

IN THE SUPREME COURT OF THE STATE OF NEVADA

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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.

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**JOINT APPENDIX  
VOLUME 110**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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<b>04-26-10</b>	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>07-02-10</b>	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
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	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

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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- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

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	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
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<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion in Limine Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
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<sup>1</sup> Filed January 31, 2018

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	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

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

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, 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
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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 Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>in Limine</i>	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
<b>06-15-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-18-18</b>	<b>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</b>	<b>JA007190- JA007192</b>	<b>99</b>
<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
<b>06-29-18</b>	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>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</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>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</b>	<b>JA007316- JA007331</b>	<b>101</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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
<b>08-29-19</b>	<b>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)</b>	<b>JA009117- JA009123</b>	<b>119</b>

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	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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. Mounter, 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
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	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
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	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



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

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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
<b>06-29-18</b>	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	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
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>08-06-19</b>	<b>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</b>	<b>JA007316- JA007331</b>	<b>101</b>
	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	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Nevada, LLC, SWPPP Compliance Solutions, Inc., E&E Fire Protection		
	Exhibit 6 – Order Dismissing Appeal in Part (Case No. 76276)	JA007518- JA007519	103
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	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
	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



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
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	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 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 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
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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
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	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
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
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	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
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	Exhibit 4 – Cactus Rose Trial Exhibits	JA001636- JA001637	28
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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 <i>in Limine</i>	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- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
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	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 <i>En Banc</i> 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
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<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC's Motion <i>in Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007332- JA007334</b>	<b>101</b>
<b>07-02-10</b>	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>08-02-17</b>	<b>Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and <i>Ex Parte</i> Application for Order Shortening Time</b>	<b>JA000328- JA000342</b>	<b>6</b>
	<b>Exhibit 1 – APCO Construction's Answers to Helix Electric of Nevada, LLC's First Request for Interrogatories</b>	<b>JA000343- JA000379</b>	<b>6</b>
	<b>Exhibit 2 – Camco Pacific Construction Company, Inc.'s Responses to Helix Electric of Nevada, LLC's Interrogatories</b>	<b>JA000380- JA000392</b>	<b>6</b>
<b>11-06-17</b>	<b>Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6</b>	<b>JA000419- JA000428</b>	<b>7</b>
	<b>Exhibit 1 – Notice of Entry of Order</b>	<b>JA000429</b>	<b>7</b>

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	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
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>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</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

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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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	Exhibit 2 – Helix Trial Exhibits	JA002222- JA002223	36
	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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 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
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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
	<b>HELIX Related Exhibits:</b>		41
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	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



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone ( <i>Admitted</i> )	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ( <i>Admitted</i> )	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work ( <i>Admitted</i> )	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) ( <i>Admitted</i> )	JA001981- JA001987	32

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<sup>5</sup> Filed January 31, 2018

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

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

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018



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

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<sup>8</sup> Filed January 31, 2018

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

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

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

## COUNTERCLAIM

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

## JURISDICTIONAL ALLEGATIONS

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

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

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

### FIRST CAUSE OF ACTION

**(Breach of Contract)**

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

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

1 "Project").

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

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

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

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

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

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

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

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

25 **SECOND CAUSE OF ACTION**

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

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

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

1 reference and further allege:

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

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

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

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

11 WHEREFORE, Counterclaimant Camco prays as follows:

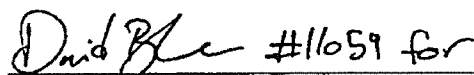
12 1. This Court enter judgment against Counterdefendants, and each of them, in an  
13 amount in excess of \$10,000.00, plus interest at the contract rate;

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

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

17 DATED this 11<sup>th</sup> day of September 2009.

18 WOODBURY, MORRIS & BROWN

19   
20 STEVEN L. MORRIS, ESQ.  
21 Nevada Bar No. 7454  
22 701 N. Green Valley Pkwy., Suite 110  
23 Henderson, NV 89074-6178  
24 Attorneys for Camco and Fidelity  
25  
26  
27  
28

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

CERTIFICATE OF MAILING

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

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

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

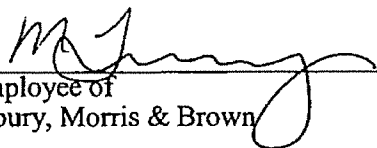
  
An Employee of  
Woodbury, Morris & Brown

EXHIBIT A

JA008256



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

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

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

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

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

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

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

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

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

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

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15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7289

A licensed and bonded corporate finance company.

**JA008257**

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

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

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

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

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

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

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

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

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

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



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

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

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

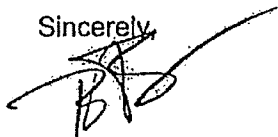
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

**RE: ManhattanWest Funding**

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott  
President

---

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

A licensed and bonded corporate finance company.

**JA008261**



Exhibit 'A'

December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~

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

**RE: ManhattanWest Funding**

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

~~Although we cannot guarantee the approval SFC anticipates the draw request to be processed and funded to NCS Voucher control in December.~~

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

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

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

Sincerely,

  
Brad J. Scott  
President

---

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

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**JA008262**

Exhibit B

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

Exhibit "B"

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

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

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

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

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

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

Thanks.

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



Brad J. Scott, CRE  
President  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)  
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Bismarck, ND 58503  
Office: 701.255.2215  
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Cell: 701.220.3999

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4/1/2009

JA008264

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Anne Dwyer; Jennifer Olivares

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispensed funds held on account at NCS in the amount of \$938,666.72 back to SFC using the attached wiring instructions.

This amount includes the current Helmerich Payment due of \$68,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

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

4/1/2009

JA008265

# **EXHIBIT 10K**

**JA008266**



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

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

12  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., a California corporation

Counterclaimant,

vs.

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

Counterdefendant,

FILED

SEP 11 5 25 PM '09

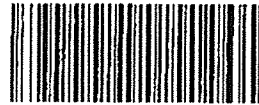
*Ed Smith*  
CLERK OF THE COURT

Case No. A587168  
Dept. No: XIII

Consolidated with:  
A571228

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

09A587168  
389415



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **AFFIRMATIVE DEFENSES**

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

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

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

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

- 1 the Complaint, and is and was not in breach of contract.
- 2 5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff
- 3 had full and complete knowledge and information in regard to the conditions and circumstances
- 4 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,
- 5 assume the risk attendant to any condition there or then present.
- 6 6. The liability, if any, of Camco must be reduced by the percentage of fault of
- 7 others, including the Plaintiff.
- 8 7. The claims, and each of them, are barred by the failure of the Plaintiff to plead
- 9 those claims with particularity.
- 10 8. The claims of Plaintiff have been waived as a result of the acts and the conduct
- 11 of the Plaintiff.
- 12 9. The claim for breach of contract is barred as a result of the failure to satisfy
- 13 conditions precedent.
- 14 10. Plaintiff has failed to mitigate its damages.
- 15 11. Plaintiff's claims are barred from recovery by the doctrine of unclean hands.
- 16 12. Plaintiff's claims are barred from recovery by the doctrine of laches, waiver, and
- 17 estoppel.
- 18 13. To the extent that Plaintiff's work was substandard, not workmanlike, defective,
- 19 incomplete, or untimely, Plaintiff is not entitled to recover for said work.
- 20 14. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff
- 21 now complains.
- 22 15. Plaintiff has failed to name parties that are necessary and/or indispensable to this
- 23 action.
- 24 16. Defendant Fidelity is informed and believes that it is entitled to assert all of the
- 25 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses
- 26 raised, or that could have been raised, by Fidelity's principal.
- 27 17. Fidelity alleges that its liability, if any exists, which is expressly denied, is
- 28

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

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

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

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

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

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

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

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

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

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

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

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

**JA008272**

1 "Project").

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

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

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

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

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

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

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

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

25 **SECOND CAUSE OF ACTION**

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

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

1 reference and further allege:

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

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

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

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

11 WHEREFORE, Counterclaimant Camco prays as follows:

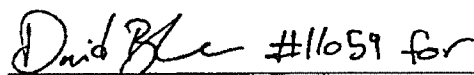
12 1. This Court enter judgment against Counterdefendants, and each of them, in an  
13 amount in excess of \$10,000.00, plus interest at the contract rate;

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

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

17 DATED this 11<sup>th</sup> day of September 2009.

18 WOODBURY, MORRIS & BROWN

19   
20 STEVEN L. MORRIS, ESQ.  
21 Nevada Bar No. 7454  
22 701 N. Green Valley Pkwy., Suite 110  
23 Henderson, NV 89074-6178  
24 Attorneys for Camco and Fidelity  
25  
26  
27  
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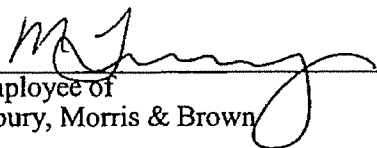
WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

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

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

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

  
An Employee of  
Woodbury, Morris & Brown

# EXHIBIT A

JA008276



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

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

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

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

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

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

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

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

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

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

---

15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7289

A licensed and bonded corporate finance company.

**JA008277**

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

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

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

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

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

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

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

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

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

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

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

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

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

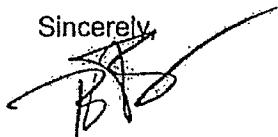
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

**RE: ManhattanWest Funding**

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott  
President

---

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

A licensed and bonded corporate finance company.

**JA008281**



Exhibit 'A'

December 1, 2008

Leo Duckstein  
~~CabineTec Inc.~~

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

**RE: ManhattanWest Funding**

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

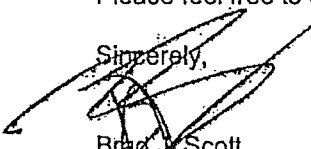
~~Although we cannot guarantee the approval SFC anticipates the draw request to be processed and funded to NCS Voucher control in December.~~

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

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

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

Sincerely,

  
Brad J. Scott  
President

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

A licensed and bonded corporate finance company.

**JA008282**



Exhibit B

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

Exhibit "B"

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

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

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

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

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

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

Thanks.

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



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

A licensed and bonded corporate finance company.

4/1/2009

JA008284

Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Anne Dwyer; Jennifer Olivares

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previously advanced, but undispensed funds held on account at NCS in the amount of \$938,666.72 back to SFC using the attached wiring instructions.

This amount includes the current Helmerich Payment due of \$68,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

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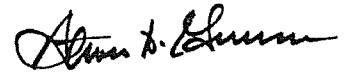
Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party.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

4/1/2009

JA008285

# **EXHIBIT 10L**

**JA008286**



CLERK OF THE COURT

1 **ANS**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, NV 89074-6571  
9 Telephone: (702) 990-7272  
10 Fax: (702) 990-7273  
11 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
12 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
13 *Attorneys for Accuracy Glass & Mirror Company, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

14 APCO CONSTRUCTION, a Nevada  
15 corporation,

16 Plaintiff,

17 vs

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

27 Defendants.

28 AND ALL RELATED MATTERS.

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

*Consolidated with Case Nos.: A574391,  
A571792, A577623, A580889, A583289,  
A584730, A584960, A587168, A589195,  
A589677, A590319, A592826, A595552,  
A596924, A597089*

**Case No.: A587168**

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

21 Plaintiff and Counterclaim Defendant Accuracy Glass & Mirror Company, Inc.  
22 ("Accuracy Glass"), by and through its counsel, Richard L. Peel, Esq. and Michael T. Gebhart,  
23 Esq. of the law firm Peel Brimley LLP, hereby answer the Counterclaim of Camco Pacific  
24 Construction Company, Inc. ("Camco"), on file herein, and admit deny and allege as follows:  
25 1. Accuracy Glass denies each and every allegation contained in Paragraphs 9-13 and  
26 16-18.  
27 2. Accuracy Glass is without information or knowledge sufficient to ascertain the  
28 truth of the allegations contained in Paragraphs 1, 3, and 5-8.

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3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

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

3. Accuracy Glass admits the allegations contained in Paragraphs 2.

4. As to Paragraphs 4 and 14 of Camco's Counterclaim, Accuracy Glass repeats and realleges the answers to Paragraphs 1 through 18 as though fully set forth herein.

5. As to Paragraph 15, Accuracy Glass admits that there is a covenant of good faith and fair dealing implied in every enforceable agreement. Accuracy Glass further admits that it acted in good faith, but denies any remaining allegations contained in Paragraph 15.

## AFFIRMATIVE DEFENSES

1. The Counterclaim on file herein fails to state a claim against Accuracy Glass upon which relief can be granted.

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

3. Accuracy Glass is not negligent with respect to the transaction(s) which may be the subject of the counterclaim, and is and was not in breach of contract.

4. Counterclaimant's damages, if any, are the direct and consequential result of Counterclaimant's own acts and omissions.

5. Counterclaimant has failed to satisfy all conditions precedent to bring and/or maintain a cause of action against Counterdefendant.

6. Counterclaimant's claims are barred under the doctrine of waiver and the doctrine of estoppel.

7. Counterclaimant is barred from recovery by the doctrine of unclean hands.

8. Counterclaimant's claims are barred by the doctrines of laches and estoppel.

9. Counterclaimant has failed to mitigate its damages.

10. Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged herein, inasmuch as sufficient facts were not available after reasonable inquiry and investigation upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, Plaintiff/Counterdefendant reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigation and discovery of facts so warrants.

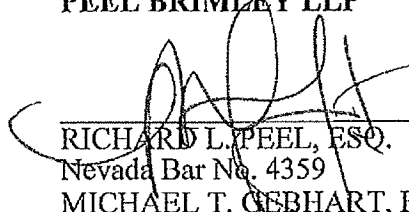
WHEREFORE, Plaintiff/Counterdefendant Accuracy Glass prays as follows:

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

1. That Counterclaimant takes nothing by way of its Counterclaim;
2. For an award of reasonable attorneys' fees and costs for having to defend this claim; and
3. For such other and further relief as this Court deems just and proper.

DATED this 13 day of April, 2010.

**PEEL BRIMLEY LLP**

  
RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Telephone: (702) 990-7272

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[rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)

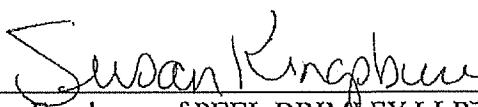
[mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)

*Attorneys for Accuracy Glass & Mirror  
Company, Inc.*

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 13<sup>th</sup> day of April 2010, I served a true and correct copy of the foregoing **ACCURACY GLASS & MIRROR COMPANY, INC.'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S COUNTERCLAIM**, by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

  
An Employee of PEEL BRIMLEY LLP



# **EXHIBIT 10M**

**JA008291**

*Elm. H. H.*  
CLERK OF THE COURT

1 **STMT**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 DALLIN T. WAYMENT, ESQ.  
7 Nevada Bar No. 10270  
8 **PEEL BRIMLEY LLP**  
9 3333 E. Serene Avenue, Suite 200  
10 Henderson, NV 89074-6571  
11 Telephone: (702) 990-7272  
12 Fax: (702) 990-7273  
13 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
14 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
15 [dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

Attorneys for Helix Electric of Nevada, LLC d/b/a Helix Electric

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

22 **HELIX ELECTRIC OF NEVADA, LLC,** a  
23 Nevada limited-liability company, d/b/a **HELIX**  
24 **ELECTRIC,**

Plaintiff in Intervention,

vs.

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

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

Consolidated with:

A571792

A574391

A577623

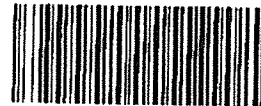
A583289

A584730

A587168

**HELIX ELECTRIC'S AMENDED  
STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

09A587168  
211076



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

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

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

Defendants.

9 HELIX ELECTRIC OF NEVADA, LLC d/b/a HELIX ELECTRIC ("Helix") by and  
10 through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting  
11 a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named  
12 defendants complains, avers and alleges as follows:

### 13 THE PARTIES

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

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

22 Manhattan West Condominiums (Project)  
23 Spring Valley  
24 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
25 PT N2 NW4 SEC 32 21 60  
26 SEC 32 TWP 21 RNG 60

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

H:\PB&S\CLIENT FILES\3000 - 3999 (G - J)\3562  
- Helix Electric of NV\056 - APCO [Manhattan  
West]\UPX\Originals\090622 Helix Amd Stmt of

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3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

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

4 3. The whole of the Property is reasonably necessary for the convenient use and  
5 occupation of the improvements.  
6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 b. Failing to adjust the APCO Agreement price to account for extra and/or  
26 changed work, as well as suspensions and delays of APCO Work caused or ordered by the  
27 Defendants and/or their representatives;  
28

H:\PDB&S\CLIENT FILES\3000 - 3999 (G - J)\3562  
- Helix Electric of NV\056 - APCO [Manhattan  
West]\P\X\Originals\090622 Helix And Strat of

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
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1 c. Failing to promptly recognize and grant time extensions to reflect additional  
2 time allowable under the APCO Agreement and permit related adjustments in scheduled  
3 performance;

4 d. Failing and/or refusing to comply with the APCO Agreement and Nevada law;  
5 and  
6

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
8 with Helix's performance of the APCO Work.

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

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

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

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

20 18. On or about September 4, 2008, Helix entered into the Ratification and  
21 Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO  
22 as the general contractor on the Project, to continue the work for the Property ("CPCC Work").

23 19. Helix furnished the CPCC Work for the benefit of and at the specific instance and  
24 request of CPCC and/or Owner.  
25

26 20. Pursuant to the CPCC Agreement, Helix was to be paid an amount in excess of  
27 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC  
28 Work.

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- Helix Electric of NV\056 - APCO (Manhattan  
West)\WPX\Originals\090622 Helix Amd Stmt of

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

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

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

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

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

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

15 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
16 with Helix's performance of the CPCC Work.

17 23. Helix is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
18 CPCC Work.

20 24. Helix has been required to engage the services of an attorney to collect the CPCC  
21 Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and  
22 interest therefore.

23 THIRD CAUSE OF ACTION  
24 (Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

25           25.     Helix repeats and realleges each and every allegation contained in the preceding  
26 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
27 follows:





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

**FIFTH CAUSE OF ACTION**

**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

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

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

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

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

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

40. Helix has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

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

42. The Defendants have been unjustly enriched, to the detriment of Helix.

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

**SIXTH CAUSE OF ACTION**

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

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

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1           45.    The provision of the Work was at the special instance and request of the  
2 Defendants for the Property.

3           46.    As provided at NRS 108.245 and common law, the Defendants had knowledge of  
4 Helix's delivery of the APCO Work and CPCC Work to the Property or Helix provided a Notice  
5 of Right to Lien.  
6

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

9           48.    On or about January 12, 2009, Helix timely recorded a Notice of Lien in Book  
10 20090112 of the Official Records of Clark County, Nevada, as Instrument No. 0002864 (the  
11 "Original Lien").

12           49.    On or about January 29, 2009, Helix timely recorded an Amended Notice of Lien  
13 in Book 20090129 of the Official Records of Clark County, Nevada, as Instrument No. 0000237  
14 (the "Amended Lien").  
15

16           50.    The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

17           51.    The Liens were in writing and were recorded against the Property for the  
18 outstanding balance due to Helix in the amount of Three Million One Hundred Eighty-Six  
19 Thousand One Hundred Two and 67/100 Dollars (\$3,186,102.67).  
20

21           52.    The Liens were served upon the Owner and/or its authorized agents, as required by  
22 law.

23           53.    Helix is entitled to an award of reasonable attorney's fees, costs and interest on the  
24 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the  
25 Nevada Revised Statutes.  
26

27           ///

28           ///

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

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

55. Helix is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

56. Helix is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Helix's statutory mechanics' lien thereby elevating Helix's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

57. Helix's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

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

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

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

1           60. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued  
2 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars  
3 (\$50,000.00).

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

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

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

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

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

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

4 73. Helix has been required to engage the services of an attorney to collect the APCO  
5 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and  
6 interests therefore.  
7

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

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

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

15 76. In violation of the Statute, CPCC failed and/or refused to timely pay Helix monies  
16 due and owing.

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

18 78. By reason of the foregoing, Helix is entitled to a judgment against CPCC in the  
19 amount of the CPCC Outstanding Balance  
20

21 79. Helix has been required to engage the services of an attorney to collect the CPCC  
22 Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and  
23 interests therefore.  
24

25 ///

26 ///

27 ///

28 ///

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

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

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

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

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

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

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
2 Senior Debt Deed of Trust.

3 85. Helix is informed and believes and therefore alleges that construction on the  
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
5 law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt  
6 Deed of Trust.

7  
8 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
11 subordinate to all mechanics' liens, including Helix's.

12 87. A dispute has arisen, and an actual controversy now exists over the priority issue  
13 of Helix's mechanics' lien over other encumbrances on the property.

14 88. Helix is entitled to a court order declaring that its mechanics' lien has a superior  
15 lien position on the Property over any other lien or encumbrance created by or for the benefit of  
16 SFC or any other entity.

17  
18 **WHEREFORE**, Helix prays that this Honorable Court:

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

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

24 3. Enter a judgment declaring that Helix has valid and enforceable mechanic's liens  
25 against the Property, with priority over all Defendants, in an amount of the APCO Outstanding  
26 Balance and CPCC Outstanding Balance;

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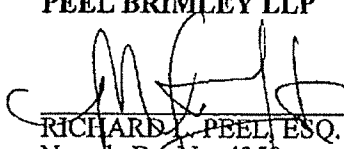
1           4.     Adjudge a lien upon the Property for the APCO Outstanding Balance and CPCC  
2 Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this  
3 Honorable Court enter an Order that the Property, and improvements, such as may be necessary,  
4 be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied  
5 to the payment of sums due Helix herein;  
6

7           5.     Enter a judgment declaring that Helix' mechanics' lien enjoys a position of  
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
9 entity; and  
10

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

13           Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

  
RICHARD J. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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Attorneys for Helix Electric of Nevada, LLC  
d/b/a Helix Electric



# **EXHIBIT 10N**

**JA008307**

  
CLERK OF THE COURT

1 **ANSW**  
2 Gwen Mullins, Esq.  
3 Nevada Bar No. 3146  
4 Wade B. Gochmour, Esq.  
5 Nevada Bar No. 6314  
6 **Howard & Howard Attorneys PLLC**  
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13 [wbg@h2law.com](mailto:wbg@h2law.com)  
14 Attorneys for APCO Construction

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada  
13 corporation,

14 Plaintiff,

15 vs.

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

25 Defendants.

26 HELIX ELECTRIC OF NEVADA, LLC, a  
27 Nevada limited-liability company, d/b/a  
28 HELIX ELECTRIC,

Lien Claimant/Intervenor,

vs.

CASE NO.: 08-A-571228  
DEPT. NO.: XIII

Consolidated with: A574391, A574792,  
A577623, A583289, A584730, A587168,  
A580889 and A589195

**APCO CONSTRUCTION'S ANSWER TO  
HELIX ELECTRIC'S AMENDED  
STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

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

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

Defendants.

11 AND ALL RELATED CASES AND  
12 MATTERS.

14 **APCO CONSTRUCTION'S ANSWER TO**  
15 **HELIX ELECTRIC'S AMENDED STATEMENT OF FACTS CONSTITUTING**  
16 **NOTICE OF LIEN AND THIRD-PARTY COMPLAINT**

17 APCO CONSTRUCTION formerly ASPHALT PRODUCT CORPORATION  
18 (hereinafter "APCO"), by and through its attorneys, Gwen Rutar Mullins, Esq. and Wade B.  
19 Gochmour, Esq., of the law firm of Howard and Howard Attorneys PLLC, hereby files this  
20 Answer to Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third  
21 Party Complaint (hereinafter "Complaint") and hereby responds and alleges as follows:

22 **THE PARTIES**

23 1. Answering Paragraphs 1, 5, 6, 7, and 8 of the Complaint, APCO does not have  
24 sufficient knowledge or information upon which to base a belief as to the truth of the  
25 allegations contained therein, and upon said grounds, denies each and every allegation  
26 contained therein.

27 2. Answering Paragraphs 2, 3 and 4 of the Complaint, APCO admits the  
28 allegations contained therein.

**FIRST CAUSE OF ACTION**

**(Breach of Contract Against APCO)**

3. Answering Paragraph 9 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 and 2 of this Answer to the Complaint as though fully set forth herein.

4. Answering Paragraph 10 of the Complaint, APCO admits that APCO entered into subcontract with Helix Electric of Nevada LLC dba Helix Electric. ("Helix") to provide certain electrical related work and materials on the Manhattan West Condominium Project. As to the remaining allegations of Paragraph 10 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

5. Answering Paragraph 11 of the Complaint, APCO admits that Helix's services benefited Owner. APCO denies the remaining allegations of Paragraph 11 of the Complaint.

6. Answering Paragraph 12 of the Complaint, APCO admits that the terms of the subcontract with Helix speak for themselves. APCO denies the remaining allegations of Paragraph 12 of the Complaint.

7. Answering Paragraph 13 of the Complaint, APCO admits that Helix furnished services under subcontract, which subcontract was subsequently ratified and assumed by CPCC and/or Gemstone. APCO denies the remaining allegations of Paragraph 13 of the Complaint.

8. Answering Paragraphs 14, 15 and 16 of the Complaint, APCO denies each and every allegation contained therein.

**SECOND CAUSE OF ACTION**

**(Breach of Contract Against CPCC)**

9. Answering Paragraph 17 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 and 8 of this Answer to the Complaint as though fully set forth herein.

1           10.     Answering Paragraph 18 of the Complaint, APCO, upon information and belief,  
2 admits the allegations contained therein.

3           11.     Answering Paragraphs 19, 20, 21, 22, 23, and 24 of the Complaint, APCO does  
4 not have sufficient knowledge or information upon which to base a belief as to the truth of the  
5 allegations contained therein, and upon said grounds, denies each and every allegation  
6 contained therein on those basis.

7                               **THIRD CAUSE OF ACTION**

8                   **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

9           12.     Answering Paragraph 25 of the Complaint, APCO repeats and realleges each  
10 and every allegation contained in paragraphs 1 through 11 of this Answer to the Complaint as  
11 though fully set forth herein.

12           13.     Answering Paragraphs 26 of the Complaint, APCO, upon information and  
13 belief, admits the allegations contained therein.

14           14.     Answering Paragraphs 27, 28 and 29 of the Complaint, APCO does not have  
15 sufficient knowledge or information upon which to base a belief as to the truth of the  
16 allegations contained therein, and upon said grounds, denies each and every allegation  
17 contained therein on those basis.

18                               **FOURTH CAUSE OF ACTION**

19                   **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

20           15.     Answering Paragraph 30 of the Complaint, APCO repeats and realleges each  
21 and every allegation contained in paragraphs 1 through 14 of this Answer to the Complaint as  
22 though fully set forth herein.

23           16.     Answering Paragraph 31 of the Complaint, APCO, upon information and belief,  
24 admits the allegations contained therein.

25           17.     Answering Paragraphs 32, 33 and 34 of the Complaint, APCO does not have  
26 sufficient knowledge or information upon which to base a belief as to the truth of the  
27

1 allegations contained therein, and upon said grounds, denies each and every allegation  
2 contained therein on those basis.

3 **FIFTH CAUSE OF ACTION**

4 **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

5 18. Answering Paragraph 35 of the Complaint, APCO repeats and realleges each  
6 and every allegation contained in paragraphs 1 through 17 of this Answer to the Complaint as  
7 though fully set forth herein.

8 19. Answering Paragraphs 36, 37, 38, 39, 40, 41, 42, and 43 of the Complaint,  
9 APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With  
10 respect to any allegations that have been asserted against the remaining Defendants, APCO  
11 does not have sufficient knowledge or information upon which to base a belief as to the truth of  
12 the allegations contained therein, and upon said grounds, denies each and every allegation  
13 contained therein.

14 **SIXTH CAUSE OF ACTION**

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

16 20. Answering Paragraph 44 of the Complaint, APCO repeats and realleges each  
17 and every allegation contained in paragraphs 1 through 19 of this Answer to the Complaint as  
18 though fully set forth herein.

19 21. Answering Paragraphs 45, 46, 47, 48, 49, 50, 51, 52, and 53 of the Complaint,  
20 APCO denies all the allegations as they pertain to, or as they are or may be alleged against,  
21 APCO. With respect to any allegations that have been asserted against the remaining  
22 Defendants APCO does not have sufficient knowledge or information upon which to base a  
23 belief as to the truth of the allegations contained therein, and upon said grounds, denies each  
24 and every allegation contained therein.

25 ...

26 ...

27 ...

**SEVENTH CAUSE OF ACTION**

**(Claim of Priority)**

22. Answering Paragraph 54 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 21 of this Answer to the Complaint as though fully set forth herein.

23. Answering Paragraph 55 of the Complaint, APCO admits the allegations contained therein.

24. Answering Paragraph 56 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

25. Answering Paragraphs 57 and 58 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**EIGHTH CAUSE OF ACTION**

**(Claim Against Bond – CPCC Surety)**

26. Answering Paragraph 59 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 25 of this Answer to the Complaint as though fully set forth herein.

27. Answering Paragraphs 60, 61, 62, 63, 64, 65, 66, and 67 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

...

...

**NINTH CAUSE OF ACTION**

**(Violation of NRS 624 - APCO)**

28. Answering Paragraph 68 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 27 of this Answer to the Complaint as though fully set forth herein.

29. Answering Paragraph 69 of the Complaint, APCO alleges that NRS 624.606 to 624.630 speak for themselves. As to the remaining allegations of Paragraph 69 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

30. Answering Paragraphs 70, 71, 72 and 73 of the Complaint, APCO denies each and every allegation contained therein.

**TENTH CAUSE OF ACTION**

**(Violation of NRS 624 - CPCC)**

31. Answering Paragraph 74 the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 30 this Answer to the Complaint as though fully set forth herein.

32. Answering Paragraph 75 the Complaint, APCO alleges that NRS 624.606 to 624.630 speak for themselves. As to the remaining allegations of Paragraph 75 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

33. Answering Paragraphs 76, 77, 78, and 79 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

...



**ELEVENTH CAUSE OF ACTION**

**(Declaratory Judgment)**

34. Answering Paragraph 80 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 33 of this Answer to the Complaint as though fully set forth herein.

35. Answering Paragraphs 81, 82, 83, 84, 85, 86, and 87 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

36. Answering Paragraph 88 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FIRST AFFIRMATIVE DEFENSE**

Helix has failed to state a claim against APCO upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

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

**THIRD AFFIRMATIVE DEFENSE**

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

**FOURTH AFFIRMATIVE DEFENSE**

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

**FIFTH AFFIRMATIVE DEFENSE**

At the time and place under the circumstances alleged by the Helix, Helix had full and complete knowledge and information with regard to the conditions and circumstances then and

1 there existing, and through Helix's own knowledge, conduct, acts and omissions, assumed the  
2 risk attendant to any condition there or then present.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 Whatever damages, if any, were sustained by Helix, were caused in whole or in part or  
5 were contributed to by reason of Helix's own actions.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 The liability, if any, of APCO must be reduced by the percentage of fault of others,  
8 including Helix.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The damages alleged by Helix were caused by and arose out of the risk which Helix had  
11 knowledge and which Helix assumed.

12 **NINTH AFFIRMATIVE DEFENSE**

13 The alleged damages complained of by Helix were caused in whole or in part by a new,  
14 independent and intervening cause over which APCO had no control. Said independent,  
15 intervening cause was the result of any alleged damages resulting to Helix.

16 **TENTH AFFIRMATIVE DEFENSE**

17 APCO's obligations to Helix have been satisfied or excused.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Helix failed to perform their work in workmanlike manner thus causing damages in  
20 excess to the sums Helix claim are due under the subcontract with APCO.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 The claim for breach of contract is barred as a result of Helix's failure to satisfy  
23 conditions precedent.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 The claims, and each of them, are premature.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 Helix should indemnify APCO for any and all losses, damages or expenses APCO  
28 sustains as a result of any claims by Gemstone for damages that Gemstone allegedly sustained

1 due to Helix's improper workmanship on the Manhattan West Project, including, but not  
2 limited to, any damage amount and the attorney's fees and costs incurred by APCO relative  
3 thereto.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 APCO is entitled to an offset or a setoff of any damages that APCO sustains as a result  
6 of Helix's failure to complete the work in a workmanlike manner and/or breach of contract.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 Any obligations or responsibilities of APCO under the subcontract with Helix, if any,  
9 have been replaced, terminated, voided, cancelled or otherwise released by the ratification  
10 entered into between Helix, Gemstone and CPCC and APCO no longer bears any liability  
11 thereunder.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 APCO has been forced to retain the services of an attorney to defend this action and  
14 therefore is entitled to reasonable attorneys' fees and costs.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 Helix has failed to comply with the requirements of NRS 624.

17 **NINETIETH AFFIRMATIVE DEFENSE**

18 Helix may have failed to comply with all requirements of NRS 108 to perfect its lien.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 Helix has failed to promptly assert its respective claims against APCO and APCO  
21 reserves the right to request the Court to strike any improper pleadings filed against APCO.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 Helix's claims are barred under the doctrine of accord and satisfaction.  
28 ...

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**TWENTY-THIRD AFFIRMATIVE DEFENSE**

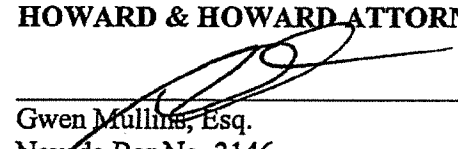
Pursuant to NRCP Rule 8 and 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to the Complaint, and therefore, APCO reserves the right to amend their Answer to allege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

WHEREFORE, APCO prays for judgment as follows:

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

DATED this 5<sup>th</sup> day of August, 2009.

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CERTIFICATE OF MAILING

On the 5<sup>th</sup> day of August, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO HELIX ELECTRIC'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT, by U.S. Mail, postage prepaid, upon the following:

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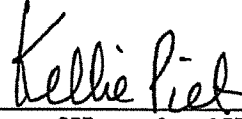
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An employee of Howard and Howard Attorneys PLLC



# EXHIBIT 100

JA008323

ORIGINAL

30

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3 Nevada Bar No. 7454  
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8 slmorris@wmb-law.net

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

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

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

16 **Plaintiff,**

17 **vs.**

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

**Defendants.**

**FILED**

SEP 10 4 22 PM '09

*Ed. B. Smith*  
CLERK OF THE COURT

Case No: A587168  
Dept. No: XIII

Consolidated with:  
A571228

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

08A571228  
385664



**WOODBURY, MORRIS & BROWN**

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CLERK OF THE COURT

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

4 Plaintiff-in-Intervention,

5 vs.

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

19 Defendants-in-Intervention.

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

22 Counterclaimant,

23 vs.

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

27 Counterdefendants.

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

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

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

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

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

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

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

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

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

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

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

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

1 expressly set forth hereinabove.

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

6 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2                               **COUNTERCLAIM**

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

6                               **JURISDICTIONAL ALLEGATIONS**

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

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

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

19                               **FIRST CAUSE OF ACTION**

20                               **(Abuse of Process)**

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

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

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

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



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

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

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

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

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

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

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

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

17                               **SECOND CAUSE OF ACTION**

18                               **(Breach of Contract - In the Alternative)**

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

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

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

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

**(702) 933-0777 ♦ Fax (702) 933-0778**

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

4                                   **FOURTH CAUSE OF ACTION**

5                                   **(Declaratory Relief)**

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

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

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

19                                   **FIFTH CAUSE OF ACTION**

20                                   **(Attorneys' Fees)**

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

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

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

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

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

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

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

8 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

14 DATED this 9<sup>th</sup> day of September 2009.

15 WOODBURY, MORRIS & BROWN

16 *Steven L. Morris* #11059 for

17 STEVEN L. MORRIS, ESQ.

18 Nevada Bar No. 7454

19 701 N. Green Valley Pkwy., Suite 110

20 Henderson, NV 89074-6178

21 Attorneys for Camco and Fidelity

22 **CERTIFICATE OF MAILING**

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


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

WOODBURY, MORRIS & BROWN  
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Henderson, Nevada 89074-6571

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

  
An Employee of Woodbury, Morris & Brown

# EXHIBIT A

JA008336



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

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

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

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

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

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

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

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

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

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

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

A licensed and bonded corporate finance company.

**JA008337**

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

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

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

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

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

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

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

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

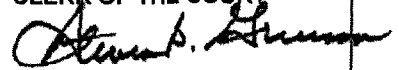
Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

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



# **EXHIBIT 10P**

**JA008339**



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7 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs

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

18 Defendants.

19  
20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**NOTICE OF ENTRY OF ORDER**

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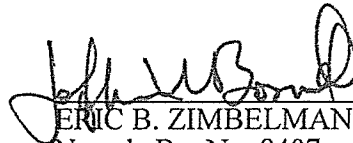
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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs was filed on **July 2, 2018**, a copy of which is attached as Exhibit A.

DATED this 2 day of July, 2018.

**PEEL BRIMLEY LLP**

 11776  
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*Attorneys for Helix Electric of Nevada, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 17 day of July 2018, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** 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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**Camco Pacific Construction Co Inc:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

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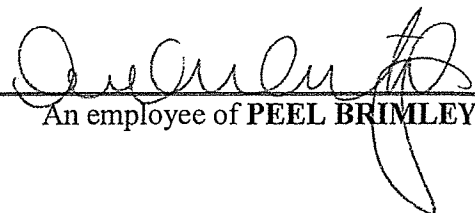
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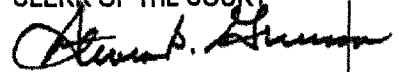
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An employee of PEEL BRIMLEY, LLP

# Exhibit A



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7 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 vs.

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

19 Defendants.

20 AND ALL RELATED MATTERS.

CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**ORDER GRANTING HELIX ELECTRIC  
OF NEVADA, LLC'S MOTION FOR  
ATTORNEY'S FEES, INTEREST AND  
COSTS**

22 This matter came on for hearing July 2, 2018, before the Honorable Mark Denton in  
23 Dept. 13 on Helix Electric of Nevada, LLC's ("Helix") Motion for Attorney's Fees, Interest and  
24 Costs. No Oppositions having been filed, a Notice of Non-Opposition was filed June 21, 2018.  
25 Jefferson W. Boswell, Esq. of PEEL BRIMLEY LLP appeared on behalf of Helix. No other  
26 appearances having been made.

27 ///

28 ///

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1 The Court having considered all of the pleadings and papers on file, and after review of  
2 the pleadings on file and for good cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Helix's Motion for  
4 Attorney's Fees, Interest and Costs is granted.

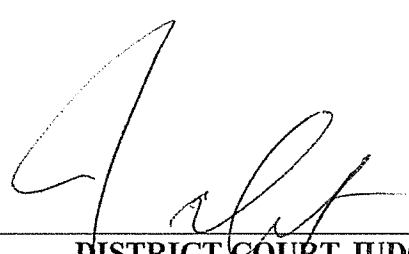
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorneys' fees in  
6 the amount of \$153,342.10 is granted.

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs in the  
8 amount of \$19,021.90 is granted.


9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that interest in the  
10 amount of \$270,761.37 through May 31, 2018 (and continuing to accrue until paid) is granted;

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Helix's request  
12 for an Amended Judgment in the amount of \$1,277,601.82, with interest accruing thereon from  
13 the date of Judgment at prime plus 4% is granted.

14 Dated this 2<sup>nd</sup> day of June, 2018.

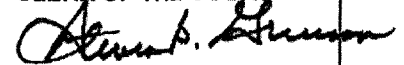
15  
16  
17   
DISTRICT COURT JUDGE

18 Submitted by:  
19 **PEEL BRIMLEY LLP**

20  #11776  
21 ERIC B. ZIMBELMAN, ESQ  
22 Nevada Bar No. 9407  
23 RICHARD L. PEEL, ESQ.  
24 Nevada Bar No. 4359  
3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074-6571  
*Attorneys for Helix Electric of Nevada, LLC*

# EXHIBIT 10Q

JA008348



**NJUD**

ERIC B. ZIMBELMAN, ESQ.

Nevada Bar No. 9407

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*Attorneys for Helix Electric of Nevada LLC*

**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*

**NOTICE OF ENTRY OF JUDGMENT**

///

///

///

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**NOTICE OF ENTRY OF JUDGMENT**

PLEASE TAKE NOTICE that a **JUDGMENT [AS TO THE CLAIMS OF HELIX ELECTRIC OF NEVADA, LLC AGAINST CAMCO CONSTRUCTION CO., INC.]** was filed on **May 30, 2018**, a copy of which is attached as Exhibit A.

DATED this 31st day of May, 2018.

