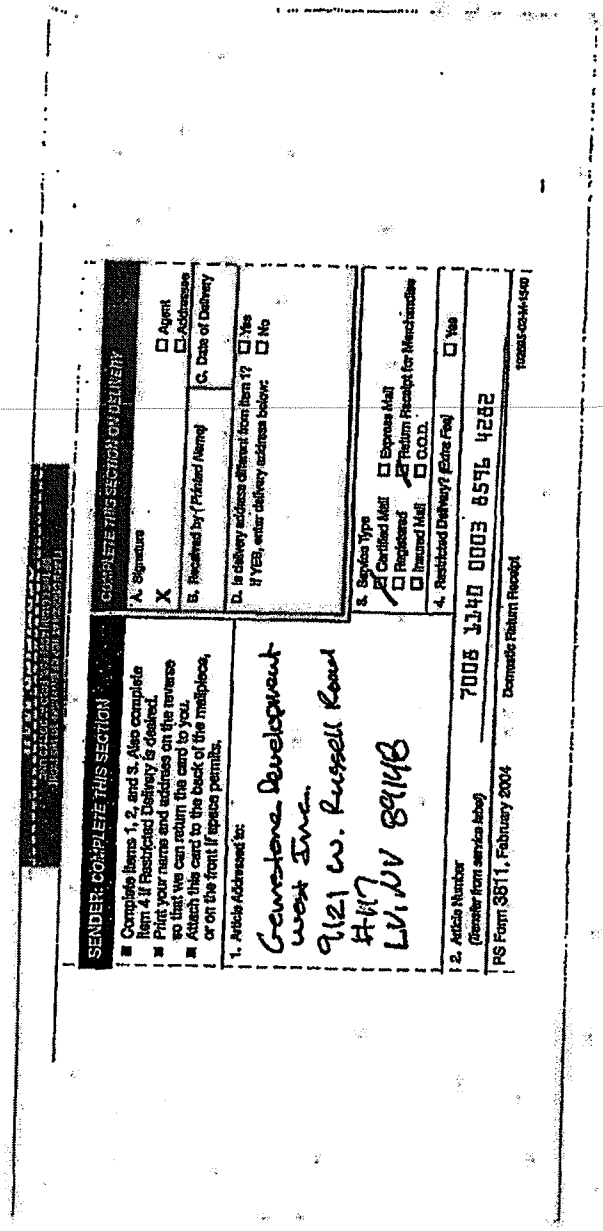
SALT LAKE CITY UT FEB.24.08

0000020042

US POSTAGE 00566 ***

MISTAKIA 38218

Gemstone Development West, Inc.
9121 West Russell Road #117
Las Vegas, Nevada 89148


SENDER: COMPLETE THIS SECTION
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.
1. Article Addressed to:
Gemstone Development West Inc.
9121 W. Russell Road
#117
Las Vegas 89148
COMPLETE THIS SECTION ON DELIVERY
A. Signature
X
Agent
Addressee
B. Received by (Printed Name)
C. Date of Delivery
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3. Service Type
Certified Mail
Express Mail
Registered
Return Receipt for Merchandise
Insured Mail
C.O.D.
4. Restricted Delivery? (Extra Fee) Yes
2. Article Number
(Transfer from service label)
7005 1140 0003 8576 4282
PS Form 3811, February 2004
Domestic Return Receipt

NOTC
MICHAEL M. EDWARDS
Nevada Bar No. 006281
REUBEN H. CAWLEY
Nevada Bar No. 009384
LEWIS BRISBOIS BISGAARD & SMITH LLP
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101
(702) 893-3383
FAX: (702) 893-3789
E-Mail: medwards@lbbslaw.com
E-Mail: cawley@lbbslaw.com
Attorneys for Plaintiff
Zitting Brothers Construction, Inc.

FILED
APR 30 2 05 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ZITTING BROTHERS CONSTRUCTION, INC., a Utah corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC., a Nevada Corporation; APCO CONSTRUCTION, a Nevada corporation; and DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X and LOE LENDERS I through X, inclusive,

Defendants.

Case No. A-09-589195-C
Dept. No. ✓

NOTICE OF LIS PENDENS

(Exemption from Arbitration - Concerns Title to Real Estate)

PLEASE TAKE NOTICE that an action was commenced and is pending in the above-entitled Court to enforce that certain Notices and Claims of Lien recorded by Lien Claimant Zitting Brothers Construction, Inc., in the Official Records of Clark County on September 10, 2008, in book 20080910, as instrument number 0002029 and December 11, 2008, in book number 20081211, instrument number 0002636 effecting certain real property or portions thereof, owned or reputedly owned by Defendants and commonly referred to as the Manhattan West mixed use development project generally located at 9205 W. Russell Road, Clark County, Nevada and more particularly described as Assessor's Parcel Number 163-32-101-019.

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

Plaintiff Zitting Brothers Construction, Inc., hereby places a Lis Pendens against the same affecting real properties referenced herein, located in Clark County, State of Nevada.

Dated this 30th day of April, 2009.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____
Michael M. Edwards, Esq.
Nevada Bar No. 006281
Reuben H. Cawley, Esq.
Nevada Bar No. 009384
400 South Fourth Street, Suite 500
Las Vegas, Nevada 89101
Attorneys for Plaintiff
Zitting Brothers Construction, Inc.

EXHIBIT 5

SUBCONTRACT AGREEMENT

PROJECT: **The West Manhattan Condominiums** Contract NO. **168-18** APCO Construction Project No. **168**
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: **Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148**

ARCHITECT/ENGINEER: **OZ Architecture,** 303.861.5704 Huron Street , Denver . CO . 80202 . **Redwine Engineering** (303) 575-9510 700 17th Street, Denver, CO 80202 . **Jordan & Skala Engineers,** (702) 362-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. **WRG Engineering** (702990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April , 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor") 3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0396. Nevada Contractors License No. **14563.**

And CabineTec
2711 E. Craig Road
Suite A
North Las Vegas, NV 89030 P 702-649-1010 F 702-649-7918

. (hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 27189 Limit: $ 550,000.00

Contractor and Subcontractor agree as follows:

1. **Contract Documents**

1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by **OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering** and approved by **Gemstone Development West, Inc.** and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").

1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor

shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind **lower tier** subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. **Scope of Work**

2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in **Exhibit "A": Subcontractor Scope of Work**

2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 **Equal Opportunity Clause**

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.