**PEEL BRIMLEY LLP**

/s/ Eric B Zimbelman

ERIC B. ZIMBELMAN, ESQ

Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

*Attorneys for Helix Electric of Nevada LLC*

**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 31st day of May, 2018, I caused the above and foregoing document,

**NOTICE OF ENTRY OF JUDGMENT** 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 and/or facsimile number indicated below:

**Apco Construction:**

Rosie Wesp ([rwesp@maclaw.com](mailto:rwesp@maclaw.com))

**Camco Pacific Construction Co Inc:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**Camco Pacific Construction Co Inc:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**Fidelity & Deposit Company Of Maryland:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**E & E Fire Protection LLC:**

Tracy Truman ([district@trumanlegal.com](mailto:district@trumanlegal.com))

**Interstate Plumbing & Air Conditioning Inc:**

Jonathan Dabbieri ([dabbieri@sullivanhill.com](mailto:dabbieri@sullivanhill.com))

**National Wood Products, Inc.'s:**

Richard Tobler ([rltldck@hotmail.com](mailto:rltldck@hotmail.com))

Tammy Cortez ([tcortez@caddenfuller.com](mailto:tcortez@caddenfuller.com))

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Richard Reincke ([rreincke@caddenfuller.com](mailto:rreincke@caddenfuller.com))

**Chaper 7 Trustee:**

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**United Subcontractors Inc:**

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**Other Service Contacts not associated with a party on the case:**

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Jennifer Case ([jcase@maclaw.com](mailto:jcase@maclaw.com))

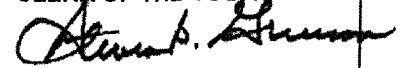
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Vivian Bowron ([vbowron@spencerfane.com](mailto:vbowron@spencerfane.com))

/s/ Amanda Armstrong

An employee of **PEEL BRIMLEY, LLP**

# Exhibit A





1 ERIC B. ZIMBELMAN,  
Nevada Bar No. 9407  
2 RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359  
3 **PEEL BRIMLEY LLP**  
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6 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
*Attorneys for Helix Electric of Nevada, LLC*  
7

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs

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

18 Defendants.

19 AND ALL RELATED MATTERS.  
20

CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**JUDGMENT**

**[AS TO THE CLAIMS OF HELIX  
ELECTRIC OF NEVADA, LLC  
AGAINST CAMCO CONSTRUCTION  
CO., INC.]**

21 This matter having come on for a non-jury trial on the merits on January 17-19, 23, 24  
22 and February 6, 2018, Helix Electric of Nevada, LLC ("Helix"), SWPPP Compliance  
23 Solutions, Inc. ("SWPPP"), Cactus Rose Construction, Co., Inc. ("Cactus Rose"), Fast Glass,  
24 Inc. ("Fast Glass"), and Heinaman Contract Glazing ("Heinaman") all appearing through  
Peel Brimley LLP; Camco Construction, Inc., ("Camco") through Grant Morris Dodds;  
APCO Construction, Inc. ("APCO"), appearing through Spencer Fane, LLP and Marquis &  
Aurbach; National Wood Products, Inc. ("National Wood" or "CabineTec") through Cadden  
& Fuller LLP and Richard L. Tobler, Ltd.; and United Subcontractors, Inc. through Fabian

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MAY 22 2018

DISTRICT COURT DEPT. 13

**JA008355**

Case Number: 08A571228

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

1 Vancott; and the Court having heard the testimony of witnesses through examination and  
2 cross-examination by the parties' counsel, having reviewed the evidence provided by the  
3 parties, having heard the arguments of counsel, and having read and considered the briefs of  
4 counsel, the parties' pleadings, and various other filings, and good cause appearing; the  
5 Court hereby makes the following:

6 The Court having taken the matter under consideration and advisement;

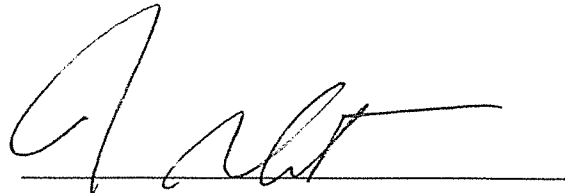
7 The Court having entered its April 26, 2018 Findings of Fact and Conclusions of Law  
8 as to the Claims of Helix against Camco, incorporated herein by this reference and attached  
9 hereto as Exhibit 1 ("the Helix FFCL");

10 The Court enters the following Judgment as to the claims of Helix against Camco;

11 IT IS ORDERED, ADJUDGED, AND DECREED that judgment is to be entered in  
12 favor of Helix and against Camco as set forth on the Helix FFCL.

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court may  
14 issue an amended judgment after the Court has heard and decided upon Helix's Motion for  
15 Attorney's Fees, Costs and Interest Against Camco currently pending before the Court.

16 Dated this 29<sup>th</sup> day of May 2018.

17  
18  
19  
20  


DISTRICT COURT JUDGE

21 Respectfully submitted by:

22 PEEL BRIMLEY LLP

23  #11776 for

ERIC B. ZIMBELMAN,

24 Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

25 Nevada Bar No. 4359

3333 E. Serene Avenue, Suite 200

26 Henderson, NV 89074-6571

27 Attorneys for Helix Electric of Nevada, LLC

28

# EXHIBIT 1

JA008357

*Steven D. Grierson*

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.: A571228

DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AS TO THE  
CLAIMS OF HELIX ELECTRIC OF  
NEVADA, LLC AGAINST CAMCO  
PACIFIC CONSTRUCTION, INC.**

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,  
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared  
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP

CLERK OF THE COURT

APR 26 2018

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40

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

Cactus Rose Construction Co., Inc. ("Cactus Rose")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law Firm of Cadden & Fuller LLP
E&E Fire Protection, LLC ("E&E").	T. James Truman, Esq. of the Law Firm of T. James Truman, & Associates

**A. Procedural History.**

1. This is one of the oldest cases on the Court's docket. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums Project ("the Project") located at West Russell Road and Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005, 163-32-101-010 and 163-32-101-014 (the "Property" and/or "Project"), owned by Gemstone Development West, Inc. ("Gemstone" or "the Owner").

2. Gemstone hired APCO, and, subsequently, Camco as its general contractors, who in turn entered into subcontract agreements with various subcontractors. In December 2008 the Owner suspended the Project and advised the various contractors that Gemstone's lender did not expect to disburse further funds for construction. The Project was never completed. Numerous contractors, including the parties hereto, recorded mechanic's liens against the Property.

3. After several years of litigation and a Writ Action to determine the priority of the various lienors (during which the Property was sold, the proceeds of the same held in a blocked account and this action was stayed), the Nevada Supreme Court ruled that the Owner's lenders had priority over the proceeds of the sale of the Property, holding that the NRS Ch. 108 mechanic's liens were junior to the lenders' deeds of trust. The Court subsequently ordered the proceeds be released to the lenders. Thereafter, the stay was lifted and many of the trade contractors continued to pursue claims for non-payment from

1 APCO and Camco. The trial focused on these claims. The Court has separately treated  
2 Helix's claims against APCO and has made or is making separate Findings of Fact and  
3 Conclusions of Law regarding the same.

4 B. Significant Pre-Trial Orders

5 1. Order Granting Partial Summary Judgment re: Pay-if-Paid. On  
6 January 2, 2018, this Court issued an Order granting a Motion for Partial Summary  
7 Judgment brought by a group of subcontractors represented by the Peel Brimley Law Firm  
8 (the "Peel Brimley Lien Claimants"<sup>1</sup>) and joined in by others. Generally, but without  
9 limitation, the Court concluded that, pursuant to NRS 624.624 and *Lehrer McGovern*  
10 *Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev.  
11 2008), higher-tiered contractors, such as APCO and Camco, are required to pay their  
12 lower-tiered subcontractors within the time periods set forth in NRS 624.626(1) and may  
13 not fail to make such payment based on so-called "pay-if-paid" agreements ("Pay-if-Paid")  
14 that are against public policy, void and unenforceable except under limited circumstances.  
15 Accordingly, the Court ruled that APCO and Camco may not assert or rely on a defense to  
16 their payment obligations to the party subcontractors that is based on a pay-if-paid  
17 agreement.

18 2. Order on Peel Brimley Lien Claimants' Motion in Limine Against  
19 Camco. On December 29, 2017 the Court issued an order on motions *in limine* brought by  
20 the Peel Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco  
21 from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on  
22 the Project was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in  
23 compliance with the terms of the parties' agreement because Camco's person most  
24 knowledgeable was not aware of, and Camco did not otherwise offer, any evidence to  
25 support such claims. For the same reason, the Court also precluded Camco from asserting  
26 or offering evidence at trial that the Peel Brimley Lien Claimants have breached their

27  
28  

---

<sup>1</sup> The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.

1 agreements other than with respect to pay-if-paid agreements, evidence and argument of  
2 which is otherwise precluded by the Partial Summary Judgment discussed above. For the  
3 same reason, the Court also precluded Camco from asserting or offering evidence at trial to  
4 dispute the amounts invoiced, paid and that remain to be owed as asserted by the Peel  
5 Brimley Lien Claimants in their respective Requests for Admission. For the same reason,  
6 the Court also precluded Camco from asserting or offering evidence at trial that any liens  
7 recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected  
8 and are otherwise valid and enforceable.

9 **C. Findings of Fact.**

10 Having received evidence and having heard argument of counsel, the Court makes  
11 the following Findings of Fact:

12 1. The original general contractor on the Project was APCO. Gemstone and  
13 APCO entered into the ManhattanWest General Construction Agreement for GMP (the  
14 "APCO-Gemstone Agreement") on or about September 6, 2006. [See Exhibit 2].

15 2. After APCO ceased work on the Project, Gemstone hired Camco to be its  
16 general contractor pursuant to an Amended and Restated ManhattanWest General  
17 Construction Agreement effective as of August 25, 2008 ("the Camco-Gemstone  
18 Agreement"). [See Exhibit 162].

19 3. Camco continued the same payment application format and numbering and  
20 same schedule of values that APCO had been following. [See Exhibit 218; TR5-30:21-  
21 31:4].<sup>2</sup> Like APCO before it, Camco compiled and included in its payment applications to  
22 Gemstone the amounts billed by its subcontractors, including Helix. [See e.g., Exhibit  
23 522-001-011]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone  
24 Agreement required Camco, upon receipt of a progress payment from Gemstone, to  
25 "promptly pay each [subcontractor] the amount represented by the portion of the  
26 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-

27 \_\_\_\_\_  
28 <sup>2</sup> Testimony of Dave Parry.

1 010, ¶7.03(e)].<sup>3</sup> It is only after Gemstone announced that the Project would be suspended  
2 that Camco asserted otherwise.

3 4. Camco's initial letter to subcontractors following Gemstone's  
4 announcement demonstrates both that it believed it had subcontracts (because it purported  
5 to terminate the same) and that it intended to continue to forward payment applications to  
6 Gemstone. [See e.g., Exhibit 804-003-004]. Specifically, Camco wrote:

7 Camco is left with no choice but to terminate our agreement with Gemstone  
8 and all subcontracts on the Project, including our agreement with your  
9 company. Accordingly, we have terminated for cause our agreement with  
10 Gemstone, effective December 19, 2008, and we hereby terminate for  
11 convenience our subcontract with your company, effective immediately.

12 Please submit to Camco all amounts you believe are due and owing on your  
13 subcontract. We will review and advise you of any issues regarding any  
14 amounts you claim are owed. For all amounts that should properly be billed to  
15 Gemstone, Camco will forward to Gemstone such amounts for payment y  
16 Gemstone. If your claims appear to be excessive, we will ask you to justify  
17 and/or revise the amount.

18 [See e.g., Ex. 804-003-004].

19 5. Camco quickly retracted its initial communication and replaced it with a  
20 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to "please disregard  
21 previous letter which was sent in error." [See e.g., Ex. 804-005]. Among other things,  
22 Camco's second letter:

- 23 • Deleted its statement that it had terminated the Camco-Gemstone  
24 Agreement (while continuing to terminate the subcontractors);
- 25 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk  
26 of non-payment from the owner (which is also Pay-if-Paid); and,
- 27 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus  
28 agreement wherein the subcontractors and suppliers were paid directly by  
Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.

<sup>3</sup> Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be paid to Camco (though retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].



1 804-007].

2 While Gemstone eventually did make partial payment through NCS and not Camco [see  
3 discussion, *infra*], the Camco-Gemstone Agreement expressly required Camco, upon  
4 receipt of a progress payment from Gemstone, to “promptly pay each [subcontractor] the  
5 amount represented by the portion of the Percentage of the Work Completed that was  
6 completed by such [subcontractor].” [Ex. 162-010, ¶7.03(e)].

7 6. Some subcontractors stopped working after APCO left the Project. Others,  
8 such as Helix, continued to work on the Project and began working for Camco as the  
9 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started  
10 working on the Project only after APCO left and worked only for Camco.

11 7. Camco presented some subcontractors with a standard form subcontract  
12 Agreement (“the Camco Subcontract”), a representative example of which is Camco’s  
13 subcontract with Fast Glass. [See Exhibit 801-007-040; TR5-57:8-16].<sup>4</sup> Among other  
14 provisions, the Camco Subcontract (consistent with the Camco-Gemstone Agreement),  
15 requires Camco, no later than 10 days after receiving payment from Gemstone in response  
16 to its payment applications, to “pay to Subcontractor, in monthly progress payments, 90%<sup>5</sup>  
17 of labor and materials placed in position by Subcontractor during [the month preceding a  
18 payment application].” [See Ex. 701-012, ¶ II(C)].

19 8. Despite and contrary to the payment provisions of the Camco-Gemstone  
20 Agreement [see *supra* and Ex. 162-010, ¶7.03(e)] and the Camco Subcontract [See Ex.  
21 701-012, ¶ II(C)], no monies were ever distributed to the subcontractors through Camco.  
22 Instead, and until it ceased making payments, Gemstone released funds to NCS, which  
23 issued checks “on behalf of Camco Pacific” to some of the subcontractors and/or joint  
24 checks to the subcontractors and their lower tiers, including Helix and its lower tiers. [See  
25 e.g., Exhibit 508-062 (NCS check no. 531544 to Helix and its lower tier, Graybar Electric  
26 “on behalf of Camco Pacific.”)].

27 <sup>4</sup> Testimony of Dave Parry.

28 <sup>5</sup> i.e., less retention.

9. Camco also presented subcontractors who had previously worked for APCO, including Helix and Cabintec (National Wood), with a document titled Ratification and Amendment of Subcontract Agreement (“the Camco Ratification”). [See e.g., **Exhibit 3164**].

10. Helix admitted in its Complaint and in its lien documents that it entered into the Camco Subcontract and the Camco Ratification.

11. As it was instructed to do, Camco continued to perform the work it had agreed to perform on the Project until Gemstone suspended work on December 15, 2008. As it was also instructed to do, Helix submitted payment applications to Camco using the same forms and same procedures as it had employed while APCO was still on the Project. [See e.g., Ex. 508-067-074]. Camco in turn submitted its pay applications to Gemstone in the same way, and using the same forms, as APCO had used. [See e.g., Ex. 522-001-011].

12. Helix submitted gross payment applications to Camco totaling \$1,010,255.25 (i.e., inclusive of retention). [See Ex. 508-001-002; 037-038; 049; 068-069].<sup>6</sup> Helix was paid only \$175,778.80 and is owed the balance, \$834,476.45.

13. The Court finds that Helix and Camco entered into a contractor/subcontractor relationship and agreement whereby they agreed on the material terms of a contract – i.e., the work to be performed, the price for the work and Camco’s obligation to pay. The Court finds that Camco breached its obligation to pay Helix the sum of \$834,476.45.

14. Helix provided undisputed testimony that the amounts it billed were reasonable for the work performed. [TR2-71:22-72:3].<sup>7</sup> Because (i) this testimony was undisputed, (ii) Camco submitted these amounts on its certified pay applications to Gemstone, and (iii) Helix was paid in part for these amounts, the Court finds that the amounts Helix billed Camco for its work were reasonable for the work performed.

<sup>6</sup> See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See TR3-68:17-69:7].

<sup>7</sup> Testimony of Andy Rivera.

1           15.     Helix presented undisputed evidence, and the Court finds, that Helix timely  
2 recorded a mechanic's lien, as amended ("the Helix Lien"), pursuant to NRS Chapter 108  
3 and perfected the same. [See Exhibit 512]. The Helix Lien identified both APCO and  
4 Camco as the "person by whom the lien claimant was employed or to whom the lien  
5 claimant furnished or agreed to furnish work, materials or equipment." [See e.g., Ex. 512-  
6 007, 009].

7           16.     Any finding of fact herein that is more appropriately deemed a conclusion  
8 of law shall be treated as such.

9           FROM the foregoing Findings of Fact, the Court hereby makes the following

10          B.     Conclusions of Law.

11          1.     "Basic contract principles require, for an enforceable contract, an offer and  
12 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,  
13 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have  
14 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d  
15 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context  
16 and also on the subsequent conduct of the parties, including the dispute which arises and  
17 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a  
18 contract exists is a question of fact and the District Court's findings will be upheld unless  
19 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,  
20 119 P.3d at 1257.

21          2.     The Court concludes that Camco and Helix entered into a contract whereby  
22 they agreed on the material terms of a contract – i.e., the work to be performed, the price  
23 therefore and Camco's obligation to pay. The Court further concludes that Camco failed to  
24 pay Helix the undisputed sum of \$834,476.45 without excuse (other than Camco's reliance  
25 on Pay-if-Paid, which the Court has previously rejected).

26          3.     Camco did not dispute Helix's testimony that the amounts it billed were a  
27 reasonable value for the work performed, and the reasonableness thereof was demonstrated

1 by Camco's payment in part and its inclusion of Helix's billings in its own payment  
2 applications to Gemstone. The court therefore concludes that the unpaid value of Helix's  
3 work while Camco was on site as the general contractor is \$834,476.45 and that Helix  
4 should be awarded that principal amount against Camco for that principal amount.

5 4. The Court rejects Camco's argument that it is not liable to Helix (and other  
6 subcontractors) because it never received payment from Gemstone who instead made  
7 payments to subcontractors through the disbursement company, NCS. Camco's position  
8 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract  
9 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO  
10 Subcontract) payments to subcontractors were intended to flow through the general  
11 contractor. Camco presented no evidence that Helix or any other subcontractor consented  
12 in advance to Gemstone's eventual decision to release payments (in part) through NCS and  
13 not Camco.

14 5. Similarly, the Court rejects Camco's contention that the Court's decision on  
15 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and  
16 other subcontractors. Camco presented no evidence that it, for example, declared  
17 Gemstone to be in breach for failing to make payments through Camco rather than through  
18 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract  
19 and, at least until Gemstone announced that it was suspending construction, continued to  
20 process subcontractor payment applications and submit them to Gemstone. Camco's  
21 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public  
22 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

23 6. Helix is entitled to the principal sum of \$834,476.45 against Camco which  
24 will be the subject of a judgment to be entered by the Court.

25 7. The Court denies all of Camco's affirmative defenses.

26 8. Helix is entitled to prejudgment interest pursuant to NRS 108.237 and/or  
27 NRS 17.130.

9. Helix is the prevailing party and/or prevailing lien claimant as to Camco and Helix and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237 and/or the Camco Subcontract. Helix is granted leave to separately apply for the same.

10. As the prevailing party, Helix may also apply for an award of costs against Camco in accordance with the relevant statutes and for judgment as to the same.

11. Any conclusion of law herein that is more appropriately deemed a finding of fact shall be treated as such.

## ORDER

NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact and Conclusions of Law; and

IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and Conclusions of Law, and those made regarding the other parties and claims involved in the consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the same at the appropriate time subject to further order of the Court.

DATED this 24 day of April, 2018,

DISTRICT COURT JUDGE

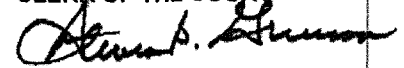
## CERTIFICATE

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List.

LORRAINE TASHIRO  
Judicial Executive Assistant  
Dept. No. XIII

# **EXHIBIT 10R**

**JA008368**



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7 Attorneys for APCO Construction, Inc.

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 v.

14 GEMSTONE DEVELOPMENT WEST, INC., A  
15 Nevada corporation,

16 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

**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.]**

17  
18  
19  
20 AND ALL RELATED MATTERS

21  
22 PLEASE TAKE NOTICE that a JUDGMENT [AS TO THE CLAIMS OF HELIX  
23 ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL WOOD  
24 PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.] was filed on May 31, 2018, a

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copy of which is attached as **Exhibit A**.

Dated this 1st day of June, 2018.

SPENCER FANE LLP



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*Attorneys for APCO Construction, Inc.*



1  
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am an employee of Spencer Fane LLP and that a copy of the  
4 foregoing **NOTICE OF ENTRY OF JUDGMENT [AS TO THE CLAIMS OF HELIX**  
5 **ELECTRIC OF NEVADA, LLC AND PLAINTIFF IN INTERVENTION NATIONAL**  
6 **WOOD PRODUCTS, INC.'S AGAINST APCO CONSTRUCTION, INC.]** was served by  
7 electronic transmission through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and  
8 EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage  
9 prepaid for non-registered users, on this 1<sup>st</sup> day of June, 2018, as follows:

10 **Counter Claimant: Camco Pacific Construction Co Inc**

11 Steven L. Morris (steve@gmdlegal.com)

12 **Intervenor Plaintiff: Cactus Rose Construction Inc**

13 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

14 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

15 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

16 **Intervenor: National Wood Products, Inc.'s**

17 Dana Y Kim (dkim@caddenfuller.com)

18 Richard L Tobler (rltldck@hotmail.com)

19 Richard Reincke (rreincke@caddenfuller.com)

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21 Tammy Cortez (tcortez@caddenfuller.com)

22 **Other: Chaper 7 Trustee**

23 Elizabeth Stephens (stephens@sullivanhill.com)

24 Gianna Garcia (ggarcia@sullivanhill.com)

25 Jennifer Saurer (Saurer@sullivanhill.com)

26 Jonathan Dabbieri (dabbieri@sullivanhill.com)

27 **Plaintiff: Apco Construction**

28 Rosie Wesp (rwesp@maclaw.com)

**Third Party Plaintiff: E & E Fire Protection LLC**

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)


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# EXHIBIT A



1 JUDGE  
2 SPENCER FANE LLP  
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8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 v.

14 GEMSTONE DEVELOPMENT WEST, INC., A  
15 Nevada corporation,

16 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

JUDGMENT

[AS TO THE CLAIMS OF HELIX  
ELECTRIC OF NEVADA, LLC AND  
PLAINTIFF IN INTERVENTION  
NATIONAL WOOD PRODUCTS, INC.'S  
AGAINST APCO CONSTRUCTION, INC.]

20 AND ALL RELATED MATTERS

21  
22 This matter having come on for a non-jury trial on the merits on January 17-19, 23,  
23 24 and February 6, 2018, APCO Construction, Inc. ("APCO"), appearing through Spencer  
24 Fane, LLP and Marquis & Aurbach; Camco Construction, Inc., ("Camco") through Grant  
25 Morris Dodds; National Wood Products, Inc. ("National Wood" or "CabineTec") through  
26 Cadden & Fuller LLP and Richard L. Tobler, Ltd.; United Subcontractors, Inc. through  
27 Fabian Vancott; and Helix Electric of Nevada, LLC ("Helix"), SWPP Compliance  
28 Solution, Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all

1 through Peel Brimley; and, the Court having heard the testimony of witnesses through  
2 examination and cross-examination by the parties' counsel, having reviewed the evidence  
3 provided by the parties, having heard the arguments of counsel, and having read and  
4 considered the briefs of counsel, the parties' pleadings, and various other filings, and good  
5 cause appearing; the Court hereby makes the following:

6 The Court having taken the matter under consideration and advisement;

7 The Court having entered its April 25, 2018 Findings of Fact and Conclusions of  
8 Law as to the Claims of Helix Electric and CabineTec against APCO, incorporated  
9 herein by this reference ("the APCO FFCL");

10 The Court enters the following Judgment as to the claims of Helix and National  
11 Wood against APCO;

12 IT IS ORDERED, ADJUDGED, AND DECREED that, as set forth on the APCO  
13 FFCL, judgment is to be entered in favor of APCO and against Helix and National Wood  
14 on all of Helix's and National Wood's claims against APCO and that (i) Helix's April 14,  
15 2009 Statement of Facts Constituting Notice of Lien and Third-Party Complaint, (ii)  
16 Helix's June 24, 2009 Amended Statement of Facts Constituting Notice of Lien and Third-Party  
17 Complaint and (iii) CabineTec's February 6, 2009 Statement of Facts Constituting Lien  
18 Claim and Complaint in Intervention shall be dismissed with prejudice, but only to the  
19 extent they state claims against APCO.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court may  
21 issue an amended judgment after the Court has heard and decided APCO's Motion for  
22 Attorney's Fees and Costs Against Helix and National Wood and any related motion to

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1 determine APCO's costs, currently pending before the Court.<sup>1</sup>

2

3

Dated this 29<sup>th</sup> day of May, 2018.

4



DISTRICT COURT JUDGE

5

6

7 Respectfully submitted by:

8

SPENCER FANE LLP

9



10 John H. Mowbray, Esq. (Bar No. 1140)  
11 John Randall Jefferies, Esq. (Bar No. 3512)  
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*Attorneys for Apco Construction, Inc.*

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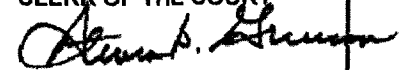
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<sup>1</sup> The amended judgment will be in accordance with the court's decisions on the pending motion for attorney's fees and any motion/pleadings for costs.



# EXHIBIT 10S

JA008379



1 FFCO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 APCO CONSTRUCTION, a Nevada  
5 corporation,

6 Plaintiff,

7 v.

8 GEMSTONE DEVELOPMENT WEST, INC., A  
9 Nevada corporation,

10 Defendant.

Case No.: 08A571228  
Dept. No.: XIII

Consolidated with:

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

11 AND ALL RELATED MATTERS

12 FINDINGS OF FACT AND CONCLUSIONS OF LAW  
13 AS TO THE CLAIMS OF HELIX ELECTRIC  
14 AND CABENETEC AGAINST APCO

15 This matter having come on for a non-jury trial on January 17-19, 23, 24, and  
16 February 6, 2018, APCO Construction, Inc., appearing through Spencer Fane, LLP and  
17 Marquis & Aurbach; Camco Construction, Inc., through Grant Morris Dodds; National Wood  
18 Products, LLC through Cadden Fuller and Richard L. Tobler, Ltd.; United Subcontractors, Inc.  
19 through Fabian Vancott; and Helix Electric of Nevada, LLC, SWPP Compliance Solution,  
20 Cactus Rose Construction, Inc., Fast Glass, Inc., Heinaman Contract Glazing all through Peel  
21 Brimley; and, the Court having heard the testimony of witnesses, having reviewed the evidence  
22 provided by the parties, having heard the arguments of counsel, and having read and considered  
the briefs of counsel and good cause appearing; the Court hereby makes the following:

23 I. FINDINGS OF FACT

24 A. The Project

25 1. This action arises out of a construction project in Las Vegas, Nevada known as  
26 the Manhattan West Condominiums project in Clark County Nevada, (the "Project").

27 2. Gemstone Development West, Inc. ("Gemstone") was the owner and developer  
28 of the Project that contracted APCO to serve as the prime contractor.

CLERK OF THE COURT

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APR 25 2018

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MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

JA008380

Case Number: 08A571228

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1           3.     On or about September 6, 2007, Gemstone and APCO entered into the  
2 Manhattan West General Construction Contract for GMP (the "Contract")<sup>1</sup>.

3           4.     The Contract included Phase 1 and Phase 2 and consisted of nine buildings, with  
4 five of the nine buildings in Phase 1 (buildings 2, 3, 7, 8 and 9).<sup>2</sup>

5           5.     The Contract price for Phase 1 was \$78,938,160.00.<sup>3</sup> APCO started work on the  
6 Project in September, 2007.<sup>4</sup>

7           **B.     The Contract**

8           6.     The following are several critical Contract provisions that relate to the current  
9 claims.

10          1.     **Completion**

11          7.     Section 2.10 of the Contract defines completion as follows:

12               (a) The Work within or related to each Building shall be deemed  
13 completed upon the (i) completion of the Work in such Building  
14 and the Corresponding Common Area; (ii) issuance of the  
15 Certificate of Occupancy for such Building; (iii) completion of  
16 any corrections that are requested by Developer, set forth on a  
17 Developer Punch List; and (iv) delivery of the applicable  
Completion Documents (collectively, a "Building Completion").  
The Project shall be deemed completed upon the Building  
Completion of each Building (collectively "Final Completion").<sup>5</sup>

18          8.     Given the ultimate disputes between APCO and Gemstone, APCO did not meet  
19 this definition of completion.<sup>6</sup>

20          .....

21 \_\_\_\_\_  
22               <sup>1</sup> Exhibit 2. Gemstone and APCO also entered into a grading contract on April  
17, 2007 but that contract is not the subject of this lawsuit. Exhibit 1.

23               <sup>2</sup> Testimony of Joe Pelan (APCO) Day 1, pp. 19 and 22; Exhibit 13, p.1. Joe  
Pelan is the General Manager of APCO Construction.

24               <sup>3</sup> Testimony of Joe Pelan (APCO), Day 1, p. 28.

25               <sup>4</sup> Testimony of Joe Pelan (APCO), Day 1, p. 28. APCO first started work under  
the grading contract. Exhibit 1.

26               <sup>5</sup> Exhibit 2, Section 2.10.

27               <sup>6</sup> Testimony of Joe Pelan (APCO), Day 1, p. 23.

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2. **Progress Payments.**

9. Section 5.05 outlined the progress payment process as follows:

(a) On the first business day of each month, General Contractor and the Developer shall meet to review the Work that was completed during the previous month and the corresponding payment required for such Work.

...

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

...

(g) Upon receipt of the Progress Payment, General Contractor shall promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of Work Completed that was completed by such Third-Party Service Provider during the period covered by the corresponding Progress Payment. General Contractor shall, by appropriate agreement with each Third-Party Service Provider, require each Third-Party Service Provider to make payment to sub-contractors in a similar manner.<sup>7</sup>

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<sup>7</sup> Exhibit 2 at Section 5.05. The Contract defines APCO's subcontractors as a "Third Party Service Provider." Exhibit 2, Section 2.02(a).

- 1           10. Per this provision, on the 20<sup>th</sup> of each month subcontractors submitted their  
2 billings to APCO for the current month (including a projection of what each intended to  
3 complete through the end of that month).<sup>8</sup>
- 4           11. APCO would then provide all of these documents to Gemstone.<sup>9</sup>
- 5           12. Gemstone would then walk the Project and determine the percentage each  
6 subcontractor had completed.<sup>10</sup>
- 7           13. Gemstone would adjust each subcontractor's billings to match its estimate of the  
8 percentage complete.<sup>11</sup>
- 9           14. Gemstone would give the revised billings back to APCO, and APCO would  
10 return them to each subcontractor to revise.<sup>12</sup>
- 11           15. Once revised, the subcontractors would submit them to APCO, APCO would  
12 submit them to Gemstone, and Gemstone would submit them to its construction funds control  
13 company, Nevada Construction Services ("NCS") for further review and payment.<sup>13</sup>
- 14           16. NCS would then send an inspector to verify the work was complete.<sup>14</sup>
- 15           17. NCS would then request funds from the lender and pay the total amount directly  
16 to APCO.<sup>15</sup>
- 17           18. APCO then paid the subcontractor the final amount received from Gemstone.<sup>16</sup>
- 18           19. As discussed more fully below, this process continued until June 2008.<sup>17</sup>

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20           <sup>8</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

21           <sup>9</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

22           <sup>10</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

23           <sup>11</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

24           <sup>12</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24.

25           <sup>13</sup> Testimony of Joe Pelan (APCO), Day 1, p. 24; Exhibit 3, Nevada Construction  
26 Services Agreement.

27           <sup>14</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

28           <sup>15</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25, and 59.

<sup>16</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

<sup>17</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25.

1           **3.     Final Payment**

2           20.     Per the payment schedule in Section 5.06, Gemstone was required to make final  
3 payment when the following preconditions were met:

4                   (c) ...Prior to final payment, and as a condition precedent,  
5 General Contractor shall furnish Developer with the following  
6 (the "Completed Documents"):

7                   (i) All maintenance and operating manuals;

8                   (ii) Marked set of drawings and specifications reflecting "as-  
9 built" conditions, upon which General Contractor shall have  
10 transferred all changes in the location of concealed utilities...

11                   (iii) the documents set forth in Section 2.06(e)

12                   (iv) Any assignment and/or transfer of all guaranties and  
13 warranties from Third-Party Service Providers, vendors or  
14 suppliers and manufacturers;

15                   (v) A list of the names, address and phone numbers of all parties  
16 providing guarantees and warranties, and

17                   (vi) verification that all waivers that should be issued to  
18 Developer concurrent with Final payment.<sup>18</sup>

19           21.     APCO admitted that none of these preconditions were met while APCO was on  
20 the Project.<sup>19</sup>

21           **4.     Retainage**

22           22.     Section 5.07 contained the Contract's retention (or retainage) payment  
23 schedule.<sup>20</sup>

24           23.     Retainage is essentially an "escrow account" representing a temporarily  
25 withheld portion of a billing that is retained by Gemstone to ensure that the work is completed

26                   <sup>18</sup> Exhibit 2 at Section 5.06(c).

27                   <sup>19</sup> Testimony of Joe Pelan (APCO), Day 1, p. 63.

28                   <sup>20</sup> Exhibit 2 at Section 5.07.

properly, that all material suppliers are paid and lien releases have been provided, and that all certificates of occupancy were issued.<sup>21</sup>

24. APCO and the subcontractors tracked the 10% retention in their billings each month.<sup>22</sup>

25. APCO never held or otherwise received any subcontractor's retention withheld by Gemstone and kept by the lender for the Project.<sup>23</sup>

26. Section 5.07(f) sets forth the preconditions for APCO to receive its retention:

(f) Any remaining Standard Retainage, Monthly Retainage, and Milestone Retainage shall be released to General Contractor on the date that (i) Final Completion is attained and (ii) all outstanding disputes between Developer and General Contractor and Developer and any Third Party Service Providers have been resolved, and any liens against the Project related to such disputes have been removed.<sup>24</sup>

27. APCO admits that it never met any of the milestones or preconditions to be entitled to its retention from Gemstone.<sup>25</sup>

28. Accordingly, APCO never billed and did not receive any retention from Gemstone.<sup>26</sup>

#### 5. Termination for Convenience

29. Section 10.01 of the Contract is entitled "Termination by the Developer Without Cause."<sup>27</sup>

<sup>21</sup> Testimony of Joe Pelan (APCO), Day 1, p. 25; Exhibit 2 at Section 5.07; Helix's Post-Trial Brief, p. 3, ll. 10-11.

<sup>22</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 25-26.

<sup>23</sup> Testimony of Joe Pelan (APCO), Day 1, p. 26.

<sup>24</sup> Exhibit 2 at Section 5.07(f).

<sup>25</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 1-4, 26.

<sup>26</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127. Mary Jo Allen is a bookkeeper for APCO, and has been a bookkeeper for approximately 40 years. Testimony of Mary Jo Allen (APCO), Day 3, p. 121. She assisted in preparing the pay applications to Gemstone for the Project. Testimony of Mary Jo Allen (APCO), Day 3, p. 121.

30. In the construction industry, this is known as a "termination for convenience."<sup>28</sup>

31. Gemstone never terminated the Contract for convenience.

**6. Termination for Cause**

32. Section 10.02 of the Contract is entitled "**Termination by Developer With Cause**" and states:

...

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

...

(ii) Accept assignment of any Third-Party Agreements pursuant to Section 10.04.<sup>29</sup>

33. Although Gemstone purported to terminate the Contract for cause,<sup>30</sup> the undisputed evidence established that APCO was not in default.<sup>31</sup>

**7. Assignment**

34. The Contract contained an assignment provision confirming that upon the Contract's termination, APCO's subcontracts would be assigned to Gemstone.

35. At that point, Gemstone would be responsible for any amounts that Gemstone had not already paid APCO for the subcontractors' work:

**10.04 Assignment.** Each Third-Party Agreement for a portion of the Work is hereby assigned by General Contractor to Developer provided that such assignment is effective only after termination of the Agreement by Developer for cause pursuant to Section

---

<sup>27</sup> Exhibit 2 at Section 10.01.

<sup>28</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

<sup>29</sup> Exhibit 2 at Section 10.02(b)(2).

<sup>30</sup> Testimony of Joe Pelan (APCO), Day 1, p. 27.

<sup>31</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.



1 10.02 and only for those Third-Party Agreements which  
2 Developer accepts by notifying General Contractor and the  
3 applicable Third Party Service Provider in writing. General  
4 Contractor shall execute and deliver all such documents and take  
5 all such steps as Developer may require for the purpose of fully  
6 vesting in Developer the rights and benefits of General  
7 Contractor under such documents. Upon the acceptance by  
8 Developer of any Third-Party Agreement, subject to the other  
9 terms of this Article X, Developer shall pay to the corresponding  
10 Third-Party Service Provider any undisputed amounts owed for  
11 any Work completed by such Third Party Provider, prior to the  
12 underlying termination for which Developer had not yet paid  
13 General Contractor prior to such underlying termination.<sup>32</sup>

14 36. Despite its dispute with Gemstone, APCO could not have terminated its  
15 subcontracts or it would have been in breach of the Contract.<sup>33</sup>

16 37. Notably, the Contract and this assignment clause were incorporated into the  
17 APCO subcontracts.<sup>34</sup>

18 38. And before APCO left the Project, Gemstone and APCO ensured that all  
19 subcontractors were properly paid up through that last period.<sup>35</sup>

20 C. Subcontracts

21 1. Helix

22 39. Helix Electric of Nevada, LLC ("Helix") was originally selected and retained by  
23 Gemstone and performed work on the Project prior to APCO becoming the general  
24 contractor.<sup>36</sup>

25 <sup>32</sup> Exhibit 2, Section 10.04 (p. 36).

26 <sup>33</sup> Testimony of Joe Pelan (APCO), Day 1, p. 75.

27 <sup>34</sup> Exhibit 45 (Helix Subcontract) and Exhibit 149 (CabineTec Subcontract),  
28 Section 1.1.

<sup>35</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67, and 82.  
Testimony of Mary Jo Allen (APCO), Day 3, pp. 127-128.

<sup>36</sup> Testimony of Joe Pelan (APCO), Day 1, p. 58.

1 40. Specifically, Helix's Vice President, Bob Johnson,<sup>37</sup> admitted Helix participated  
2 in preparing engineering and design services for Gemstone on the Project's electrical scope of  
3 work.<sup>38</sup>

4 41. So at Gemstone's direction, APCO entered into a subcontract with Helix for the  
5 electrical work (the "Helix Subcontract") required on the Project.<sup>39</sup>

6 42. Helix's scope of work included "electrical installation for the project, which  
7 consists of distribution of power, lighting, power for the units, connections to equipment that  
8 required electrical."<sup>40</sup>

9 43. So Helix's work was based, in part, on the electrical drawings that Helix  
10 prepared under contract to Gemstone.<sup>41</sup>

11 44. The Helix subcontract included the following relevant provisions:

- 12 ○ Section 1.1: The subcontract incorporates the Contract including all
- 13 exhibits and attachments, specifically including the Helix exhibit.
- 14 ○ Section 1.3: Helix was bound to APCO to the same extent and duration
- 15 that APCO was bound to Gemstone.
- 16 ○ Section 3.4 outlined the agreed upon progress payment schedule as
- 17 follows: Progress Payments
- 18     ▪ The progress payment to Subcontractor shall be one
- 19     hundred percent (100%) of the value of Subcontract work
- 20     completed (less 10% retention) during the preceding
- 21     month as determined by the Owner, less such other
- 22     amounts as Contractor shall determine as being properly
- 23     withheld as allowed under this Article or as provided

24 <sup>37</sup> Bob Johnson is the Vice President of the major projects group at Helix. Testimony of Bob Johnson (Helix), Day 1, p. 106. Mr. Johnson has negotiated more  
25 than 50 subcontracts in his career, three to four of which have been with APCO. Testimony of Bob Johnson (Helix), Day 2, p. 17. Mr. Johnson was involved in the  
26 negotiation and execution of the final terms and conditions of Helix's subcontract with APCO for the Project. Testimony of Bob Johnson (Helix), Day 1, p. 107. Mr. Johnson  
27 admitted Andy Rivera received most of the project related correspondence and had the  
28 most information on Helix's damages claim. Testimony of Bob Johnson (Helix), at Day 2, p. 24.

<sup>38</sup> Testimony of Bob Johnson (Helix) Day 2, p. 6.

<sup>39</sup> Exhibit 45, Helix Subcontract; Testimony of Joe Pelan (APCO), Day 1, p. 58.

<sup>40</sup> Testimony of Bob Johnson (Helix) at Day 2, p. 10.

<sup>41</sup> Testimony of Bob Johnson (Helix) Day 2, p. 7.

1 elsewhere in this Subcontract. The estimates of Owner as  
2 to the amount of Work completed by Subcontractor shall  
3 be binding upon Contractor and Subcontractor and shall  
4 conclusively establish the amount of Work performed by  
5 Subcontractor. As a condition precedent to receiving  
6 partial payments from Contractor for Work performed,  
7 Subcontractor shall execute and deliver to Contractor,  
8 with its application for payment, a full and complete  
9 release (Forms attached) of all claims and causes of action  
10 Subcontractor may have against Contractor and Owner  
11 through the date of the execution of said release, save and  
12 except those claims specifically listed on said release and  
13 described in a manner sufficient for Contractor to Identify  
14 such claim or claims with certainty. Upon the request of  
15 Contractor, Subcontractor shall provide an Unconditional  
16 Waiver of Release in form required by Contractor for any  
17 previous payment made to Subcontractor. Any payment to  
18 Subcontractor shall be conditioned upon receipt of the  
19 actual payments by Contractor from Owner.  
20 Subcontractor herein agrees to assume the same risk that  
21 the Owner may become insolvent that Contractor has  
22 assumed by entering into the Prime Contract with the  
23 Owner.

24 ○ 3.5 Progress Payments

- 25 ■ Progress payments will be made by Contractor to  
26 Subcontractor within 15 days after Contractor actually  
27 receives payment for Subcontractor's work from  
28 Owner.... The estimate of owner as to the amount of  
Work completed by Subcontractor be binding upon  
Contractor and Subcontractor and shall conclusively  
establish the amount of Work performed by  
Subcontractor...<sup>42</sup>

45. Of critical importance to the present action and claims, the Helix Subcontract  
contained the following agreed upon retention payment schedule:

○ Section 3.8: Retainage

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

---

<sup>42</sup> Exhibit 45.

1 entire project as described in the Contract Documents; (b) The approval  
2 of final acceptance of the project Work by Owner, (c) Receipt of final  
3 payment by Contractor from Owner; (d) Delivery to Contractor from  
4 Subcontractor all as-built drawings for it's (*sic*) scope of work and other  
5 close out documents; (e) Delivery to Contractor from Subcontractor a  
6 Release and Waiver of Claims from all of Subcontractor's laborers,  
7 material and equipment suppliers, and subcontractors, providing labor,  
8 materials or services to the Project.<sup>43</sup>

9 46. As documented below, Helix admitted that these preconditions were not met  
10 while Apco was the contractor.<sup>44</sup>

11 47. In its lien documents,<sup>45</sup> Complaint against APCO,<sup>46</sup> and its Amended  
12 Complaint, Helix has unequivocally admitted that it had a binding subcontract with APCO.<sup>47</sup>

13 48. In fact, Victor Fuchs, the President of Helix,<sup>48</sup> also confirmed the following in  
14 an affidavit attached to Helix's May 5, 2010 Motion for Summary Judgment Against Gemstone  
15 Development West (and corresponding errata) filed with this Court:

16 4. On or around April 17, 2007 [the date of Exhibit 45],  
17 APCO contracted with Helix to perform certain work on the  
18 Property.

19 5. Helix's relationship with APCO was governed by a  
20 subcontract, which provided the scope of Helix's work and  
21 method of billing and payments to Helix for work performed on  
22 the Property (the "Subcontract"). A true and correct copy of the  
23 Subcontract is attached hereto as Exhibit 1.

24 6. Helix also performed work and provided equipment and  
25 services directly for and to Gemstone, namely design engineering  
26 and temporary power.

---

27 <sup>43</sup> Exhibit 45.

28 <sup>44</sup> Testimony of Bob Johnson, Day 2, pp. 36 and 37.

<sup>45</sup> Exhibits 512 pp. 5-6, 7-9, 10-11.

<sup>46</sup> Exhibit 77.

<sup>47</sup> Exhibit 231.

<sup>48</sup> Testimony of Bob Johnson (Helix), Day 1, p. 108.

1 7. Camco Pacific Construction Company, Inc. ("Camco")  
2 replaced APCO as the general contractor. Thereafter, Helix  
3 performed its Work for Gemstone and/or Camco...<sup>49</sup>

4 Exhibit 1 to the declaration was the first fifteen pages of Exhibit 45.<sup>50</sup>

5 49. And notwithstanding Helix's proposed interlineations to the subcontract, Helix's  
6 Mr. Johnson admitted he did not change the retention payment schedule in the subcontract:

7 Q. Okay. Would you turn to page 4 [of Exhibit 45] And  
8 directing your attention to paragraph 3.8?

9 A. Okay.

10 Q. Do you recognize that as the agreed-upon retention  
11 payment schedule in the subcontract?

12 A. I do.

13 Q. And in fairness to you and the record, you did propose  
14 a change to paragraph 3.8. Could you turn to page 16 of the  
15 exhibit, Exhibit 45? And directing your attention to paragraph 7,  
16 does this reflect your proposed change to the retention payment  
17 schedule in the original form of Exhibit 45?

18 A. In the original form, yes.

19 Q. Okay. And APCO accepted your added sentence that if  
20 the retention was reduced on the Project, the same would be  
21 passed on to the subcontractor, correct?

22 A. Correct.

23 Q. Through your change in paragraph 7, on page 16 of  
24 Exhibit 45, you did not otherwise modify the preconditions in the  
25 retention payment schedule of 3.8, did you?

26 A. We did not.<sup>51</sup>

27 50. Mr. Johnson, also admitted that Exhibit 45 represented the APCO agreement  
28 that Helix alleges APCO somehow breached:

Q. Okay, sitting here today, is it your contention that  
APCO breached a contract with Helix?

A. I would say they did in the respect that we haven't  
been paid.

Q. Okay. And which contract is it in your opinion that  
APCO breached?

<sup>49</sup> Exhibit 314.

<sup>50</sup> Helix Electric's May 5, 2010 Motion for Partial Summary Judgment Against  
Gemstone Development West (and corresponding errata).

<sup>51</sup> Testimony of Bob Johnson, Day 2, pp. 17-18.

1 A. For the Manhattan West project.

2 Q. Is there a document?

3 A. There is a document.

4 Q. Okay. And, sir, would you turn—if you could, grab  
Exhibit 45. You spent some time talking about this yesterday.

5 A. Okay.

6 The Court: Which item is it, counsel?

7 Mr. Jefferies: Exhibit 45.

8 Q. Is it your position that APCO breached this agreement?

9 A. My assumption would be they breached it, yes.

10 Q. Okay. But this is the document that represents the  
agreement between APCO and Helix for the project?

11 A. It is the agreement between APCO and Helix.<sup>52</sup>

12 51. Notably, the Helix Subcontract did not contain a provision purporting to waive  
Helix's statutory lien rights.

13 2. CabineTec

14 52. Gemstone also selected CabineTec, Inc. ("CabineTec") to serve as APCO's  
15 cabinet subcontractor.<sup>53</sup> Plaintiff in Intervention National Wood Products, Inc. ("National  
16 Wood") is a judgment creditor of CabineTec which has assigned all of its right, title, and  
17 interest in the project to National Wood. Such parties are collectively referred to herein as  
18 "CabineTec."

19 53. APCO entered into a subcontract with CabineTec on April 28, 2008 for the  
20 delivery and installation of cabinets on the Project (the "CabineTec Subcontract")<sup>54</sup>

21 54. CabineTec's Subcontract contained the same retention and progress payment  
22 schedules quoted above from the Helix Subcontract.<sup>55</sup>

23  
24  
25 <sup>52</sup> Testimony of Bob Johnson (Helix), Day 2, p. 9.

26 <sup>53</sup> Testimony of Joe Pelan (APCO), Day 1, p. 89.

27 <sup>54</sup> Exhibit 149, CabineTec Subcontract.

28 <sup>55</sup> Exhibit 149.

1 55. CabineTec's Nicholas Cox<sup>56</sup> admitted CabineTec did not change the retention  
2 payment schedule found in Section 3.8.<sup>57</sup>

3 56. CabineTec and APCO also signed an August 6, 2008 letter regarding Terms &  
4 Conditions.<sup>58</sup>

5 57. That letter confirmed that CabineTec would be paid when "APCO receives  
6 payment from Gemstone per subcontract."<sup>59</sup>

7 58. The CabineTec Subcontract does not contain a waiver of CabineTec's right to  
8 place a mechanic's lien on the Project.

9 **D. The Contract was terminated.**

10 59. APCO did not finish the Project as the general contractor.<sup>60</sup>

11 60. Despite APCO's performance, issues with Gemstone's payments started in May  
12 2008 and Gemstone reduced the May Pay Application to exclude any money for APCO.<sup>61</sup>

13 61. "...Gemstone will withhold \$226,360.88 from the May Progress Payment (the  
14 "Withheld Amount") in addition to the 10% retainage that was already being withheld. The  
15 Withheld Amount represents the APCO Construction Contractor's Fee line-item from the May  
16 Progress Payment."<sup>62</sup>

17 62. As a result, Gemstone only paid the subcontractors for the May time period.

18 63. Given the wrongful withholding, APCO provided Gemstone with written notice  
19 of its intent to stop work pursuant to NRS 624.610 if APCO was not paid in full.<sup>63</sup>

20  
21 <sup>56</sup> Mr. Cox was the president of CabineTec during the Project. Testimony of  
Nicholas Cox (CabineTec) Testimony Day 3, p. 13.

22 <sup>57</sup> Testimony of Nicholas Cox (CabineTec), Day 3, p. 29.

23 <sup>58</sup> Exhibit 152.

24 <sup>59</sup> Exhibit 152.

25 <sup>60</sup> Testimony of Brian Benson (APCO) at Day 3, p. 50; Testimony of Mary Jo  
Allen (APCO), Day 3, p. 122.

26 <sup>61</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 31.

27 <sup>62</sup> Exhibit 212-1.

28 <sup>63</sup> Exhibit 5.

1           64.    On or about July 18, 2008, APCO submitted its pay application for the month  
2 ending June 30, 2008, and requested \$6,566,720.38 (the "June Application").<sup>64</sup>

3           65.    The cover page of the June Application, like all other pay applications, tracked  
4 the total value of the Contract, the total requested for that month, subcontractor billings and  
5 retention.<sup>65</sup>

6           66.    The June Application shows Gemstone was withholding \$4,742,574.01 in  
7 retainage as of that date.<sup>66</sup>

8           67.    On July 18, 2008, APCO sent Gemstone a notice of intent to stop work for its  
9 failure to pay the May Application as follows.

10                       Specifically, Gemstone has failed to pay \$3,434,396.50 for  
11                       Application for Payment No. 8, Owner Draw No. 7, which was  
12                       submitted to Gemstone on June 20, 2008, and was due no later  
13                       than July 11, 2008 pursuant to NRS 624.609(A). Accordingly,  
14                       THIS LETTER SHALL SERVE AS APCO'S NOTICE OF  
15                       INTENT TO STOP WORK PURSUANT TO NRS 624.609  
16                       THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS  
17                       PAID THE TOTAL AMOUNT OF \$3,434,396.50 FOR ITS  
18                       WORK ON THE PROJECT... Accordingly, pursuant to NRS  
19                       624.609(1)(b), payment was due to APCO within 21 days of its  
20                       request for payment (again, no later than July 11, 2008). To date,  
21                       no payment has been made... If APCO has not been paid for  
22                       Application for Payment No. 8, Owner Construction Draw No. 7,  
23                       in the amount of \$3,434,396.50 by the close of business on  
24                       Monday, July 28, 2008, APCO reserves the right to stop work on  
25                       the Project anytime after that date. While APCO is willing to  
26                       continue to work with Gemstone to get these issues resolved,  
27                       APCO is not waiving its right to stop work any time after July 28,  
28                       2008, if APCO continues to work on the Project or otherwise  
                     attempts to resolve these issues with Gemstone.<sup>67</sup>

22           68.    On July 28, 2008, APCO sent a letter confirming that APCO would stop  
23 working unless Gemstone made full payment to APCO for all past due amounts:

24 \_\_\_\_\_  
25           <sup>64</sup> Exhibit 4.

26           <sup>65</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 28 and 29; Exhibit 4.

27           <sup>66</sup> Exhibit 4; Testimony of Joe Pelan (APCO), Day 1, p. 30.

28           <sup>67</sup> Exhibit 5.



1 As you area aware, on July 17, 2008, APCO provided Gemstone  
2 with written notice that unless APCO was paid the full amount of  
3 \$3,434,396 by the close of business on Monday, July 28, 2008,  
4 that APCO would stop work on the Project. Gemstone failed to  
5 make full payment and has improperly withheld \$203,724.29,  
6 despite having no good faith or proper statutory basis for  
7 withholding the payment. AS a result, APCO is stopping work on  
8 the Manhattan West Project effective immediately.  
9 In addition to stopping work on the project, APCO hereby asserts  
10 its rights to terminate the contract pursuant to NRS 624.610(2).  
11 THIS LETTER SHALL SERVICE AS APCO'S NOTICE OF  
12 INTENT TO TERMINATE THE MANHATTAN WEST  
13 GENERAL CONSTRUCTION CONTRACT FOR GMP  
14 PURSUANT TO NRS 624.606 THROUGH NRS 624.630,  
15 INCLUSIVE, PURSUANT TO THE TERMS OF THE NRS  
16 624.610, THE CONTRACT SHALL BE TERMINATED AS OF  
17 AUGUST 14, 2008.<sup>68</sup>

18 69. Helix was aware that shortly after a July 11, 2008 email,<sup>69</sup> APCO began issuing  
19 stop work notices to Gemstone on the Project.<sup>70</sup>

20 70. Gemstone ultimately paid APCO for May.<sup>71</sup>

21 71. In addition, on July 29, 2008, APCO sent the following letter to its  
22 subcontractors:

23 As most of you are now aware, APCO Construction and  
24 GEMSTONE are embroiled in an unfortunate contractual dispute  
25 which has resulted in the issuance of a STOP WORK NOTICE to  
26 GEMSTONE. While it is APCO Construction's desire to  
27 amicably resolve these issues so work may resume, it must also  
28 protect its contractual and legal rights. This directive is to advise  
all subcontractors on this project that until further notice, all work  
on the Manhattan West project will remain suspended.  
THIS SUSPENSION IS NOT A TERMINATION OF THE  
GENERAL CONTRACT AT THIS TIME AND AS SUCH ALL  
SUBCONTRACTORS ARE STILL CONTRACTUALLY  
BOUND TO THE TERMS OF THEIR RESPECTIVE  
SUBCONTRACTS WITH APCO CONSTRUCTION.

68 Exhibit 6.

69 Exhibit 506, p. 1.

70 Testimony of Bob Johnson (Helix), Day 1, p. 113.

71 Testimony of Joe Pelan (APCO) Day 1, p. 31.

1           Additionally, the subcontractors are advised that, at the present  
2           time they are not obligated to perform any subcontract work on  
3           the project at the direction or insistence of Gemstone.  
4           We will keep all subcontractors advised on a timely basis if the  
          status of the work suspension changes. Should you have any  
          questions, feel free to call.<sup>72</sup>

5           72.    On July 30, 2008, Scott Financial, the Project's lender, sent a letter to APCO  
6           confirming the loan for the Project was in good standing.<sup>73</sup>

7           73.    On or about August 6, 2008, Gemstone provided APCO notice of its intent to  
8           withhold the sum of \$1,770,444.28 from APCO for the June Application.<sup>74</sup>

9           74.    Accordingly, APCO sent Gemstone another notice of intent to stop work on  
10          August 11, 2008, noting that if APCO was not paid by August 21, 2008, APCO would suspend  
11          work on the Project:

12                   On July 18, 2008, APCO Construction submitted its Progress  
13                   Payment for June 2008 pursuant to the terms of the General  
14                   Construction Agreement for GMP, dated September 6, 2007 in  
15                   the amount of \$6,566,720.38. This number has since been  
16                   adjusted on your submittal to the lender to reflect \$5,409,029.42  
17                   currently due to APCO Construction. We understand this number  
18                   reflects certain upward adjustments to change orders made after  
19                   the Progress Payment was submitted on July 18, 2008. Pursuant  
20                   to NRS 624.609(1), this payment was due on or before August 8,  
21                   2008. By way of good faith agreement extended by APCO  
22                   Construction to Peter Smith, this deadline was extended for three  
23                   (3) days as a result of what were intended to be "good faith"  
24                   efforts to fully resolve certain change order issues. While APCO  
25                   Construction does not feel at this time that Gemstone participated  
26                   in good faith, we will nevertheless honor our commitment to you  
27                   to extend the deadline. Accordingly, and pursuant to the  
28                   aforementioned statute and agreement, deadline for payment for  
                  the June Progress Payment was close of business Monday,  
                  August 11, 2008.

...

---

<sup>72</sup> Exhibit 48.

<sup>73</sup> Exhibit 7.

<sup>74</sup> Exhibit 313.

1 In review of your August 6, 2008 correspondence you have  
2 provided a "withholding breakdown" wherein you have given  
3 notice of your intent to withhold \$1,770,444.28, allegedly  
4 pursuant to NRS 624.609(3) and Section 5.05(d) and 5.05(f)(vii)  
5 of the Agreement.

6 As such, the correct amount of the June Progress Payment  
7 should be \$6,183,445.24. As of this date, Gemstone has failed  
8 and/or refused to pay the June Progress Payment.

9 THIS LETTER SHALL SERVE AS APCO'S NOTICE OF  
10 INTENT TO STOP WORK PURSUANT TO NRS 624.606  
11 THROUGH NRS 624.630, INCLUSIVE, UNLESS APCO IS  
12 PAID THE TOTAL AMOUNT OF \$6,183,445.24 FOR ITS  
13 WORK ON THE PROJECT.

14 IF APCO CONSTRUCTION HAS NOT BEEN PAID FOR  
15 PAYMENT NO. 9 OWNER CONSTRUCTION DRAW NO. 8,  
16 IN THE AMOUNT OF \$6,183,445.24 BY CLOSE OF  
17 BUSINESS ON THURSDAY, AUGUST 21, 2008, APCO  
18 CONSTRUCTION RESERVES THE RIGHT TO STOP WORK  
19 ON THE PROJECT ANYTIME AFTER THAT DATE.

20 As we have previously demonstrated, APCO Construction will  
21 continue to work with Gemstone to resolve the various issues  
22 affecting this project, however, we will not waive our right to  
23 stop work anytime after August 21, 2008. We trust you will give  
24 this Notice appropriate attention.<sup>75</sup>

25 75. All subcontractors were copied on this notice.<sup>76</sup>

26 76. APCO informed all subcontractors that it intended to terminate the Contract as  
27 of September 5, 2008.<sup>77</sup>

28 77. Helix's Project Manager, Andy Rivera,<sup>78</sup> admitted that he received APCO's stop  
work notice and possible termination.<sup>79</sup>

<sup>75</sup> Exhibit 10; Testimony of Joe Pelan (APCO) Day 1, pp. 30 and 32.

<sup>76</sup> Testimony of Joe Pelan (APCO), Day 1, p. 31; Exhibit 10.

<sup>77</sup> Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 74.

<sup>78</sup> Andy Rivera was Helix's Project Manager. Testimony of Andy River (Helix),  
Day 2, p. 48. As the Project Manager, he was in charge of labor, materials,

1           78. After receipt of APCO's written notice, Gemstone sent a letter on Friday,  
2 August 15, 2008, claiming that APCO was in breach of contract and that Gemstone would  
3 terminate the Contract for cause if the alleged breaches were not cured by Sunday, August 17,  
4 2008.<sup>80</sup>

5           79. That letter divided APCO's alleged breaches into curable breaches and non-  
6 curable breaches<sup>81</sup> and also confirmed that upon termination: "(a) all Third-Party Agreements  
7 shall be assigned to Gemstone and (b) APCO must execute and deliver all documents and take  
8 such steps as Gemstone may require for the purpose of fully vesting in Gemstone the rights and  
9 benefits of such assigned Third-Party Agreements."<sup>82</sup>

10           80. APCO's counsel responded to the letter the same day, August 15, 2008.<sup>83</sup>

11           81. That letter refuted Gemstone's purported basis for termination for cause,<sup>84</sup> as  
12 there was no factual basis for any of the alleged defaults in Gemstone's letter:

13                   Gemstone's demand is factually incorrect as APCO is not in  
14 default of the agreement, and even if APCO was in default of the  
15 Agreement as alleged, the issues set forth by Gemstone would  
16 not support a termination of the contract...APCO has provided  
17 Gemstone with a 10 day Notice of Intent to Stop Work on the  
18 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...APCO has

19  
20 subcontractors, labor reports, billings, change orders, submittals, requests for  
21 information, and most other documents on the Project. Mr. Rivera reported to Robert  
22 Johnson. Testimony of Andy Rivera (Helix), Day 2, p. 48. Andy Rivera prepared  
23 Helix's pay applications. Testimony of Bob Johnson (Helix), Day 2, p. 8. So while  
24 Robert Johnson signed the pay applications for Helix, Mr. Andy Rivera had the most  
25 personal knowledge of the financial aspects of the Project for Helix and was actually  
26 designated as Helix's PMK on Helix's claim. Testimony of Andy Rivera, Day 2, p. 73.

27           <sup>79</sup> Testimony of Bob Johnson (Helix), Day 1, p. 113.

28           <sup>80</sup> Exhibit 13; Testimony of Joe Pelan (APCO), Day 1, pp. 35-36.

<sup>81</sup> Exhibit 13 - 1-13.

<sup>82</sup> Exhibit 13, p. 14, Section C.3.

<sup>83</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 36.

<sup>84</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, pp. 37 and 79.

1 received a copy of the e-mail sent to APCO's subcontractors by  
2 Gemstone. The e-mail notes that Gemstone has a replacement  
3 General Contractor in place. Obviously, Gemstone's intent is to  
4 improperly declare APCO in default and then attempt to move  
5 forward with the project using APCO's subcontractors... Items  
(ii), (iii), (iv) and (v) were all complete months ago as part of the  
normal job process.<sup>85</sup>

6 82. There was no evidence presented at trial rebutting Mr. Pelan's testimony that  
7 APCO was not in default.

8 83. And since the Court has stricken Gemstone's answer and counterclaim against  
9 APCO,<sup>86</sup> the Court must find that APCO was not in breach.

10 84. On or about August 15, 2008, prior to its purported termination, Gemstone  
11 improperly contacted APCO's subcontractors and notified them that Gemstone was terminating  
12 APCO as of Monday, August 18, 2008.<sup>87</sup>

13 85. Gemstone confirmed it had already retained a replacement general contractor.<sup>88</sup>  
14 Gemstone advised the APCO subcontractors as follows:

15 In the event that APCO does not cure breaches to Gemstone's  
16 satisfaction during the cure period, Gemstone will proceed with a  
17 new general contractor. This GC has been selected and they are  
18 ready to go. We do not expect any delays or demobilizations in  
19 this event... If APCO does not cure all breaches, we will be  
providing extensive additional information on the transition to a  
new GC in 48 hours time.<sup>89</sup>

20 86. The replacement contractor turned out to be Camco.<sup>90</sup>

21  
22  
23 <sup>85</sup> Exhibit 14; Testimony of Joe Pelan (APCO), Day 1, p. 100.

24 <sup>86</sup> Docket at May 26, 2010 Order Striking Defendant Gemstone Development  
West, Inc.'s Answer and Counterclaims, and Entering Default.

25 <sup>87</sup> Exhibit 215; Testimony of Joe Pelan (APCO), Day 1, pp. 34 and 35.

26 <sup>88</sup> Exhibit 215.

27 <sup>89</sup> Exhibit 215-2.

28 <sup>90</sup> Exhibit 162, Camco/Gemstone Prime Contract.

1           87. On August 18, 2008, APCO emailed Gemstone objecting to such direct  
2 communications with the subcontractors: "The APCO Construction GMP and Grading  
3 Contracts are still in effect and as such Gemstone shall not meet with our subcontractors. Please  
4 read the contract and other correspondence closely. If APCO didn't (and APCO did) cure the  
5 breach, Gemstone must issue a seven day notice of termination. You are disrupting my ability  
6 to perform the work."<sup>91</sup>

7           88. That same day, APCO submitted its July 2008 pay application for  
8 \$6,307,487.15.<sup>92</sup>

9           89. The next day on August 19, 2008, APCO sent Gemstone a letter noting  
10 Gemstone's breaches:

11           [I]t was and is my clear position that any termination of our  
12 contract would be a breach of the agreement. Then today before I  
13 could send my letter I received a letter from your lawyer saying  
14 our contract was over.... As with the other changes, it is  
15 impossible to fully account for the delays and full impacts to our  
16 schedule at this stage. Consistent with the (2) two change orders  
17 that Alex signed after Pete initially rejected them for the HVAC  
18 deltas, I would propose that we hold the time issues for now... I  
19 also find it interesting that you have sent us letters to terminate  
20 the contract all within the time that we were allowed to provide  
21 you notice of our intent to suspend the work if the change orders  
22 on the June pay application were not paid. That was to elapse on  
23 Thursday and now your lawyer is proposing that we agree to a  
24 termination before that date. We will not agree and intend to fully  
25 proceed with our contract obligations... Yesterday morning, Alex  
26 came in and asked me what we were still doing on site because  
27 there was nothing that we could do to satisfy Gemstone. That  
28 would be consistent with the email that was sent to all of our  
subcontractors on Friday advising that we were being removed  
from the project before we even had a chance to respond to the  
48 hour notice... Craig also told me that Gemstone had  
previously selected Camco to complete the project.<sup>93</sup>

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<sup>91</sup> Exhibit 216-1.

<sup>92</sup> Exhibit 8.

<sup>93</sup> Exhibit 15.

1           90.    On August 19, 2008, Gemstone confirmed that joint checks to the  
2 Subcontractors and Apco would be written for the June 2008's pay application: "I'd like to  
3 have dual checks cut for this [June, 2008] pay application directly to the subs and the general. I  
4 believe this is different than what we have historically done on Manhattan West, but similar to  
5 how we have paid some Manhattan Pay Apps in the past."<sup>94</sup>

6           91.    Gemstone confirmed that all future payments would essentially go directly from  
7 Nevada Construction Control to the subcontractors.<sup>95</sup>

8           92.    Although it disagreed with Gemstone's conduct, APCO cooperated in this post  
9 termination process to ensure that all subcontractors were properly paid for work performed on  
10 APCO's watch:

11                   An APCO representative has to sign all of the subcontractor  
12 checks due to Gemstone's request to prepare the "joint checks".  
13 An APCO signer should be doing that by the end of today or  
14 tomorrow morning. At that time, NCS will contact all of the  
15 subcontractors to pick up their checks. Furthermore, today the  
16 APCO's July pay application was submitted to NCS. As  
17 mentioned in the meeting on Monday, August 25, 2008, enclosed  
18 is the contact information for Camco Pacific regarding pay  
19 applications... Please forward your July and August pay requests  
20 to Yvonne. Obviously, July was already submitted to NCS but we  
21 would like Camco to have record of the most current pay  
22 requests.<sup>96</sup>

23           93.    None of the joint checks that NCS and Gemstone issued and that APCO  
24 properly endorsed included any funds for APCO.<sup>97</sup>

25           94.    And none of the joint checks accounted for any APCO or subcontractor  
26 retention because retention had not been earned under either the Contract or the various  
27 subcontracts.<sup>98</sup>

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28           <sup>94</sup> Exhibit 16; Testimony of Joe Pelan (APCO), Day 1, p. 38.

<sup>95</sup> Testimony of Joe Pelan (APCO), Day 1, p. 38.

<sup>96</sup> Exhibit 26. Testimony of Joe Pelan (APCO), Day 1, pp. 38 and 41.

<sup>97</sup> Testimony Day 1, p. 38.

<sup>98</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 38-39.

1 95. As of the end of August, the Project was only about 74% complete.<sup>99</sup>

2 96. Ultimately, APCO was not paid for its share of June Application even though  
3 the subcontractors received their money.<sup>100</sup>

4 97. On August 21, 2008, APCO sent a letter to its subcontractors informing them  
5 that APCO would stop work on the Project on August 21, 2008:

6 Attached hereto is APCO Construction's Notice of Stopping  
7 Work and Notice of Intent to Terminate Contract for  
8 nonpayment. As of 5:00p.m., Thursday, August 21, 2008 all  
9 work in furtherance of the subcontracts you have with APCO  
10 CONSTRUCTION on the Manhattan West project is to stop until  
11 you are advised otherwise, in writing, by APCO  
12 CONSTRUCTION... If a prime contractor terminates an  
13 agreement pursuant to this section, all such lower tiered  
14 subcontractors may terminate their agreements with the prime  
15 contractor... Pursuant to statute, APCO CONSTRUCTION is  
16 only stopping work on this project. At this time it has not  
17 terminated its contract with Gemstone. As such, all  
18 subcontractors, until advised in writing by APCO  
19 CONSTRUCTION, remain under contract with APCO  
20 CONSTRUCTION.<sup>101</sup>

15 98. On August 21, 2008 APCO also provided Gemstone with written notice of  
16 APCO's intent to terminate the Contract as of September 5, 2008.<sup>102</sup>

17 99. APCO's last work on the Project was August 21, 2008.<sup>103</sup>

18 100. On August 22, 2008, APCO sent a letter to the Clark County Building  
19 Department advising that APCO was withdrawing as the general contractor for the Project.<sup>104</sup>  
20

21  
22 <sup>99</sup> Exhibit 218-10; Testimony of Steven Parry (Camco), Day 5, pp. 31-32. Mr.  
23 Parry was Camco's project manager for the approximate four months that Camco  
worked on the Project. Testimony of Steven Parry (Camco), Day 5, p. 24.

24 <sup>100</sup> Testimony of Joe Pelan (APCO), Day 1, p. 33.

25 <sup>101</sup> Exhibit 23; Testimony of Joe Pelan (APCO), Day 1, p. 32.

26 <sup>102</sup> Exhibit 23.

27 <sup>103</sup> Testimony of Brian Benson (APCO), Day 3, p. 50; Testimony of Joe Pelan  
(APCO), Day 1, p. 40.

28 <sup>104</sup> Exhibit 24; Testimony of Joe Pelan (APCO), Day 1, p. 40.



1           101. APCO was required to cancel its current building permits so the Project permits  
2 could be issued and transferred to Camco.<sup>105</sup>

3           102. In an August 28, 2008 letter, Gemstone advised that APCO was terminated for  
4 cause as of August 24, 2008:

5                   Furthermore, pursuant to the ManhattanWest's August 15, 2008  
6 notice regarding Termination of Phase 1 for Cause, and APCO's  
7 failure to cure the breaches set forth in the notice prior to August  
8 17, 2008, the Contract terminated for cause on August 24, 2008.  
9 Consequently, pursuant to Section 10.02(c) of the Contract,  
10 APCO is not entitled to receive any further payments until the  
11 Work [as defined in the Contract] is finished. Later today,  
12 Gemstone will issue joint checks to the subcontractors pursuant  
13 to the June Progress Payment; however, payment will not include  
14 any fees or general conditions to APCO.<sup>106</sup>

15           103. APCO contested Gemstone's purported termination and APCO's evidence was  
16 uncontested on that issue that it was not in default.<sup>107</sup>

17           104. APCO properly terminated the Contract for cause in accordance with NRS  
18 624.610 and APCO's notice of termination since Gemstone did not pay the June Application,  
19 as of September 5, 2008.<sup>108</sup>

20           105. Helix and CabineTec both received a copy of the termination letter.<sup>109</sup> APCO  
21 considered its notice of termination to be effective as of September 5, 2008.<sup>110</sup>

22           106. But Gemstone proceeded with the Project as if it had terminated the Contract  
23 with APCO.<sup>111</sup> APCO was physically asked to leave the Project as of the end of August,  
24 2008.<sup>112</sup>

25                   <sup>105</sup> Testimony of Joe Pelan (APCO), Day 1, p. 100.

26                   <sup>106</sup> Exhibit 27; Testimony of Joe Pelan (APCO), Day 1, p. 41.

27                   <sup>107</sup> Testimony of Joe Pelan (APCO), Day 1, p. 42.

28                   <sup>108</sup> Exhibit 28; Testimony of Joe Pelan (APCO), Day 1, pp. 73 and 80.

<sup>109</sup> Exhibit 28; Testimony of Bob Johnson (Helix), Day 1, p. 113.

<sup>110</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 42-43.

<sup>111</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 100-101; Exhibit 29.

1 107. And all subcontractors received notice from Gemstone that APCO was  
2 terminated on August 26, 2008 and would not be returning to the Project.<sup>113</sup>

3 E. Gemstone owed APCO \$1.4 million when APCO left the Project.

4 108. Even though the subcontractors had received all amounts billed through August  
5 2008, Gemstone owed APCO \$1,400,036.75 for APCO's June, July, and August 2008 payment  
6 applications.<sup>114</sup>

7 109. Gemstone also owed APCO \$200,000.00 from various reimbursements.<sup>115</sup>

8 110. APCO has never received payment in any form from any entity for these pay  
9 applications or the \$200,000.00 in reimbursements.<sup>116</sup>

10 111. The \$1,400,036.75 does not reflect any of the retention that Gemstone withheld  
11 from APCO on the Project because the retention never became due.<sup>117</sup>

12 112. Ultimately, Gemstone would not accept APCO's final August 2008 pay  
13 application.<sup>118</sup>

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14  
15 <sup>112</sup> Testimony of Joe Pelan (APCO) Day 3, p. 150.

16 <sup>113</sup> Exhibit 118.

17 <sup>114</sup> Exhibit 320/321, Summary of June, July and August 2008 payment  
18 applications to Gemstone that were not paid; Testimony of Joe Pelan (APCO) Day 1, p.  
19 67; Testimony of Mary Jo Allen (APCO) Day 3, p. 144. Exhibit 4 is APCO's June  
20 Application. Testimony of Mary Jo Allen (APCO), Day 3, p. 124. APCO's share of the  
21 June Pay Application was \$700,802.90, which was not paid. Testimony of Mary Jo  
22 Allen (APCO), Day 3, pp. 125-127. Exhibit 8 is APCO's July pay application.  
23 Testimony of Mary Jo Allen (APCO), Day 3, p. 125. APCO's share of the July 2008  
24 pay application was \$431,183.67, which was not paid. Testimony of Mary Jo Allen  
25 (APCO), Day 3, pp. 125-127. Exhibit 31 was APCO's August 2008 pay application and  
26 its final pay application. Accordingly, the August 2008 application shows everything  
27 that was done by APCO and its subcontractors through the end of August 2008.  
28 Testimony of Mary Jo Allen (APCO) Day 3, p. 135. APCO's share of the August 2008  
pay application was \$268,050.18, which was not paid. Testimony of Joe Pelan (APCO)  
Day 1, p. 46; Testimony of Mary Jo Allen (APCO), Day 3, pp. 126-127. In total,  
Gemstone owed APCO \$1,400,036.75 for its last three pay applications. Testimony of  
Mary Jo Allen (APCO), Day 3, p. 122.

<sup>115</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>116</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>117</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 127.

<sup>118</sup> Testimony of Joe Pelan (APCO), Day 1, pp. 44-45. Exhibit 31.

1 113. So Camco submitted APCO's August 2008 billing so APCO's subcontractors  
2 would get paid.<sup>119</sup>

3 114. Camco's August 2008 pay application tracked the full retention from the Project  
4 (including APCO's)<sup>120</sup> and APCO's full contract amount.<sup>121</sup>

5 115. As of its last pay application, APCO believed it was 76% complete with the  
6 Project.<sup>122</sup>

7 116. Despite the amounts owed to APCO, the evidence was uncontested that the  
8 subcontractors received all of their billed amounts, less retention, up through August 2008.<sup>123</sup>

9 **F. APCO did not terminate the Helix or CabineTec Subcontracts.**

10 117. During this dispute, APCO did not terminate the Helix or CabineTec  
11 subcontracts,<sup>124</sup> but advised its subcontractors that they could suspend work on the Project in  
12 accordance with NRS Chapter 624.<sup>125</sup>

13 118. If APCO wanted to terminate its subcontractors, it had to do so in writing.<sup>126</sup>

14 119. Helix admitted it knew APCO was off the Project as of August 28, 2008<sup>127</sup> and  
15 that neither APCO nor Helix terminated the Helix Subcontract.<sup>128</sup>

16  
17  
18 <sup>119</sup> Exhibit 218; Testimony of Joe Pelan (APCO), Day 1, pp. 43-44.

19 <sup>120</sup> Testimony of Joe Pelan (APCO), Day 1, p. 44; Exhibit 218-2.

20 <sup>121</sup> Exhibit 218-10.

21 <sup>122</sup> Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.

22 <sup>123</sup> Testimony of Mary Jo Allen (APCO) Day 3, pp. 127-129 and 144; Testimony  
23 of Andy Rivera (Helix) Day 2, pp. 73 and 75; Testimony of Joe Pelan (APCO) Day 3,  
24 p. 150; Exhibit 26; Exhibit 152; Testimony of Joe Pelan (APCO) Day 1, pp. 26, 46, 67  
25 and 82.

26 <sup>124</sup> Testimony of Joe Pelan (APCO), Day 1, p. 39.

27 <sup>125</sup> Exhibit 23.

28 <sup>126</sup> Testimony of Joe Pelan (APCO) Day 1, p. 71.

<sup>127</sup> Testimony of Andy Rivera (Helix) Day 2, p. 62.

<sup>128</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 126; Testimony of Bob Johnson  
(Helix) Day 2, p. 33.

1 120. Additionally, Helix admitted it never issued a stop work notice to APCO  
2 pursuant to NRS 624 because it had no payment disputes with APCO.<sup>129</sup>

3 121. In fact, per Gemstone's notice dated August 15, 2008, Gemstone gave APCO  
4 notice that it exercised its right under Contract Section 10.04 to accept an assignment of the  
5 APCO subcontracts.<sup>130</sup>

6 122. Accordingly, any purported termination of a subcontract by APCO would have  
7 breached the Contract.<sup>131</sup>

8 123. During August 2008, subcontractors on the Project were getting information  
9 directly from Gemstone.<sup>132</sup>

10 124. Helix and CabineTec both continued work on the Project for Gemstone and  
11 Camco, and submitted their August billings to Camco.<sup>133</sup>

12 **G. Status of the Project when APCO was off the Project**

13 125. Before APCO was asked to leave the Project on August 19 and 20, 2008, APCO  
14 documented the as-built conditions and confirmed that Helix and CabineTec were not  
15 anywhere close to completing their respective scopes of work.<sup>134</sup>

16 126. So the evidence was undisputed that at the time APCO left the Project,  
17 Gemstone did not owe APCO or the subcontractors their retention.

18 . . . . .

19 . . . . .

20  
21 <sup>129</sup> Testimony of Bob Johnson (Helix) Day 1, p. 127.

22 <sup>130</sup> Exhibit 13.

23 <sup>131</sup> Testimony of Joe Pelan (APCO) Day 1, p. 75.

24 <sup>132</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

25 <sup>133</sup> Exhibit 29; Exhibit 173, Helix's first payment application to Camco; Exhibits  
182/185, CabineTec's first payment application to Camco.

26 <sup>134</sup> Testimony of Brian Benson (APCO) Day 3, pp. 50-58, 63-64 and 97. Those  
27 videos are a correct and accurate representation and reproduction of the status of the  
28 Project on August 19 and August 20, 2008. Testimony of Brian Benson (APCO) Day 3,  
p. 52.

1           **H.     Camco became the Prime Contractor.**

2           127. Camco and Gemstone had several meetings and Gemstone contracted with  
3 Camco to complete the Project on August 25, 2008.<sup>135</sup>

4           128. In terms of the plans, specifications and technical scope of work, Camco's work  
5 was the same as APCO's.<sup>136</sup>

6           129. In fact, Camco used the same schedule of values and cost coding that APCO had  
7 been using on the Project.<sup>137</sup>

8           130. Camco obtained permits in its own name to complete the Project.<sup>138</sup>

9           131. Camco's Steve Parry confirmed that Exhibit E to the Camco contract  
10 represented the state of the Project when Camco took over.<sup>139</sup>

11           132. Gemstone and Camco estimated the Project to be 74% complete for Phase 1.<sup>140</sup>  
12 Those estimates also confirmed that:

- 13                     • The first floor drywall taping in building 8 was 70% complete.<sup>141</sup>  
14                     • The first floor drywall taping in building 9 was 65% complete.<sup>142</sup>

15           133. Among other things, the Camco contract required that Camco "shall engage the  
16 Third-Party Service Providers listed on Exhibit C (the "Existing Third-Party Service  
17 Providers)."<sup>143</sup>

18  
19  
20           <sup>135</sup> Exhibit 162, Camco/Gemstone Prime Contract; Testimony of Steve Parry  
(Camco) Day 5, pp. 25-26.

21           <sup>136</sup> Exhibit 162; Testimony of Joe Pelan (APCO) Day 1, pp. 45 and 98;  
22 Testimony of Steve Parry (Camco) Day 5, p. 31.

23           <sup>137</sup> Testimony of Steve Parry (Camco) Day 5, pp. 30-31.

24           <sup>138</sup> Testimony of Steve Parry (Camco) Day 5, p. 37.

25           <sup>139</sup> Testimony of Steve Parry (Camco) Day 5, p. 27.

26           <sup>140</sup> Exhibit 218, p. 10; Testimony of Steven Parry (Camco) Day 5, p. 31-32.

27           <sup>141</sup> Exhibit 160-3.

28           <sup>142</sup> Exhibit 160-3.

<sup>143</sup> Exhibit 162-2.

1 134. Helix and CabineTec are both listed as Existing Third-Party Service Providers  
2 on Exhibit C.<sup>144</sup>

3 135. And Camco had worked with Helix before.<sup>145</sup>

4 136. Camco's Steve Parry admitted that Camco was assuming the subcontracts that  
5 APCO had with Helix and CabineTec:

6 [Exhibit 162 was on the elmo]

7 Q. ..I've highlighted a sentence that says, "General contractor  
8 shall engage third-party service providers." Do you see that?

9 A. Yes.

10 Q. Okay. What did you understand that to mean?

11 A. That we would use subcontractors on the site that had already  
12 been under contract to perform work on the project.