2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. **Contract Price and Payments**

3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in **Exhibit "A": Subcontractor's Scope of Work.**

3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the

suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25th of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25th of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.

3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release **(Forms attached)** of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release **(Forms attached)** of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.6 Contractor shall have the right at all times to contact lower tier subcontractors and suppliers to verify that they are being paid by Subcontractor for labor or materials furnished for use in the Subcontract Work. If it

appears that labor, material or other costs incurred in the performance of the Subcontract Work are not being paid when due, Contractor may take whatever steps it deems necessary to insure that the progress payments will be utilized to pay such costs, including, but not limited to, the issuance of joint checks payable to the claimant after written notice to Subcontractor, or additionally, making payment directly to claimant after written notice to Subcontractor. If such payment by Contractor exceeds the balance of payments due or to become due to Subcontractor from Contractor, then Subcontractor shall be liable to Contractor for the difference.

3.7 Contractor is hereby expressly granted the right to off set any sums due the Subcontractor under the provisions of this Subcontract against any obligation that may be due from Subcontractor to Contractor regardless of the source of said obligation. When requested by Contractor, Subcontractor shall furnish to Contractor a verified and itemized statement showing the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Subcontract Work together with the amount due or to become due for such work.

3.8 The 10 percent withheld retention shall be payable to Subcontractor upon, and only upon the occurrence of all the following events, each of which is a condition precedent to Subcontractor's right to receive final payment hereunder and payment of such retention: (a) Completion of the entire project described in the Contract Documents; (b) The approval and final acceptance of the project Work by Owner; (c) Receipt of final payment by Contractor from Owner; (d) Delivery to Contractor from Subcontractor all as-built drawings for it's scope of work and other close out documents; (e) Delivery to Contractor from Subcontractor a Release and Waiver of Claims from all of Subcontractor's laborers, material and equipment suppliers, and subcontractors providing labor, materials or services to the Project, **(Forms attached)**. If any sub-subcontractor, supplier or other person refuses to furnish a release or waiver required by the Owner or Contractor, the Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to the owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with Subcontractor's Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all actual amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorney's fees incurred in connection therewith. Final payment shall not relieve Subcontractor from liability, or for warranty or guaranty, or for indemnity obligations for faulty or defective Work.

3.9 Subcontractor agrees that Contractor shall have no obligation to pay Subcontractor for any changed or extra work performed by Subcontractor until or unless Contractor has actually been paid for such work by the Owner.

3.10 Progress payments and Final Payment shall not be considered or construed as evidence of acceptance of any part of Subcontractor's work until final acceptance of the Project by Owner.

4. Prosecution of Work

4.1 TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.

(a) Seven (7) copies of all Subcontractor submittals shall be received by Contractor to suit the requirements of the approved CPM target schedule unless otherwise agreed to in writing by Contractor. Subcontractor agrees to provide plan-sized sheets for all submittals of required size 24"x36" including one (1) sepia & five (6) blue line prints. Product specifications shall be provided in standard 8-1/2" by 11" paper, three hole punched and inserted into three ring binders labeled **"The Manhattanwest Condominiums"**. Any required re-submittals shall be submitted within five working days of receipt of request from the Owner.

(b) Final acceptance and approval of this Subcontract Agreement is contingent upon approval of Subcontractor's Submittals by the Owner/Architect/Engineer.

(c) Any delays in the submittal process caused in whole or part by Subcontractor may be grounds for immediate termination of this Subcontract Agreement and subject Subcontractor to damages as provided in Sections 8 and 9 below.

Subcontractor agrees to commence the Subcontract Work within five (5) calendar days after receiving notification from Contractor to proceed, or within such other time as may be specified by Contractor, and to proceed at such points as Contractor may designate, and to continue diligently in its performance in accordance with the Contractor's project schedule and at a pace that will cause no delay in the progress of the Contractor's or other subcontractor's work.

4.2 Upon request, Subcontractor shall promptly provide Contractor with scheduling information, in the format required in the Contract Documents, or any other information relating to the order or nature of the Subcontract Work. Subcontractor agrees that the project schedule may be revised by Contractor as work progresses. Contractor may require Subcontractor to prosecute segments of the Subcontract Work in phases as Contractor may specify. Subcontractor shall comply with instructions given by Contractor, including any instructions to suspend, delay or accelerate the Subcontract Work. Subcontractor shall not be entitled to any extra compensation from Contractor for any such suspension, delay or acceleration unless specifically agreed to in writing by the Contractor and Owner and paid for by Owner. The Owner's payment to Contractor of extra compensation for any such suspension, delay, or acceleration shall be a condition precedent to Subcontractor's right, if any, to receive such extra compensation from Contractor.

4.3 Subcontractor shall keep the work area reasonably clean of debris, daily, resulting from the performance of its work and shall remove from the work area all debris generated by the execution of the Subcontract work. Non-compliance with verbal direction from Prime Contractor's Project Superintendent for cleanup shall result in one (1) written notice for clean-up. Upon failure to properly police the debris from their own activity, 24 hours after written notification this subcontractor will be fined $500.00 plus the cost for clean-up.

4.4 Subcontractor, in undertaking to complete the Subcontract Work within the time specified, avows that it has considered ordinary delays incident to such work; including, but not limited to delays in securing materials, equipment or workmen, and minor changes, omissions or additions, unavoidable casualties, normal weather conditions, strikes or lockouts. If Subcontractor shall be delayed in the performance of the Work by any act or neglect of the Owner or Architect, or by agents or representatives of either, or by changes ordered in the Work, or by fire, unavoidable casualties, national emergency, or by any cause other that the intentional interference of Contractor, Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost due to the delay, but only if Subcontractor shall notify Contractor in writing within twenty four (24) hours after such occurrence, and only if Contractor shall be granted such time extension by Owner. No time extension will be allowed for delays or suspensions of work caused or contributed to by Subcontractor, and no time extension will be granted Subcontractor that will render Contractor liable for liquidated damages or other loss under the Contract Documents. The Subcontractor understands that this is an aggressive schedule and that should the Subcontractor fail to staff the Project with the proper workforce, to stay on schedule, then it is understood that the Subcontractor will have it's workforce work overtime and/or weekends to maintain the pace of the schedule solely at the subcontractors expense.