13 Q. Okay. So you were assuming the Subcontracts that APCO had  
14 issued on the Project; is that right?

15 A. Yes.

16 Q. And, sir, if you would, turn to Exhibit C within the exhibit.  
17 Those assumed contracts from APCO included CabineTec and  
18 Helix; correct?

19 A. Yes.

20 Q. And, sir, if you would, turn to Exhibit C within the exhibit.  
21 Those assumed subcontracts from APCO included CabineTec  
22 and Helix; correct?

23 A. Yes.<sup>146</sup>

24 137. After Camco became the general contractor, it was responsible to pay  
25 subcontractors for work performed under it.<sup>147</sup>

26 138. Camco never had any contact or involvement with APCO on the Project,<sup>148</sup> nor  
27 did APCO provide any direction or impose any scheduling requirements on subcontractors  
28 proceeding with their work.<sup>149</sup>

<sup>144</sup> Exhibit 162-23.

<sup>145</sup> Testimony of Steve Parry (Camco) Day 5, pp. 13-14.

<sup>146</sup> Testimony of Steve Parry (Camco) Day 5, p. 26.

<sup>147</sup> Testimony of Joe Pelan (APCO) Day 1, p. 99.

<sup>148</sup> Testimony of Steve Parry (Camco) Day 5, p. 27.

<sup>149</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Joe Pelan  
(APCO) Day 3, p. 150; Testimony of Steve Parry (Camco) Day 5, p. 27.

1 139. APCO played no role in the pay application process or the actual field work on  
2 the Project from September-December 2008.<sup>150</sup>

3 140. And no Helix nor CabineTec representative ever approached APCO with  
4 questions or concerns about proceeding with work on the Project after APCO's termination.<sup>151</sup>

5 141. So APCO did not receive any benefit from the work or materials that Helix or  
6 CabineTec performed or provided to the Project after August 21, 2008.<sup>152</sup>

7 142. Camco's first pay application was for the period through August 31, 2008.<sup>153</sup>

8 143. That billing reflected Gemstone retainage account for APCO's work:

9 Q. Now, I have highlighted the retainage line item of  
10 \$5,337,982.74 [on Exhibit 218]. Do you see that?

11 A. Yes.

12 Q. What did that figure represent?

13 A. The retainage that was being withheld on the Project.

14 Q. And who was the retainage being withheld by?

15 A. Gemstone, the owner.

16 ...

17 Q. Okay. So my point simply was what you're depicting  
18 here in the retainage is the accounting of the retainage that was  
19 withheld from APCO as you're going forward on the Project.

20 A. That's correct.<sup>154</sup>

21 So all parties knew that the subcontract retention amounts were maintained with Gemstone  
22 after APCO was terminated.

23 **I. CabineTec entered into a ratification agreement with Camco.**

24 144. After APCO left the Project, CabineTec signed a ratification agreement with  
25 Camco whereby CabineTec agreed to complete its original scope of work for Camco.<sup>155</sup>

26 <sup>150</sup> Testimony of Joe Pelan (APCO) Day 1, p. 98.

27 <sup>151</sup> Testimony of Joe Pelan (APCO) Day 1, p. 98.

28 <sup>152</sup> Testimony of Joe Pelan (APCO) Day 3, pp. 149-150.

<sup>153</sup> Testimony of Steve Parry (Camco) Day 5, p. 29.

<sup>154</sup> Testimony of Steve Parry (Camco) Day 5, p. 30.

1 145. CabineTec understood the ratification to mean that "you guys [APCO] were  
2 stepping out and Camco was stepping in."<sup>156</sup>

3 146. CabineTec further clarified its understanding of the ratification agreement as  
4 follows:

5 Q. Okay. Sir, but going forward from and after the point that  
6 CabineTec signed the ratification agreement with Camco, you  
7 knew and understood that Camco was going to be the  
8 "contractor", as that term was used in the original subcontract  
9 that Cabinetec had for the project, correct?

10 A. So APCO was going away and Camco was coming on. That's  
11 what was happening.<sup>157</sup>

12 147. In addition, the signed ratification agreement contained the following terms:

- 13 • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to  
14 the terms of the Subcontract Agreement, whereby Camco will replace  
15 APCO as the "Contractor" under the Subcontract Agreement but, subject  
16 to the terms of this Ratification, all other terms and conditions of the  
17 Subcontract Agreement will remain in full force and effect."<sup>158</sup>
- 18 • The ratification agreement acknowledged that \$264,395.00 of work  
19 remained to be finished on Building 8 and \$264,395.00 on Building 9.<sup>159</sup>
- 20 • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the  
21 Subcontract Agreement (as amended by this Ratification and including  
22 all Amendments, Previously Approved Change Orders, and the Camco  
23 Schedule) will govern their relationship regarding the Project, (b) Camco  
24 will be the "Contractor" under the Subcontract Agreement, and (c)  
25 Subcontractor and Camco agree to perform and fulfill all of the  
26 executory terms, covenants, conditions and obligations required to be  
27 performed and fulfilled thereunder by Subcontractor and Camco,  
28 respectively."<sup>160</sup>

Accordingly, all retention and future payments to CabineTec, which were executory  
obligations, were Camco's responsibility.

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<sup>155</sup> Exhibit 3096; Testimony of Nicholas Cox (CabineTec) Day 3, p. 34;  
Testimony of Mr. Thompson (CabineTec) Day 5, p. 60.

<sup>156</sup> Testimony of Nicholas Cox (CabineTec) Day 3, p. 35.

<sup>157</sup> Testimony of Nicholas Cox (CabineTec) Day 3, p. 36.

<sup>158</sup> Exhibit 183-1.

<sup>159</sup> Exhibit 183-2.



1 148. After Gemstone could no longer pay Camco, CabineTec filed a complaint  
2 against APCO and Camco and alleged that it entered into a ratification agreement with Camco:

3 10. On or about August 26, 2008, pursuant to Gemstone's request  
4 CABINETEC entered into a Ratification and Amendment of  
5 Subcontract Agreement (the "Ratification") with CAMCO,  
6 whereby CAMCO agreed to the terms of the APCO Subcontract  
7 and to replace APCO as the "Contractor" under the APCO  
8 Contract. . .

9 14. CABINETEC entered into the Ratification with CAMCO,  
10 pursuant to Gemstone's request, wherein CAMCO agreed to pay  
11 CABINETEC for the services and materials on the Project.

12 15. Pursuant to, and in reliance upon, the aforementioned  
13 Subcontract, Ratification and representations, CABINETEC  
14 performed the work of providing services and materials (the  
15 "Work.")...<sup>161</sup>

16 APCO had no liability for the materials CabineTec provided to Camco and Gemstone after  
17 termination.

18 149. The fact is, APCO paid (and even overpaid) CabineTec for materials delivered  
19 to the Project while APCO was contractor.<sup>162</sup>

20 150. CabineTec did not dispute this overpayment at trial.

21 151. CabineTec submitted two invoices while APCO was on the Project.<sup>163</sup>

22 152. Exhibit 148 is CabineTec's first invoice to Camco for \$70,836.00.<sup>164</sup>

23 153. CabineTec's second invoice is for \$72,540.00.<sup>165</sup>

24 154. The total amount due to CabineTec, less retention, was \$129,038.40.<sup>166</sup>

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25 <sup>160</sup> Exhibit 172-5.

26 <sup>161</sup> Exhibit 156 at ¶ 10-15.

27 <sup>162</sup> Testimony of Mary Jo Allen (APCO) Day 3, pp. 131-132.

28 <sup>163</sup> Exhibits Nos. 148, 150, 151, and 320-321, Calculation of CabineTec  
overpayment; Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

<sup>164</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 130.

<sup>165</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

<sup>166</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

1 155. But APCO actually paid CabineTec a total of \$161,262.00 for these two  
2 invoices.<sup>167</sup>

3 156. As such, CabineTec was overpaid \$32,223.60 by APCO on the Project.

4 157. CabineTec did not submit a pay application for August 2008.<sup>168</sup>

5 158. APCO is entitled to credit for this over payment.

6 **J. CabineTec Claims retention against APCO.**

7 159. When CabineTec originally filed suit CabineTec disclosed \$19,547.00 in  
8 damages against APCO in its complaint:

9 "50. As a result of the foregoing, and in accordance with the  
10 principles of equity and common law, CABINETEC is entitled to  
11 judgment in its favor, and against APCO in the amount of  
12 \$19,547.00, together with interest thereon at the highest legal  
13 rate."<sup>169</sup>

14 160. And, CabineTec's initial and first supplemental disclosures only disclosed  
15 \$30,110.95 in damages against APCO: "...National Wood seeks to recover those damages  
16 claimed by CabineTec in its complaint in intervention against APCO in the amount of  
17 \$30,110.95 and CAMCO in the amount of \$1,125,374.94..."<sup>170</sup> The \$30,110.95 represented  
18 \$19,547.00 in alleged retention, and \$10,563.95 in interest and fees.<sup>171</sup>

19 161. Those were the only two disclosures CabineTec made before the close of  
20 discovery, as was extended by the Court. Then on the eve of trial, CabineTec attempted to  
21 disclose and seek \$1,154,680.40 in damages against APCO.<sup>172</sup>

22 <sup>167</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 131.

23 <sup>168</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 134.

24 <sup>169</sup> Exhibit 156-8.

25 <sup>170</sup> Exhibit 157 (CabineTec's Initial Disclosure); Exhibit 158 (CabineTec's First  
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's Second Supplemental  
27 Disclosure).

28 <sup>171</sup> Compare Exhibit 156, CabineTec's Complaint to Exhibit 157, CabineTec's  
Initial Disclosure.

<sup>172</sup> Exhibit 159-6.

1 162. Aside from the late disclosure there is no basis for that amount as it is  
2 undisputed that CabineTec was paid every dollar it billed APCO, less retention,  
3 notwithstanding the overpayment.<sup>173</sup>

4 K. Helix's claim for \$505,021.00 in retention.

5 163. Helix's designated PMK and Project Manager, Andy Rivera, confirmed that  
6 Helix's only claim in this litigation against APCO was for the retention of \$505,021.00.<sup>174</sup>

7 164. Helix's counsel admitted this limited claim in its opening statement.<sup>175</sup>

8 165. And then at trial, Mr. Rivera confirmed Helix was only seeking retention and  
9 not the unpaid invoices submitted to Camco:

10 Q. Sir, could you pull out Exhibit 44. And I want to make  
11 sure my record's clear. Exhibit 44 that I marked is, in fact, the  
12 same summary that was found in Exhibit 535, page 252, that you  
and Mr. Zimbleman went over; is that—

A. Correct.

13 Q. Okay. And does Exhibit 44 represent the damages that  
14 you are seeking from APCO in this matter?

A. Yes.

15 Q. And do you recall if you were designated as the person  
16 most knowledgeable for one of the topics being the damages that  
Helix was seeking from APCO in these proceedings, correct?

A. Correct.

17 Q. And would you agree that as the PMK, you identified a  
18 figure of \$505,021 as the amount that Helix in this lawsuit claims  
APCO owes it, correct?

A. Correct.

19 Q. And there are no other amounts that you identified in  
20 your PMK depo as being APCO's liability on this Project,  
correct?

A. Correct.

22 Q. Okay. And we are in agreement that the 505—that's  
your handwriting, where you wrote: Retention?

A. Yes.

24 <sup>173</sup> Exhibit 147 summarizing payments and releases.

25 <sup>174</sup> Exhibit 279, Testimony of Andy Rivera (Helix) Day 2, pp. 63-65; Helix's  
PMK Deposition at p. 52.

26 <sup>175</sup> Testimony, Day 1 at p. 10. ("...Helix remains to be unpaid \$505,021, while  
27 APCO was the general contractor. This is to say amounts still owing from pay  
applications submitted to APCO, and yes, that is essentially our retention.").

1 Q. And would it be fair to conclude that that retention  
2 represents retention that had been accounted for and accrued  
3 while APCO was serving as the prime contract – prime contractor  
4 on the Project?

5 A. Yes.

6 Q. Prior to today has Helix ever billed APCO for that  
7 retention?

8 A. No. No. I'm sorry.

9 Q. Do you have any information to suggest that APCO  
10 ever received Helix's retention from Gemstone?

11 A. I would not know.

12 Q. Okay. You don't have any information to suggest that  
13 APCO has collected Helix's retention but not forwarded it on to  
14 Helix, correct?

15 A. Correct.

16 Q. Okay. And in light of your summary within Exhibit 44,  
17 would it be fair to conclude that all of the amounts that Helix  
18 billed to APCO were, in fact, paid but for retention?

19 A. Yes.<sup>176</sup>

20 166. Helix received direct payments from APCO through May 2008.<sup>177</sup>

21 167. After May 2008, Helix received payment for its APCO billings directly from  
22 NCS through joint checks to Helix and APCO, which APCO endorsed over to Helix.<sup>178</sup>

23 168. Helix's first billing to Camco was on September 19, 2008.<sup>179</sup>

24 169. Mr. Rivera admitted Helix is only seeking \$505,021.00 in retention from APCO,  
25 which Helix never billed APCO.<sup>180</sup>

26 . . . . .

27 . . . . .

28 <sup>176</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

<sup>177</sup> Testimony of Andy Rivera (Helix) Day 2, p. 61.

<sup>178</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 61-64

<sup>179</sup> Exhibit 508, p. 1; Testimony of Andy Rivera (Helix) Day 2 at p. 65.

<sup>180</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 50 and 58. Exhibit 501, p. 393  
is the spreadsheet Helix created of payments it applied for and received from APCO.  
Helix's Mr. Rivera admitted Helix was paid a total of \$4,626,186.11 on the Project by  
and through APCO, which reflected payment for work billed (and retention) through  
August 31, 2008. Testimony of Andy Rivera (Helix) Day 2, pp. 58-59; Exhibits 46-47,

1           L.     Retention never became due to Helix or CabineTec from APCO.

2           170. As noted above, both the Helix Subcontract and the CabineTec Subcontract  
3 included an agreed upon retention payment schedule in Paragraph 3.8.

4           171. The evidence was undisputed, and even acknowledged by Helix and CabineTec,  
5 that the level of completion and other preconditions of the retention payment schedule were not  
6 met while APCO was the general contractor.

7           172. More specifically, Helix's Mr. Johnson admitted Helix did not meet the  
8 preconditions in Section 3.8 of the Subcontract to be entitled to retention:<sup>181</sup>

9                         Q. Well, let me ask it this way: Did Helix satisfy any of  
10 these preconditions found in paragraph 3.8 while APCO was the  
general contractor on the project?

11                         A. Not to my knowledge.<sup>182</sup>

12           173. CabineTec's Mr. Thompson admitted that the buildings had to be drywalled and  
13 painted before the cabinets were installed<sup>183</sup> and he had no documentation (daily reports,  
14 photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in Phase 1  
15 for APCO.<sup>184</sup>

16           174. It is undisputed that neither Helix nor CabineTec presented *any* testimony that  
17 they met the valid conditions precedent to payment to be entitled to retention.

18           175. *See Lucini-Parish Ins. v. Buck*,<sup>185</sup> (a party who seeks to recover on a contract has  
19 the burden of establishing any condition precedent to the respective contract).

20           176. Instead, the Court saw pictures<sup>186</sup> and videos<sup>187</sup> confirming that Helix's and  
21 CabineTec's work was not completed.

22  
23 Helix May and June billings; Exhibit 49-50; APCO Checks to Helix, Exhibit 58, Exhibit  
24 59, Exhibit 60, Exhibit 61, Exhibit 66, Exhibit 75.

24           <sup>181</sup> Testimony of Bob Johnson (Helix) Day 2, pp. 36-37.

25           <sup>182</sup> Testimony of Bob Johnson (Helix) Day 2, p. 19.

26           <sup>183</sup> Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

26           <sup>184</sup> Testimony of Mr. Thompson (CabineTec) Day 5, p. 69.

27           <sup>185</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

1 177. The Court also heard unrefuted testimony that APCO was never paid from  
2 Gemstone for Helix's or CabineTec's retention.<sup>188</sup>

3 178. The fact is APCO and its subcontractors never got to the point where they could  
4 request retention while APCO was the contractor.<sup>189</sup>

5 179. To that end, Helix's Mr. Johnson admitted that Helix did not present a claim to  
6 APCO for any additional compensation for disputed claims or changes while APCO was on the  
7 Project.<sup>190</sup>

8 180. Helix's Mr. Rivera admitted Helix *has never* billed APCO for retention, and that  
9 all amounts that Helix did bill APCO were paid, less retention.<sup>191</sup>

10 181. The fact that Helix did not bill retention confirms that Helix recognized that  
11 retention never became due from APCO under the retention payment schedule which governed  
12 the same.

13 182. Both Helix and CabineTec rolled their retention account over to Camco and  
14 Gemstone in their post-APCO billings as it was truly a Project and Gemstone liability.<sup>192</sup>

15 183. APCO's responsibility for retention under the subcontract's retention payment  
16 schedule was governed by the same.

17 184. That is confirmed by Helix's and Camco's conduct at the Project level through  
18 their pay applications.<sup>193</sup>

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19  
20 <sup>186</sup> Exhibit 32-38, 51-57, 108-114, 62-65, 67-74, 125-132, Pictures of Status of  
21 Project; Testimony of Brian Benson (APCO) Day 3, pp. 53-71.

22 <sup>187</sup> Exhibits 17-22, Videos of Project.

23 <sup>188</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 144; Testimony of Joe Pelan  
24 (APCO) Day 1, p. 26.

25 <sup>189</sup> Testimony of Joe Pelan (APCO) Day 1, pp. 60 and 82; Testimony of Bob  
26 Johnson (Helix) Day 2, pp. 36-37; Testimony of Joe Pelan (APCO) Day 3, p. 151.

27 <sup>190</sup> Testimony of Bob Johnson (Helix) Day 2, p. 31.

28 <sup>191</sup> Testimony of Andy Rivera (Helix) Day 2, p. 74; Exhibits 43, 50, 61 and 75.

<sup>192</sup> Exhibits 170-177, Helix billings to Camco and Exhibit 185, CabineTec's  
billings to Camco; Testimony of Mary Jo Allen (APCO) Day 3, pp. 129-130; Testimony  
of Andy Rivera (Helix) Day 2, p. 74.

1 M. Similarly, APCO never earned or received its retention.

2 185. Gemstone and/or its lender maintained the retention account.<sup>194</sup>

3 186. APCO's August 2008 pay application did not bill Gemstone for APCO's  
4 retention.<sup>195</sup>

5 187. In fact, APCO never billed Gemstone for retention<sup>196</sup> because APCO had not  
6 earned the retention and thus was not entitled to it.<sup>197</sup>

7 188. And APCO never billed or received the retention funds from Gemstone for any  
8 of the subcontractors.<sup>198</sup>

9 189. APCO never received CabineTec's or Helix's retention from Gemstone.<sup>199</sup>

10 190. Helix's Mr. Johnson admitted that Gemstone, not APCO, was holding its  
11 retention.<sup>200</sup>

12 191. And Helix admitted it had no information to suggest that APCO was ever paid  
13 Helix's retention.<sup>201</sup>

14 192. Neither Helix nor CabineTec ever billed APCO for any of the materials or work  
15 it performed after Camco signed its prime contract with Gemstone.<sup>202</sup>

16  
17 <sup>193</sup> Compare Exhibit 58, Helix's August 2008 pay application to APCO, to  
18 reflecting \$513,120.71 in retention to Exhibit 173, Helix's September 2008 payment  
19 application to Camco reflecting \$553,404.81 in retention. See also, Exhibit 151 pgs. 1, 2  
20 CabineTec's last pay application to APCO for \$179,180.00 reflecting \$17,918.00 in  
retention, to Exhibit-185, CabineTec's first payment application to Camco showing  
approved amount of \$537,404.80 less \$53,740.48 in retention. See also Exhibit 30  
(Camco's August 2008 draw request confirming retention was being held for the entire  
project).

21 <sup>194</sup> Testimony of Joe Pelan (APCO) Day 1, p. 30.

22 <sup>195</sup> Exhibit 31; Testimony of Joe Pelan (APCO) Day 1, p. 45.

23 <sup>196</sup> Testimony of Joe Pelan (APCO) Day 1, p. 30.

24 <sup>197</sup> Testimony of Joe Pelan (APCO) Day 1, p. 83.

25 <sup>198</sup> Testimony of Mary Jo Allen (APCO) Day 3, p. 128.

26 <sup>199</sup> Testimony of Joe Pelan (APCO) Day 3, p. 150.

27 <sup>200</sup> Testimony of Bob Johnson (Helix) Day 2, p. 19.

28 <sup>201</sup> Testimony of Bob Johnson (Helix) Day 2, p. 20.

<sup>202</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97.

1 193. And notably, neither Helix nor CabineTec billed APCO nor submitted a claim  
2 letter for the retention they now claim.<sup>203</sup>

3 194. In fact, CabineTec actually billed Camco for the retention it incurred under  
4 APCO.<sup>204</sup>

5 N. Helix also entered into a ratification agreement with Camco.

6 195. Helix's Project Manager, Mr. Rivera understood that Gemstone purported to  
7 terminate the Contract:

8 Q. Wouldn't it be fair to say that based on  
9 communications, both written and verbal, that you received from  
10 APCO and/or Gemstone, you knew that Gemstone had purported  
11 to terminate APCO's prime contract?

12 A. We knew they were having issues.

13 Q. Okay. And those issues had culminated in APCO  
14 purporting to terminate the prime contract and/or Gemstone  
15 purporting to terminate the prime contract, correct?

16 A. Correct.<sup>205</sup>

17 196. In fact, during the August 2008 timeframe, Helix was getting information  
18 directly from Gemstone.<sup>206</sup>

19 197. Mr. Rivera admitted Helix was copied on certain communications between  
20 APCO and Gemstone:

21 Q. And wouldn't it be fair to say that you received copies  
22 of certain communications from APCO to the owner, Gemstone,  
23 whereby APCO indicated that we're having payment issues and  
24 we're giving notice of our intent to exercise statutory rights to  
25 suspend and/or terminate?

26 A. Something to that effect, yes.<sup>207</sup>

27  
28  
<sup>203</sup> Testimony of Joe Pelan (APCO) Day 1, p. 97; Testimony of Mary Jo Allen  
(APCO) Day 3, p. 128 (as to CabineTec); Testimony of Joe Pelan (APCO) Day 3, p.  
150.

<sup>204</sup> Exhibit 3103 confirming CabineTec billed Camco for its retention. Testimony  
of Nicholas Cox (CabineTec) Day 3, p. 38-39.

<sup>205</sup> Testimony of Andy Rivera (Helix) Day 2, p. 75.

<sup>206</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.

<sup>207</sup> Testimony of Andy Rivera (Helix) Day 2, p. 76.



1  
2  
3 Q. Okay. But do you recall receiving APCO generated  
4 correspondence indicating to the owner, which was sent to  
5 subcontractors as well, that APCO was suspending and/or  
6 terminating its work, correct?

7 A. Correct.<sup>208</sup>

8  
9 198. Mr. Rivera also admitted Helix was performing work under Gemstone's  
10 direction by August 26, 2008:

11 Q. And from and after about August 26, 2008, Helix was  
12 taking its direction from Gemstone and/or Camco, correct?

13 A. Gemstone.

14 Q. Okay. APCO was not directing, requesting any work  
15 on behalf of Helix after September 5, 2008, correct?

16 A. Correct.

17 Q. And based on your personal involvement with  
18 Gemstone and Camco, did you understand that, in fact, Camco  
19 was replacing APCO as the prime contractor?

20 A. At that time did not know exactly how that was—the  
21 agreement was going to be.

22 Q. Did you come to find out?

23 A. Yes.

24 Q. that was, in fact, the case?

25 A. Yes.<sup>209</sup>

26 199. Helix was directed to hook up power to the Camco trailer on August 26, 2008.<sup>210</sup>

27 200. Gemstone provided Helix with the Camco subcontract and Camco pay  
28 applications,<sup>211</sup> and directed Helix to start directing its payment applications to Camco.<sup>212</sup>

29 201. On August 26, 2008 Camco sent Helix a checklist for starting work.<sup>213</sup> Among  
30 the provisions included:

- 31 • RETENTION MONIES Final retention monies will only be  
32 released to Camco Pacific from Owner when all Punch list

33 <sup>208</sup> Testimony of Andy Rivera (Helix) Day 2, p. 77.

34 <sup>209</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 76-77. *See also* Testimony of  
35 Bob Johnson (Helix) Day 2, p. 25.

36 <sup>210</sup> Exhibit 171; Testimony of Bob Johnson (Helix) Day 2, p. 25.

37 <sup>211</sup> Exhibit 170.

38 <sup>212</sup> Testimony of Andy Rivera (Helix) Day 2, p. 66.

39 <sup>213</sup> Exhibit 170.

1 Items, Contract Items, and Close-Out Documents have been  
2 fully completed and inspected by the owner. Any delay by a  
3 single Subcontractor in completing this will delay the entire  
4 project's final payment. PLEASE DO NOT DELAY IN  
5 COMPLETING YOUR PUNCHLIST ITEMS. Exhibit 170-3.

6 ...

- 7 • **D. Final Payment.** Subcontractor shall not be entitled to  
8 payment of the balance of the Contract Price, including,  
9 without limitation, the Retainage, until (1) the Contract Work  
10 has been completed to the satisfaction of Contractor, (2)  
11 Subcontractor has submitted to Contractor an invoice for the  
12 final payment accompanied by (i) a final complete list of all  
13 suppliers and subcontractors whose materials or services have  
14 been utilized by Subcontractor, (ii) all closeout documents  
15 including, warranties, guarantees, as-builts, drawings,  
16 operating and maintenance manuals and such other items  
17 required of Subcontractor have been provided and such have  
18 been accepted by Owner, (iii) executed unconditional lien  
19 releases and waivers from Subcontractor and all of its  
20 mechanics, subcontractors, and suppliers for the Contract  
21 Work covered by all preceding progress payments, and (iv)  
22 executed unconditional lien releases and waivers upon final  
23 payment from all mechanics, subcontractors, and suppliers  
24 who have previously received final payment, and conditional  
25 lien releases and waivers upon final payment from  
26 Subcontractor and each mechanic, subcontractor, and supplier  
27 from which an unconditional lien release and waiver upon  
28 final payment has not been submitted to Contractor, (3)  
Contractor has received the corresponding final payment  
from Owner, (4) Contractor has received evidence of  
Subcontractor's insurance required to be in place, (5) 45 days  
have elapsed after a Notice of Completion has been recorded  
or if a valid Notice of Completion is not recorded, upon  
Subcontractor's receipt of a written notice of acceptance of  
the Contract Work that shall be given by Contractor not later  
than 91 days after Contractor determines in good faith that the  
Contract Work has been performed completed and in  
acceptable manner and (6) all outstanding disputes related to  
the Project have been resolved, and any liens against the  
Project have been removed.<sup>214</sup>

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<sup>214</sup> Exhibit 170-11, 170-12.

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

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**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.

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**JOINT APPENDIX**  
**VOLUME 111**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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 <i>Ex Parte</i> 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- JA000379	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- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCPP 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	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	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>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</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	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 <i>in Limine</i>	JA001644- JA001647	28

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 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 <i>in Limine</i>	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
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

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

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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	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
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>HELIX Related Exhibits:</b>		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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61



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

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018

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

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, 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
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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 Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>in Limine</i>	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>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</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>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</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>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</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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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	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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
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	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>08-29-19</b>	<b>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)</b>	<b>JA009117- JA009123</b>	<b>119</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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. Mounter, 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
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	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
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in <i>Limine</i> Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i></b>	<b>JA001133 JA001148</b>	<b>21</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 2 – Notice of Taking NRCP Rule 30(b)(6) Deposition of the Person Most Knowledgeable for Zitting Brothers Construction, Inc.	JA001152- JA001160	21
<b>06-29-18</b>	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
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	Exhibit 2 – Marquis Aurbach Coffing Invoice to APCO dated April 30, 2018	JA007223- JA007224	99
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
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	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
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<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

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<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
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	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
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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 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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<b>08-06-19</b>	<b>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</b>	<b>JA007316- JA007331</b>	<b>101</b>
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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
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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
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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
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	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
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	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 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
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	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 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	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
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	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
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<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	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
	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
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	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
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-</b>	<b>JA009117- JA009123</b>	<b>119</b>

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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>06-24-09</b>	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA001617- JA001635	28
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	Exhibit 5 – Heinaman Trial Exhibits	JA001638- JA001639	28
	Exhibit 6 – Fast Glass Trial Exhibits	JA001640- JA001641	28
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	Exhibit 8 - Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i>	JA001644- JA001647	28

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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 <i>in Limine</i>	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- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
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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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	Exhibit 13 – Appellant’s Opening Brief (Padilla v. Big D)	JA001436- JA001469	26
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	Exhibit 15 – Appellant’s Reply Brief (Padilla v. Big D)	JA001517- JA001551	27
	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
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<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>

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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 <i>in Limine</i> 1-4	JA001170- JA001177	22
12-29-17	Notice of Entry of Order Granting Peel Brimley Lien Claimants' Motion <i>in Limine</i> 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 <i>Ex Parte</i> 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- JA000379	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 <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
		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
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>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</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>HELIX Related Exhibits:</b>		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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	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

<sup>5</sup> Filed January 31, 2018

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

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

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

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

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<sup>8</sup> Filed January 31, 2018

1 Having received these requirements, Helix continued on as the electrical subcontractor for  
2 Camco after APCO's termination.

3 202. Helix's Andy Rivera admitted Helix's technical scope of work remained the  
4 same under Camco:

5 Q. Would it be fair to conclude the technical scope of  
6 work remained the same as you transitioned to work with  
Camco—

7 A. Yeah.

8 Q. —for Helix?

A. Yes.<sup>215</sup>

9 203. During the transition of APCO to Camco, Helix had a meeting with  
10 Gemstone.<sup>216</sup>

11 204. The purpose of that meeting was to: "represent that work was still proceeding,  
12 nothing had changed with our contracts with the current APCO relationship, and that we were  
13 to take direction for construction from Camco, and they wanted to negotiate a contract."<sup>217</sup>

14 205. Helix never sent APCO a letter or requested that APCO clarify or provide any  
15 information to Helix on the status of its relationship to the Project.<sup>218</sup>

16 206. Camco presented Helix with a ratification agreement.<sup>219</sup>

17 207. It was Camco's intent and understanding that it was replacing APCO in the  
18 Helix-APCO subcontract.<sup>220</sup>

19 208. Helix had a copy of the ratification agreement by at least September 3, 2008.<sup>221</sup>

22 <sup>215</sup> Testimony of Andy Rivera (Helix) Day 2, p. 78.

23 <sup>216</sup> Testimony of Bob Johnson (Helix) Day 2, p. 22.

24 <sup>217</sup> Testimony of Bob Johnson (Helix) Day 2, pp. 22-23.

25 <sup>218</sup> Testimony of Bob Johnson (Helix) Day 2, p. 23.

26 <sup>219</sup> Testimony of Bob Johnson (Helix) Day 1, p. 124.

27 <sup>220</sup> Testimony of Steve Parry (Camco) Day 5, pp. 28, 29 and 60.

28 <sup>221</sup> Exhibit 172. Testimony of Bob Johnson (Helix) Day 2, p. 27.



1           209. Helix understood the purpose of the ratification agreement as follows: "...they  
2 [Camco] were stepping in as construction management for the project and that they were using  
3 that agreement in order to proceed with – hold us as the subcontractor going forward."<sup>222</sup>

4           210. Camco's understanding was the same, i.e. the ratification agreement formed the  
5 basis of Camco's agreement in allowing Helix to proceed on the Project.<sup>223</sup>

6           211. Helix continued working on the Project after receiving the ratification agreement  
7 from Gemstone.<sup>224</sup>

8           212. Camco sent Helix the ratification agreement with a September 4, 2008 letter that  
9 included the following representations: "The conditional acceptance of this work is based on  
10 the execution of a standard Camco Pacific Ratification Agreement... We have provided you a  
11 copy of the Camco Pacific Ratification Agreement for your review and acceptance."

12           213. The Ratification Agreement contained the following additional terms:

- 13           • "B. Subcontractor and Camco desire to acknowledge, ratify and agree to  
14 the terms of the Subcontract Agreement, whereby Camco will replace  
15 APCO as the "Contractor" under the Subcontract Agreement but, subject  
16 to the terms of this Ratification, all other terms and conditions of the  
17 Subcontract Agreement will remain in full force and effect."
- 18           • "5. Ratification. Subcontractor and Camco agree that (a) the terms of the  
19 Subcontract Agreement (as amended by this Ratification and including  
20 all Amendments, Previously Approved Change Orders, and the Camco  
21 Schedule) will govern their relationship regarding the Project, (b) Camco  
22 will be the "Contractor" under the Subcontract Agreement, and (c)  
23 Subcontractor and Camco agree to perform and fulfill all of the  
24 executory terms, covenants, conditions and obligations required to be  
25 performed and fulfilled thereunder by Subcontractor and Camco,  
26 respectively."<sup>225</sup>

27           <sup>222</sup> Testimony of Bob Johnson (Helix) Day 1, p. 124.

28           <sup>223</sup> Exhibit 172. Testimony of Steve Parry (Camco) Day 5, p. 29.

<sup>224</sup> Testimony of Bob Johnson (Helix) Day 2, p. 28.

<sup>225</sup> Exhibit 172-5.

1           214. Helix admitted it entered into a ratification agreement with Camco on  
2 September 4, 2008 to continue on and complete the APCO scope of work.<sup>226</sup>

3           215. Helix even added a document to the ratification entitled "Helix Electric's  
4 Exhibit to the Ratification and Amendment."<sup>227</sup>

5           216. The Helix Exhibit to the Ratification and Amendment contained language  
6 confirming that APCO was removed as the general contractor and that Helix submitted  
7 \$994,025.00 in change orders to APCO prior to August 26, 2008, the date Camco was using for  
8 its ratification agreement.<sup>228</sup>

9           217. Helix included a total contract price of \$5.55 million for the Project, which was  
10 its original contract price with APCO for Phase 1, and added \$480,689.00 as approved change  
11 orders under APCO to the total contract price.<sup>229</sup>

12           218. The proposed Helix Amendment to the ratification agreement also included the  
13 following term: "All close out documents must be turned in before Camco Pacific can release  
14 final payment."<sup>230</sup>

15           219. And although Helix has not produced a signed copy of the ratification  
16 agreement, Helix has admitted entering into its ratification and amended subcontract agreement  
17 in its complaint as follows:

18                   18. On or about September 4, 2008, Helix entered into the  
19 Ratification and Amendment of Subcontract Agreement ("CPCC  
20 Agreement") with Camco who replaced APCO as the general  
21 contractor on the Project, to continue the work for the Property  
22 ("CPCC Work").

23                   19. Helix furnished the CPCC Work for the benefit of and at the  
24 specific instance and request of CPCC and/or Owner.

25                   <sup>226</sup> Exhibit 77, Helix Complaint, ¶18.

26                   <sup>227</sup> Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, p. 42.

27                   <sup>228</sup> Exhibit 170; Testimony of Bob Johnson (Helix) Day 2, pp. 42-43.

28                   <sup>229</sup> Exhibit 170-54; Testimony of Bob Johnson (Helix) Day 2, p. 44; Exhibit 169-  
8.

<sup>230</sup> Exhibit 169-1.

1 20. Pursuant to the CPCC Agreement, Helix was to be paid an  
2 amount in excess of Ten Thousand Dollars (\$10,000.00)  
3 (hereinafter "CPCC Outstanding Balance") for the CPCC Work.  
4 21. Helix furnished the CPCC Work and has otherwise performed  
5 its duties and obligations as required by the CPCC Agreement.  
6 22. CPCC has breached the CPCC Agreement...  
7 CPCC breached its duty to act in good faith by performing the  
8 Ratification Agreement in a manner that was unfaithful to the  
9 purpose of the Ratification Agreement, thereby denying Helix's  
10 justified expectations...<sup>231</sup>

11 Helix's Mr. Johnson admitted that Exhibit 172, the Ratification Agreement, was the document  
12 that Helix referenced in its complaint (Exhibit 77) as the Ratification.<sup>232</sup>

13 220. Helix sought \$834,476.45 against Camco.<sup>233</sup>

14 221. Helix also admitted it had a contract with Camco/Gemstone for \$8.6 million in  
15 its lien documents.<sup>234</sup>

16 222. The scope of work that Helix and CabineTec undertook on the Project was the  
17 same as each had previously contracted with APCO for.<sup>235</sup>

18 223. Helix did not have any further communication with APCO after Camco took  
19 over the Project.<sup>236</sup>

20 224. That is because both knew that APCO was no longer involved and had no  
21 further liability.

22 225. In fact, both Helix and CabineTec rolled their retention over into the Camco  
23 billings.<sup>237</sup>

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24 <sup>231</sup> Exhibit 77.

25 <sup>232</sup> Testimony of Bob Johnson (Helix) at Day 2, p. 28.

26 <sup>233</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 10.

27 <sup>234</sup> Exhibit 512; Testimony of Bob Johnson (Helix) at Day 2, p. 29.

28 <sup>235</sup> Exhibit 314 and Testimony of Bob Johnson (Helix) Day 2, p. 10.

<sup>236</sup> Testimony of Bob Johnson (Helix) Day 2, p. 14.

<sup>237</sup> Compare Exhibit 58, Helix's last pay application to APCO to Exhibit 173, Helix's first payment application to Camco. See also Exhibit 176 and 177 showing Helix's retention rolled over. See also, Exhibit 150, CabineTec's last pay application to APCO, to Exhibit 185, CabineTec's first payment application to Camco showing

1           226.     Helix's Andy Rivera specifically admitted that it rolled its \$505,000.00 in  
2 retention billings over to Camco.<sup>238</sup>

3           227.     After Helix and CabineTec went to work for Camco, neither sent APCO any  
4 further pay applications or billings for work they performed on the Project.<sup>239</sup>

5           228.     And it is undisputed that Helix submitted its September 2008 pay application  
6 for \$354,456.90 to Camco.<sup>240</sup>

7           229.     That pay application tracked Helix's full retainage of \$553,404.81 for the  
8 Project, not just work completed under Camco.<sup>241</sup>

9           230.     Helix also submitted its October 2008 billing for \$361,117.44,<sup>242</sup> its  
10 November 2008 pay application for \$159,475.68,<sup>243</sup> and its December 2008 billing for  
11 \$224,805.30 to Camco.<sup>244</sup>

12           **O.     Camco never completed the Project.**

13           231.     Camco never finished the Project<sup>245</sup> and was never paid retention by  
14 Gemstone.<sup>246</sup>

15           232.     In its letter to the subcontractors dated December 22, 2008, Camco advised the  
16 subcontractors as follows:

17                     [I]t has come to Camco Construction, Inc.'s attention that  
18                     funding for the completion of the Manhattan West project (the

19 CabineTec's retention rolled over. See also, Exhibit 30 (Camco's August 2008 draw  
20 request confirming retention was being held for the entire Project).

21                     <sup>238</sup> Testimony of Andy Rivera (Helix) Day 2, p. 74.

22                     <sup>239</sup> Testimony of Mary Jo Allen (APCO) Day 3, at pp. 127-128; Testimony of  
23 Andy Rivera (Helix) Day 2, p. 76.

24                     <sup>240</sup> Exhibit 173-1.

25                     <sup>241</sup> Exhibit 173-2

26                     <sup>242</sup> Exhibit 176-2.

27                     <sup>243</sup> Exhibit 177-4.

28                     <sup>244</sup> Exhibit 178-4.

<sup>245</sup> Testimony of Steve Parry (Camco) Day 5, p. 36.

<sup>246</sup> Testimony of Steven Parry (Camco) Day 5, p. 36.

1 "Project") has been withdrawn. Camco recently received the  
2 following email from [Gemstone]...As a result, Gemstone does  
3 not have funds sufficient to pay out the October draw or other  
4 obligations...Based on the foregoing facts and circumstances,  
5 Camco has no other alternative but to immediately terminate all  
6 subcontracts on the Project, including the agreement with your  
7 company... you have acknowledged that Camco is not liable to  
8 you for payment unless and until Camco receives the  
9 corresponding payment from the Owner... Camco's contract with  
10 Gemstone is a cost plus agreement wherein the subcontracts and  
11 supplies were paid directly by Gemstone and/or its agent, Nevada  
12 Construction Services, based on the invoices and/or payment  
13 applications submitted through voucher control... Therefore,  
14 Camco has no contractual and/or statutory obligation to pay any  
15 claim that may be alleged by any of the subcontractors and/or  
16 suppliers on the Project... any claim for payment alleged against  
17 Camco will result in additional fees, costs ... Therefore, all claims  
18 for payment must be directed to and/or alleged against Gemstone  
19 and the Project.<sup>247</sup>

20 233. Camco's Parry was not able to tell if CabineTec billed Camco in August 2008,  
21 Exhibit 218 and Camco's first pay app to Gemstone.<sup>248</sup>

- 22 • Exhibit 220 is Camco's second pay application for the Project, through  
23 September 30, 2008.<sup>249</sup> That pay application accounted \$6,004,763.00 in  
24 retention.<sup>250</sup> Camco's Parry admitted that Exhibit 220 does include  
25 billings from Helix to Camco that Camco was passing on to  
26 Gemstone.<sup>251</sup>
- 27 • Exhibit 221 is Camco's billing to Gemstone through October 31, 2008;  
28 reflecting a total retention of \$6,928,767.84 in retention.
- Exhibit 163 is Camco's November 2008 billing, reflecting a total  
retention of \$7,275,991.08.