4.5 In addition to other damages and remedies provided in this Subcontract, Subcontractor agrees to pay any liquidated damages that may be assessed against the Contractor by the Owner, as provided in the Contract Documents, for any project delays caused by Subcontractor. Such damages shall be paid for each working day the Subcontract Work remains incomplete beyond the time specified for subcontract completion plus any extension thereof agreed to in writing by the Contractor, and granted by Owner.

4.6 Contractor shall not be liable to Subcontractor for delays caused by reason of fire or other casualty, or on account of riots, strikes, labor trouble, terrorism, acts of God, cataclysmic event, or by reason of any other event or cause beyond Contractor's control, or contributed to by Subcontractor.

4.7 All Subcontract work done and all Subcontract materials delivered to the project site shall become Contractor's property, and said material shall not be removed by Subcontractor or any other party from the project site without Contractor's written consent. After completion and final acceptance of the Subcontract work and final payment, Subcontractor shall promptly remove all remaining material, equipment and debris of Subcontractor.

5. Changes and Claims

5.1 Contractor may order or direct changes, additions, deletions or other revisions in the Subcontract work without invalidating the Subcontract. No changes, additions, deletions, or other revisions to the Subcontract shall be valid unless made in writing. Subcontractor mark up shall be limited to 10% overhead and profit in addition to the direct cost of the work. No markup shall be allowed on over time for original scope of work acceleration.

5.2 Subcontractor, prior to the commencement of such changed or revised work, shall submit, (within 24 hours of request) to Contractor, written copies of the cost or credit proposal, including work schedule revisions, for changes, additions, deletions or other revisions in a manner consistent with the Contract Documents. Contractor shall not be liable to Subcontractor for a greater sum, or additional time extensions, than Contractor obtains from Owner for such additional work, less reasonable overhead and profit due to Contractor, and also less professional and attorney's fees, costs, and other expenses incurred by Contractor in the collection of any such sum or time extension. Payment to Subcontractor for such work shall be conditioned upon Contractor's actual receipt of payment from the Owner and such payment by Owner to Contractor with whatever documentation or support, as Contractor may deem necessary to negotiate with Owner.

5.3 In any dispute between Contractor and Owner as to amount, classification, price, time or value of Subcontract Work, or any Subcontract material or supplies, or any delay in the prosecution of the Subcontract work caused by Owner, or any other matter whatsoever pertaining to the Subcontract work, Subcontractor agrees to promptly and adequately provide Contractor with whatever documentation or support as Contractor may deem necessary to negotiate with Owner.

5.4 Contractor may dispute, appeal resist, litigate or arbitrate any decision of Owner, without being deemed to have admitted any obligation or liability to Subcontractor, and if the decision shall be against Contractor, then Subcontractor shall be bound thereby. Subcontractor may, at its own expense, participate with Contractor in arbitration or legal proceedings. Subcontractor shall bear part or all costs, including attorneys' fees and legal expenses, incurred by Contractor in any such proceeding involving a claim, which, if allowed, would result in one or more payments to Subcontractor. Subcontractor's costs shall bear to the total amount sought in the proceeding. Prosecution of any such claim or proceeding shall be at the sole risk of Subcontractor, and Contractor shall have no liability for or in relation to the outcome.

6. Assignments

6.1 Subcontractor shall not assign or sublet the Subcontract or any part of the Subcontract Work or any payments due hereunder, without prior written consent of Contractor. Any such assignment made by Subcontractor without Contractor's prior written consent is void, and shall be grounds for termination of this Subcontract by Contractor, terminates the Subcontractor's right to any further payment and authorizes Contractor to withhold all monies due or to become due to Subcontractor.

7. **Taxes**

7.1 All applicable taxes, contributions, interest and/or penalties due under any federal, state, or municipal statute or regulation arising from Subcontractor's Work are included in the price to be paid to Subcontractor under the Subcontract. Subcontractor shall indemnify, defend, and save Contractor and Owner harmless from all liability, loss, and expense resulting from Subcontractor's failure to satisfy such obligations. Subcontractor shall, on demand, provide proof that all taxes and other charges have been, and are being properly paid.

7.2 If Contractor is assessed or charged for any Subcontractor taxes, contributions, interest or penalties, Contractor shall have the right to withhold such amount from funds due or the become due under the Subcontract, and to pay directly to taxing authorities any sums otherwise due Subcontractor, but not otherwise subject to offset in accordance with Section 3 above, upon receipt of a tax levy from such taxing authority.

8. **Default and Termination**

8.1 If, in the opinion of Contractor or Owner, Subcontractor fails, at any time, to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality; or fails to adequately or timely perform the Subcontract work to the satisfaction of Contractor or Owner; or becomes insolvent or makes any filing under the Acts of Congress relating the bankruptcy; or fails, neglects and/or refuses to comply with the project plans and specification; or fails to perform the Subcontract work in a good and workmanlike manner; or causes any stoppage of the work of the other trades upon the project; or fails to correct defective work; or fails to comply in any other respect with the terms and conditions of this Subcontract, Contractor may declare a default by Subcontractor as herein provided.

8.2 Contractor shall provide prompt written notice of default to Subcontractor, by regular mail or as may otherwise be considered to reasonably provide notice to Subcontractor at Subcontractor's place of business described above. Such notice shall be complete upon deposit at a regular receptacle of the U.S. mail, Fax Transmission or upon actual hand delivery as provided herein.

In the event of default by Subcontractor as provided above, Contractor may, at his option, demand Subcontractor to cure or otherwise correct the default and breach within three calendar days after written notice by Contractor. If, after three days, Subcontractor has failed to cure and correct the default, Contractor may, at his sole option, provide any such labor, materials or equipment as may be necessary to complete the Work covered by this Subcontract Agreement and thereafter deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement. Alternatively, Contractor may terminate Subcontractor's right to proceed with the Work and thereafter enter upon the premises and take control of all materials, tools, equipment, and/or appliances of Subcontractor, and may employ any other person, persons, or organizations to finish the Work and provide the labor, materials and equipment to accomplish that purpose. Following completion of the Work by the Contractor or other persons or organizations, all unused materials, tools, equipment and/ or appliances shall be returned to Subcontractor. Subcontractor shall not be entitled to rent or payment of any kind for the use of Subcontractor owned equipment or materials, nor shall Contractor be liable for any damages arising from said use unless resulting from gross negligence, or willful destruction by Contractor.

In the event Subcontractor has provided a payment or performance bond to Contractor, in accordance with Section 10 of this Agreement, and following expiration of the three days cure period, Contractor will make notice and demand by registered mail upon Subcontractor's surety to complete the Work covered by this Subcontract Agreement. In the event Subcontractor's surety fails to notify Contractor within 10 days after receipt of notice and demand by Contractor of surety's election to complete the work on behalf of

Subcontractor, such failure shall be deemed a waiver by surety to exercise its rights to complete the Work. Thereafter, Contractor may at his sole option, complete the Work as otherwise provided by this Section.

8.3 In case of any such termination of Subcontractor's right to proceed with the Work, Subcontractor shall not be entitled to receive any further payment under this Subcontract Agreement until the Work undertaken by Contractor in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance.

"Expense" as referred to in this Section shall include all direct and indirect costs incurred by Contractor for furnishing labor, materials, and equipment; to complete the Work covered by this Subcontract Agreement. "Expense" shall further include, but shall not be limited to, replacement of Subcontractor costs, liquidated damages incurred by Contractor, extended field office overhead, and home office overhead, Contractor's attorneys fees and costs, and any and all other damages sustained by Contractor by reason of Subcontractor's default.

8.4 In the event Contractor elects to use its own labor forces to complete Subcontractor's Work, Subcontractor and Subcontractor's surety agree to pay Contractor for such Work at the following rates: (a) Labor – At Contractor's then prevailing labor rates, plus labor burden, including, but not limited to, employment taxes, liability insurance, workmen compensation insurance, and all other benefits; (b) Contractor Owned Equipment-At the then prevailing Equipment Rental Rates as established by the Blue Book for Contraction Equipment as published by Data Quest; all rental costs shall be determined by dividing the monthly rental rate by twenty-two days per month to determine a daily rental rate. Hourly rental rates shall be determined by dividing the daily rate by eight; (c) Materials, Rental Equipment-Direct Invoice Costs, including transportation, if any; (d) Replacement Subcontractor-Direct Invoice Costs paid Replacement Subcontractor; (e) Field and home office overhead; (f) Ten percent profit on all expenses indicated in a-e above.

In lieu of computing overhead, as provided for above, Contractor may, at his sole option, elect to assess a charge, on items a, b, and c above, of 15% for General Overhead expenses. In addition, Contractor may assess a charge on items a, b, and c above 10% for Profit. Contractor shall be entitled to an additional markup on any and all of such expenses. Contractor shall also be entitled to an additional markup of 5% for General Overhead and 10% for Profit on all expenses and cost incurred pursuant to item d and e above.

8.5 If the cost to complete the Subcontract work is more than the unpaid balance of the Subcontract, then Subcontractor shall be liable to Contractor for the deficiency, and Contractor may hold, sell or otherwise realize upon any Subcontractor materials or equipment, or take other steps to collect the deficiency, including making a claim against Subcontractor's surety.

8.6 Whether Contractor exercises one or more of the above options or rights, nothing contained herein shall release Subcontractor within the specified time. Subcontractor agrees in the event of default that it will immediately assign and turn over to Contractor all sub-contracts, material contracts, or orders, bills of lading for material en route, and any other necessary data or information that would minimize the cost of completion of the Subcontract work.

9. **Termination for Convenience**

9.1 Right to Terminate for Convenience. The Contractor shall have the right to terminate for convenience, at any time, and with or without cause, Subcontractor's performance of all or part of the Subcontract or Subcontract Work, as defined in paragraph 2.1.

9.2 Notice to Subcontractor. The Contractor shall provide Subcontractor with written notice of the termination two calendar days in advance of the effective date of the termination. The two-day period shall begin to run upon receipt of the termination for convenience notice by the Subcontractor.

9.3 Subcontractor's Obligations. Upon receipt of the written notice of termination, the Subcontractor shall:

A. Stop all work or its performance of all the Subcontractor or Subcontract Work that has been terminated, or stop work on the part of the Subcontract Work that has been terminated if its performance of only part of the Subcontract Work has been terminated.

B. Enter into no further sub-subcontracts or place any orders for supplies, materials, or facilities, except as necessary to complete any portion of the Subcontract Work not terminated for convenience.

C. Terminate all sub-subcontracts or orders to the extent related to the terminated Subcontract Work.

D. As directed by the Contractor, transfer title and deliver to the Contractor any fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials produced or acquired for the Subcontractor or Subcontract Work terminated and the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, the Subcontractor would be required to furnish to the Contractor.

E. Complete non-terminated portions of the Subcontractor Work if the Subcontractor's performance of only a part of the Subcontract Work has been terminated.

F. Use its best efforts to sell, as directed by the Contractor, any materials of the types referred to in paragraph (D) above; provided, however, that the Subcontractor is not required to extend credit to any purchaser of this material and may acquire the material under the conditions prescribed by, and at prices approved by, the Contractor. The proceeds from the sale of such material shall be applied to reduce any payment due from the Contractor under this Subcontract, and credited to the price or cost of the Subcontract Work, or paid in any other manner directed by the Contractor.

G. Submit with 60 days of the effective date of termination, to the Contractor, a written termination claim, along with all documentation required to support the claim.

H. Take any other action toward termination as directed by the General Contractor.

9.4 Effect of Owner's Termination of Contractor. If there has been a termination of the Contractor's contract with the Owner, the Subcontractor shall be paid the amount due from the Owner to the Contractor for the Subcontractor's completed work, as provided in the Contract Documents, after payment by the Owner to the Contractor.

9.5 Compensation. If the Contractor's contract has not been terminated, the Contractor shall pay the Subcontractor as follows:

A. The direct cost of the work performed by Subcontractor prior to termination.

B. Overhead, general, and administrative expenses (including those for any sub-subcontracts) in an amount equal to 5% percent of direct costs.

C. 5% percent profit of the total of the amounts allowed in paragraphs (A) and (B) above. If, however, it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been

completed, no profit shall be compensated by the Contractor, and the amounts paid for the termination shall not be compensated for.

9.6 Items Not Compensated. The Subcontractor shall not be compensated for.

A. Any accounting, legal, clerical, or other expenses incurred by the Subcontractor in the preparation of the Subcontractor's termination claim.

B. Unabsorbed overhead and anticipated lost profits.

9.7 Permitted Deductions. The Contractor shall be entitled to deduct from any payment due the Subcontractor (A) any advance payment it has made to the Subcontractor for work not yet performed under the terms of the Subcontract and (B) the amount of any claim that the Contractor has against the Subcontractor.