234. Based on Camco's last billing,<sup>252</sup> Exhibit 163, Camco's best estimate of the  
work completed on Phase 1 was 86%.<sup>253</sup>

<sup>247</sup> Exhibit 40 and Exhibit 39.

<sup>248</sup> Exhibit 218; Testimony of Steven Parry (Camco) Day 5, p. 34.

<sup>249</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

<sup>250</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 32.

<sup>251</sup> Exhibit 220; Testimony of Steven Parry (Camco) Day 5, p. 33.

<sup>252</sup> Testimony of Steve Parry (Camco), Day 5, p. 36.

<sup>253</sup> Exhibit 163; Testimony of Steven Parry (Camco), Day 5, p. 36.

1           P.     The litigation.

2           235. On September 9, 2008, APCO brought an action against Gemstone for breach of  
3 Contract and nonpayment.<sup>254</sup>

4           236. Gemstone counterclaimed alleging that APCO breached the Contract.<sup>255</sup>

5           237. On November 4, 2008, the Project lender confirmed that it was reviewing  
6 September's pay application, and confirmed that the subcontractors would be paid for the work  
7 performed for Camco.<sup>256</sup>

8           238. In December 2008 Gemstone suspended work on the Project and advised Camco  
9 and its various subcontractors that the lender was halting all financing for the Project.<sup>257</sup>

10          239. That led to the onslaught of liens and the related priority litigation.

11          240. On December 16, 2008, Camco officially terminated its prime contract with  
12 Gemstone:

13               Pursuant to your notice to Camco on December 15, 2008,  
14               Gemstone (a) has lost its funding for the ManhattanWest project  
15               and (b) will be unable to meet its payment obligations pursuant to  
16               Article VI of the Engagement Agreement. Furthermore,  
17               Gemstone has failed to make payments to Camco pursuant to  
18               Article VI of the Engagement Agreement for October 2008,  
19               November 2008, and December 2008, and such failures are a  
20               material breach of the Engagement Agreement. As Gemstone has  
21               no means of curing such material breach in a timely manner, the  
22               Engagement Agreement is terminated for cause, effective  
23               December 19, 2008. Pursuant to our discussions, we understand  
24               that you agree with the termination  
25               and the effective date of termination.

26               ...

27               Pursuant to our discussions and with Gemstone's consent, Camco  
28               will immediately send notices to all of the subcontractors to  
29               terminate their subcontract agreements. In Camco's termination  
30               notice, we will ask the subcontractors to submit their payment  
31               applications to Camco. Camco will review the payment

32               <sup>254</sup> Exhibit 219.

33               <sup>255</sup> Exhibit 226.

34               <sup>256</sup> Exhibit 138.

35               <sup>257</sup> Exhibit 48; Exhibit 138.

1 applications and, if they appear proper, Camco will forward them  
2 to Gemstone for payment.<sup>258</sup>

3 In response, Camco terminated the subcontracts with its subcontractors on December 22,  
4 2008.<sup>259</sup>

5 241. On May 26, 2010, Judge Kathleen Delaney filed an Order Striking Defendant  
6 Gemstone Development West, Inc.'s Answer and Counterclaims, and Entering Default for  
7 failure to give reasonable attention to matters, failure to obtain new counsel, failure to appear at  
8 hearings.<sup>260</sup>

9 242. On June 6, 2013, APCO filed a motion for summary judgment against  
10 Gemstone. That Motion confirmed that APCO complied with all terms of the Agreement and  
11 that Gemstone materially breached the Agreement by, among other things: (1) failing to make  
12 payments due to APCO; (2) interfering with APCO's relationships with its subcontractors; (3)  
13 refusing to review, negotiate, or consider change order requests in good faith; (4) removing  
14 APCO from the Project without valid or appropriate grounds; and (5) otherwise breaching the  
15 terms of the Agreement.<sup>261</sup>

16 243. On June 13, 2013, the Court (Judge Susan Scann) granted that motion.<sup>262</sup> The  
17 record does not reflect an order or judgment.

18 244. APCO did not receive any funds associated with its work from June, July or  
19 August 2008 on the Project and never received its or any subcontractor's retention.

20 245. APCO did cooperate with Gemstone to see that all subcontractors, including  
21 Helix and CabineTec were paid all progress payments that were billed and due while APCO  
22 was in charge.

23 <sup>258</sup> Exhibit 165.

24 <sup>259</sup> Exhibit 166-2.

25 <sup>260</sup> Docket at May 26, 2010 Order Striking Defendant Gemstone Development  
26 West, Inc.'s Answer and Counterclaims, and Entering Default.

27 <sup>261</sup> Docket at June 6, 2013, Motion for Summary Judgment against Gemstone.

28 <sup>262</sup> Docket at Minutes from June 13, 2013.

1           246. Despite APCO's efforts, Helix and CabineTec are seeking to hold APCO  
2 responsible for retention.

3           247. Any of the foregoing findings of fact that would be more appropriately  
4 considered conclusions of law should be deemed so.

5           FROM the foregoing Findings of Fact, the Court makes the following

6 **II. CONCLUSIONS OF LAW**

7  
8 **Helix's Claims Against APCO**

9           A. **Breach of Contract**

10           1. In Nevada, there are four elements to a claim for breach of contract: "(1)  
11 formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3)  
12 material breach by the defendant, and (4) damages."<sup>263</sup>

13           2. Exhibit 45 is the Helix Subcontract, which represents the valid, final written  
14 agreement between APCO and Helix.

15           3. Helix's claim against APCO is for \$505,021.00 in alleged retention.<sup>264</sup> As a  
16 condition precedent to payment for retention, the Helix Subcontract required Helix to properly  
17 comply with the retention payment schedule in Section 3.8.<sup>265</sup> Specifically, Section 3.8  
18 required: (1) completion of the entire project, (2) owner acceptance, (3) final payment from  
19 owner to APCO, (4) final as-built drawings, and (5) releases.<sup>266</sup>

20           4. A party who seeks to recover on a contract has the burden of establishing any  
21 condition precedent to the respective contract.<sup>267</sup>

22           5. Parties can agree to a schedule of payments.<sup>268</sup>

23  
24 <sup>263</sup> *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180  
(D. Nev. 2011).

25 <sup>264</sup> Testimony of Andy Rivera (Helix) Day 2, pp. 73-75.

26 <sup>265</sup> Exhibit 45 at Section 3.8.

27 <sup>266</sup> Exhibit 45 at Section 3.8.

28 <sup>267</sup> *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).



6. Parties can agree to proper conditions precedent to payment.<sup>269</sup>

7. Under Nevada precedent and legislative action, acceptance provisions are valid conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.<sup>270</sup>

8. NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after the owner paid the general for the subcontractor's work.<sup>271</sup>

9. In the present action, the Helix Subcontract: (1) incorporated the Contract,<sup>272</sup> (2) confirmed that the subcontractors would be bound to Gemstone to the same extent APCO was,<sup>273</sup> and (3) contained a schedule of payments for both retention and change orders with preconditions before APCO had an obligation to pay the subcontractors.<sup>274</sup>

10. Only one of those preconditions involved Gemstone's payment of retention to APCO. The others concerned the right to receive payment, not the fact of payment.

11. Pursuant to NRS 624.624(1)(a), payment was due to Helix in accordance with the retention payment schedule or within 10 days after APCO received payment from Gemstone:

**NRS 624.624 Payment of lower-tiered subcontractor;  
grounds and procedure for withholding amounts from**

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<sup>268</sup> NRS 624.624(1)(a).

<sup>269</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev. 2016) (unpublished) ("Because the parties' subcontract contained a payment schedule that required that Padilla be paid within ten days after IGT accepted Padilla's work and paid Big-D for that work and it is undisputed that IGT never accepted Padilla's work . . . the district court correctly found that payment never became due to Padilla under the subcontract or NRS 624.624(1)(a); see generally, NRS 624.626.

<sup>270</sup> *Id.*

<sup>271</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev. 2016) (unpublished).

<sup>272</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.

<sup>273</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.

<sup>274</sup> *Id.* at Section 3.8 and Article 4.

1 payment; rights and duties after notice of withholding, notice  
2 of objection or notice of correction.

3 1. Except as otherwise provided in this section, if a  
4 higher-tiered contractor enters into:

5 (a) A written Contract with a lower-tiered  
6 subcontractor that includes a schedule for payments, the  
7 higher-tiered contractor shall pay the lower-tiered  
8 subcontractor:

9 (1) On or before the date payment is due; or

10 (2) Within 10 days after the date the higher-tiered  
11 contractor receives payment for all or a portion of  
12 the work, materials or equipment described in a  
13 request for payment submitted by the lower-tiered  
14 subcontractor,

15 → whichever is earlier.

16 12. These provisions place a time obligation on a higher-tiered contract to make  
17 payment, but they do not restrict the right of the lower-tiered contractor to receive payment if  
18 the higher-tiered contractor has not been paid. Section 3.8 of the Helix Subcontract contained a  
19 retention payment schedule that was acknowledged and affirmed by Helix and APCO at trial.  
20 As such, Helix needed to show that applicable and enforceable conditions precedent were  
21 satisfied before APCO had to pay retention. See *Lucini-Parish Ins. v. Buck*,<sup>275</sup> (a party who  
22 seeks to recover on a contract has the burden of establishing any condition precedent to the  
23 respective contract).

24 13. Helix admitted that it did not comply with the applicable and enforceable  
25 conditions precedent to be entitled to its retention payments from APCO.<sup>276</sup>

26 <sup>275</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

27 <sup>276</sup> See Testimony of Helix's Bob Johnson, Day 2 at pg. 19 ("Q. Well, let me ask  
28 it this way: Did Helix satisfy any of these preconditions found in paragraph 3.8 while  
APCO was the general contractor on the project? A. Not to my knowledge.")

1 14. Helix did not show: (1) completion of the entire Project, (2) final acceptance of  
2 the Project by Gemstone, (3) receipt of final payment from Gemstone to APCO, (4) delivery of  
3 all as-builts and close out document, and (5) delivery of all final waivers and releases.

4 15. Helix never sent APCO an invoice or billing for its retention.

5 16. Accordingly, Helix's retention payment was not due from APCO at the time  
6 APCO was removed from the project.

7 17. As a result, Helix's first claim for relief for breach of contract for failing to pay  
8 retention fails as a matter of law.

9 18. Lastly, there is no contractual obligation for APCO to pay Helix for the work it  
10 performed for Gemstone and/or Camco after APCO left the Project. Helix knowingly replaced  
11 APCO with Camco under the Helix Subcontract on all executory obligations, including  
12 payment for future work and retention.

13 **B. Breach of the Implied Covenant of Good Faith and Fair Dealing**

14 19. Helix's second claim for relief for breach of the covenant of good faith and fair  
15 dealing also fails.

16 20. In Nevada, "[e]very contract imposes upon each party a duty of good faith and  
17 fair dealing in its performance and enforcement."<sup>277</sup> This implied covenant requires that parties  
18 "act in a manner that is faithful to the purpose of the contract and the justified expectations of  
19 the other party."<sup>278</sup>

20 21. A breach of the implied covenant of good faith and fair dealing occurs when the  
21 terms of a contract are complied with but one party to the contract deliberately contravenes the  
22 intention of the contract.<sup>279</sup>

23  
24 <sup>277</sup> *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9  
(Nev. 1989) (quoting NRS 104.1203).

25 <sup>278</sup> *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2  
26 (Nev. 1994) (internal quotations omitted).

27 <sup>279</sup> See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d  
28 919,923 (Nev. 1991).

1           22. To prevail on a theory of breach of the covenant of good faith and fair dealing, a  
2 plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2) defendants  
3 owed a duty of good faith to the plaintiff, (3) defendants breached that duty by performing in a  
4 manner that was unfaithful to the purpose of the contract, and (4) plaintiff's justified  
5 expectations were denied.<sup>280</sup>

6           23. The Nevada Supreme Court has held that good faith is a question of fact.<sup>281</sup>

7           24. Helix claims APCO breached its duty of good faith and fair dealing by  
8 "performing in a manner that was unfaithful to the purpose of the APCO Agreement."<sup>282</sup>

9           25. APCO acted in good faith with respect to Helix:

10           a. APCO paid Helix all sums Helix billed APCO through August 2008  
11 (when APCO left the Project),<sup>283</sup>

12           b. APCO signed joint checks so that its subcontractors, including Helix,  
13 would get paid, even though APCO was not getting paid,<sup>284</sup>

14           c. APCO pulled its general contractor permits so that Camco could get  
15 permits for the Project and APCO's subcontractors could continue on  
16 with the Project (less retention),<sup>285</sup> and

17           d. APCO also financed the related appeal to obtain priority for Helix and  
18 the other subcontractors once Gemstone shut the Project down.

19  
20  
21           <sup>280</sup> *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

22           <sup>281</sup> *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev.  
1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

23           <sup>282</sup> Exhibit 231, Helix's amended complaint at ¶ 27.

24           <sup>283</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1 at pg. 67; Testimony  
of Mary Jo Allen (APCO), Day 3 pg. 127 (as to Helix) and Testimony of Mary Jo Allen  
25 (APCO), Day 3 at pg. 128; Testimony of Joe Pelan (APCO), Day 1 at pg. 46; Testimony  
of Joe Pelan (APCO), Day 1 at pg. 82.

26           <sup>284</sup> Exhibit 26. See also: Testimony of Joe Pelan (APCO), Day 1 at pg. 38;  
Testimony of Joe Pelan (APCO), Day 1 at pg. 41.

27           <sup>285</sup> Testimony of Joe Pelan (APCO), Day 1 at pg. 100.

1           26. Helix failed to present any evidence that APCO failed to act in good faith under  
2 the Helix Subcontract or these circumstances. While it is undisputed that APCO did not pay  
3 Helix the retention, there is no evidence that this non-payment was in bad faith.

4           27. As a result, Helix's second claim for breach of the implied covenant of good  
5 faith and fair dealing of the subcontract fails as a matter of law.

6           C. Unjust Enrichment/Quantum Meruit

7           28. Helix asserted breach of contract *and* unjust enrichment claims against  
8 APCO.<sup>286</sup>

9           29. APCO had a subcontract with Helix, Exhibit 45. Helix admitted the same in its  
10 complaints, at trial, and in its May 10, 2010 Motion for Partial Summary Judgment Against  
11 Gemstone (and corresponding errata), on file with this Court.

12           30. An action based upon a theory of unjust enrichment is not available when there  
13 is an express, written contract because no contract can be implied when there is an express  
14 contract.<sup>287</sup> However, frustration of an express contract's purpose can make unjust enrichment  
15 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

16           31. Even if the Helix Subcontract did not preclude an unjust enrichment/*quantum*  
17 *meruit* theory of recovery (which it does), APCO was not unjustly enriched by Helix's work.  
18 The undisputed evidence confirms that APCO was not paid any amounts for Helix's work that  
19 it did not transmit to Helix, and APCO did not get to keep the property. Instead, APCO remains  
20 unpaid \$1,400,036.75 from the failed Project.<sup>288</sup>

21           32. As such, APCO was not unjustly enriched by Helix's work.

22           .....

23           .....

24  
25           <sup>286</sup> See Exhibit 45, Helix Subcontract, and Exhibit 149, CabineTec Subcontract.

26           <sup>287</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182  
(1997).

27           <sup>288</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

1           D.    Mechanic's Lien Foreclosure

2           33.   Helix's fourth claim for relief was of a mechanic's lien foreclosure, which also  
3 fails.

4           34.   APCO was not the owner of the Project.

5           35.   The Project has already been foreclosed upon and the proceeds were awarded to  
6 the lender. The Nevada Supreme Court affirmed the decision of the trial court that the lender  
7 was entitled to keep the Project and related proceeds, and the subcontractors (and APCO) were  
8 left with nothing. Thus, Helix cannot foreclose upon the property.

9           36.   APCO is not legally liable for any deficiency judgment because it is not the  
10 party responsible for any deficiency.<sup>289</sup>

11           E.    Violation of NRS 624.606 through 624.630 et seq.

12           37.   NRS 624.624 is designed to ensure that general contractors promptly pay  
13 subcontractors after the general contractor receives payment from the owner for the work  
14 performed by the subcontractor.

15           38.   Here, it is undisputed that Exhibit 45, the Helix Subcontract is a written  
16 agreement between APCO and Helix and contained a retention payment schedule in Section  
17 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified in the  
18 subcontract.

19           39.   The Helix Subcontract confirmed that Helix would get paid retention after it  
20 met the five conditions precedent in the retention payment schedule.

21           40.   It is undisputed that Helix never met the five preconditions in the subcontract's  
22 payment schedule.<sup>290</sup> Accordingly, payment of retention to Helix never became due under NRS  
23 624 and Helix's claim for a violation of NRS 624 fails.

24  
25  
26                   <sup>289</sup> NRS 108.239(12); *Nev. Nat'l Bank v. Snyder*, 108 Nev. 151, 157, 826 P.2d  
26 560, 563 (1992).

27                   <sup>290</sup> Testimony of Bob Johnson (Helix) Day 2 at pg. 36 and 37

41. Additionally, Helix never billed APCO for its retention and APCO never received Helix's retention from Gemstone.

**CabineTec's claims against APCO**

**A. Breach of Contract**

42. In Nevada, there are four elements to a claim for breach of contract: "(1) formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3) material breach by the defendant, and (4) damages."<sup>291</sup>

43. Exhibit 149 is the CabineTec Subcontract, which represents the valid, final written agreement between APCO and CabineTec.

44. Exhibit 156, CabineTec's Complaint (page 7, paragraph 50) confirms that CabineTec's principal claim against APCO is for \$19,547.00 for retention.

45. As a condition precedent to payment for retention, the CabineTec Subcontract required CabineTec to properly comply with the retention payment schedule in Section 3.8.<sup>292</sup> Specifically, Section 3.8 required: (1) completion of the entire project, (2) owner acceptance, (3) final payment from owner to APCO, (4) final as-built drawings, and (5) releases.<sup>293</sup>

46. A party who seeks to recover on a contract has the burden of establishing any condition precedent to the respective contract.<sup>294</sup>

47. Parties can agree to a schedule of payments.<sup>295</sup>

48. Parties can agree to proper conditions precedent to payment.<sup>296</sup>

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<sup>291</sup> *Laguerre v. Nevada System of Higher Education*, 837 F.Supp.2d 1176, 1180 (D. Nev. 2011).

<sup>292</sup> Exhibit 149, CabineTec Subcontract at Section 3.8.

<sup>293</sup> Exhibit 149, CabineTec Subcontract at Section 3.8.

<sup>294</sup> *See Lucini-Parish Ins. v. Buck*, 108 Nev. 617, 620, 836 P.2d 627, 629 (1992).

<sup>295</sup> NRS 624.624(1)(a).

<sup>296</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386 P.3d 982 (Nev. 2016) (unpublished)("Because the parties' subcontract contained a payment schedule that required that Padilla be paid within ten days after IGT accepted Padilla's work and paid Big-D for that work and it is undisputed that IGT never accepted Padilla's work the district court correctly found that payment never became

1           49. Under Nevada precedent and legislative action, acceptance provisions are valid  
2 conditions precedent to payment when not combined with a waiver of a mechanic's lien rights.

3 <sup>297</sup>

4           50. NRS 624.624 was meant, *inter alia*, to ensure payment to subcontractors after  
5 the owner paid the general for the subcontractor's work.<sup>298</sup>

6           51. In the present action, the CabineTec Subcontract: (1) incorporated the  
7 Contract,<sup>299</sup> (2) confirmed that the subcontractors would be bound to Gemstone to the same  
8 extent APCO was,<sup>300</sup> and (3) contained a schedule of payments for both retention and change  
9 orders with preconditions before APCO had an obligation to pay the subcontractors.<sup>301</sup>

10           52. Only one of those preconditions involved Gemstone's payment of retention to  
11 APCO, which never occurred. The others concerned the right to receive payment, not the fact  
12 of payment.

13           53. Pursuant to NRS 624.624(1)(a), payment was due to CabineTec in accordance  
14 with the retention payment schedule or within 10 days after APCO received payment from  
15 Gemstone:

16                   **NRS 624.624 Payment of lower-tiered subcontractor;**  
17                   **grounds and procedure for withholding amounts from**  
18                   **payment; rights and duties after notice of withholding, notice**  
19                   **of objection or notice of correction.**

20                   1. Except as otherwise provided in this section, if a  
21 higher-tiered contractor enters into:

22 due to Padilla under the subcontract or *NRS 624.624(1)(a)*; see generally, NRS  
23 624.626.

24 <sup>297</sup> *Id.*

25 <sup>298</sup> *Padilla Construction Company of Nevada v. Big-D Construction Corp*, 386  
26 P.3d 982 (Nev. 2016) (unpublished).

27 <sup>299</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 1.1.

28 <sup>300</sup> Exhibits 45 and 149, Helix and CabineTec Subcontracts at Sections 3.4.

<sup>301</sup> *Id.* at Section 3.8 and Article 4.



1 (a) A written Contract with a lower-tiered  
2 subcontractor that includes a schedule for payments, the  
3 higher-tiered contractor shall pay the lower-tiered  
4 subcontractor:

5 (1) On or before the date payment is due; or

6 (2) Within 10 days after the date the higher-tiered  
7 contractor receives payment for all or a portion of  
8 the work, materials or equipment described in a  
9 request for payment submitted by the lower-tiered  
10 subcontractor,

11 → whichever is earlier.

12 These provisions place a time obligation on a higher-tiered contractor to make  
13 payment but they do not restrict the right of a lower-tiered contractor to receive  
14 payment if the higher-tiered contractor has not been paid.

15 54. Section 3.8 of the CabineTec Subcontract contained retention payment  
16 schedules that were acknowledged and affirmed by CabineTec and APCO at trial. As such,  
17 CabineTec needed to show that applicable and enforceable conditions precedent were satisfied  
18 before APCO had to pay retention. *See Lucini-Parish Ins. v. Buck*,<sup>302</sup> (a party who seeks to  
19 recover on a contract has the burden of establishing any condition precedent to the respective  
20 contract).

21 55. CabineTec did not even attempt to show: (1) completion of the entire Project,  
22 (2) final acceptance of the Project by Gemstone, (3) receipt of final payment from Gemstone to  
23 APCO, (4) delivery of all as-builts and close out document, and (5) delivery of all final waivers  
24 and releases.

25 56. CabineTec did not meet its burden of proof and APCO never received  
26 CabineTec's retention to trigger the 10 day period.

27 57. Accordingly, CabineTec's retention payment never became due from APCO.

28  

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<sup>302</sup> 108 Nev. 617, 620, 836 P.2d 627, 629 (1992)

1           58. As a result, CabineTec's first claim for relief for breach of contract fails as a  
2 matter of law.

3           59. There is no contractual obligation for APCO to pay CabineTec for the work it  
4 performed for Gemstone and/or Camco after APCO left the Project. CabineTec knowingly  
5 replaced APCO with Camco under the CabineTec Subcontract on all executory obligations,  
6 including payment for future work and retention.

7           60. NRCP 16.1(a)(1)(c) requires that a plaintiff "*must, without awaiting a discovery*  
8 *request*, provide to other parties . . . [a] **computation of any category of damages claimed**  
9 **by the disclosing party**, making available for inspection and copying under Rule 34 of the  
10 documents or other evidentiary matter... on which such computation is based, including  
11 materials bearing on the nature and extent of injuries suffered..."<sup>303</sup>

12           61. A plaintiff "is not excused from making its disclosures because it has not fully  
13 completed its investigation of the case."<sup>304</sup>

14           62. NRCP 16.1(a)(c) requires that parties voluntarily disclose "[a] computation of  
15 any category of damages claimed by the disclosing party" and documents to support the  
16 computation.<sup>305</sup>

17           63. Under NRCP 26(e)(1), a plaintiff must immediately supplement its initial  
18 damages computation if it "learns that in some material respect the information disclosed is  
19 incomplete or incorrect."<sup>306</sup> *See Keener v. United States*,<sup>307</sup> (finding a second disclosure so  
20 substantially different from the first that it could not qualify as a correction of an incomplete or  
21 inaccurate expert report).

22  
23  
24           <sup>303</sup>NRCP 16.1(a)(1)(c)(emphasis added).

25           <sup>304</sup>*Id.*

26           <sup>305</sup>NRCP 16.1(a)(1)(c).

27           <sup>306</sup>NRCP 26(e)(1).

28           <sup>307</sup>181 F.R.D. 639, 640 (D. Mont. 1998)

1           64.   CabineTec's complaint alleged \$19,547.00 against APCO.<sup>308</sup>

2           65.   CabineTec's initial, and first supplemental disclosures disclosed \$30,110.95 in  
3 damages against APCO, which included interest and fees on the retention amount of  
4 \$19,547.00.<sup>309</sup>

5           66.   Those were the only disclosures that CabineTec made prior to the close of  
6 discovery, as extended by the Court.

7           67.   CabineTec's damage claims against APCO are limited to \$30,110.95.

8           68.   National Wood's Second Supplemental Disclosure containing amended  
9 damages was filed on November 13, 2017, two weeks before a November 28 trial date. This  
10 supplement increases the damages from \$30,110.95 to \$1,154,680.40, a 3600% increase.

11           69.   APCO has been prejudiced as a result of this late disclosure as APCO described  
12 in its motion in limine, and National Wood's error in not disclosing its damages pursuant to  
13 these rules was not harmless.

14           70.   CabineTec/National Wood has no adequate justification for its repeated failure  
15 to comply with Rule 16.1(a)'s disclosure requirements.

16           71.   CabineTec did not present any testimony confirming it met any of the conditions  
17 in Section 3.8. Instead, CabineTec's Mr. Thompson admitted that the buildings had to be  
18 drywalled and painted before the cabinets were installed<sup>310</sup> and he had no documentation (daily  
19 reports, photographs, etc.) that would confirm that CabineTec ultimately installed cabinets in  
20 Phase 1 for APCO.<sup>311</sup>

21           .....

22           .....

23 \_\_\_\_\_  
24           <sup>308</sup> Exhibit 156-8.

25           <sup>309</sup> Exhibits 157 (CabineTec's initial disclosures); Exhibit 158 (CabineTec's First  
26 Supplemental Disclosure), and Exhibit 159 (CabineTec's second supplemental  
disclosure).

27           <sup>310</sup> Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

28           <sup>311</sup> Testimony of Mr. Thompson (CabineTec) at Day 5 p. 69.

1           B.     Breach of the Implied Covenant of Good Faith and Fair Dealing

2           72.     In Nevada, "[e]very contract imposes upon each party a duty of good faith and  
3           fair dealing in its performance and enforcement."<sup>312</sup> This implied covenant requires that  
4           parties "act in a manner that is faithful to the purpose of the contract and the justified  
5           expectations of the other party."<sup>313</sup>

6           73.     A breach of the implied covenant of good faith and fair dealing occurs when the  
7           terms of a contract are complied with but one party to the contract deliberately contravenes  
8           the intention of the contract.<sup>314</sup>

9           74.     To prevail on a theory of breach of the covenant of good faith and fair dealing, a  
10          plaintiff must establish: (1) plaintiff and defendants were parties to a contract, (2)  
11          defendants owed a duty of good faith to the plaintiff, (3) defendants breached that duty by  
12          performing in a manner that was unfaithful to the purpose of the contract, and (4) plaintiff's  
13          justified expectations were denied.<sup>315</sup>

14          75.     The Nevada Supreme Court has held that good faith is a question of fact.<sup>316</sup>

15          76.     APCO acted in good faith with respect to CabineTec:

16           a.     APCO paid CabineTec all sums CabineTec billed APCO through August  
17           2008 (when APCO left the Project),<sup>317</sup>

18           b.     APCO signed joint checks so that its subcontractors, including  
19           CabineTec, would get paid, even though APCO was not getting paid,<sup>318</sup>

20  
21          <sup>312</sup> *A.C. Shaw Cont., Inc. v. Washoe Cnty.*, 105 Nev. 913, 914, 784 P.2d 9, 9  
(Nev. 1989) (quoting NRS 104.1203).

22          <sup>313</sup> *Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1278 n.2, 886 P.2d 454, 457 n.2  
(Nev. 1994) (internal quotations omitted).

23          <sup>314</sup> See *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 232, 808 P.2d  
24          919,923 (Nev. 1991).

25          <sup>315</sup> *Perry v. Jordan*, 111 Nev. 943, 948, 900 P.2d 335, 338 (Nev. 1995).

26          <sup>316</sup> *Consolidated Generator-Nevada, Inc. v. Commins Engine Co., Inc.*, 114 Nev..  
27          1304, 1312, 971 P.2d 1251, 1256 (Nev. 1998).

28          <sup>317</sup> Exhibit 26; Exhibit 152; Testimony of Joe Pelan, Day 1, pp. 46, 67 and 82;  
Testimony of Mary Jo Allen (APCO) Day 3, p. 128.

1 c. APCO pulled its general contractor permits so that Camco could get  
2 permits for the Project and APCO's subcontractors could continue on  
3 with the Project (less retention),<sup>319</sup> and

4 d. APCO also financed the related appeal to obtain priority for CabineTec  
5 and the other subcontractors once Gemstone shut the Project down.

6 77. CabineTec failed to present any evidence that APCO failed to act in good faith  
7 under the CabineTec Subcontract. While it is undisputed that APCO did not pay CabineTec the  
8 retention, there is no evidence that this non-payment was in bad faith.

9 78. As a result, CabineTec's second claim for breach of the implied covenant of  
10 good faith and fair dealing of the subcontract fails as a matter of law.

11 C. Unjust Enrichment/Quantum Meruit

12 79. CabineTec asserted breach of contract *and* unjust enrichment/ *quantum meruit*  
13 claims against APCO.<sup>320</sup>

14 80. APCO had a subcontract with CabineTec, **Exhibit 149**.

15 81. An action based upon a theory of unjust enrichment is not available when there  
16 is an express, written contract because no contract can be implied when there is an express  
17 contract.<sup>321</sup> However, frustration of an express contract's purpose can make unjust enrichment  
18 an available remedy. *See e.g. Restatement, Contracts 2d*, §377.

19 82. Even if the CabineTec Subcontract did not preclude an unjust  
20 enrichment/*quantum meruit* theory of recovery (which it does), APCO was not unjustly  
21 enriched by CabineTec's work. The undisputed evidence confirms that APCO was not paid any  
22

23  
24 <sup>318</sup> Exhibit 26. See also: Trial Testimony of Joe Pelan (APCO) Day 1 at p. 38;  
Testimony of Joe Pelan (APCO) Day 1 at p. 41.

25 <sup>319</sup> Testimony of Joe Pelan (APCO) Day 1 at p. 100.

26 <sup>320</sup> See Exhibit 149, CabineTec Subcontract.

27 <sup>321</sup> *Leasepartner's Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 942 P.2d 182  
(1997).

1 amounts for CabineTec's work that it did not transmit to CabineTec, and APCO did not get to  
2 keep the property. Instead, APCO remains unpaid \$1,400,036.75 from the failed Project.<sup>322</sup>

3 83. As such, APCO was not unjustly enriched by CabineTec's work.

4 D. Violation of NRS 624.606 through 624.630 et seq.

5 84. NRS 624.624 is designed to ensure that general contractors promptly pay  
6 subcontractors after the general contractor receives payment from the Owner for the work  
7 performed by the subcontractor.

8 85. Here, it is undisputed that Exhibit 149, the CabineTec Subcontract is a written  
9 agreement between APCO and CabineTec and contained a retention payment schedule in  
10 Section 3.8. Accordingly, pursuant to NRS 624.624(1)(a) payment is due on the date specified  
11 in the subcontract.

12 86. The CabineTec Subcontract confirmed that CabineTec would get paid retention  
13 after it met the five conditions precedent in the retention payment schedule.

14 87. It is undisputed that CabineTec never met the five preconditions in the  
15 subcontract's payment schedule. Accordingly, payment of retention to CabineTec never  
16 became due under NRS 624 and CabineTec's claim for a violation of NRS 624 fails.

17 88. Additionally, CabineTec never billed APCO for its retention and APCO never  
18 received CabineTec's retention from the Owner. CabineTec rolled its retention over to Camco  
19 as a Project liability, and actually billed its retention to Camco.

20 E. Monies Due and Owing

21 89. CabineTec has failed to prove that it is due monies from APCO.

22 90. "The word due always imports a fixed and settled obligation or liability."<sup>323</sup>

23 91. Exhibit 149 governed the relationship between the parties and it was subject to  
24 the retention payment schedule in Section 3.8.

25  
26 <sup>322</sup> Testimony of Mary Jo Allen (APCO), Day 3, p. 122.

27 <sup>323</sup> *Black's Law Dictionary*, Sixth Edition, 1990.

1 92. Payment never became due under Section 3.8 for the reasons set forth above.

2 F. Account Stated

3 93. CabineTec's claim for account stated fails.

4 94. In Nevada, "[a]n account stated may be broadly defined as an agreement based  
5 upon prior transactions between the parties with respect to the items composing the account and  
6 the balance due, if any, in favor of one of the parties."<sup>324</sup>

7 95. "To effect an account stated, the outcome of the negotiations must be the  
8 recognition of a sum due from one of the parties to the other with a promise, express or  
9 implied, to pay that balance."<sup>325</sup>

10 96. "The genesis of an account stated is the agreement of the parties, express or  
11 implied."<sup>326</sup> APCO and CabineTec had an express written agreement that governed their  
12 relationship.

13 97. APCO and CabineTec did not have any prior transactions with respect to the  
14 items composing any account.

15 98. No evidence was presented that APCO agreed that any sum was due. Instead,  
16 APCO disputed any payment obligation.

17 99. APCO and CabineTec have not agreed to any other payment provisions outside  
18 of Exhibit 149 and this claim fails.

19 Helix and CabineTec ratified their subcontracts with Camco.

20  
21 100. "Ratification of a contract occurs when one approves, adopts, or confirms a  
22 contract previously executed by another..."<sup>327</sup>

23  
24 <sup>324</sup> *Old W. Enterprises, Inc. v. Reno Escrow Co.*, 86 Nev. 727, 729, 476 P.2d 1, 2  
25 (1970).

26 <sup>325</sup> *Id.*

27 <sup>326</sup> *Id.*

28 <sup>327</sup> *Id.*

1           101. Ratification may be express or implied by the conduct of the parties.<sup>328</sup> The  
2 party to be charged with ratification of such a contract must have acted voluntarily and with full  
3 knowledge of the facts.<sup>329</sup>

4           102. "A person ratifies an act by manifesting assent that the act affects the person's  
5 legal relations or conduct that justifies a reasonable assumption that the person so consents."<sup>330</sup>

6           103. "Any conduct which indicates assent by the purported principal to become a  
7 party to the transaction or which is justifiable only if there is ratification is sufficient, and even  
8 silence with full knowledge of the facts may operate as a ratification."<sup>331</sup>

9           104. "If a person makes a manifestation that the person has ratified another's act and  
10 the manifestation, as reasonably understood by a third party, induces the third party to make a  
11 detrimental change in position, the person may be estopped to deny the ratification."<sup>332</sup>

12           105. "A valid ratification by the principal relieves the agent from any liability to the  
13 principal which would otherwise result from the fact that the agent acted in an unauthorized  
14 way or without authority."<sup>333</sup>

15           106. Helix legally admitted it ratified the Helix/APCO subcontract to the Court and to  
16 APCO in its complaint, thereby replacing Camco for APCO in all executory obligations under  
17 the Helix Subcontract, including payment for retention and future work.

18           107. CabineTec signed a ratification agreement with Camco.

19           108. After APCO left the Project, Helix and CabineTec took direction from  
20 Gemstone or Camco, not APCO.

21  
22  
23           <sup>328</sup> 17A Am Jur 2d Contracts § 10.

24           <sup>329</sup> *Id.*

25           <sup>330</sup> 3 Am Jur 2d Agency § 169.

26           <sup>331</sup> *Id.*

27           <sup>332</sup> 3 Am Jur 2d Agency § 171.

28           <sup>333</sup> 2A C.J.S. Agency § 85.



1 109. Helix and CabineTec submitted billings to Camco including rolling over the  
2 retention they now seek from APCO, and each performed work under the ratified original  
3 scope of work.

4 110. None of the ongoing work was done for or on behalf of APCO and there is no  
5 legal authority that would make APCO liable for their ongoing work on the Project, or the  
6 Project retention.

7 111. Helix never billed APCO for retention because it never became due.<sup>334</sup>

8 112. Helix and CabineTec waived all claims against APCO by knowingly contracting  
9 to work on the Project for Camco/Gemstone and rolling their retention over to Camco and  
10 Gemstone.

11 113. When Helix and CabineTec ratified their subcontracts with Camco, they  
12 replaced APCO. See *Foley Co. v. Scottsdale Ins. Co.*,<sup>335</sup> ("The ratification, by subcontractor's  
13 liability insurer, of its general agent's allegedly unauthorized placement of coverage released  
14 the general agent from liability to the insurer."); *Brooks v. January*,<sup>336</sup> (holding that because a  
15 dissident faction of a church congregation ratified their pastor's unauthorized sale of property,  
16 the pastor was relieved from liability to the church); *Southwest Title Ins. Co. v. Northland*  
17 *Bldg.*,<sup>337</sup> (holding that because the title insurance company ratified its agent's arguably  
18 unauthorized actions, the agent could not be held liable to the title insurance company);  
19 *Rakestraw v. Rodrigues*,<sup>338</sup> (holding that because a wife ratified forgery of her name on a deed  
20 of trust, the agent was relieved of liability to the principal).

21  
22 <sup>334</sup> CabineTec admittedly sent one billing for the full amount of CabineTec's  
23 delivered (but uninstalled) cabinets that incorrectly included retention. Retention clearly  
24 was not due under the retention payment schedule.

25 <sup>335</sup> 28 Kan. App. 2d 219, 15 P.3d 353 (2000)

26 <sup>336</sup> 116 Mich.App. 15, 321 N.W.2d 823 (1982)

27 <sup>337</sup> 542 S.W.2d 436 (Tex.App.1976), *rev'd in part on other grounds* 552 S.W.2d  
28 425 (Tex.1977)

<sup>338</sup> 8 Cal.3d 67, 104 Cal.Rptr. 57, 500 P.2d 1401 (1972)

1 114. CabineTec and Helix ratified their subcontracts with Camco and discharged  
2 APCO.

3  
4 The Subcontracts were assigned to Gemstone.

5 115. The following factors are relevant in determining whether an assignment of a  
6 construction contract took place: which party was responsible for the administration of the  
7 project, which party ensured the design was correctly carried out, who paid the subcontractors  
8 and materialmen, which party answered questions from the owner, which parties were on the  
9 job site, which party had ongoing involvement with the project, and which party was  
10 corresponding with the owner.<sup>339</sup>

11 116. These factors weigh in APCO's favor. Each party's behavior is consistent with  
12 the assignment of the Helix and CabineTec Subcontracts to Gemstone:

- 13 • **Gemstone:** Gemstone attempted to "terminate" the APCO/Gemstone prime  
14 contract and stopped giving direction and/or orders to APCO. Gemstone told the  
15 subcontractors to stop working for APCO and that their contracts would be  
16 assumed by Camco. Gemstone also ordered APCO off the site.
- 17 • **Camco:** Camco started giving direction to the subcontractors and dictating their  
18 work. Camco sent subcontracts and/or Ratification agreements to both Helix and  
19 CabineTec. It engaged in negotiations of the respective subcontracts, and it  
20 received billings directly from Helix and CabineTec, including the rollover of  
21 their retention.
- 22 • **Helix:** Helix did not contact APCO after August 2008 and remained on-site  
23 working directly for Gemstone and Camco. It engaged in subcontract  
24 negotiations for the same scope of work as it had initially subcontracted for with  
25 APCO with Camco, and took direction and performed work under Camco's and  
26 Gemstone's direction. Helix submitted pay applications to Camco and even  
27 rolled its retention account over to Camco billings. Helix also represented that it  
28 signed a ratification Contract and subcontract with Camco in its complaint and  
its amended complaint.
- **CabineTec:** CabineTec did not contact APCO after August 2008 and remained  
on-site working for Camco. It engaged in subcontract negotiations for the same  
scope of work as it had initially subcontracted for with APCO with Camco, and  
took direction and performed work under Camco's direction. CabineTec

339 *J. Christopher Stuhmer, Inc. v. Centaur Sculpture Galleries, Ltd., Inc.*, 110  
Nev. 270, 274, 871 P.2d 327, 330 (1994)

submitted pay applications to Camco including all retention. CabineTec also signed a ratification agreement with Camco.

- **APCO:** APCO was off-site and did not dictate or control the subcontractors' work. It did not have any communication with Gemstone or the subcontractors after August 2008. It did not participate in construction related meetings, did not receive billings from subcontractors, or submit payment applications on behalf of subcontractors. In fact, Helix never invoiced APCO for its retention.