9.8 Consideration. If no work has been performed by the Subcontractor at the time of termination, Subcontractor shall be paid the sum of $100.00 for its undertaking an obligation to perform.

9.9 Settlement and Release of Any and All Claims. The settlement of termination costs pursuant to Paragraph 9.5 of this Clause shall constitute a settlement and release of any and all claims, known and unknown by the Subcontractor, arising prior to termination.

10. Bonds

10.1 Should the Contractor require it, the Subcontractor shall execute a Labor and Material Bond and Faithful Performance Bond in an amount equal to 100% of the Subcontract Price in Section 3. Said bonds shall be executed by a corporate surety acceptable to Contractor, shall name Asphalt Products Corporation as an Obligee, and shall further name and protect all persons and entities to the same extent as may be required of Contractor pursuant to the Prime Contract. The cost of the bonds shall be added to the Subcontract amount. The terms of this Subcontract Agreement are incorporated by reference into the bonds required by this section, and the terms, conditions, and remedies of Contractor, shall prevail over any similar terms contained in said bond. By issuing a bond to Subcontractor pursuant to this Agreement, the Subcontractor's surety specifically agrees to be bound to Contractor to the same extent and in the same amount as Subcontractor.

11. Indemnity and Insurance -

11.1 INSURANCE REQUIREMENTS – Unless the Contract Documents require otherwise, Subcontractor agrees to procure and maintain, at his sole cost and expense, the following insurance coverage,

1. **Worker's Compensation:** Coverage A. Statutory policy form; Coverage B. Employer's liability; Bodily injury by accident - $1,000,000 each accident; Bodily injury by disease- $1,000,000 each employee. Coverage shall be maintained in accordance with NRS 616 and 617.

2. **Commercial Auto Coverage:** Auto liability limits of not less than $1,000,000 each accident combined bodily injury and property damage liability insurance including, but not limited to, owned autos, hired or non-owned autos.

3. **Comprehensive General Liability or Commercial General Liability, "Occurrence Form" only. "Claims Made" is not acceptable.** The limits of liability shall not be less than:

   a) Comprehensive General Liability: $1,000,000 combined single limit bodily/property damage per occurrence or,

b) Commercial General Liability: The limits of liability shall not be less than: Each Occurrence limit - $1,000,000; Personal injury limit - $1,000,000; Products Completed Operations Aggregate Limit - $5,000,000; General Aggregate Limit (other than products-completed operations).

4. Excess Liability: Umbrella Form or Follow Form Excess where necessary to meet required minimum amounts of coverage.

5. **The Project is covered by an OCIP.** Subcontractor shall enroll into this OCIP. Subcontractor shall be responsible for a deductible/SIR equal to that of the subcontractors' non-OCIP GL policy; not to be less than $20,000 for light hazard trade contractors, $25,000 for medium hazard trade contractors and $75,000 for high hazard trade contractors.

6. Any deductible or self-insured retention must be declared on the Certificate and is subject to prior approval.

7. Liability Policy forms must include: a) Premises and operation with no X, C or U exclusions; b) Products and completed operations coverage (Subcontractor agrees to maintain this coverage for a minimum of 1 year following completion of his work); c) Full blanket contractual coverage; d) Broad form property damage including completed operations or its equivalent; e) An endorsement naming Asphalt Products Corporation, Gemstone LVS, LLC. and any other required interest as additional insured(s); f) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) shall be noncontributing with the coverage provided under this policy."

8. **Other Requirements:** (a) All policies must contain an endorsement affording an unqualified thirty (30) days notice of cancellation to the additional insured(s) in the event of cancellation or reduction in coverage; (b) All policies must be written by insurance companies whose rating in the most

9. recent Best's rating guide, is not less than A:VII Rating must be shown on Certificate under "Companies Affording Coverage"; (c) Certificates of insurance with the required endorsement evidencing the coverage must be delivered to APCO Construction prior to commencement of any work under this Contract; **(see attached samples)** (d) If the Subcontractor fails to secure and maintain the required insurance, Asphalt Products Corporation shall have the right (without obligation to do so, however) to secure same in the name and for the account of the Subcontractor in which event the Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. (e) Liability insurance policies containing warranties must be reviewed for prior approval and acceptance by Contractor. (f) The Subcontractor's insurance shall be primary with respects to Asphalt Products Corporation, its officers, employees and volunteers.

11.2 INDEMNIFICATION

a) **General Indemnity:** All work covered by this agreement that is performed at the project site, or performed in preparing or delivering materials or equipment to the project site, or in providing services for the Project, shall be at the sole risk of the Subcontractor. Subcontractor, to the fullest extent permitted by law, with respect to all such work which is covered by or incidental to this agreement, shall defend all claims through legal counsel acceptable to Contractor, and indemnify and hold Contractor, it's insurance carriers and bonding companies, Owner and any other interested party designated by Contractor, or their agents, employees or representatives (collectively referred to as "Indemnities") harmless from and against any claim, liability, loss,

damage, cost, expense, including attorney's fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury or damage to tangible property, including the loss of use therefrom, whether or not it is caused in part by an Indemnitee; provided, however, that the Subcontractor shall not be obligated under this agreement to indemnify the Indemnities with respect to damages which are ultimately determined to be due the sole negligence or willful misconduct of the Indemnities.

b) **Indemnity Not Limited:** In any and all claims against the Indemnities by any employee of the Subcontractor, or lower tier subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workmen Compensation Acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Agreement and shall survive the expiration or termination of the Agreement until such time as action on account of any matter covered by such indemnity is barred by the applicable Statute of Limitations.

12. Warranty and Guarantee

12.1 Subcontractor agrees to promptly repair, rebuild, replace or make good, without cost to Contractor or Owner, any defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period established in the Contract Documents. If no such period is stipulated in the contract Documents, then Subcontractor's guarantee shall be for a period of two year from the date Certificate of Occupancy is obtained for the project. Subcontractor shall require similar guarantees from all vendors and lower tier subcontractors.

13. Patents

13.1 Subcontractor agrees to pay all applicable patent royalties and license fees and to defend all suits or claims made for infringement of any patent rights involved in the Subcontract work.