117. The Contract contained a subcontract assignment provision that assigned Gemstone APCO's subcontracts upon termination of the Contract.<sup>340</sup>

118. The Contract was incorporated into the subcontracts.<sup>341</sup>

119. Once APCO left the Project, the Helix and CabineTec Subcontracts were assigned to Gemstone per Gemstone's written notice to APCO.

120. Once Gemstone had those Subcontracts, it facilitated Camco's assumption of those subcontracts.<sup>342</sup>

121. After the subcontracts were assigned, Gemstone/Camco were responsible for all executory obligations including payments for retention and future work.<sup>343</sup>

122. An assignment took place thereby making Gemstone/Camco the party responsible for payment to the subcontractors.

**Helix and CabineTec waived any right to pursue APCO.**

123. "Waiver requires the intentional relinquishment of a known right."<sup>344</sup>

124. "If intent is to be inferred from conduct, the conduct must clearly indicate the party's intention."<sup>345</sup>

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<sup>340</sup> Exhibit 2 at 10.4.

<sup>341</sup> See Sections 1.1 of Helix and CabineTec subcontracts. Helix's Mr. Johnson admitted it was Helix's practice to request and review an incorporated prime contract. Testimony of Bob Johnson (Helix) Day 2, p.16.

<sup>342</sup> See Exhibit 170/169 Helix's subcontract and Helix Amendment with Camco; and Exhibit 184, CabineTec's subcontract with Camco.

<sup>343</sup> See Exhibit 2, Section 10.4.

<sup>344</sup> *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 123 Nev. 44, 49, 152 P.3d 737, 740 (2007) (internal citations omitted).

125. “Thus, the waiver of a right may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”<sup>346</sup>

126. In this case, CabineTec's and Helix's intent was clear: they understood that APCO left the Project. They entered into ratification agreements with Camco and continued working for Camco and Gemstone on the Project without any further dealings with APCO.

127. Helix and CabineTec did not negotiate entirely new contracts and their subsequent billings to Camco depicted their retention that was being held by Gemstone, not APCO. They took orders and direction from Camco employees. They sent billings to Camco. They submitted change orders to Camco. They showed up to the Project at Camco's direction and Camco ultimately informed them the Project had shut down. By pursuing this course of action, it was clear that none of the parties believed APCO was the general contractor on the Project. This conduct is entirely inconsistent with any claim that APCO was the general contractor and was responsible for retention or other future payments. APCO paid Helix and CabineTec all amounts due while APCO was the general contractor.

Any of the foregoing conclusions of law that would more appropriately be considered to be findings of fact shall be so deemed.

## ORDER

NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of Fact and Conclusions of Law; and

IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and Conclusions of Law, and those made regarding the other parties and claims involved in the

• • • • •

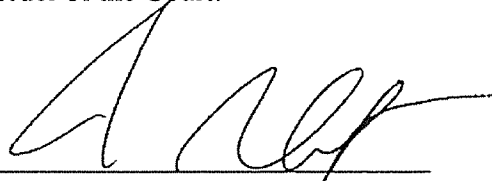
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345 *Id.*

346 *Id.*

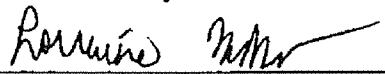
1 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the  
2 same at the appropriate time subject to further order of the Court.

3 DATED this 24<sup>th</sup> day of April, 2018.

4   
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE

7 CERTIFICATE

8 I hereby certify that on or about the date filed, this document was Electronically  
9 Served to the Counsel on Record on the Clark County E-File Electronic Service List.

10   
11 \_\_\_\_\_  
12 LORRAINE TASHIRO  
13 Judicial Executive Assistant  
14 Dept. No. XIII

# **EXHIBIT 10T**

**JA008451**

*Emil H. H. H.*  
CLERK OF THE COURT

1 **STMT**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
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16 Attorneys for WRG Design, Inc.

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

13 Plaintiff,

14 vs.

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

28 Defendants.

**WRG DESIGN, INC., a Delaware corporation,**

Plaintiff in Intervention,

vs.

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

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

Consolidated with:

A571792

A574391

A577623

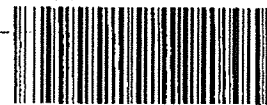
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203739



**WRG DESIGN, INC.'S AMENDED**  
**STATEMENT OF FACTS**  
**CONSTITUTING NOTICE OF LIEN**  
**AND THIRD-PARTY COMPLAINT**

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

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

9 Defendants.

10 WRG DESIGN, INC. ("WRG") by and through its attorneys PEEL BRIMLEY LLP, as  
11 for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint  
12 ("Amended Complaint") against the above-named defendants complains, avers and alleges as  
13 follows:

#### 14 THE PARTIES

15 1. WRG is and was at all times relevant to this action a Delaware corporation, duly  
16 authorized, licensed and qualified to do business in Clark County, Nevada.

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

22 Manhattan West Condominiums (Project)  
23 Spring Valley

24 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
25 PT N2 NW4 SEC 32 21 60  
26 SEC 32 TWP 21 RNG 60

27 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and  
28 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-  
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and  
appurtenances thereto, and surrounding space may be required for the convenient use and

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1 occupation thereof, upon which Owners caused or allowed to be constructed certain  
2 improvements (the "Property").

3 3. The whole of the Property is reasonably necessary for the convenient use and  
4 occupation of the improvements.  
5

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

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

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

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

24 8. WRG does not know the true names of the individuals, corporations, partnerships  
25 and entities sued and identified in fictitious names as DOES I through X, ROE  
26 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE  
27 LENDERS I through X. WRG alleges that such Defendants claim an interest in or to the  
28

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1 Properties, and/or are responsible for damages suffered by WRG as more fully discussed under  
2 the claims for relief set forth below. WRG will request leave of this Honorable Court to amend  
3 this Amended Complaint to show the true names and capacities of each such fictitious Defendant  
4 when WRG discovers such information.

5  
6 **FIRST CAUSE OF ACTION**  
**(Breach of Contract against Owner)**

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

11 10. On or about July 31, 2006 WRG entered into an Agreement with Owner (the  
12 "Owner Agreement") to provide certain surveying and mapping related work, materials and  
13 equipment to the Property located in Clark County, Nevada (the "Owner Services")

14 11. WRG furnished the Services for the benefit of and at the specific instance and  
15 request of the Owner.

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

20 13. WRG furnished the Owner Services and has otherwise performed its duties and  
21 obligations as required by the Owner Agreement.

22 14. The Owner has breached the Owner Agreement by, among other things:

23 a. Failing and/or refusing to pay the monies owed to WRG for the Owner  
24 Services;  
25

26 b. Failing to adjust the Owner Agreement price to account for extra and/or  
27 changed work, as well as suspensions and delays of Owner Services caused or ordered by the  
28 Defendants and/or their representatives;

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1 c. Failing to promptly recognize and grant time extensions to reflect additional  
2 time allowable under the Owner Agreement and permit related adjustments in scheduled  
3 performance;

4 d. Failing and/or refusing to comply with the Owner Agreement and Nevada law;  
5 and  
6

7 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
8 with WRG's performance of the Owner Services.

9 15. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
10 Owner Services.

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

15 **SECOND CAUSE OF ACTION**  
16 **(Breach of Contract against APCO)**

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

20 18. On or about April 17, 2007 WRG entered into an Agreement with APCO (the  
21 "APCO Agreement") to provide certain surveying and mapping related work, materials and  
22 equipment to the Property located in Clark County, Nevada (the "APCO Services")

23 19. WRG furnished the APCO Services for the benefit of and at the specific instance  
24 and request of APCO and/or Owner.  
25

26 20. Pursuant to the APCO Agreement, WRG was to be paid an amount in excess of  
27 Ten Thousand Dollars (\$10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO  
28 Services.

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1 21. WRG furnished the APCO Services and has otherwise performed its duties and  
2 obligations as required by the APCO Agreement.

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

4 a. Failing and/or refusing to pay the monies owed to WRG for the APCO  
5 Services;

6 b. Failing to adjust the APCO Agreement price to account for extra and/or  
7 changed work, as well as suspensions and delays of APCO Services caused or ordered by the  
8 Defendants and/or their representatives;

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

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

14 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
15 with WRG's performance of the APCO Services.

16 23. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
17 APCO Services.

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

21 **THIRD CAUSE OF ACTION**  
22 **(Breach of Contract against CPCC)**

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

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1           26. On or about August 26, 2008, WRG entered into the Ratification and Amendment  
2 of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general  
3 contractor on the Project, to continue the services for the Property ("CPCC Services").

4           27. WRG furnished the CPCC Services for the benefit of and at the specific instance  
5 and request of CPCC and/or Owner.

6           28. Pursuant to the CPCC Agreement, WRG was to be paid an amount in excess of  
7 Ten Thousand Dollars (\$10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC  
8 Services.

9           29. WRG furnished the CPCC Services and has otherwise performed its duties and  
10 obligations as required by the CPCC Agreement.

11           30. CPCC has breached the CPCC Agreement by, among other things:

12           a. Failing and/or refusing to pay the monies owed to WRG for the CPCC  
13 Services;

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

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

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

22           e. Negligently or intentionally preventing, obstructing, hindering or interfering  
23 with WRG's performance of the CPCC Services.  
24  
25  
26  
27  
28

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1 31. WRG is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
2 CPCC Services.

3 32. WRG has been required to engage the services of an attorney to collect the CPCC  
4 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and  
5 interest therefore.  
6

7 **FOURTH CAUSE OF ACTION**

8 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)**

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

12 34. There is a covenant of good faith and fair dealing implied in every agreement,  
13 including the Owner Agreement.

14 35. Owner breached its duty to act in good faith by performing the Owner Agreement  
15 in a manner that was unfaithful to the purpose of the Owner Agreement, thereby denying WRG's  
16 justified expectations.

17 36. Due to the actions of Owner, WRG suffered damages in an amount to be  
18 determined at trial for which WRG is entitled to judgment plus interest.

19 37. WRG has been required to engage the services of an attorney to collect the Owner  
20 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and  
21 interest therefore.  
22

23 **FIFTH CAUSE OF ACTION**

24 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

25 38. WRG repeats and realleges each and every allegation contained in the preceding  
26 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
27 follows:  
28

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1           39.    There is a covenant of good faith and fair dealing implied in every agreement,  
2 including the APCO Agreement.

3           40.    APCO breached its duty to act in good faith by performing the APCO Agreement  
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying WRG's  
5 justified expectations.  
6

7           41.    Due to the actions of APCO, WRG suffered damages in an amount to be  
8 determined at trial for which WRG is entitled to judgment plus interest.

9           42.    WRG has been required to engage the services of an attorney to collect the APCO  
10 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and  
11 interest therefore.  
12

#### 13                               SIXTH CAUSE OF ACTION

#### 14                               (Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)

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

18           44.    There is a covenant of good faith and fair dealing implied in every agreement,  
19 including the CPCC Agreement.

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

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

25           47.    WRG has been required to engage the services of an attorney to collect the CPCC  
26 Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and  
27 interest therefore.  
28

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**SEVENTH CAUSE OF ACTION**

**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

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

49. WRG furnished the Owner Services, APCO Services and CPCC Services for the benefit of and at the specific instance and request of the Defendants.

50. As to Owner, Asphalt, APCO and CPCC, this cause of action is being pled in the alternative.

51. The Defendants accepted, used and enjoyed the benefit of the Owner Services, APCO Services and CPCC Services.

52. The Defendants knew or should have known that WRG expected to be paid for the Owner Services, APCO Services and CPCC Services.

53. WRG has demanded payment of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance.

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

55. The Defendants have been unjustly enriched, to the detriment of WRG.

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

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

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

58. The provision of the Owner Services, APCO Services and CPCC Services was at the special instance and request of the Defendants for the Property.

59. As provided at NRS 108.245 and common law, the Defendants had knowledge of WRG's delivery of the Owner Services, APCO Services and CPCC Services Services to the Property or WRG provided a Notice of Right to Lien.

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

61. On or about February 13, 2009, WRG timely recorded a Notice of Lien in Book 20090213 of the Official Records of Clark County, Nevada, as Instrument No. 0004321 (the "Original Lien").

62. One or about April 27, 2009, WRG timely recorded an Amended Notice of Lien in Book 20090427 of the Official Records of Clark County, Nevada, as Instrument No. 0000107 (the "Amended Lien").

63. The Original Lien and Amended Lien are hereinafter collectively referred to as the "Liens".

64. The Liens were in writing and were recorded against the Property for the outstanding balance due to WRG in the amount of Two Hundred Seventy-Five Thousand One Hundred Fifteen and 66/100 Dollars (\$275,115.66).

65. The Liens were served upon the Owner and/or its authorized agents, as required by law.

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1 66. WRG is entitled to an award of reasonable attorney's fees, costs and interest on the  
2 APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the  
3 Nevada Revised Statutes.

4 **NINTH CAUSE OF ACTION**  
5 **(Claim of Priority)**

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

10 68. WRG is informed and believes and therefore alleges that construction on the  
11 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the  
12 Property, including the deeds of trust recorded by SFC.

13 69. WRG is informed and believes and therefore alleges that even if a deed(s) of trust  
14 and/or other interest(s) in the Property were recorded before construction on the Property  
15 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to  
16 WRG's statutory mechanics' lien thereby elevating WRG's statutory mechanics' lien to a  
17 position superior to those deed(s) of trust and/or other interests(s) in the Property.  
18

19 70. WRG's claim against the Property is superior to the claim(s) of SFC, any other  
20 defendant, and/or any Loe Lender.

21 71. WRG has been required to engage the services of an attorney to collect the Owner  
22 Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance due and  
23 owing for the Owner Services, APCO Services and CPCC Services, and WRG is entitled to  
24 recover its reasonable costs, attorney's fees and interest therefore.  
25

26 ///

27 ///

28 ///

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**TENTH CAUSE OF ACTION**  
**(Claim Against Bond – CPCC Surety)**

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

73. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the “Bond”) in the sum of Fifty Thousand Dollars (\$50,000.00).

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

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

76. WRG furnished the CPCC Services as stated herein and has not been paid for the same. WRG therefore claims payment on said Bond.

77. The CPCC Surety is obligated to pay WRG the sums due.

78. Demand for the payment of the sums due to WRG has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to WRG.

79. CPCC and the CPCC Surety owe WRG the penal sum of the Bond.

80. WRG was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to WRG and WRG is entitled to recover its reasonable attorney’s fees and costs therefore.

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

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

1           82.    Upon information and belief, Owner is the Trustor and SFC is the beneficiary  
2 under the following deeds of trust covering the real property at issue:

- 3           a.    Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
4                20060705, Instrument No. 0004264;  
5           b.    Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
6                20060705, Instrument No. 0004265;  
7           c.    Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
8                20060705, Instrument No. 0004266; and,  
9           d.    Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book  
              20080207, Instrument No. 01482.

10           83.   On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination  
11 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior  
12 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority  
13 otherwise available to SFC by law or agreement".  
14

15           84.   The Mezzanine Deeds of Trust Subordination Agreement contains a provision that  
16 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of  
17 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the  
18 priority of competing liens or encumbrances on the property, such as WRG's mechanics' lien.

19           85.   Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to  
20 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they  
21 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books  
22 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
23 Senior Debt Deed of Trust.  
24

25           86.   WRG is informed and believes and therefore alleges that construction on the  
26 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
27  
28

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1 law, all mechanics' liens, including WRG's, enjoy a position of priority over the Senior Debt  
2 Deed of Trust.

3 87. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
4 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
5 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
6 subordinate to all mechanics' liens, including WRG's.

7 88. A dispute has arisen, and an actual controversy now exists over the priority issue  
8 of WRG's mechanics' lien over other encumbrances on the property.

9 89. WRG is entitled to a court order declaring that its mechanics' lien has a superior  
10 lien position on the Property over any other lien or encumbrance created by or for the benefit of  
11 SFC or any other entity.

12 **WHEREFORE**, WRG prays that this Honorable Court:

13 1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
14 the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance  
15 amounts;

16 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
17 WRG's reasonable costs and attorney's fees incurred in the collection of the Owner Outstanding  
18 Balance, APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of  
19 interest thereon;

20 3. Enter a judgment declaring that WRG has valid and enforceable mechanic's liens  
21 against the Property, with priority over all Defendants, in an amount of the Owner Outstanding  
22 Balance, APCO Outstanding Balance and CPCC Outstanding Balance;

23 4. Adjudge a lien upon the Property for the Owner Outstanding Balance, APCO  
24 Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and  
25

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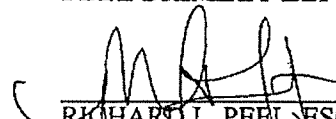
1 interest thereon, and that this Honorable Court enter an Order that the Property, and  
2 improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and  
3 that the proceeds of said sale be applied to the payment of sums due WRG herein;

4  
5 5. Enter a judgment declaring that WRG's mechanics' lien enjoys a position of  
6 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
7 entity; and

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

10 Dated this 22 day of June 2009.

11 PEEL BRIMLEY LLP

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# **EXHIBIT 10U**

**JA008468**

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

12 APCO CONSTRUCTION, a Nevada  
13 corporation,

14 Plaintiff,

15 vs.

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

25 Defendants.

26 WRG DESIGN, INC., a Delaware  
27 corporation,

28 Lien Claimant/Intervenor,

vs.

APSPHALT PRODUCTS CORP., A Nevada

Electronically Filed  
08/06/2009 08:00:28 AM

*Erin H. Smith*  
CLERK OF THE COURT

A587168

CASE NO.: 08-A-571228  
DEPT. NO.: XIII

Consolidated with: A574391, A574792,  
A577623, A583289, A584730, A587168,  
A580889 and A589195

**APCO CONSTRUCTION'S ANSWER TO  
WRG DESIGN INC.'S AMENDED  
STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

09A587168  
311673





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

13 Defendants.

14 AND ALL RELATED CASES AND  
15 MATTERS.

16  
17 **APCO CONSTRUCTION'S ANSWER TO**  
18 **WRG DESIGN INC.'S AMENDED STATEMENT OF FACTS CONSTITUTING**  
19 **NOTICE OF LIEN AND THIRD-PARTY COMPLAINT**

20 APCO CONSTRUCTION formerly ASPHALT PRODUCT CORPORATION  
21 (hereinafter "APCO"), by and through its attorneys, Gwen Rutar Mullins, Esq. and Wade B.  
22 Gochmour, Esq., of the law firm of Howard and Howard Attorneys PLLC, hereby files this  
23 Answer to WRG Design Inc.'s Amended Statement of Facts Constituting Notice of Lien and  
24 Third Party Complaint (hereinafter "Complaint") and hereby responds and alleges as follows:

25 **THE PARTIES**

26 1. Answering Paragraph 1, 5, 6, 7, and 8 of the Complaint, APCO does not have  
27 sufficient knowledge or information upon which to base a belief as to the truth of the  
28 allegations contained therein, and upon said grounds, denies each and every allegation  
contained therein.

2. Answering Paragraphs 2, 3 and 4 of the Complaint, APCO admits the  
allegations contained therein.

...

**FIRST CAUSE OF ACTION**

**(Breach of Contract Against Owner)**

3. Answering Paragraph 9 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 and 2 of this Answer to the Complaint as though fully set forth herein.

4. Answering Paragraphs 10, 11, 12, 13, 14, 15, and 16 of the Complaint, APCO APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

**SECOND CAUSE OF ACTION**

**(Breach of Contract Against APCO)**

5. Answering Paragraph 17 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 4 of this Answer to the Complaint as though fully set forth herein.

6. Answering Paragraph 18 of the Complaint, APCO admits that APCO entered into subcontract with WRG Design, Inc. ("WRG") to provide certain surveying and mapping related work and materials on the Manhattan West Condominium Project. As to the remaining allegations of Paragraph 18 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

7. Answering Paragraph 19 of the Complaint, APCO admits that WRG's services benefited Owner. APCO denies the remaining allegations of Paragraph 19 of the Complaint.

8. Answering Paragraph 20 of the Complaint, APCO admits that the terms of the subcontract with WRG speak for themselves. APCO denies the remaining allegations of Paragraph 20 of the Complaint.

...

...

1           9.       Answering Paragraph 21 of the Complaint, APCO admits that WRG furnished  
2 services under subcontract, which subcontract was subsequently ratified and assumed by CPCC  
3 and/or Gemstone. APCO denies the remaining allegations of Paragraph 21 of the Complaint.

4           10.      Answering Paragraphs 22, 23 and 24 of the Complaint, APCO denies each and  
5 every allegation contained therein.

6                               **THIRD CAUSE OF ACTION**

7                               **(Breach of Contract Against CPCC)**

8           11.      Answering Paragraph 25 of the Complaint, APCO repeats and realleges each  
9 and every allegation contained in paragraphs 1 and 10 of this Answer to the Complaint as  
10 though fully set forth herein.

11           12.      Answering Paragraph 26 of the Complaint, APCO, upon information and belief,  
12 admits the allegations contained therein

13           13.      Answering Paragraphs 27, 28, 29, 30, 31, and 32 of the Complaint, APCO does  
14 not have sufficient knowledge or information upon which to base a belief as to the truth of the  
15 allegations contained therein, and upon said grounds, denies each and every allegation  
16 contained therein on those basis.

17                               **FOURTH CAUSE OF ACTION**

18                               **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)**

19           14.      Answering Paragraph 33 of the Complaint, APCO repeats and realleges each  
20 and every allegation contained in paragraphs 1 through 13 of this Answer to the Complaint as  
21 though fully set forth herein.

22           15.      Answering Paragraph 34 of the Complaint, APCO, upon information and belief,  
23 admits the allegations contained therein.

24           16.      Answering Paragraphs 35, 36 and 37 of the Complaint, APCO does not have  
25 sufficient knowledge or information upon which to base a belief as to the truth of the  
26 allegations contained therein, and upon said grounds, denies each and every allegation  
27 contained therein on those basis.  
28

**FIFTH CAUSE OF ACTION**

**(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)**

17. Answering Paragraph 38 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 16 of this Answer to the Complaint as though fully set forth herein.

18. Answering Paragraph 39 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

19. Answering Paragraphs 40, 41 and 42 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

**SIXTH CAUSE OF ACTION**

**(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

20. Answering Paragraph 43 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 19 of this Answer to the Complaint as though fully set forth herein.

21. Answering Paragraph 44 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

22. Answering Paragraphs 45, 46 and 47 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

**SEVENTH CAUSE OF ACTION**

**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

23. Answering Paragraph 48 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 22 of this Answer to the Complaint as though fully set forth herein.

24. Answering Paragraphs 49, 50, 51, 52, 53, 54, 55, and 56 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**EIGHTH CAUSE OF ACTION**

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

25. Answering Paragraph 57 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 24 of this Answer to the Complaint as though fully set forth herein.

26. Answering Paragraphs 58, 59, 60, 61, 62, 63, 64, 65, and 66 of the Complaint, APCO denies all the allegations as they pertain to, or as they are or may be alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**NINTH CAUSE OF ACTION**

**(Claim of Priority)**

27. Answering Paragraph 67 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 26 of this Answer to the Complaint as though fully set forth herein.

28. Answering Paragraph 68 of the Complaint, APCO admits the allegations contained therein.

29. Answering Paragraph 69 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

30. Answering Paragraphs 70 and 71 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**TENTH CAUSE OF ACTION**

**(Claim Against Bond – CPCC Surety)**

31. Answering Paragraph 72 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 30 of this Answer to the Complaint as though fully set forth herein.

32. Answering Paragraphs 73, 74, 75, 76, 77, 78, 79, and 80 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**ELEVENTH CAUSE OF ACTION**

**(Declaratory Judgment)**

33. Answering Paragraph 81 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 32 of this Answer to the Complaint as though fully set forth herein.

34. Answering Paragraphs 82, 83, 84, 85, 86, 87, and 88 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

35. Answering Paragraph 89 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein

**FIRST AFFIRMATIVE DEFENSE**

WRG has failed to state a claim against APCO upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

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

**THIRD AFFIRMATIVE DEFENSE**

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

**FOURTH AFFIRMATIVE DEFENSE**

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

**FIFTH AFFIRMATIVE DEFENSE**

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

**SIXTH AFFIRMATIVE DEFENSE**

Whatever damages, if any, were sustained by WRG, were caused in whole or in part or were contributed to by reason of WRG's own actions.

**SEVENTH AFFIRMATIVE DEFENSE**

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

**EIGHTH AFFIRMATIVE DEFENSE**

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

...

...

**NINTH AFFIRMATIVE DEFENSE**

The alleged damages complained of by WRG were caused in whole or in part by a new, independent and intervening cause over which APCO had no control. Said independent, intervening cause was the result of any alleged damages resulting to WRG.

**TENTH AFFIRMATIVE DEFENSE**

APCO's obligations to WRG have been satisfied or excused.

**ELEVENTH AFFIRMATIVE DEFENSE**

WRG failed to perform their work in workmanlike manner thus causing damages in excess to the sums WRG claim are due under the subcontract with APCO.

**TWELFTH AFFIRMATIVE DEFENSE**

The claim for breach of contract is barred as a result of WRG's failure to satisfy conditions precedent.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The claims, and each of them, are premature.

**FOURTEENTH AFFIRMATIVE DEFENSE**

WRG should indemnify APCO for any and all losses, damages or expenses APCO sustains as a result of any claims by Gemstone for damages that Gemstone allegedly sustained due to WRG's improper workmanship on the Manhattan West Project, including, but not limited to, any damage amount and the attorney's fees and costs incurred by APCO relative thereto.

**FIFTEENTH AFFIRMATIVE DEFENSE**

APCO is entitled to an offset or a setoff of any damages that APCO sustains as a result of WRG's failure to complete the work in a workmanlike manner and/or breach of contract.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Any obligations or responsibilities of APCO under the subcontract with WRG, if any, have been replaced, terminated, voided, cancelled or otherwise released by the ratification entered into between WRG, Gemstone and CPCC and APCO no longer bears any liability thereunder.



**SEVENTEENTH AFFIRMATIVE DEFENSE**

APCO has been forced to retain the services of an attorney to defend this action and therefore is entitled to reasonable attorneys' fees and costs.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

WRG has failed to comply with the requirements of NRS 624.

**NINETIETH AFFIRMATIVE DEFENSE**

WRG may have failed to comply with all requirements of NRS 108 to perfect its lien.

**TWENTIETH AFFIRMATIVE DEFENSE**

WRG has failed to promptly assert its respective claims against APCO and APCO reserves the right to request the Court to strike any improper pleadings filed against APCO.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

WRG's claims are barred under the doctrine of accord and satisfaction.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

WHEREFORE, APCO prays for judgment as follows:

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

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

...

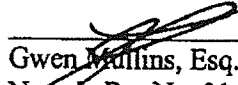
...

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

DATED this 5 day of August, 2009.

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## CERTIFICATE OF MAILING

On the 5<sup>th</sup> day of August, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO WRG DESIGN INC.S' AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT, by U.S. Mail, postage prepaid, upon the following:

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 Bruin Painting Corporation; Helix Electric  
 of Nevada, LLC; and WRG Design, Inc.*

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*Kellie Piet*

An employee of Howard and Howard Attorneys PLLC

# **EXHIBIT 10V**

**JA008484**

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

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

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

16 Plaintiff,

17 vs.

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

Defendants.

**FILED**

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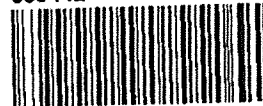
*Ed. [Signature]*  
CLERK OF THE COURT

Case No: A587168  
Dept. No: XIII

Consolidated with:  
A571228

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

09A587168  
389442





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

3 Plaintiff in Intervention,

4 vs.

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

18 Defendants.

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

23 Counterclaimant,

24 vs.

25 WRG DESIGN, INC., a Delaware  
26 corporation; and DOES I through X,  
27 inclusive,

28 Counterdefendants,

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

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

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

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

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

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

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

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

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

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

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

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

1 the remaining allegations therein.

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

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

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

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

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

15 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

28

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

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

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

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

9           10.    Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 NRS 624.273.

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

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

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

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

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

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

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

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

26 **COUNTERCLAIM**

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

1 Morris & Brown complains as follows:

2 **JURISDICTIONAL ALLEGATIONS**

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

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

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

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

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

3 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

9 DATED this 11<sup>th</sup> day of September 2009.

10 WOODBURY, MORRIS & BROWN

11  #11059 for

12 STEVEN L. MORRIS, ESQ.  
13 Nevada Bar No. 7454  
14 701 N. Green Valley Pkwy., Suite 110  
15 Henderson, NV 89074-6178  
16 Attorneys for Camco and Fidelity



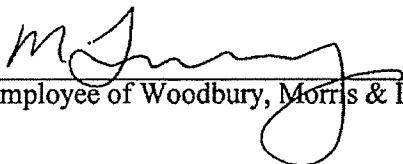
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Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

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

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

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

  
An Employee of Woodbury, Morris & Brown

# EXHIBIT A

JA008495



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

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

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

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

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

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

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

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

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

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

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

A licensed and bonded corporate finance company.

JA008496

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

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

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

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

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

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

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

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

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

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

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

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

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

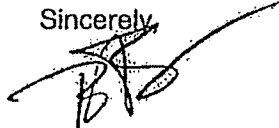
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

6380 South Valley View, Suite 110

Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott  
President

---

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

A licensed and bonded corporate finance company.

**JA008500**



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~Cabine Tec Inc.~~

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

**RE: ManhattanWest Funding**

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,

  
Brad J. Scott  
President

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

A licensed and bonded corporate finance company.

**JA008501**



Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

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

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


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

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

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

Thanks.

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

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

4/1/2009

JA008503

Exhibit "B"

Jennifer Olivares

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

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

To: Anne Dwyer; Jennifer Olivares

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

A licensed and bonded corporate finance company.

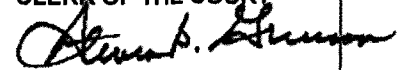
Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party.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

4/1/2009

JA008504

# **EXHIBIT 10W**

**JA008505**



1 **NESO**  
2 ERIC B. ZIMBELMAN,  
3 Nevada Bar No. 9407  
4 RICHARD L. PEEL, ESQ.  
5 Nevada Bar No. 4359  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, NV 89074-6571  
9 Telephone: (702) 990-7272  
10 Fax: (702) 990-7273  
11 ezimbelman@peelbrimley.com  
12 rpeel@peelbrimley.com  
13 *Attorneys for Various Lien Claimants*

14  
15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**  
17

18 APCO CONSTRUCTION, a Nevada  
19 corporation,

20 Plaintiff,

21 vs

22 GEMSTONE DEVELOPMENT WEST, INC.,  
23 Nevada corporation; NEVADA  
24 CONSTRUCTION SERVICES, a Nevada  
25 corporation; SCOTT FINANCIAL  
26 CORPORATION, a North Dakota corporation;  
27 COMMONWEALTH LAND TITLE  
28 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

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER OF DISMISSAL**

PLEASE TAKE NOTICE that a Stipulation and Order of Dismissal of All Claims

///

///

///

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

1 Relating to Cardno WRG, Inc. was filed on September 20, 2017, a copy of which is attached as  
2 Exhibit A.

3 Dated this 21<sup>st</sup> day of September 2017.  
4

5 **PEEL BRIMLEY, LLP**

6  
7 /s/ Eric Zimbelman  
8 ERIC B. ZIMBELMAN, ESQ.  
9 Nevada Bar No. 9407  
10 3333 E. Serene Avenue, Suite 200  
11 Henderson, Nevada 89074-6571  
12 *Attorneys for Cardno WRG, Inc.*  
13  
14  
15  
16  
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19  
20  
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28

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

**CERTIFICATE OF SERVICE**

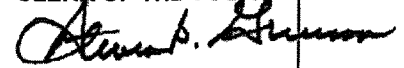
Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 28th day of June, 2017, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF STIPULATION AND ORDER OF DISMISSAL** to be served to the party(ies) and/or attorney(s) listed below as follows:

- ☐ 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 parties identified below; and/or
- X 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 \_\_\_\_\_

/s/Amanda Armstrong  
An Employee of Peel Brimley LLP

# Exhibit A





1 **SAO**  
2 ERIC B. ZIMBELMAN,  
3 Nevada Bar No. 9407  
4 RICHARD L. PEEL, ESQ.  
5 Nevada Bar No. 4359  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, NV 89074-6571  
9 Telephone: (702) 990-7272  
10 Fax: (702) 990-7273  
11 ezimbelman@peelbrimley.com  
12 rpeel@peelbrimley.com  
13 *Attorneys for Various Lien Claimants*

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

16 APCO CONSTRUCTION, a Nevada  
17 corporation,

18 Plaintiff,

19 vs

20 GEMSTONE DEVELOPMENT WEST, INC.,  
21 Nevada corporation; NEVADA  
22 CONSTRUCTION SERVICES, a Nevada  
23 corporation; SCOTT FINANCIAL  
24 CORPORATION, a North Dakota corporation;  
25 COMMONWEALTH LAND TITLE  
26 INSURANCE COMPANY; FIRST  
27 AMERICAN TITLE INSURANCE  
28 COMPANY and DOES I through X,

29 Defendants.

30 AND ALL RELATED MATTERS.

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

*Consolidated with:*  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**STIPULATION AND ORDER OF  
DISMISSAL OF ALL CLAIMS  
RELATING TO CARDO WRG, INC.**

31 APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC CONSTRUCTION  
32 COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design, Inc. ("Cardno")  
33 hereby stipulate as follows:

- 34 1. All claims between and APCO and Cardno are mutually dismissed with prejudice and  
without an award of costs or fees to any party;
- 35 2. All claims between Camco and Cardno are mutually dismissed with prejudice and  
without an award of costs or fees to any party.

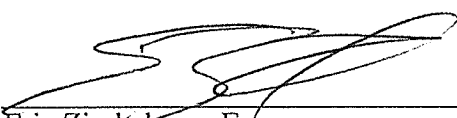
PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

RECEIVED  
SEP 14 2017

DISTRICT COURT DEPT. # 124


1 Dated: 9/14/2017

2 **PEEL BRIMLEY LLP**

3  
4 By:   
5 Eric Zimbelman, Esq.  
6 Nevada Bar No. 9407  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, Nevada 89074  
9 *Attorneys for Cardno WRG, Inc.*

Dated: 9/12/17

**MARQUIS AURBACH COFFING**

By:   
Jack Chen Min Juan, Esq.  
Nevada Bar No. 6367  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for APCO Construction*

8 Dated: \_\_\_\_\_

9 **GRANT MORRIS DODDS PLLC**

10  
11 By: \_\_\_\_\_  
12 Steven L. Morris, Esq.  
13 Nevada Bar No. 7454  
14 2520 St. Rose Parkway, Suite 319  
15 Henderson Nevada 89074  
16 *Attorneys for Camco Pacific Construction*  
17 *Company, Inc.*

15 **ORDER**

16 Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC  
17 CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design,  
18 Inc. ("Cardno"),  
19

20 IT IS HEREBY ORDERED as follows:

- 21 1. All claims between and APCO and Cardno are mutually dismissed with prejudice and  
22 without an award of costs or fees to any party.;
- 23 2. All claims between Camco and Cardno are mutually dismissed with prejudice and  
24 without an award of costs or fees to any party.

25 DATED: Sept 19 2017.

26  
27   
28 DISTRICT COURT JUDGE 

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

Dated: \_\_\_\_\_

**PEEL BRIMLEY LLP**

By: \_\_\_\_\_  
Eric Zimbelman, Esq.  
Nevada Bar No. 9407  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
*Attorneys for Cardno WRG, Inc.*


Dated: \_\_\_\_\_

**MARQUIS AURBACH COFFING**

By: \_\_\_\_\_  
Jack Chen Min Juan, Esq.  
Nevada Bar No. 6367  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for APCO Construction*

Dated: \_\_\_\_\_

**GRANT MORRIS DODDS PLLC**

By:   
Steven L. Morris, Esq.  
Nevada Bar No. 7454  
2520 St. Rose Parkway, Suite 319  
Henderson Nevada 89074  
*Attorneys for Camco Pacific Construction  
Company, Inc.*

**ORDER**

Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design, Inc. ("Cardno"),

IT IS HEREBY ORDERED as follows:

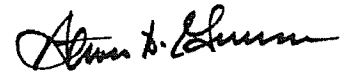
1. All claims between and APCO and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.;
2. All claims between Camco and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.

DATED: \_\_\_\_\_ 2017.

\_\_\_\_\_  
DISTRICT COURT JUDGE

# **EXHIBIT 10X**

**JA008513**



CLERK OF THE COURT

1 ANS  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, NV 89074-6571  
9 Telephone: (702) 990-7272  
10 Fax: (702) 990-7273  
11 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
12 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
13 *Attorneys for WRG Design, Inc.*

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

16 In re:  
17  
18 MANHATTAN WEST MECHANICS' LIEN  
19 LITIGATION

LEAD CASE NO.: A571228  
DEPT. NO.: 25

**WRG DESIGN, INC.'S ANSWER TO  
CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC.'S COUNTERCLAIM**

20 AND ALL CONSOLIDATED MATTERS.  
21  
22

23 Plaintiff and Counterclaim Defendant WRG Design, Inc. ("WRG"), by and through its  
24 counsel, Richard L. Peel, Esq. and Michael T. Gebhart, Esq. of the law firm PEEL BRIMLEY  
25 LLP, hereby answer the Counterclaim of Camco Pacific Construction Company, Inc. ("Camco"),  
26 on file herein, and admit, deny and allege as follows:

- 27 1. WRG denies each and every factual allegation and legal conclusion contained in  
28 Paragraphs 9, 10, 11, 12, 13, 16, 17 and 18.
2. WRG is without information or knowledge sufficient to ascertain the truth of the  
allegations contained in Paragraphs 3 and 8.
3. WRG admits the allegations contained in Paragraphs 1, 2, 5 and 6.
4. Answering Paragraphs 4 and 14 of Camco's Counterclaim, WRG repeats and  
reallleges the answers to Paragraphs 1 through 18 as though fully set forth herein.

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

1           5.       Answering Paragraph 7, WRG states that the contract document(s) referenced  
2       therein speak for themselves, and on this basis, denies any factual allegations or legal conclusions  
3       contained therein.

4           6.       As to Paragraph 15, WRG admits that a covenant of good faith and fair dealing is  
5       implied in every enforceable agreement. WRG further admits that it acted in good faith, but  
6       denies any remaining factual allegations or legal conclusions contained in Paragraph 15.

7           7.       It has become necessary for WRG to retain the services of Peel Brimley LLP,  
8       attorneys at law, to defend this counterclaim, and as a result, WRG has been damaged by the  
9       Counterclaimant, and WRG is accordingly entitled to its attorney fees and costs incurred herein.

10                               **AFFIRMATIVE DEFENSES**

11           1.       The Counterclaim on file herein fails to state a claim against WRG upon which  
12       relief can be granted.

13           2.       Any and all damages sustained by Counterclaimant are the result of its own  
14       negligence and breach of contract.

15           3.       WRG is not negligent with respect to the transaction(s) which may be the subject  
16       of the counterclaim, and is and was not in breach of contract.

17           4.       Counterclaimant's damages, if any, are the direct and consequential result of  
18       Counterclaimant's own acts and omissions.

19           5.       Counterclaimant has failed to satisfy all conditions precedent to bring and/or  
20       maintain a cause of action against WRG.

21           6.       Counterclaimant's claims are barred under the doctrine of waiver and the doctrine  
22       of estoppel.

23           7.       Counterclaimant is barred from recovery by the doctrine of unclean hands.

24           8.       Counterclaimant's claims are barred by the doctrines of laches and estoppel.

25           9.       Counterclaimant has failed to mitigate its damages.

26           10.      Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged  
27       herein, inasmuch as sufficient facts were not available after reasonable inquiry and investigation  
28       upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, WRG reserves the right to

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


1 amend its answer to allege additional affirmative defenses if subsequent investigation and  
2 discovery of facts so warrants.

3 WHEREFORE, Plaintiff/Counterdefendant WRG prays as follows:

- 4 1. That Counterclaimant takes nothing by way of its Counterclaim;  
5 2. For an award of reasonable attorneys' fees and costs for having to defend this  
6 claim; and  
7 3. For such other and further relief as this Court deems just and proper.

8  
9 DATED this 15 day of April, 2010.

10 **PEEL BRIMLEY LLP**

11   
12

13 RICHARD J. PEEL, ESQ.  
Nevada Bar No. 4359

14 MICHAEL T. GEBHART, ESQ.  
Nevada Bar No. 7718

15 3333 E. Serene Avenue, Suite 200  
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16 Telephone: (702) 990-7272

17 Fax: (702) 990-7273

18 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)

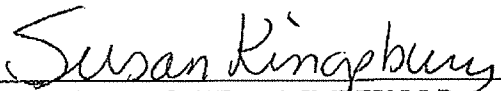
19 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)

20 *Attorneys for WRG Design, Inc.*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP,  
and that on this 15<sup>th</sup> day of April 2010, I served a true and correct copy of the foregoing **WRG,**  
**INC.'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S**  
**COUNTERCLAIM**, by e-serving a copy on all parties listed in the Master Service List in  
accordance with the Electronic Filing Order entered in this matter.