14. Compliance with Regulations, Applicable Law and Safety

14.1 All Work, labor, services and materials to be furnished by Subcontractor shall strictly comply with all applicable federal, state, and local laws, rules, regulations, statutes, ordinances, building codes, and directives now in force or hereafter in effect as may be required by the Prime Contract. Subcontractor shall satisfy and comply with the foregoing as a part of the Subcontract without any additional compensation.

14.2 Subcontractor agrees that the prevention of accidents to workmen engaged in the work under the Subcontract is solely its responsibility. If requested, Subcontractor shall submit a safety plan for review by Contractor. Contractor's review of any safety plan shall not be deemed to release Subcontractor, or in any way diminish its indemnity or other liability as assumed under the Subcontract, nor shall it constitute an assumption of liability by Contractor.

14.3 When so ordered, Subcontractor shall stop any part of the Work that the Contractor or Owner deems unsafe until corrective safety measures, satisfactory to Contractor and or Owner, have been taken. Should Subcontractor neglect to adopt such corrective measures, Contractor may do so and deduct the cost from payments due or to become due to Subcontractor. Upon request, Subcontractor shall timely submit copies of all accident or injury reports to Contractor.

14.4 Subcontractor agrees to cooperate with the Contractor in efforts to prevent injuries to workmen employed by either party in carrying out operations covered by this agreement, and to adopt and place in effect OSHA

requirements and such practical suggestions as may be offered by the Contractor and/or the Owner to promote safety and safe working conditions. Should the Subcontractor fail to fulfill its obligations in relation to safety matters on the job site, at the option of the Contractor, this Agreement, upon ten (10) days written notice to Subcontractor, may be cancelled, and the Subcontractor required to immediately remove his equipment and employees from the project.

15. Damage to Work

15.1 All loss or damage to Subcontractors' work resulting from any cause whatsoever shall be borne and sustained by Subcontractor and shall be solely at its risk until final acceptance by Contractor, Owner, or Owner's Representative. Subcontractor shall at all times and at its sole expense fully secure and protect against any damage, injury, destruction, theft or loss, all work and all labor, materials, supplies, tools and equipment furnished by Subcontractor or its sub-subcontractors, laborers and material men. Subcontractor shall at its sole expense promptly repair or replace damage to the work of others, or to any part of the project, resulting from Subcontractor's activities.

16. Inspection and Approvals

16.1 Contractor and Owner at all times shall have the right to inspect Subcontractor's materials, workmanship and equipment. Subcontractor shall provide facilities necessary to effect such inspection, whether at the place of manufacture, the project site, or any intermediate point. This point of inspection may be exercised at any time during performance of the Subcontract Work.

16.2 Any Subcontract work or material furnished that fails to meet the requirements or specifications of the Contract Documents, or the Subcontract, shall be promptly removed and replaced by Subcontractor at its own cost and expense. If, in the opinion of Contractor or Owner, it would not be economical or expedient to correct or remedy all or any part of the rejected Subcontract work or materials, then Contractor, at its option may deduct from payments due or to become due to Subcontractor either: (a) such amount as in Contractor's sole judgment represents the difference between the fair value of the Subcontract work and materials rejected and the value if same had been performed in full compliance with the Contract documents; or (b) such reductions in price that are provided for or determined for this purpose under the Contract Documents.

16.3 The Subcontractor shall keep, maintain and require its subcontractors and suppliers to keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, and all other materials relating to the Contract Documents and Project.

16.4 All of the material set forth in paragraph 16.3 shall be made available to the Owner and to Contractor for auditing, inspection and copying and shall be produced, upon request, at either the Owner's offices or such other place as Contractor may specify. Said request for information shall be limited to instances when specifically required to comply with at request for information by the Owner, and should not be construed as a general right by Contractor to request proprietary or privileged information of Subcontractor.

17. Arbitration

17.1 Contractor shall have the option to, and Subcontractor shall be required to resolve all claims, disputes and matters in question arising out of, or relating to the Subcontract, or breach thereof, except for claims which have been waived by the making or acceptance of final payment, by submission to arbitration in the time period and in accordance with the Contract Documents.

17.2 In accordance with Paragraph 17.1, Subcontractor hereby waive its right to otherwise litigate any and all such disputes, claims and matters in question in any court or governmental tribunal in any jurisdiction. If

Subcontractor submits any matter to arbitration hereunder, at its sole option, Contractor may refuse to arbitrate any such disputes, claims, and matters in question. In that event, and in only that event, Subcontractor may litigate the matters subject to its demand for arbitration.

17.3 All arbitration and other legal proceedings instituted pursuant to this Section shall be conducted in Las Vegas, Nevada, or at such other venue as Contractor and Subcontractor shall agree to in writing.

17.4 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

17.5 Unless otherwise agreed in writing, the Subcontractor shall carry on the Subcontract work and maintain the schedule of work pending arbitration or litigation, and the Contractor shall continue to make payments in accordance with the Subcontract.

17.6 To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other Subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding.

17.7 This Agreement to arbitrate shall not apply to any claim of contrition or indemnity asserted by one party to the Subcontract against the other party and arising out of any action brought in a state or federal court, or in arbitration by a person who is under no obligation to arbitrate the subject matter of such action with either of the parties hereto; or does not consent to such arbitration.

17.8 In any dispute arising over the application of paragraph 17.7, all questions regarding the arbitration requirements of this section shall be decided by the appropriate court and not by arbitration.

18. Miscellaneous

18.1 Contractor's waiver of any of the provisions of the Subcontract, or Contractor's failure to exercise any options or legal remedies provided therein, shall not be construed as a general waiver of its right thereafter to require such compliance or to exercise such option or remedy.

18.2 The Subcontract, including all Contract Documents as provided in Section One, comprises the entire Agreement between the parties relating to the Subcontract Work and no other agreements, representations, terms, provisions or understandings concerning the Subcontract Work have been made. All modifications or amendments to the Subcontract must be in writing.

18.3 To the best knowledge and belief of the parties, the Subcontract contains no provision that is contrary to Federal or State law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect to the extent permissible. The illegality of any provisions, or parts thereof, shall not affect the enforceability of any other provisions of this Subcontract.

18.4 The Subcontract shall be construed and interpreted according to the laws of the State of Nevada.

18.5 In the event either party employs an attorney to institute a lawsuit or to demand arbitration for any cause arising out of the Subcontract Work or the Subcontract, or any of the Contract Documents, the prevailing party shall be entitled to all costs, attorney's fees and any other reasonable expenses incurred therein.