  
An Employee of PEEL BRIMLEY LLP



# EXHIBIT 10Y

JA008518

*Edmund A. Hines*  
CLERK OF THE COURT

1 STMT  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 DALLIN T. WAYMENT, ESQ.  
7 Nevada Bar No. 10270  
8 PEEL BRIMLEY LLP  
9 3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074-6571  
Telephone: (702) 990-7272  
Fax: (702) 990-7273  
rpeel@peelbrimley.com  
mgebhart@peelbrimley.com  
dwayment@peelbrimley.com  
Attorneys for Heinaman Contract Glazing

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiff,

13 vs.

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

Defendants.

HEINAMAN CONTRACT GLAZING, a  
California corporation,

Plaintiff in Intervention,

vs.

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

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

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

HEINAMAN CONTRACT GLAZING'S  
AMENDED STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:  
Title to Real Estate

09A587168  
211104



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

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

BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,  
Defendants.

HEINAMAN CONTRACT GLAZING ("Heinaman") by and through its attorneys PEEL  
BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third  
Party Complaint ("Amended Complaint") against the above-named defendants complains, avers  
and alleges as follows:

### THE PARTIES

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

Manhattan West Condominiums (Project)  
Spring Valley  
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
PT N2 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60

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

H:\PB&S\CLIENT FILES\3000 - 3999 (G - J)\3569  
- Heinaman Contract Glazing\007 - Camco Pacific  
[Manhattan West]\J\leadings\Originals\090622

PEEL BRUMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
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1           3.     The whole of the Property is reasonably necessary for the convenient use and  
2 occupation of the improvements.

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

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

10           6.     Heinaman is informed and believes and therefore alleges that Defendant Scott  
11 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business  
12 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,  
13 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust  
14 securing loans given to the Owner for, inter alia, development of the Property.

15           7.     Heinaman does not know the true names of the individuals, corporations,  
16 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE  
17 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE  
18 LENDERS I through X. Heinaman alleges that such Defendants claim an interest in or to the  
19 Properties, and/or are responsible for damages suffered by Heinaman as more fully discussed  
20 under the claims for relief set forth below. Heinaman will request leave of this Honorable Court  
21 to amend this Amended Complaint to show the true names and capacities of each such fictitious  
22 Defendant when Heinaman discovers such information.

23  
24  
25  
26  
27  
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///

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**FIRST CAUSE OF ACTION**  
**(Breach of Contract against CPCC)**

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

9. In or around November 4, 2008, Heinaman entered into the Subcontract Agreement ("CPCC Agreement") with CPCC, to provide certain glass and glazing related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada.

10. Heinaman furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

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

12. Heinaman furnished the Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

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

- a. Failing and/or refusing to pay the monies owed to Heinaman for the Work;
  - b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or their representatives;
  - c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;
  - d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law;
- and

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1 e. Negligently or intentionally preventing, obstructing, hindering or interfering  
2 with Heinaman's performance of the Work.

3 14. Heinaman is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for  
4 the Work.

5 15. Heinaman has been required to engage the services of an attorney to collect the  
6 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and  
7 interest therefore.  
8

9 **SECOND CAUSE OF ACTION**

10 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

11 16. Heinaman repeats and realleges each and every allegation contained in the  
12 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
13 alleges as follows:

14 17. There is a covenant of good faith and fair dealing implied in every agreement,  
15 including the CPCC Agreement.

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

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

21 20. Heinaman has been required to engage the services of an attorney to collect the  
22 Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and  
23 interest therefore.  
24

25  
26 ///

27 ///

28 ///

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**THIRD CAUSE OF ACTION**

**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

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

22. Heinaman furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Heinaman expected to be paid for the Work.

26. Heinaman has demanded payment of the Outstanding Balance.

27. To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding Balance.

28. The Defendants have been unjustly enriched, to the detriment of Heinaman.

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

**FOURTH CAUSE OF ACTION**

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

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

31. The provision of the Work was at the special instance and request of the Defendants for the Property.

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1           32. As provided at NRS 108.245 and common law, the Defendants had knowledge of  
2 Heinaman's delivery of the Work to the Property or Heinaman provided a Notice of Right to  
3 Lien.

4           33. Heinaman demanded payment of an amount in excess of Ten Thousand and  
5 no/100 Dollars (\$10,000.00), which amount remains past due and owing.  
6

7           34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book  
8 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the  
9 "Original Lien").

10           35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien  
11 in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355  
12 (the "Amended Lien").  
13

14           36. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

15           37. The Liens were in writing and were recorded against the Property for the  
16 outstanding balance due to Heinaman in the amount of One Hundred Eighty-Seven Thousand  
17 Five Hundred Twenty-Five and 26/100 Dollars (\$187,525.26).

18           38. The Liens were served upon the Owner and/or its authorized agents, as required by  
19 law.  
20

21           39. Heinaman is entitled to an award of reasonable attorney's fees, costs and interest  
22 on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

23                           **FIFTH CAUSE OF ACTION**  
24                           **(Claim of Priority)**

25           40. Heinaman repeats and realleges each and every allegation contained in the  
26 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
27 alleges as follows:  
28



1           41.     Heinaman is informed and believes and therefore alleges that construction on the  
2     Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the  
3     Property, including the deeds of trust recorded by SFC.

1           49.    Heinaman furnished the Work as stated herein and has not been paid for the same.  
2   Heinaman therefore claims payment on said Bond.

3           50.    The CPCC Surety is obligated to pay Heinaman the sums due.

4           51.    Demand for the payment of the sums due to Heinaman has been made, but CPCC  
5   and the CPCC Surety have failed, neglected and refused to pay the same to Heinaman.

6           52.    CPCC and the CPCC Surety owe Heinaman the penal sum of the Bond.

7           53.    Heinaman was required to engage the services of an attorney to collect the  
8   Outstanding Balance due and owing to Heinaman and Heinaman is entitled to recover its  
9   reasonable attorney's fees and costs therefore.

10  
11                                   **SEVENTH CAUSE OF ACTION**  
12                                   **(Violation of NRS 624)**

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

16           55.    NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as  
17   CPCC), to, among other things, timely pay their subcontractors (such as Heinaman), as provided  
18   in the in the Statute.

19           56.    In violation of the Statute, CPCC have failed and/or refused to timely pay  
20   Heinaman monies due and owing.

21           57.    CPCC's violation of the Statute constitutes negligence per se.

22           58.    By reason of the foregoing, Heinaman is entitled to a judgment against CPCC in  
23   the amount of the Outstanding Balance

24           59.    Heinaman has been required to engage the services of an attorney to collect the  
25   Outstanding Balance and Heinaman is entitled to recover its reasonable costs, attorney's fees and  
26   interests therefore.

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**EIGHTH CAUSE OF ACTION**  
**(Declaratory Judgment)**

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

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

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

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

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

64. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

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1 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
2 Senior Debt Deed of Trust.

3 65. Heinaman is informed and believes and therefore alleges that construction on the  
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
5 law, all mechanics' liens, including Heinaman's, enjoy a position of priority over the Senior Debt  
6 Deed of Trust.

7  
8 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
11 subordinate to all mechanics' liens, including Heinaman's.

12 67. A dispute has arisen, and an actual controversy now exists over the priority issue  
13 of Heinaman's mechanics' lien over other encumbrances on the property.

14 68. Heinaman is entitled to a court order declaring that its mechanics' lien has a  
15 superior lien position on the Property over any other lien or encumbrance created by or for the  
16 benefit of SFC or any other entity.

17  
18 **WHEREFORE**, Heinaman prays that this Honorable Court:

19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
20 the Outstanding Balance amount;

21 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
22 Heinaman's reasonable costs and attorney's fees incurred in the collection of the Outstanding  
23 Balance, as well as an award of interest thereon;

24 3. Enter a judgment declaring that Heinaman has valid and enforceable mechanic's  
25 liens against the Property, with priority over all Defendants, in an amount of the Outstanding  
26 Balance;  
27  
28

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1           4.     Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable  
2 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the  
3 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State  
4 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Heinaman  
5 herein;  
6

7           5.     Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of  
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
9 entity; and  
10

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

13           Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

  
RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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Nevada Bar No. 10270

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*Attorneys for Heinaman Contract Glazing*

# **EXHIBIT 10Z**

**JA008531**

ORIGINAL

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

14 Plaintiff,

15 vs.

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

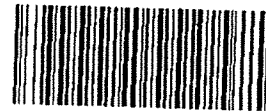
Defendants.

Case No: A587168  
Dept. No: XIII

Consolidated with:  
A571228

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

09A587168  
390054



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

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JA008532

1 HEINAMAN CONTRACT GLAZING, a  
2 California corporation,

3 Plaintiff in Intervention,

4 vs.

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

15 Defendants.

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

20 Counterclaimant,

21 vs.

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

25 Counterdefendants,

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

28

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

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

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

7           10.    Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23                           **COUNTERCLAIM**

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

27                           **JURISDICTIONAL ALLEGATIONS**

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

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

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

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

12 **FIRST CAUSE OF ACTION**

13 **(Breach of Contract)**

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

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

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

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

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

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

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

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

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

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

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

## 20 SECOND CAUSE OF ACTION

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

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

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

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

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

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

6 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

12 DATED this 11<sup>th</sup> day of September 2009.

13 WOODBURY, MORRIS & BROWN

14  
15 *David Blue #11059 for*  
16 STEVEN L. MORRIS, ESQ.  
17 Nevada Bar No. 7454  
18 701 N. Green Valley Pkwy., Suite 110  
19 Henderson, NV 89074-6178  
20 Attorneys for Camco and Fidelity  
21  
22  
23  
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28

WOODBURY, MORRIS & BROWN

701 N. Green Valley Parkway, Suite 110

Henderson, Nevada 89074

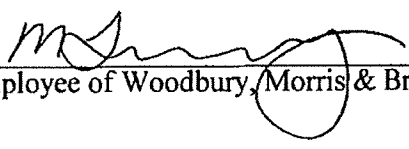
(702) 933-0777 ♦ Fax (702) 933-0778

CERTIFICATE OF MAILING

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

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

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

  
An Employee of Woodbury, Morris & Brown



# EXHIBIT A

JA008542



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

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

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

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

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

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

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

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

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

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

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**JA008543**

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

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

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

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

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

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

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

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

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

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

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

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

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

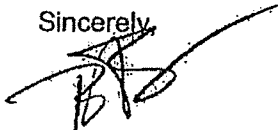
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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

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

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

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

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

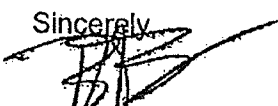
Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NES~~ (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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JA008547



Exhibit 'A'

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

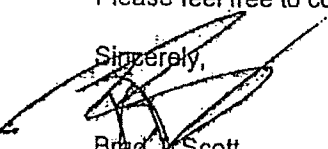
~~Although we cannot guarantee the approval of SFC and the draw request to be processed, and funded to NCS, we will continue to work on it.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

---

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Office: 701.255.2215 • Fax: 701.223.7299

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**JA008548**

Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project



Exhibit "B"

Jennifer Olivares

From: Brad Scott [mailto:brad@scottfinancialcorp.com]

Sent: Tuesday, December 16, 2008 9:38 AM

To: Jennifer Olivares

Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'

Subject: ManhattanWest Status

Importance: High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to **no further draws being approved.**

Foreclosure options and discussion on how we will proceed have been explored.

SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)



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President  
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4/1/2009

JA008550

Exhibit B

Jennifer Olivares

From: Brad Scott (brad@scottfinancialcorp.com)

Sent: Monday, December 15, 2008 3:00 PM

To: Anne Dwyer, Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previous advanced future dispersed funds held on account at NCS in the amount of \$993,866.72 back to SFC using the attached wiring instructions.


This amount includes the client Home Loan Payment Request of \$66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
Scott Financial Corporation  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com

**Scott**  
Financial Corporation

**Brad J. Scott, CRE**  
President  
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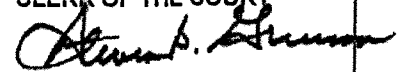
Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

JA008551

# **EXHIBIT 10AA**

**JA008552**



1 **NEOJ**  
ERIC B. ZIMBELMAN,  
2 Nevada Bar No. 9407  
RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
**PEEL BRIMLEY LLP**  
4 3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074-6571  
5 Telephone: (702) 990-7272  
Fax: (702) 990-7273  
6 [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
[rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
7 *Attorneys for Heinaman Contract Glazing*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs

13 GEMSTONE DEVELOPMENT WEST, INC.,  
14 Nevada corporation; NEVADA  
CONSTRUCTION SERVICES, a Nevada  
15 corporation; SCOTT FINANCIAL  
CORPORATION, a North Dakota  
16 corporation; COMMONWEALTH LAND  
TITLE INSURANCE COMPANY; FIRST  
17 AMERICAN TITLE INSURANCE  
COMPANY and DOES I through X,

18 Defendants.

19  
20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**NOTICE OF ENTRY OF ORDER**

21  
22 ///

23 ///

24 ///


PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Heinaman Contract Glazing's Motion for Attorney's Fees, Interest and Costs was filed on **July 2, 2018**, a copy of which is attached as Exhibit A.

DATED this 2 day of July, 2018.

**PEEL BRIMLEY LLP**

  
ERIC B. ZIMBELMAN,  
Nevada Bar No. 9407  
RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359  
3333 E. Serene Avenue, Suite 200  
Henderson, NV 89074-6571  
*Attorneys for Heinaman Contract Glazing*

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 2 day of July 2018, I caused the above and foregoing document entitled **NOTICE OF ENTR OF ORDER** 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 \_\_\_\_\_

**Apco Construction:**

Rosie Wesp ([rwesp@maclaw.com](mailto:rwesp@maclaw.com))

**Camco Pacific Construction Co Inc:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**Camco Pacific Construction Co Inc:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**Fidelity & Deposit Company Of Maryland:**

Steven Morris ([steve@gmdlegal.com](mailto:steve@gmdlegal.com))

**E & E Fire Protection LLC:**

Tracy Truman ([district@trumanlegal.com](mailto:district@trumanlegal.com))

**Interstate Plumbing & Air Conditioning Inc:**

Jonathan Dabbieri ([dabbieri@sullivanhill.com](mailto:dabbieri@sullivanhill.com))

**National Wood Products, Inc. 's:**

Richard Tobler ([rltldck@hotmail.com](mailto:rltldck@hotmail.com))

Tammy Cortez ([tcortez@caddenfuller.com](mailto:tcortez@caddenfuller.com))

S. Judy Hirahara ([jhirahara@caddenfuller.com](mailto:jhirahara@caddenfuller.com))

Dana Kim ([dkim@caddenfuller.com](mailto:dkim@caddenfuller.com))

Richard Reincke ([rreincke@caddenfuller.com](mailto:rreincke@caddenfuller.com))

**Chaper 7 Trustee:**

Jonathan Dabbieri ([dabbieri@sullivanhill.com](mailto:dabbieri@sullivanhill.com))  
Jennifer Saurer ([Saurer@sullivanhill.com](mailto:Saurer@sullivanhill.com))  
Gianna Garcia ([ggarcia@sullivanhill.com](mailto:ggarcia@sullivanhill.com))  
Elizabeth Stephens ([stephens@sullivanhill.com](mailto:stephens@sullivanhill.com))

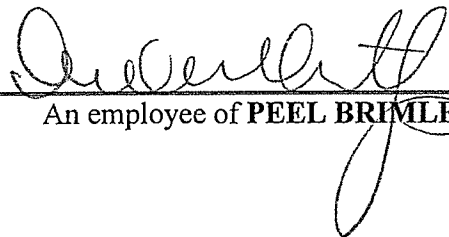
**United Subcontractors Inc:**

Bradley Slighting ([bslighting@fabianvancott.com](mailto:bslighting@fabianvancott.com))

**Other Service Contacts not associated with a party on the case:**

Caleb Langsdale, Esq. ([caleb@langsdalelaw.com](mailto:caleb@langsdalelaw.com))  
Cody Mounteer, Esq. ([cmounteer@marquisaurbach.com](mailto:cmounteer@marquisaurbach.com))  
Cori Mandy, Legal Secretary ([cori.mandy@procopio.com](mailto:cori.mandy@procopio.com))  
Donald H. Williams, Esq. ([dwilliams@dhwlawlv.com](mailto:dwilliams@dhwlawlv.com))  
Marisa L. Maskas, Esq. ([mmaskas@pezzillolloyd.com](mailto:mmaskas@pezzillolloyd.com))  
Martin A. Little, Esq. ([mal@juww.com](mailto:mal@juww.com))  
Martin A. Little, Esq. ([mal@juww.com](mailto:mal@juww.com))  
Aaron D. Lancaster ([alancaster@gerrard-cox.com](mailto:alancaster@gerrard-cox.com))  
Agnes Wong ([aw@juww.com](mailto:aw@juww.com))  
Andrew J. Kessler ([andrew.kessler@procopio.com](mailto:andrew.kessler@procopio.com))  
Becky Pintar ([bpintar@gglt.com](mailto:bpintar@gglt.com))  
Benjamin D. Johnson ([ben.johnson@btjd.com](mailto:ben.johnson@btjd.com))  
Beverly Roberts ([broberts@trumanlegal.com](mailto:broberts@trumanlegal.com))  
Caleb Langsdale ([Caleb@Langsdalelaw.com](mailto:Caleb@Langsdalelaw.com))  
Calendar ([calendar@litigationservices.com](mailto:calendar@litigationservices.com))  
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An employee of PEEL BRIMLEY, LLP



# Exhibit A

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**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.

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**JOINT APPENDIX**  
**VOLUME 112**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
06-24-09	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>04-26-10</b>	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>07-02-10</b>	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	<b>JA000055- JA000316</b>	<b>1/2/4/5/6</b>
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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 <i>Ex Parte</i> 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- JA000379	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- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCB 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	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	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>



<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion <i>in Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion <i>in Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>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</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	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 <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 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 <i>in Limine</i>	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
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	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 <i>(Admitted)</i>	JA002015- JA002016	33

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ( <i>Admitted</i> )	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ( <i>Admitted</i> )	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ( <i>Admitted</i> )	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ( <i>Admitted</i> )	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ( <i>Admitted</i> )	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ( <i>Admitted</i> )	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	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
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
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<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>HELIX Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
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<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
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<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, 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
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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 Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>in Limine</i>	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>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</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>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</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>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</b>	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Solutions, Inc., E&E Fire Protection		
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	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	Exhibit 10EG – Notice of Entry of Granting Plaintiff’s Motion to Dismiss	JA008171- JA008177	109
	Exhibit 10H – Complaint re Foreclosure	JA008178- JA008214	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	JA008323- JA008338	110

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	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 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
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	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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	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
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	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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
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	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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	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
<b>08-29-19</b>	<b>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)</b>	<b>JA009117- JA009123</b>	<b>119</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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. Mounter, 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
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	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
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in <i>Limine</i> Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus <i>Motion in Limine</i></b>	<b>JA001133 JA001148</b>	<b>21</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
<b>06-29-18</b>	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	Exhibit A – Nevada Construction Services Cost Plus GMP Contract Disbursement Agreement	JA000906- JA000907	12
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<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
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<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
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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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	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
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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
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	Exhibit 10N – APCO Construction’s Answer to Helix Electric’s Amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008307- JA008322	110
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	Exhibit 10P – Notice of Entry of Helix Electric of Nevada, LLC’s Motion for Attorney’s Fees, Interest and Costs	JA008339 JA008347	110
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	Exhibit 10U – APCO Construction's Answer to WRG Design Inc.'s amended Statement of Facts Constituting Lien and Third-Party Complaint	JA008468- JA008483	111
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	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 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
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	Exhibit 10NN-Notice of Appeal	JA008718 JA008723	113
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	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
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<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
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	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
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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	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
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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
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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 <i>in Limine</i>	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- JA001667	28/9/29
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	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
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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
	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
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	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
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<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>



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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
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 <i>Ex Parte</i> 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- JA000379	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 <i>in Limine</i> Nos. 1-6	JA000419- JA000428	7
	Exhibit 1 – Notice of Entry of Order	JA000429	7

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
		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
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>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</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
	<b>HELIX Related Exhibits:</b>		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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	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

<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	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 <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

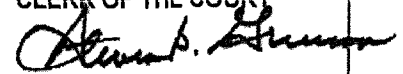
<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018



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7 *Attorneys for Heinaman Contract Glazing*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 vs.

14 GEMSTONE DEVELOPMENT WEST,  
INC., Nevada corporation; NEVADA  
15 CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
16 CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
17 TITLE INSURANCE COMPANY; FIRST  
AMERICAN TITLE INSURANCE  
18 COMPANY and DOES I through X,

19 Defendants.

20 AND ALL RELATED MATTERS.

CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**ORDER GRANTING HEINAMAN  
CONTRACT GLAZING'S MOTION FOR  
ATTORNEY'S FEES, INTEREST AND  
COSTS**

22 This matter came on for hearing July 2, 2018, before the Honorable Mark Denton in  
23 Dept. 13 on Heinaman Contract Glazing's ("Heinaman") Motion for Attorney's Fees, Interest  
24 and Costs. No Oppositions having been filed, a Notice of Non-Opposition was filed June 21,  
25 2018. Jefferson W. Boswell, Esq. of PEEL BRIMLEY LLP appeared on behalf of Heinaman.  
26 No other appearances having been made.

27 ///

28 ///

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The Court having considered all of the pleadings and papers on file, and after review of the pleadings on file and for good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Heinaman's Motion for Attorney's Fees, Interest and Costs is granted.

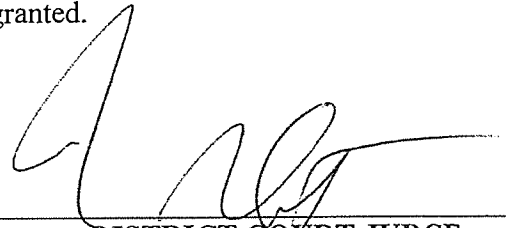
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorneys' fees in the amount of \$10,113.47 is granted.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs in the amount of \$2,704.96 is granted.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that interest in the amount of \$61,666.85 through May 31, 2018 (and continuing to accrue until paid) is granted;

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Heinaman's request for an Amended Judgment in the amount of \$262,010.64, with interest accruing thereon from the date of Judgment at prime plus 4% is granted.

Dated this 2<sup>d</sup> day of June, 2018.



DISTRICT COURT JUDGE

Submitted by:

**PEEL BRIMLEY LLP**



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Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

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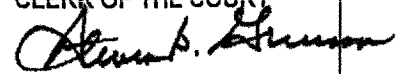
Henderson, NV 89074-6571

*Attorneys for Heinaman Contract Glazing*



# **EXHIBIT 10BB**

**JA008561**



**NJUD**  
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*Attorneys for Heinaman Contract Glazing*

**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*

**NOTICE OF ENTRY OF JUDGMENT**

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///

///

PEEL BRIMLEY LLP  
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**NOTICE OF ENTRY OF JUDGMENT**

PLEASE TAKE NOTICE that a **JUDGMENT [AS TO THE CLAIMS OF HEINAMAN CONTRACT GLASING AGAINST CAMCO CONSTRUCTION CO., INC.]** was filed on **May 30, 2018**, a copy of which is attached as Exhibit A.

DATED this 31st day of May, 2018.

**PEEL BRIMLEY LLP**

/s/ Eric B Zimbelman

ERIC B. ZIMBELMAN, ESQ

Nevada Bar No. 9407

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

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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 31st day of May, 2018, I caused the above and foregoing document, **NOTICE OF ENTRY OF JUDGMENT** 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 and/or facsimile number indicated below:

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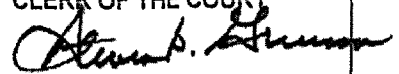
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/s/ Amanda Armstrong

An employee of PEEL BRIMLEY, LLP

# Exhibit A



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2 RICHARD L. PEEL, ESQ.  
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*Attorneys for Heinaman Contract Glazing*  
7

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs

13 GEMSTONE DEVELOPMENT WEST, INC.,  
Nevada corporation; NEVADA  
14 CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
15 CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
16 TITLE INSURANCE COMPANY; FIRST  
AMERICAN TITLE INSURANCE  
17 COMPANY and DOES I through X,

18 Defendants.

19 AND ALL RELATED MATTERS.  
20

CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**JUDGMENT**

**[AS TO THE CLAIMS OF HEINAMAN  
CONTRACT GLAZING AGAINST  
CAMCO CONSTRUCTION CO., INC.]**

21 This matter having come on for a non-jury trial on the merits on January 17-19, 23, 24  
22 and February 6, 2018, Helix Electric of Nevada, LLC ("Helix"), SWPPP Compliance  
23 Solutions, Inc. ("SWPPP"), Cactus Rose Construction, Co., Inc. ("Cactus Rose"), Fast Glass,  
24 Inc. ("Fast Glass"), and Heinaman Contract Glazing ("Heinaman") all appearing through  
25 Peel Brimley LLP; Camco Construction, Inc., ("Camco") through Grant Morris Dodds;  
26 APCO Construction, Inc. ("APCO"), appearing through Spencer Fane, LLP and Marquis &  
27 Aurbach; National Wood Products, Inc. ("National Wood" or "CabineTec") through Cadden  
28 & Fuller LLP and Richard L. Tobler, Ltd.; and United Subcontractors, Inc. through Fabian

**JA008568**

Case Number: 08A571228

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MAY 22 2018

DISTRICT COURT DEPT# 13



PEEL BRIMLEY LLP  
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(702) 990-7272 ♦ FAX (702) 990-7273

1 Vancott; and the Court having heard the testimony of witnesses through examination and  
2 cross-examination by the parties' counsel, having reviewed the evidence provided by the  
3 parties, having heard the arguments of counsel, and having read and considered the briefs of  
4 counsel, the parties' pleadings, and various other filings, and good cause appearing; the  
5 Court hereby makes the following:

6 The Court having taken the matter under consideration and advisement;

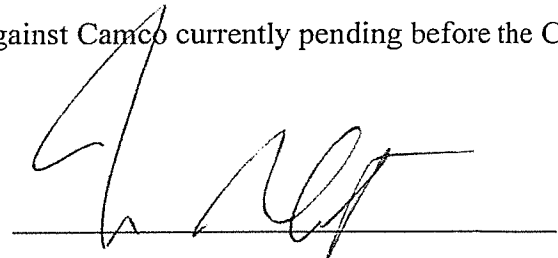
7 The Court having entered its April 26, 2018 Findings of Fact and Conclusions of Law  
8 as to the Claims of Heinaman against Camco, incorporated herein by this reference and  
9 attached hereto as Exhibit 1 ("the Heinaman FFCL");

10 The Court enters the following Judgment as to the claims of Heinaman against  
11 Camco;

12 IT IS ORDERED, ADJUDGED, AND DECREED that judgment is to be entered in  
13 favor of Heinaman and against Camco as set forth on the Heinaman FFCL.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Court may  
15 issue an amended judgment after the Court has heard and decided upon Heinaman's Motion  
16 for Attorney's Fees, Costs and Interest Against Camco currently pending before the Court.

17 Dated this 29<sup>th</sup> day of May 2018.



DISTRICT COURT JUDGE

20 Respectfully submitted by:

21 **PEEL BRIMLEY LLP**

22  #11776 fa

23 ERIC B. ZIMBELMAN,

24 Nevada Bar No. 9407

25 RICHARD L. PEEL, ESQ.

26 Nevada Bar No. 4359

27 3333 E. Serene Avenue, Suite 200

28 Henderson, NV 89074-6571

*Attorneys for Heinaman Contract Glazing*

# EXHIBIT 1

JA008570



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.

CASE NO.: A571228

DEPT. NO.: XIII

*Consolidated with:*

A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AS TO THE  
CLAIMS OF HEINAMAN CONTRACT  
GLAZING**

AND ALL RELATED MATTERS.

This matter came on for trial on January 17-19, 23-24, 31 and February 6, 2018,  
before the Honorable Mark Denton in Dept. 13, and the following parties having appeared  
through the following counsel:

<u>Party</u>	<u>Counsel for Party</u>
Apco Construction Co., Inc. ("Apco")	John Randall Jeffries, Esq. and Mary E. Bacon, Esq. of the Law Firm of Spencer Fane LLP
Camco Pacific Construction Co., Inc. ("Camco")	Steven L. Morris, Esq. of the Law Firm of the Law Firm of Grant Morris Dodds
Helix Electric of Nevada, LLC ("Helix")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Heinaman Contract Glazing, Inc. ("Heinaman")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Fast Glass, Inc. ("Fast Glass")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
Cactus Rose Construction Co., Inc. ("Cactus Rose")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP

CLERK OF THE COURT

APR 26 2018

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40

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

JA008571

Case Number: 00A571228

12

SWPPP Compliance Solutions, Inc. ("SWPPP")	Eric Zimbelman, Esq. and the Law Firm of Peel Brimley LLP
National Wood Products, LLC ("National Wood")	John B. Taylor, Esq. of the Law Firm of Cadden & Fuller LLP
E&E Fire Protection, LLC ("E&E")	T. James Truman, Esq. of the Law Firm of T. James Truman, & Associates

**A. Procedural History.**

1. This is one of the oldest cases on the Court's docket. This action arises out of a construction project in Las Vegas, Nevada known as the Manhattan West Condominiums Project ("the Project") located at West Russell Road and Rocky Hill Street in Clark County Nevada, APNs 163-32-101-003 through 163-32-101-005, 163-32-101-010 and 163-32-101-014 (the "Property" and/or "Project"), owned by Gemstone Development West, Inc. ("Gemstone" or "the Owner").

2. Gemstone hired APCO, and, subsequently, Camco as its general contractors, who in turn entered into subcontract agreements with various subcontractors. In December 2008 the Owner suspended the Project and advised the various contractors that Gemstone's lender did not expect to disburse further funds for construction. The Project was never completed. Numerous contractors, including the parties hereto, recorded mechanic's liens against the Property.

3. After several years of litigation and a Writ Action to determine the priority of the various lienors (during which the Property was sold, the proceeds of the same held in a blocked account and this action was stayed), the Nevada Supreme Court ruled that the Owner's lenders had priority over the proceeds of the sale of the Property, holding that the NRS Ch. 108 mechanic's liens were junior to the lenders' deeds of trust. The Court subsequently ordered the proceeds be released to the lenders. Thereafter, the stay was lifted and many of the trade contractors continued to pursue claims for non-payment from APCO and Camco. The trial focused on these claims.

.....

1           B.       Significant Pre-Trial Orders

2           1.       Order Granting Partial Summary Judgment re: Pay-if-Paid. On

3       January 2, 2018, this Court issued an Order granting a Motion for Partial Summary  
4       Judgment brought by a group of subcontractors represented by the Peel Brimley Law Firm  
5       (the "Peel Brimley Lien Claimants"<sup>1</sup>) and joined in by others. Generally, but without  
6       limitation, the Court concluded that, pursuant to NRS 624.624 and *Lehrer McGovern*  
7       *Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1117-18, 197 P.3d 1032, 1042 (Nev.  
8       2008), higher-tiered contractors, such as APCO and Camco, are required to pay their  
9       lower-tiered subcontractors within the time periods set forth in NRS 624.626(1) and may  
10      not fail to make such payment based on so-called "pay-if-paid" agreements ("Pay-if-Paid")  
11      that are against public policy, void and unenforceable except under limited circumstances.  
12      Accordingly, the Court ruled that APCO and Camco may not assert or rely on any defense  
13      to their payment obligations, if any, to the party subcontractors that is based on a pay-if-  
14      paid agreement.

15          2.       Order on Peel Brimley Lien Claimants' Motion in Limine Against

16      Camco. On December 29, 2017 the Court issued an order on motions *in limine* brought by  
17      the Peel Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco  
18      from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on  
19      the Project was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in  
20      compliance with the terms of the parties' agreement because Camco's person most  
21      knowledgeable was not aware of any evidence to support such claims. For the same  
22      reason, the Court also precluded Camco from asserting or offering evidence at trial that the  
23      Peel Brimley Lien Claimants have breached their agreements other than with respect to  
24      pay-if-paid agreements, evidence and argument of which is otherwise precluded by the  
25      Partial Summary Judgment discussed above. For the same reason, the Court also precluded  
26      Camco from asserting or offering evidence at trial to dispute the amounts invoiced, paid

27      \_\_\_\_\_  
28      <sup>1</sup> The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.

1 and that remain to be owed as asserted by the Peel Brimley Lien Claimants in their  
2 respective Requests for Admission. For the same reason, the Court also precluded Camco  
3 from asserting or offering evidence at trial that any liens recorded by the Peel Brimley  
4 Lien Claimants were in any way defective or unperfected and are otherwise valid and  
5 enforceable.

6 C. Findings of Fact.

7 Having received evidence and having heard argument of counsel, the Court makes  
8 the following Findings of Fact:

9 1. The original general contractor on the Project was APCO. Gemstone and  
10 APCO entered into the ManhattanWest General Construction Agreement for GMP (the  
11 "APCO-Gemstone Agreement") on or about September 6, 2006. [See Exhibit 2].

12 2. Among other things, and in exchange for a guaranteed maximum price  
13 ("GMP") of \$153,472,300.00 as forth in the APCO-Gemstone Agreement (Ex. 2, ¶  
14 5.02(a)), APCO agreed to:

- 15 • "Complete the work" required by the APCO-Gemstone Agreement,  
16 "furnish efficient business administration and superintendence" and "use its  
17 best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- 18 • "...engage contractors, subcontractors, sub-subcontractors, service  
19 providers, [and others, collectively referred to as "Third-Party Service  
20 Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- 21 • Monthly submit to Gemstone "applications for payment for the previous  
22 month on forms similar to AIA G702 and G703 and a corresponding  
23 approved Certificate for Payment;" [Ex 2., ¶ 5.05(a)]. Each payment  
24 application was to be "based on a Schedule of Values [that] shall allocate  
25 the entire GMP among the various portions of the Work" with APCO's fee  
26 to be shown as a separate line item." [Ex 2., ¶ 5.05(b)]; The payment  
27 applications were to "show the Percentage of Completion of each portion of  
28

1 the Work as of the end of the period covered by the Application for  
2 Payment. [Ex 2., ¶ 5.05(c)]; and

- 3 • Upon receipt of a monthly progress payment, “promptly pay each Third-  
4 Party Service Provider the amount represented by the portion of the  
5 Percentage of the Work Completed that was completed by such Third-Party  
6 Service Provider<sup>2</sup> during the period covered by the corresponding Progress  
7 Payment.” [Ex 2., ¶ 5.05(g)];

8 3. APCO in turn hired various subcontractors to perform certain scopes of  
9 work and provided its form Subcontract Agreement to its subcontractors (“the APCO  
10 Subcontract”). Heinaman did not work for APCO on the Project and only first provided  
11 work after APCO ceased work on the project and, as discussed below, Gemstone hired  
12 Camco as the general contractor to replace APCO. APCO ceased work on the Project in or  
13 about the end of August 2008. APCO and Gemstone each claim to have terminated the  
14 other.

15 4. After APCO ceased work on the project, Gemstone hired Camco to be its  
16 general contractor pursuant to an Amended and Restated ManhattanWest General  
17 Construction Agreement effective as of August 25, 2008 (“the Camco-Gemstone  
18 Agreement”). [See Exhibit 162].

19 5. On cross examination, Camco’s Dave Parry could not point to any portion  
20 of the Camco-Gemstone Agreement that required Camco to supervise the work of the  
21 subcontractors. [TR5-50:17-51:9]. Nothing in Article II (“General Contractor  
22 Responsibilities”) obligates Camco to supervise the work or the subcontractors. [See Ex.  
23 162, ¶Article II]. Parry did not deny that Camco was “essentially ... there to lend [its]  
24 license” to Gemstone. [TR5-50:15-17].

25 6. Mr. Parry described Camco as “more of a construction manager at this point  
26

27 <sup>2</sup> Because the only Third-Party Service Providers at issue on this trial were subcontractors, the Court  
28 will herein use the terms “subcontractor” and “Third-Party Service Provider” interchangeably and  
synonymously.

1 than a general contractor" [TR5-31:10-11<sup>3</sup>]. Nonetheless, the Camco-Gemstone  
2 Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone  
3 Agreement also requires Camco, in the same way that APCO did, to aggregate payment  
4 applications from subcontractors and prepare and submit to Gemstone payment  
5 applications for the amounts represented by the subcontractor payment applications and  
6 Camco's fee. [See Ex. 162-008-010; ¶7.01].

7 7. Camco continued the same payment application format and numbering and  
8 same schedule of values that APCO had been following. [See Exhibit 218; TR5-30:21-  
9 31:4<sup>4</sup>]. Like APCO before it, Camco compiled and included in its payment applications to  
10 Gemstone the amounts billed by its subcontractors, including Heinaman. [See e.g., Exhibit  
11 522-001-011]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone  
12 Agreement required Camco, upon receipt of a progress payment from Gemstone, to  
13 "promptly pay each [subcontractor] the amount represented by the portion of the  
14 Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-  
15 010, ¶7.03(e)].<sup>5</sup> It is only after Gemstone announced that the Project would be suspended  
16 that Camco asserted otherwise.

17 8. Camco's initial letter to subcontractors following Gemstone's  
18 announcement demonstrates both that it believed it had subcontracts (because it purported  
19 to terminate the same) and that it intended to continue to forward payment applications to  
20 Gemstone. [See e.g., Exhibit 804-003-004]. Specifically, Camco wrote:

21 Camco is left with no choice but to terminate our agreement with Gemstone  
22 and all subcontracts on the Project, including our agreement with your  
23 company. Accordingly, we have terminated for cause our agreement with  
24 Gemstone, effective December 19, 2008, and we hereby terminate for  
convenience our subcontract with your company, effective immediately.

25 Please submit to Camco all amounts you believe are due and owing on your  
subcontract. We will review and advise you of any issues regarding any

26 <sup>3</sup> Testimony of Dave Parry.

27 <sup>4</sup> Testimony of Dave Parry.

28 <sup>5</sup> Unlike APCO and the subcontractors, no retention was to be withheld from the contractor's fee to be  
paid to Camco (through retention continued to be withheld from subcontractors). [Ex. 162-010, ¶7.03(a)].



1 amounts you claim are owed. For all amounts that should properly be billed to  
2 Gemstone, Camco will forward to Gemstone such amounts for payment y  
3 Gemstone. If your claims appear to be excessive, we will ask you to justify  
and/or revise the amount.

4 [See e.g., Ex. 804-003-004].

5 9. Camco quickly retracted its initial communication and replaced it with a  
6 second letter [See e.g., Ex. 804-005-007] asking the subcontractors to "please disregard  
7 previous letter which was sent in error." [See e.g., Ex. 804-005]. Among other things,  
8 Camco's second letter:

- 9 • Deleted its statement that it had terminated the Camco-Gemstone  
10 Agreement (while continuing to terminate the subcontractors);
- 11 • Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk  
12 of non-payment from the owner (which is also Pay-if-Paid); and,
- 13 • Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus  
14 agreement wherein the subcontractors and suppliers were paid directly by  
15 Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex.  
16 804-007].

17 While Gemstone eventually did make partial payment to some subcontractors through  
18 NCS and not Camco [see discussion, *infra*], the Camco-Gemstone Agreement expressly  
19 required Camco, upon receipt of a progress payment from Gemstone, to "promptly pay  
20 each [subcontractor] the amount represented by the portion of the Percentage of the Work  
21 Completed that was completed by such [subcontractor]." [Ex. 162-010, ¶7.03(e)].

22 10. Some subcontractors stopped working after APCO left the Project. Others,  
23 such as Helix, continued to work on the Project and began working for Camco as the  
24 general contractor. Others, such as Heinaman, Fast Glass, Cactus Rose and SWPPP started  
25 working on the Project only after APCO left and worked only for Camco.

26 11. Camco presented some subcontractors with a standard form subcontract  
27 Agreement ("the Camco Subcontract"), a representative example of which is Camco's  
28

1 subcontract with Fast Glass. [See Exhibit 801-007-040; TR5-57:8-16<sup>6</sup>].

2 12. However, Heinaman and Camco never entered into the Camco Subcontract.  
3 Instead, the agreement between Camco and Heinaman is memorialized by a Letter of  
4 Intent to proceed with the Work and Memorandum of Understanding Regarding Terms  
5 and Conditions between Heinaman, Camco and Gemstone. [Exhibit 701 - "the Heinaman  
6 Agreement"]. The Heinaman Agreement provides, among other things:

- 7 • "CAMCO and Gemstone both promise to pay and to be liable to  
8 [Heinaman] ..."
- 9 • "CAMCO and Gemstone agree to be jointly and severally liable for  
10 payment of [Heinaman's invoices]" and to "pay [Heinaman on the fifth day  
11 after receipt of an Invoice from [Heinaman];"
- 12 • "Each [Heinaman] invoice shall be paid without retention;"
- 13 • "Each invoice shall be [prepared on a Time and Material basis plus 15%  
14 standard mark up on each invoice for Overhead and 10% mark up on each  
15 invoice for Profit;]"
- 16 • CAMCO and Gemstone authorize [Heinaman] to proceed with the scope of  
17 work as referenced herein.;" and
- 18 • The Parties understand that this document shall be binding on all Parties  
19 until a different contract is signed by all parties."

20 [Ex. 701].

21 13. Heinaman's representative, Mark Heinaman, testified that there is no  
22 "different contract signed by all Parties." Camco did not dispute this testimony or offer any  
23 contract signed by Heinaman, Camco and Gemstone.