18.6 All sections and headings are descriptive only and are not controlling.

18.7 Contractor's rights and remedies under the Subcontract are not exclusive and Contractor shall have all other remedies available at law or in equity to enforce the Subcontract.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first above written.

CabineTec, Inc.

Leo Duckstein
V.P. Sales & Marketing
Cabinetec Inc.

APCO CONSTRUCTION

Project Manager
TITLE

EXHIBIT 'A'
Subcontractor Scope of Work
APCO Contract No. 0168

This Agreement includes the supply of all labor, materials, tools, equipment, supervision, management, permits and taxes necessary to complete the BELOW SCOPE OF WORK for the referenced Project in accordance with the Contract Documents including Addenda/Delta Number(s) ___ through ___ Subcontractor acknowledges that he has performed his own take-off, site visit and therefore, any items necessary to complete the work depicted in accordance with the Contract Documents, shall be included in this Agreement. The Subcontractor also acknowledges that all of the costs related to the successful completion of the work including any unforeseen or unseen items, or as described herein, are included in the amount reflected in the schedule below.

The Scope of Work shall specifically include but not be limited to the following list of bid items:

ITEM #	DESCRIPTION	UNIT	QTY	PRICE	TOTAL

Kitchen and Bath Cabinets Complete: For buildings 8 & 9 Complete work per governing codes, furnish and install all necessary Design, Labor, Material, Equipment, Cartage, Freight, Supervision, Ancillary Items Taxes and Necessary Insurance to install and complete all kitchen and bath cabinets per plans by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering. See attached Project Drawing List, in the amount of **Five Hundred Twenty Eight Thousand Seven Hundred and Ninety Dollars and no/100, ($528,790.00) for the project. Building No. 7 (Type III) will be added as a Change Order for the Agreed upon amount of Two Hundred Sixty One Thousand Nine Hundred Eighty Five dollars and no/100 ($261,985.00)**

CabineTec, Inc.

Leo Duckstein
V.P. Sales & Marketing
Cabinetec Inc.

APCO CONSTRUCTION

Project Manager
TITLE

APCO Construction
Subcontractor

SPECIAL CONDITIONS

In addition to the conditions outlined in the Subcontract Agreement, the following Special Conditions shall form a part of the Subcontract Agreement.

(a) The Subcontractor shall be responsible for clean up of employees break & lunch trash on the job site. Subcontractor employees are not to wander around the _____ Area while on duty. No parking of private vehicles will be allowed in the Owners Operations Area. NO EXCEPTIONS.

(b) The Contractor will provide an adequate temporary construction area for staging.

(c) The Contractor will provide reasonable access to all working areas.

(d) The Subcontractor shall be responsible for the cleaning of his work area and removing its debris and all work shall be left in a clean condition following his activities. The APCO shall be the sole judge to determine the cleanliness.

(e) The Contractor will provide one (1) set of full size conformed construction documents for the Subcontractor's use. Additional sets may be purchased by the Subcontractor from a source designated by the Contractor. Plan change drawings will be supplied in the same quantities.

(f) Subcontractor must submit a "Daily Work Report" **(see attached Appendix 'C')** prior to 10:00 a.m. the following day for all work performed on the job site the previous day. Subcontractor monthly pay requests will not be accepted for processing unless all "Daily Work Reports" for the pay period have been submitted to the Contractor.

(g) Subcontractor is required to submit a Payroll Certificate representing all work performed on the job site on a monthly basis. The Payroll Certificate must be submitted no later than the 1st of the month for all work performed during the previous month. Subcontractor shall use a format similar to AIA G702 & G703.

(h) The Subcontractor is required to attend weekly site progress meetings and to participate in the preparation of Monthly updates of the Project schedule.

(i) The Contractor cannot guarantee continuity of progress of work; Subcontractor shall employ as many mobilizations as required to complete the work as required by the project schedule.

(j) The Subcontractor shall provide drinking water for its own employee's.

(k) Subcontractor shall at all times protect stored equipment, materials from: damage from weather, sun. Materials shall be stored off the ground and not in contact the ground.

APCO Construction
Subcontractor

(l) APCO Construction cannot guarantee price stability and therefore cannot grant any additional monies to subcontractor due to escalation of price between bid/quote time and when materials/labor/shipping is actually purchased and/or incorporated into the project.

NOTICE TO ALL SUBCONTRACTORS

We have been requested by the Internal Revenue Service to comply with Regulation 1.604-1(d), which requires that we issue a 1099 Form on the compensation paid to you by APCO Construction.

Please indicate whether you are a Corporation or not and furnish your Social Security Number if you are not a Corporation or your Federal Tax ID Number, if you are a Corporation.

Corporation: Yes [X] or No [ ]

Social Security No.: _____

Federal Tax ID No.: 88-0230488

By: _____
Signature

Leo Duckstein
V.P. Sales & Marketing
Cabinetec Inc.

4/28/06
Date **Title**

APCO Construction _____
Subcontractor ____ Page 17 of 17

APCO00036992

SUBCONTRACT AGREEMENT

PROJECT: The West Manhattan Condominiums Contract NO. 168-7 APCO Construction Project No. 168
PROJECT LOCATION: West Russell Road and Rocky Hill Street, Las Vegas, NV, 89148

OWNER: Gemstone Development West, Inc., 9121 West Russell Rd, Unit 117, Las Vegas Nevada 89148

ARCHITECT/ENGINEER: OZ Architecture, 303.861.5704 Huron Street, Denver. CO. 80202. Redwine Engineering (303) 575-9510 700 17th Street, Denver, CO 80202. Jordan & Skala Engineers, (702) 382-5111, 2900 S. Rancho Dr, Suite 102, Las Vegas Nevada 89102. WRG Engineering (702990-9300 3011 West Horizon Ridge Parkway, Suite 100, Henderson Nevada 89052.

THIS AGREEMENT (hereinafter "the Subcontract") is entered into in consideration of the mutual promises made this 17th day of April, 2007, between:

ASPHALT PRODUCTS CORPORATION also known as APCO Construction, (hereinafter called the "Contractor") 3432 N. Fifth Street, North Las Vegas, Nevada 89032. Office: (702) 734-0198, Fax: (702) 734-0396. Nevada Contractors License No. 14563.

And Helix Electric
3078 E. Sunset Road
Suite 9
Las Vegas, NV 89120 P 702-732-1188 F 702-732-4386

. (hereinafter called the "Subcontractor").

Subcontractor's NV Contractor's License No. 53810 Limit: Unlimited

Contractor and Subcontractor agree as follows:

1. Contract Documents

1.1 The Contract Documents for this Subcontract Agreement, shall include all exhibits and other documents attached hereto or made a part thereof by reference, all drawings designed by OZ Architecture, Redwine Engineering, Jordan & Skala Engineers, WRG Engineering and approved by Gemstone Development West, Inc. and the Primary Contract between the Owner and Contractor (hereinafter "the Prime Contract"), including all exhibits, and other documents attached thereto or made part hereof by reference, the Project Specifications and Contract Documents, the Project Plans, and all addendum and subsequent modifications issued thereto. (All Contract Documents identified herein shall be hereinafter collectively referred to as the "Contract Documents").

The attached Helix Electric Exhibit is also part of this Subcontract Agreement.

INITIAL

1.2 The Contract Documents are available in Contractor's office. Subcontractor acknowledges that it has carefully examined the Contract Documents and fully understands them. Copies of the Plans and Specifications will be provided to Subcontractor, upon request, at Subcontractor's Cost. Subcontractor shall, prior to the commencement of the Work, review and compare all of the Subcontract Documents relating to the performance of the Subcontractor and any and all errors, ambiguities and inconsistencies shall immediately be reported to the Contractor in writing and resolved to Subcontractor's satisfaction.

CONTRACT

1.3 Subcontractor is bound to the Contractor to the same extent and duration that Contractor is bound to Owner. Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor, by the Contract Documents, has assumed toward the Owner in the Prime Contract. Contractor shall further have the benefit of all rights, remedies, redress and limitations in respect to Subcontractor and all things done and used by Subcontractor in performance of its Work, which the Owner and its agents have against Contractor in the Contract Documents or by law. Any and all decisions by the Owner or its agents relative to interpretation of the Contract Documents or any ambiguity or discrepancy therein shall be binding on the Subcontractor to the same extent such are binding on Contractor. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Contract Documents, including all performance obligations and responsibilities which subcontractor assumes toward Contractor.

2. Scope of Work

2.1 Subcontractor agrees to furnish all supervision and labor, furnish and install all materials, equipment and supplies required, and do all things necessary to fully complete all of the items of work ("the Subcontract Work"), referred to in Exhibit "A": Subcontractor Scope of Work

2.2 Subcontractor warrants to Contractor and Owner that all Work shall be performed in a neat, skillful, good and workmanlike manner and will be fit for its intended use both as to workmanship and materials. Subcontractor agrees that all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified and ordered by Contractor in writing. Subcontractor warrants that the materials and equipment furnished and the Work performed will strictly comply with the Contract Documents and this Subcontract, and shall be satisfactory to Owner and Contractor.

2.3 **Equal Opportunity Clause**

During the performance of any contract, Subcontractor, unless exempt, agrees as follows:

2.3.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subcontractor will take affirmative action to ensure that color, religion, sex or national origin. Such action shall include, but not limited to the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places, available to employee and applicants for employment, notices to be provided by the government contracting officer setting forth the provisions of this nondiscrimination clause.

2.3.2 Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. Contract Price and Payments

3.1 In consideration of the strict and complete and timely performance of all Subcontract Work, Contractor agrees to pay Subcontractor or in the payment quantities and schedules as is more fully described in **Exhibit "A": Subcontractor's Scope of Work.**

3.2 In Consideration of the promises, covenants and agreements of Subcontractor herein contained, and the full, faithful and prompt performance of the Work in accordance with the Contract Documents, Contractor agrees to pay, and Subcontractor agrees to receive and accept as full compensation for doing all Work and

furnishing all materials and equipment contemplated and embraced in this Subcontract, and for all loss or damage arising out of the nature of said Work, or from all actions of the elements or from any unforeseen difficulties or obstacles which may arise or be encountered in the performance of the Work, and for all risks of every description connected with the Work, and for all expense incurred by or in consequence of the suspension, interruption or discontinuance of the Work, and for well and faithfully completing the Work and the whole thereof in the manner and according to the requirements and instructions of Contractor and Owner or Owner's agents in charge of the Work, if any, payment in the amount of the Subcontract Price.

3.3 Subcontractor, upon request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, a monthly billing, no later than the 25th of each month, showing quantities of Subcontract work that has been satisfactorily completed in the preceding month, as well as backup material for same for submittal to the Owner. Failure to submit by the 25th of each month may result in that monthly payment application being rolled over to the following month. Subcontractor shall also submit an original executed Conditional Release, in the form required by Contractor, verifying payment of all laborers, subcontractors, equipment and material suppliers. Subcontractor shall also furnish required releases from any sub-subcontractors and/or materials suppliers that have notified Contractor of their presence on the Project. Subcontractor further agrees to provide all required employment security department, fringe benefit trust funds, certified payroll, and/or other reports as may be required by the Contractor or the Contract Documents.

3.4 The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to assume the same risk that the Owner may become insolvent that Contractor has assumed by entering into the Prime Contract with the Owner.

3.5 Progress payments will be made by Contractor to Subcontractor within 15 days after Contractor actually receives payment for Subcontractor's work from Owner. The progress payment to Subcontractor shall be one hundred percent (100%) of the value of Subcontract work completed (less 10% retention) during the preceding month as determined by the Owner, less such other amounts as Contractor shall determine as being properly withheld as allowed under this Article or as provided elsewhere in this Subcontract. The estimates of Owner as to the amount of Work completed by Subcontractor shall be binding upon Contractor and Subcontractor and shall conclusively establish the amount of Work performed by Subcontractor. As a condition precedent to receiving partial payments from Contractor for Work performed, Subcontractor shall execute and deliver to Contractor, with its application for payment, a full and complete release (Forms attached) of all claims and causes of action Subcontractor may have against Contractor and Owner through the date of the execution of said release, save and except those claims specifically listed on said release and described in a manner sufficient for Contractor to identify such claim or claims with certainty. Upon the request of Contractor, Subcontractor shall provide an Unconditional Waiver of Release in form required by Contractor for any previous payment made to Subcontractor. Any payments to Subcontractor shall be conditioned upon receipt of the actual payments by Contractor from Owner. Subcontractor herein agrees to