24 14. In fact, Heinaman offered, and the Court admitted, a separate agreement  
25 between Camco, Gemstone, Scott Financial Corporation ("SCF" - Gemstone's lender) and  
26 Nevada Construction Services, Inc. ("NCS") titled ManhattanWest Heinaman Contract

27 \_\_\_\_\_  
28 <sup>6</sup> Testimony of Dave Parry.

1 Glazing Funding Instruction Agreement ("the Heinaman Funding Agreement") that  
2 confirms:

- 3 • "[I]t is in the best interests if the project to engage Heinaman ...;" and
- 4 • "Heinaman has demanded the right to invoice Camco weekly and requires  
5 that Camco pay each invoice within five calendar days."

6 [Exhibit 718-002]. In addition, the Heinaman Funding Agreement identifies a source of  
7 payments to Heinaman (monies in the NCS account previously "earmarked" to pay a  
8 terminated glazing contractor) and sets forth a procedure as between Camco, Gemstone,  
9 Scott and NCS to make payments to Heinaman for its work. [Ex. 718-002-004] Heinaman  
10 was not a party to the Heinaman Funding Agreement.

11 15. Consistent with the Heinaman Agreement (i.e., time and materials plus 15%  
12 overhead and 10% profit), Heinaman submitted multiple invoices to Camco, some of  
13 which were paid [see Exhibit 702-001-003] and some of which were unpaid [see Ex. 702-  
14 004-007]. Heinaman's unpaid invoices total \$187,525.26. The Court finds that Camco  
15 agreed to pay all of Heinaman's invoices, breached the Heinaman Agreement by failing to  
16 pay the unpaid invoices and owes Heinaman the principal sum (i.e., exclusive of interest,  
17 costs and attorney's fees) of \$187,525.26.

18 16. The Court further finds that Heinaman performed the work for which it  
19 invoiced. [See e.g., Exhibits 704, 705, 706, 707 and 708 (project record documents)].  
20 Based in part on the undisputed testimony of Mark Heinaman the Court finds that  
21 Heinaman's invoices represent a reasonable value for the work performed.

22 17. Heinaman presented undisputed evidence, and the Court finds, that  
23 Heinaman timely recorded a mechanic's lien, as amended ("the Heinaman Lien"), pursuant  
24 to NRS Chapter 108 and perfected the same. [See Exhibit 703]. The Heinaman Lien  
25 identified both Camco as the "person by whom the lien claimant was employed or to  
26 whom the lien claimant furnished or agreed to furnish work, materials or equipment." [See  
27 Ex. 703-038].

1           18. Any finding of fact herein that is more appropriately deemed a conclusion  
2 of law shall be treated as such.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4           **B. Conclusions of Law.**

5           1. "Basic contract principles require, for an enforceable contract, an offer and  
6 acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668,  
7 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have  
8 agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d  
9 1262, 1265 (1996). Which terms are essential "depends on the agreement and its context  
10 and also on the subsequent conduct of the parties, including the dispute which arises, and  
11 the remedy sought." Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a  
12 contract exists is a question of fact and the District Court's findings will be upheld unless  
13 they are clearly erroneous or not based on substantial evidence. *May*, 121 Nev. at 672-73,  
14 119 P.3d at 1257.

15           2. The Court concludes that Camco entered into and breached the Heinaman  
16 Agreement by failing, without excuse, to pay Heinaman in full for the invoices it  
17 submitted and for the work it performed in the amount of \$187,525.26 and that Heinaman  
18 is entitled to judgment for that amount, exclusive of interest, costs and attorney's fees.

19           3. Alternatively, the Court concludes that there is an implied contract between  
20 Heinaman and Camco and that Heinaman is entitled *quantum meruit* damages for recovery  
21 of the full and reasonable value of the work it has performed. See *Certified Fire Prot. Inc.*  
22 *v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 257 (2012) ("*quantum meruit*'s  
23 first application is in actions based upon contracts implied-in-fact."). A contract implied-  
24 in-fact must be "manifested by conduct." *Id.* at 380 citing *Smith v. Recrion Corp.*, 91 Nev.  
25 666, 668, 541 P.2d 663, 664 (1975); *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674  
26 (1984). It "is a true contract that arises from the tacit agreement of the parties." *Id.* To find  
27 a contract implied-in-fact, the fact-finder must conclude that the parties intended to

1 contract and promises were exchanged, the general obligations for which must be  
2 sufficiently clear. *Id.* Here, Heinaman and Camco clearly intended to enter into a  
3 contract whereby Heinaman would perform work for Camco and Camco would pay  
4 Heinaman for its work.

5 4. Where an implied-in-fact contract exists "*quantum meruit* ensures the  
6 laborer receives the reasonable value, usually market price, for his services." *Precision*  
7 *Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment  
8 § 31 cmt. e (2011), *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) ("The  
9 doctrine of *quantum meruit* generally applies to an action ... involving work and labor  
10 performed which is founded on a[n] oral promise [or other circumstances] on the part of  
11 the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor  
12 in the absence of an agreed upon amount."). Here, the only and undisputed testimony was  
13 that the monies Heinaman billed for its work were a reasonable value for the work  
14 performed. Moreover, Camco's submission of at least some of those amounts to Gemstone  
15 as part of its own pay application estopps Camco from disputing the reasonable value of  
16 Heinaman's work. Heinaman is therefore entitled *quantum meruit* damages in the amount  
17 of \$187,525.26 for recovery of the full and reasonable value of the work it performed. *See*  
18 *Certified Fire Prot.*, 128 Nev. at 380.

19 5. The Court rejects Camco's argument that it is not liable to Heinaman (and  
20 other subcontractors) because it never received payment from Gemstone who instead made  
21 payments to subcontractors through the disbursement company, NCS. Camco's position  
22 notwithstanding, both the Camco-Gemstone Agreement and the Camco Subcontract  
23 demonstrate that (consistent with the APCO-Gemstone Agreement and the APCO  
24 Subcontract) payments to subcontractors were intended to flow through the general  
25 contractor. Camco presented no evidence that Heinaman or any other subcontractor  
26 consented in advance to Gemstone's eventual decision to release payments (in part)  
27 through NCS and not Camco.

1           6.       Similarly, the Court rejects Camco's contention that the Court's decision on  
2 Pay-if-Paid is inapplicable because it was "impossible" for Camco to have paid Helix and  
3 other subcontractors. Camco presented no evidence that it, for example, declared  
4 Gemstone to be in breach for failing to make payments through Camco rather than through  
5 NCS. Instead, Camco appears to have acceded to Gemstone's deviation from the contract  
6 and, at least until Gemstone announced that it was suspending construction, continued to  
7 process subcontractor payment applications and submit them to Gemstone. Camco's  
8 "impossibility" claim is, in any event, another form of Pay-if-Paid, against the public  
9 policy of Nevada, void and unenforceable and barred by this Court's summary judgment.

10           7.       Specific to Heinaman, the Court concludes that Camco's reliance on any  
11 form of Pay-if-Paid (i.e., even if the same could be deemed permissible under Nevada law)  
12 is inapplicable to its relationship with Heinaman. Pursuant to the Heinaman Agreement,  
13 Camco expressly agreed to be liable to Heinaman "jointly and severally with Gemstone.  
14 Accordingly, even if (as Camco urges) the subcontractors as a whole are required to look  
15 solely to the defunct Gemstone for payment (which, for the reasons explained above, they  
16 are not), Camco has expressly agreed to be liable to Heinaman in the same way that  
17 Gemstone is liable.

18           8.       Heinaman is therefore awarded the principal sum of \$187,525.26 (i.e.,  
19 exclusive of interest, costs and attorney's fees) against Camco and may apply for judgment  
20 as to the same.

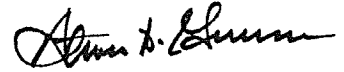
21           9.       The Court denies all of Camco's affirmative defenses.

22           10.       Heinaman is entitled to prejudgment interest pursuant to NRS 108.237  
23 and/or NRS 17.130 and is granted leave to apply for the same by way of an amendment or  
24 supplement to these Findings of Fact and Conclusions of Law and for judgment as to the  
25 same.

26           11.       Heinaman is the prevailing party and/or prevailing lien claimant as to  
27 Camco and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237.  
28

# EXHIBIT 10CC

JA008583



CLERK OF THE COURT

1   ANS  
2   RICHARD L. PEEL, ESQ.  
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4   MICHAEL T. GEBHART, ESQ.  
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12   mgebhart@peelbrimley.com  
13   Attorneys for Heinaman Contract Glazing

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

14   APCO CONSTRUCTION, a Nevada  
15   corporation,

16                                   Plaintiff,

17   vs

18   GEMSTONE DEVELOPMENT WEST, INC.,  
19   Nevada corporation; NEVADA  
20   CONSTRUCTION SERVICES, a Nevada  
21   corporation; SCOTT FINANCIAL  
22   CORPORATION, a North Dakota corporation;  
23   COMMONWEALTH LAND TITLE  
24   INSURANCE COMPANY; FIRST  
25   AMERICAN TITLE INSURANCE  
26   COMPANY and DOES I through X,

27                                   Defendants.

28   AND ALL RELATED MATTERS.

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with Case Nos.: A574391,  
A571792, A577623, A580889, A583289,  
A584730, A584960, A587168, A589195,  
A589677, A590319, A592826, A595552,  
A596924, A597089*

**Case No.: A587168**

**HEINAMAN CONTRACT GLAZING'S  
ANSWER TO CAMCO PACIFIC  
CONSTRUCTION COMPANY'S  
COUNTERCLAIM**

Plaintiff and Counterclaim Defendant Heinaman Contract Glazing ("Heinaman"), by and through its counsel, Richard L. Peel, Esq. and Michael T. Gebhart, Esq. of the law firm Peel Brimley LLP, hereby answer the Counterclaim of Camco Pacific Construction Company, Inc. ("Camco"), on file herein, and admit deny and allege as follows:

1.     Heinaman denies each and every allegation contained in Paragraphs 5, 6, 9, 10, 11, 12, 15, 16 and 17.

2.     Heinaman is without information or knowledge sufficient to ascertain the truth of the allegations contained in Paragraphs 3, 7 and 8.

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3. Heinaman admits the allegations contained in Paragraphs 1 and 2.

4. As to Paragraphs 4 and 13 of Camco's Counterclaim, Heinaman repeats and realleges the answers to Paragraphs 1 through 17 as though fully set forth herein.

5. As to Paragraph 14, Heinaman admits that there is a covenant of good faith and fair dealing implied in every enforceable agreement. Heinaman further admits that it acted in good faith, but denies any remaining allegations contained in Paragraph 14.

6. It has become necessary for Heinaman to retain the services of Peel Brimley LLP, attorneys at law, to defend this counterclaim, and as a result, Heinaman has been damaged by the Counterclaimant, and Heinaman is accordingly entitled to its attorney fees and costs incurred herein.

## AFFIRMATIVE DEFENSES

- 12           1.       The Counterclaim on file herein fails to state a claim against Heinaman upon  
13 which relief can be granted.
- 14           2.       Any and all damages sustained by Counterclaimant are the result of its own  
15 negligence and breach of contract.
- 16           3.       Heinaman is not negligent with respect to the transaction(s) which may be the  
17 subject of the counterclaim, and is and was not in breach of contract.
- 18           4.       Counterclaimant's damages, if any, are the direct and consequential result of  
19 Counterclaimant's own acts and omissions.
- 20           5.       Counterclaimant has failed to satisfy all conditions precedent to bring and/or  
21 maintain a cause of action against Counterdefendant.
- 22           6.       Counterclaimant's claims are barred under the doctrine of waiver and the doctrine  
23 of estoppel.
- 24           7.       Counterclaimant is barred from recovery by the doctrine of unclean hands.
- 25           8.       Counterclaimant's claims are barred by the doctrines of laches and estoppel.
- 26           9.       Counterclaimant has failed to mitigate its damages.
- 27           10.      Pursuant to NRCP 8, all possible affirmative defenses may not have been alleged  
28 herein, inasmuch as sufficient facts were not available after reasonable inquiry and investigation

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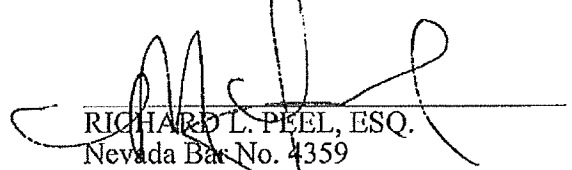
1 upon the filing of Plaintiff/Counterdefendant's Answer and, therefore, Plaintiff/Counterdefendant  
2 reserves the right to amend its answer to allege additional affirmative defenses if subsequent  
3 investigation and discovery of facts so warrants.

4 WHEREFORE, Plaintiff/Counterdefendant Heinaman prays as follows:

- 5 1. That Counterclaimant takes nothing by way of its Counterclaim;  
6 2. For an award of reasonable attorneys' fees and costs for having to defend this  
7 claim; and  
8 3. For such other and further relief as this Court deems just and proper.

9  
10 DATED this 15 day of April, 2010.

11 **PEEL BRIMLEY LLP**

12 

13 RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359

14 MICHAEL T. GEBHART, ESQ.

15 Nevada Bar No. 7718

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22 *Attorneys for Heinaman Contract Glazing*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP,  
and that on this 15<sup>th</sup> day of April 2010, I served a true and correct copy of the foregoing  
**HEINAMAN CONTRACT GLAZING'S ANSWER TO CAMCO PACIFIC**  
**CONSTRUCTION COMPANY'S COUNTERCLAIM**, by e-serving a copy on all parties  
listed in the Master Service List in accordance with the Electronic Filing Order entered in this  
matter.

  
An Employee of PEEL BRIMLEY LLP

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1 Heinaman is granted leave to apply for the same by way of an amendment or supplement  
2 to these Findings of Fact and Conclusions of Law and for judgment as to the same.

3 12. As the prevailing party, Heinaman may also apply for an award of costs in  
4 accordance with the relevant statutes and for judgment as to the same.

5 13. Any conclusion of law herein that is more appropriately deemed a finding  
6 of fact shall be treated as such.

7 ORDER

8 NOW, THEREFORE, the Court hereby directs entry of the foregoing Findings of  
9 Fact and Conclusions of Law; and


10 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact and  
11 Conclusions of Law, and those made regarding the other parties and claims involved in the  
12 consolidated cases, the Court shall issue a separate Judgment or Judgments reflective of the  
13 same at the appropriate time subject to further order of the Court.

14 IT IS SO ORDERED this 24<sup>th</sup> day of April, 2018.

15  
16   
DISTRICT COURT JUDGE

17  
18 CERTIFICATE

19 I hereby certify that on or about the date filed, this document was  
20 Electronically Served to the Counsel on Record on the Clark County E-File Electronic  
21 Service List.

22   
23 LORRAINE TASHIRO  
24 Judicial Executive Assistant  
25 Dept. No. XIII  
26  
27  
28

# **EXHIBIT 10DD**

**JA008589**

*Edmund A. Fink*  
CLERK OF THE COURT

1 **STMT**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
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16 *Attorneys for Bruin Painting Corporation*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

11 **ACCURACY GLASS & MIRROR**  
12 **COMPANY, INC.,** a Nevada corporation,

13 Plaintiff,

14 vs.

15 **ASPHALT PRODUCTS CORP.,** a Nevada  
16 corporation; **APCO CONSTRUCTION,** a  
17 Nevada corporation; **CAMCO PACIFIC**  
18 **CONSTRUCTION COMPANY, INC.,** a  
19 California corporation; **GEMSTONE**  
20 **DEVELOPMENT WEST, INC.,** Nevada  
21 corporation; **FIDELITY AND DEPOSIT**  
22 **COMPANY OF MARYLAND; SCOTT**  
23 **FINANCIAL CORPORATION,** a North Dakota  
24 corporation; **DOES I through X; ROE**  
25 **CORPORATIONS I through X; BOE**  
26 **BONDING COMPANIES I through X; LOE**  
27 **LENDERS I through X, inclusive,**

28 Defendants.

**BRUIN PAINTING CORPORATION,** a  
California corporation,

Plaintiff in Intervention,

vs.

**CAMCO PACIFIC CONSTRUCTION**  
**COMPANY, INC.,** a California corporation;  
**GEMSTONE DEVELOPMENT WEST, INC.,**  
Nevada corporation; **FIDELITY AND**  
**DEPOSIT COMPANY OF MARYLAND;**  
**SCOTT FINANCIAL CORPORATION,** a  
North Dakota corporation; **DOES I through X;**  
**ROE CORPORATIONS I through X; BOE**

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

Consolidated with:

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

09A587168  
257968



**BRUIN PAINTING'S AMENDED  
STATEMENT OF FACTS  
CONSTITUTING NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

**EXEMPTION FROM ARBITRATION:**  
Title to Real Estate

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1 BONDING COMPANIES I through X; LOE  
2 LENDERS I through X, inclusive,  
3 Defendants.

4 BRUIN PAINTING CORPORATION ("Bruin") by and through its attorneys PEEL  
5 BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third  
6 Party Complaint ("Amended Complaint") against the above-named defendants complains, avers  
7 and alleges as follows:

8 THE PARTIES

9  
10 1. Bruin is and was at all times relevant to this action a Nevada limited-liability  
11 company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding  
12 a Nevada State Contractor's license, which license is in good standing.

13 2. Bruin is informed and believes and therefore alleges that Defendant GEMSTONE  
14 DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant  
15 to this action, the owner, reputed owner, or the person, individual and/or entity who claims an  
16 ownership interest in that certain real property portions thereof located in Clark County, Nevada  
17 and more particularly described as follows:

18  
19 Manhattan West Condominiums (Project)  
Spring Valley

20 County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
21 PT N2 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60

22 and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and  
23 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-  
24 001 thru 163-32-112-246) including all easements, rights-of-way, common areas and  
25 appurtenances thereto, and surrounding space may be required for the convenient use and  
26 occupation thereof, upon which Owners caused or allowed to be constructed certain  
27 improvements (the "Property").  
28

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(Manhattan West)\PX\Originals\090622 Bruin Amd

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1           3.     The whole of the Property is reasonably necessary for the convenient use and  
2     occupation of the improvements.

3           4.     Bruin is informed and believes and therefore alleges that Defendant CAMCO  
4     PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was  
5     at all times relevant to this action doing business as a licensed contractor authorized to conduct  
6     business in Clark County, Nevada and acting as the general contractor to the Project.

7           5.     Bruin is informed and believes and therefore alleges that Defendant, FIDELITY  
8     AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a  
9     bonding company licensed and qualified to do business as a surety in Nevada.

10          6.     Bruin is informed and believes and therefore alleges that Defendant Scott  
11     Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business  
12     in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,  
13     selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust  
14     securing loans given to the Owner for, inter alia, development of the Property.

15          7.     Bruin does not know the true names of the individuals, corporations, partnerships  
16     and entities sued and identified in fictitious names as DOES I through X, ROE  
17     CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE  
18     LENDERS I through X. Bruin alleges that such Defendants claim an interest in or to the  
19     Properties, and/or are responsible for damages suffered by Bruin as more fully discussed under  
20     the claims for relief set forth below. Bruin will request leave of this Honorable Court to amend  
21     this Complaint to show the true names and capacities of each such fictitious Defendant when  
22     Bruin discovers such information.

23     ///

24     ///

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**FIRST CAUSE OF ACTION**  
**(Breach of Contract against CPCC)**

8. Bruin repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

9. On or about August 26, 2008, Bruin entered into a Subcontract Agreement ("Agreement") with CPCC to provide certain painting and wall covering related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada

10. Bruin furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

11. Pursuant to the Agreement, Bruin was to be paid an amount in excess of Ten Thousand Dollars (\$10,000.00) (hereinafter "Outstanding Balance") for the Work.

12. Bruin furnished the Work and has otherwise performed its duties and obligations as required by the Agreement.

13. CPCC has breached the Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Bruin 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 Bruin's performance of the Work.

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1 14. Bruin is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for the  
2 Work.

3 15. Bruin has been required to engage the services of an attorney to collect the  
4 Outstanding Balance, and Bruin is entitled to recover its reasonable costs, attorney's fees and  
5 interest therefore.  
6

7 **SECOND CAUSE OF ACTION**  
8 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

9 16. Bruin repeats and realleges each and every allegation contained in the preceding  
10 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
11 follows:

12 17. There is a covenant of good faith and fair dealing implied in every agreement,  
13 including the Agreement.

14 18. CPCC breached its duty to act in good faith by performing the Agreement in a  
15 manner that was unfaithful to the purpose of the Agreement, thereby denying Bruin's justified  
16 expectations.  
17

18 19. Due to the actions of CPCC, Bruin suffered damages in an amount to be  
19 determined at trial for which Bruin is entitled to judgment plus interest.

20 20. Bruin has been required to engage the services of an attorney to collect the  
21 Outstanding Balance, and Bruin is entitled to recover its reasonable costs, attorney's fees and  
22 interest therefore.  
23

24 **THIRD CAUSE OF ACTION**  
25 **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

26 21. Bruin repeats and realleges each and every allegation contained in the preceding  
27 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
28 follows:

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1 22. Bruin furnished the Work for the benefit of and at the specific instance and request  
2 of the Defendants.

3 23. As to CPCC, this cause of action is being pled in the alternative.

4 24. The Defendants accepted, used and enjoyed the benefit of the Work.

5 25. The Defendants knew or should have known that Bruin expected to be paid for the  
6 Work.  
7

8 26. Bruin has demanded payment of the Outstanding Balance.

9 27. To date, the Defendants have failed, neglected, and/or refused to pay the  
10 Outstanding Balance.

11 28. The Defendants have been unjustly enriched, to the detriment of Bruin.

12 29. Bruin has been required to engage the services of an attorney to collect the  
13 Outstanding Balance, and Bruin is entitled to recover its reasonable costs, attorney's fees and  
14 interest therefore.  
15

16 **FOURTH CAUSE OF ACTION**  
17 **(Foreclosure of Mechanic's Lien)**

18 30. Bruin repeats and realleges each and every allegation contained in the preceding  
19 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
20 follows:

21 31. The provision of the Work was at the special instance and request of the  
22 Defendants for the Property.

23 32. As provided at NRS 108.245 and common law, the Defendants had knowledge of  
24 Bruin's delivery of the Work to the Property or Bruin provided a Notice of Right to Lien.  
25

26 33. Bruin demanded payment of an amount in excess of Ten Thousand and no/100  
27 Dollars (\$10,000.00), which amount remains past due and owing.  
28

1           34.     On or about December 17, 2008, Bruin timely recorded a Notice of Lien in Book  
2     20081217 of the Official Records of Clark County, Nevada, as Instrument No. 0001837 (the  
3     "Original Lien").

35. On or about February 3, 2009, Bruin timely recorded an Amended/Restated Notice of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000315 (the "Amended Lien").

36. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

37. The Liens were in writing and were recorded against the Property for the outstanding balance due to Bruin in the amount of Seven Hundred Seventy-One Thousand Four Hundred One and 32/100 Dollars (\$771,401.32).

38. The Liens were served upon the Owner and/or its authorized agents, as required by law.

39. Bruin 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.

**FIFTH CAUSE OF ACTION**  
**(Claim of Priority)**

40. Bruin repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

41. Bruin is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

42. Bruin is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to

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1 Bruin's statutory mechanics' lien thereby elevating Bruin's statutory mechanics' lien to a position  
2 superior to those deed(s) of trust and/or other interests(s) in the Property.

3 43. Bruin's claim against the Property is superior to the claim(s) of SFC, any other  
4 defendant, and/or any Loe Lender.

5 44. Bruin has been required to engage the services of an attorney to collect the  
6 Outstanding Balance due and owing for the Work, and Bruin is entitled to recover its reasonable  
7 costs, attorney's fees and interest therefore.  
8

9 **SIXTH CAUSE OF ACTION**  
10 **(Claim Against Bond – CPCC Surety)**

11 45. Bruin repeats and realleges each and every allegation contained in the preceding  
12 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
13 follows:

14 46. Prior to the events giving rise to this Complaint, the CPCC Surety issued License  
15 Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars (\$50,000.00).  
16

17 47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

18 48. The Bond was provided pursuant to the requirements of NRS 624.270, which  
19 Bond was in force during all times relevant to this action.

20 49. Bruin furnished the Work as stated herein and has not been paid for the same.  
21 Bruin therefore claims payment on said Bond.

22 50. The CPCC Surety is obligated to pay Bruin the sums due.

23 51. Demand for the payment of the sums due to Bruin has been made, but CPCC and  
24 the CPCC Surety have failed, neglected and refused to pay the same to Bruin.  
25

26 52. CPCC and the CPCC Surety owe Bruin the penal sum of the Bond.  
27  
28

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1           53. Bruin was required to engage the services of an attorney to collect the Outstanding  
2 Balance due and owing to Bruin and Bruin is entitled to recover its reasonable attorney's fees and  
3 costs therefore.

4  
5                           **SEVENTH CAUSE OF ACTION**  
6                           **(Violation of NRS 624)**

7           54. Bruin repeats and realleges each and every allegation contained in the preceding  
8 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
9 follows:

10           55. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as  
11 CPCC), to, among other things, timely pay their subcontractors (such as Bruin), as provided in the  
12 in the Statute.

13           56. In violation of the Statute, CPCC have failed and/or refused to timely pay Bruin  
14 monies due and owing.

15           57. CPCC's violation of the Statute constitutes negligence per se.

16           58. By reason of the foregoing, Bruin is entitled to a judgment against CPCC in the  
17 amount of the Outstanding Balance

18  
19           59. Bruin has been required to engage the services of an attorney to collect the  
20 Outstanding Balance and Bruin is entitled to recover its reasonable costs, attorney's fees and  
21 interests therefore.

22                           **EIGHTH CAUSE OF ACTION**  
23                           **(Declaratory Judgment)**

24           60. Bruin repeats and realleges each and every allegation contained in the preceding  
25 paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as  
26 follows:

1           61.    Upon information and belief, Owner is the Trustor and SFC is the beneficiary  
2 under the following deeds of trust covering the real property at issue:

- 3                   a.   Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
4                            20060705, Instrument No. 0004264;  
5                   b.   Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
6                            20060705, Instrument No. 0004265;  
7                   c.   Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
8                            20060705, Instrument No. 0004266; and,  
9                   d.   Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book  
10                          20080207, Instrument No. 01482.

11           62.    On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination  
12 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior  
13 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority  
14 otherwise available to SFC by law or agreement".

15           63.    The Mezzanine Deeds of Trust Subordination Agreement contains a provision that  
16 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of  
17 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the  
18 priority of competing liens or encumbrances on the property, such as Bruin's mechanics' lien.

19           64.    Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to  
20 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they  
21 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books  
22 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
23 Senior Debt Deed of Trust.

24           65.    Bruin is informed and believes and therefore alleges that construction on the  
25 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
26  
27  
28

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1 law, all mechanics' liens, including Bruin's, enjoy a position of priority over the Senior Debt  
2 Deed of Trust.

3 66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
4 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
5 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
6 subordinate to all mechanics' liens, including Bruin's.  
7

8 67. A dispute has arisen, and an actual controversy now exists over the priority issue  
9 of Bruin's mechanics' lien over other encumbrances on the property.

10 Bruin is entitled to a court order declaring that its mechanics' lien has a superior lien position on  
11 the Property over any other lien or encumbrance created by or for the benefit of SFC or any other  
12 entity.  
13

14 **WHEREFORE**, Bruin prays that this Honorable Court:

15 1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
16 the Outstanding Balance amount;

17 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
18 Bruin's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance,  
19 as well as an award of interest thereon;

20 3. Enter a judgment declaring that Bruin has valid and enforceable mechanic's liens  
21 against the Property, with priority over all Defendants, in an amount of the Outstanding Balance;

22 4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable  
23 attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the  
24 Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State  
25 of Nevada, and that the proceeds of said sale be applied to the payment of sums due Bruin herein;  
26  
27  
28




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1           5.     Enter a judgment declaring that Bruin's mechanics' lien enjoys a position of  
2 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
3 entity; and

4           6.     For such other and further relief as this Honorable Court deems just and proper in  
5 the premises.  
6

7           Dated this 22 day of June 2009.

8                           PEEL BRIMLEY LLP

9                             
10                          RICHARD L. PEEL, ESQ.  
11                          Nevada Bar No. 4359  
12                          MICHAEL T. GEBHART, ESQ.  
13                          Nevada Bar No. 7718  
14                          DALLIN T. WAYMENT, ESQ.  
15                          Nevada Bar No. 10270  
16                          3333 E. Serene Avenue, Suite 200  
17                          Henderson, Nevada 89074-6571  
18                          Telephone: (702) 990-7272  
19                          Fax: (702) 990-7273  
20                          rpeel@peelbrimley.com  
21                          mgebhart@peelbrimley.com  
22                          dwayment@peelbrimley.com  
23                          Attorneys for Bruin Painting Corporation

# **EXHIBIT 10EE**

**JA008602**

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ANS/CTCM  
STEVEN L. MORRIS  
Nevada Bar No. 7454  
**WOODBURY, MORRIS & BROWN**  
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[slmorris@wmb-law.net](mailto:slmorris@wmb-law.net)  
Attorneys for  
Camco Pacific Construction Company, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR  
COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada  
corporation; APCO CONSTRUCTION, a  
Nevada corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., Nevada  
corporation; FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND; SCOTT  
FINANCIAL CORPORATION, a North  
Dakota Corporation; DOES I through X;  
ROE CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

Case No. A587168  
Dept. No. XIII

Consolidated with:  
A571228

ANSWER TO BRUIN PAINTING  
CORPORATION'S STATEMENT OF  
FACTS CONSTITUTING LIEN, THIRD-  
PARTY COMPLAINT, AND CAMCO  
PACIFIC CONSTRUCTION INC.'S  
COUNTERCLAIM

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**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

1 BRUIN PAINTING CORPORATION, a  
2 California corporation,

3  
4 Plaintiff in Intervention,

5 vs.

6 CAMCO PACIFIC CONSTRUCTION  
7 COMPANY, INC., a California corporation;  
8 GEMSTONE DEVELOPMENT WEST,  
9 INC., Nevada corporation; FIDELITY AND  
10 DEPOSIT COMPANY OF MARYLAND;  
11 SCOTT FINANCIAL CORPORATION, a  
12 North Dakota Corporation; DOES I through  
13 X; ROE CORPORATIONS I through X;  
14 BOE BONDING COMPANIES I through X;  
15 LOE LENDERS I through X, inclusive,

16 Defendants.

17  
18 CAMCO PACIFIC CONSTRUCTION  
19 COMPANY, INC., a California corporation,

20 Counterclaimant,

21 vs.

22 BRUIN PAINTING CORPORATION, a  
23 California corporation; and DOES I through  
24 X, inclusive,

25 Counterdefendants,

26  
27 Third Party Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
28 (hereinafter "Camco"), by and through its counsel, Steven L. Morris, Esq. of the law firm of  
Woodbury, Morris & Brown, hereby answer the Third Party Complaint of BRUIN PAINTING  
CORPORATION, (hereinafter "Plaintiff" or "Bruin"), on file herein, and admits, denies, and  
alleges as follows:

1. Camco denies each and every allegation contained in Paragraphs 12, 13, 14, 15,  
18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 33, 39, 44, 53, 56, 57, 58 and 59 of Plaintiff's  
Complaint.

2. Camco is without information or knowledge sufficient to ascertain the truth of  
the allegations contained in Paragraphs 7, 32, 34, 35, 36, 37, 38 and 42 of Plaintiff's Complaint,

and therefore denies each and every allegation contained therein.

3. Camco admits the allegations contained in Paragraphs 1, 2, 3, 4, 6, 41, 61, 62, 65, and 66 of Plaintiff's Complaint.

4. As to Paragraphs 8, 16, 21, 30, 40, 45, 54, and 60 of Plaintiff's Complaint, Camco repeats and realleges the answers to paragraphs 1 through 67 as though fully set forth herein.

5. As to Paragraphs 5, 46, 47, 48, 49, 50, 51, and 52 of Plaintiff's Complaint, it is unnecessary for Camco to respond in light of Bruin's August 3, 2009 Voluntary Dismissal of Claims against Fidelity and Deposit Company of Maryland; nonetheless, Camco denies each and every allegation contained therein.

6. As to Paragraph 9 Camco admits that Camco entered into a Subcontract Agreement with Bruin, but as for the remaining allegations therein, Camco admits that the contract speaks for itself.

7. As to Paragraph 10 Camco admits that Bruin furnished work for the benefit of and at the specific request of the Owner, but denies the remaining allegations therein.

8. As to Paragraph 11 Camco admits that Bruin was to be paid by the Owner for its services, but denies the remaining allegations therein.

9. As to Paragraph 17 Camco admits that it acted in good faith, but as for the remaining allegations therein, Camco admits that the contract speaks for itself.

10. As to Paragraph 25 Camco admits that Bruin knew or should have known that payment would have been made by Owner, but denies the remaining allegations therein.

11. As to Paragraph 43 Camco denies that Bruin's claim against the Property is superior to Camco's, but is without information or knowledge sufficient to ascertain the truth of the remaining allegations therein and therefore denies the same.

12. As to Paragraph 55 Camco admits that the Statute speaks for itself, but denies the remaining allegations therein.

13. As to Paragraph 63 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

14. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

15. As to Paragraph 67 Camco admits that there is an actual controversy as to the overall priority of all the mechanic's liens, but denies the remaining allegations therein.

16. To the extent that any allegations set forth in Plaintiff's Complaint have not been answered, this answering Defendant denies each and every allegation or inference thereof not expressly set forth hereinabove.

17. It has become necessary for this answering Defendant to retain the services of WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result, this answering Defendant has been damaged by the Plaintiff, and this answering Defendant is accordingly entitled to its attorney fees and costs incurred herein.

#### AFFIRMATIVE DEFENSES

1. The Complaint on file herein fails to state a claim against Camco upon which relief can be granted.

2. That any or all negligence or fault on the part of the Plaintiff would be active and primary, and any negligence or fault of Camco, if any, would be secondary and passive.

3. Any and all damages sustained by Plaintiff are the result of its own negligence and breach of contract.

4. Camco is not negligent with respect to the transactions which are the subject of the Complaint, and is and was not in breach of contract.

5. At the time and place under the circumstances alleged by the Plaintiff, Plaintiff had full and complete knowledge and information in regard to the conditions and circumstances then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions, assume the risk attendant to any condition there or then present.

6. The liability, if any, of Camco must be reduced by the percentage of fault of others, including the Plaintiff.

7. The claims, and each of them, are barred by the failure of the Plaintiff to plead those claims with particularity.

1           8.     The claims of Plaintiff have been waived as a result of the acts and the conduct  
2 of the Plaintiff.

3           9.     The claim for breach of contract is barred as a result of the failure to satisfy  
4 conditions precedent.

5           10.    Plaintiff brought the case at bar without reasonable grounds upon which to base a  
6 claim for relief.

7           11.    Plaintiff maintained the present action without reasonable grounds upon which to  
8 base a claim for relief.

9           12.    Plaintiff's claims are not well grounded in fact.

10          13.    Plaintiff's claims are not warranted by existing law.

11          14.    Plaintiff is barred from recovering by the doctrine of unclean hands.

12          15.    Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

13          16.    To the extent that Plaintiff's work was substandard, not workmanlike, defective,  
14 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

15          17.    Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff  
16 now complains.

17          18.    There is no justiciable case or controversy as between Plaintiff and Camco.

18          19.    Plaintiff lacks standing to assert all or part of the causes of action contained in  
19 their complaint.

20          20.    Camco's performance on any contract was excused by Plaintiff's material breach  
21 thereof.

22          21.    Plaintiff has failed to mitigate its damages.

23          22.    It has been necessary for Camco to retain the services of the law offices of  
24 Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action, and  
25 Camco is entitled to payment of all costs, fees and expenses associated with and/or arising out  
26 of the defense of this action.

27          23.    Pursuant To NRCP 8, all possible affirmative defenses may not have been  
28 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and  
inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to

1 amend its Answer to allege additional affirmative defenses if subsequent investigation warrants.

2 WHEREFORE, Third Party Defendant Camco prays as follows:

- 3 1. That Plaintiff take nothing by way of its Complaint;
- 4 2. For an award of reasonable attorneys' fees and costs for having to defend this
- 5 action; and
- 6 3. For such other and further relief as the Court deems just and proper.

7 **COUNTERCLAIM**

8 Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

9 "Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury,

10 Morris & Brown complains as follows:

11 **JURISDICTIONAL ALLEGATIONS**

- 12 1. Camco was and is at all times relevant to this action, a California corporation,
- 13 doing business in Clark County, Nevada as a contractor duly licensed by the Nevada State
- 14 Contractors Board.
- 15 2. Counterdefendant BRUIN PAINTING CORPORATION, a California
- 16 corporation (hereinafter referred to as "Bruin") is and was at all times relevant to this action, a
- 17 corporation conducting business in Clark County, Nevada.
- 18 3. The true names and capacities, whether individual, corporate, associate or
- 19 otherwise of Defendants named herein as DOES I through X are unknown to Counterclaimant.
- 20 Said DOE Defendants are responsible for damages suffered by Counterclaimant; therefore,
- 21 Counterclaimant sues Defendants by such fictitious names. Counterclaimant will ask leave to
- 22 amend this Counterclaim to show the true names and capacities of each such DOE Defendants
- 23 at such time as the same have been ascertained.

24 **FIRST CAUSE OF ACTION**

25 **(Breach of Contract)**

- 26 4. Camco repeats and realleges each and every allegation contained in the
- 27 preceding paragraphs of Camco's Counterclaim, incorporates the same at this point by
- 28 reference and further alleges:
5. On or about September 8, 2008, Camco and Bruin entered into a Subcontract



1 Agreement (the "Agreement") relative to the Manhattan West Condominiums project, located  
2 in Clark County, Nevada (the "Project").

3 6. Section II.A. of the Subcontract Agreement states: "Contractor and  
4 Subcontractor expressly acknowledge that all payments due to Subcontractor under this  
5 Agreement shall be made by Contractor solely out of funds actually received by Contractor  
6 from Owner. Subcontractor acknowledges that Subcontractor is sharing, as set forth herein,  
7 in the risk that Owner may for at any reason, including, but not limited to, insolvency or an  
8 alleged dispute, fail to make one or more payments to Contractor for all or a portion of the  
9 Contract Work. Contractor's receipt of the corresponding payment from Owner is a condition  
10 precedent to Contractor's obligation to pay Subcontractor; it being understood that  
11 Subcontractor is solely responsible for evaluating Owner's ability to pay for Subcontractor's  
12 portion of the Contract Work, and Subcontractor acknowledges that Contractor is not liable  
13 to Subcontractor for payment of Subcontractor's invoice unless and until Contractor receives  
14 the corresponding payment from Owner."

15 7. All payments made to subcontractors and suppliers on the Project were made  
16 directly by Gemstone through Nevada Construction Services. (See Exhibit A, attached  
17 hereto and incorporated herein by this reference).

18 8. Camco never received payment on behalf of the subcontractors, including  
19 Bruin, and was therefore, not responsible nor liable for payment to the subcontractors,  
20 including Bruin.

21 9. Bruin agreed and expressly acknowledged that it assumed the risk of non-  
22 payment by the Owner.

23 10. Bruin breached its contract with Camco by demanding payment from Camco  
24 and by bringing claims against Camco and its License Bond Surety relative to payment for  
25 the work allegedly performed by Bruin on the Project.

26 11. Camco is entitled to all of its attorneys' fees and costs pursuant to the terms  
27 and conditions of the Agreement.

28 12. Camco has been required to engage the services of the law firm of  
WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

reasonable attorneys' fees and costs therefor.

**SECOND CAUSE OF ACTION**

**(Breach of Covenant of Good Faith and Fair Dealing)**

13. Camco repeats and realleges each and every allegation contained in the preceding paragraphs of Counterclaimant's Counterclaim, incorporate the same at this point by reference and further allege:

14. The law imposes upon Bruin, by virtue of the contract, a covenant to act in good faith and deal fairly with Counterclaimant;

15. Despite this covenant, Bruin's intentional failure to abide by the terms of the parties written contract, Bruin breached its covenant to act in good faith and deal fairly;

16. As a result of its breach of the covenant of good faith and fair dealing, Bruin has injured Camco in an amount in excess of \$10,000.00.

17. Camco has been required to engage the services of the law firm of WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a reasonable attorneys' fees and costs therefor.

WHEREFORE, Counterclaimant Camco prays as follows:

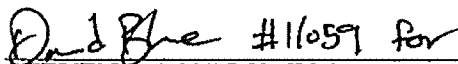
1. This Court enter judgment against Counterdefendants, and each of them, in an amount in excess of \$10,000.00, plus interest at the contract rate;

2. For an award of reasonable attorneys' fees and costs for having to prosecute this action; and

3. For such other and further relief as the Court deems just and proper.

DATED this 11<sup>th</sup> day of September 2009.

WOODBURY, MORRIS & BROWN

 #11059 for

STEVEN L. MORRIS, ESQ.

Nevada Bar No. 7454

701 N. Green Valley Pkwy., Suite 110

Henderson, NV 89074-6178

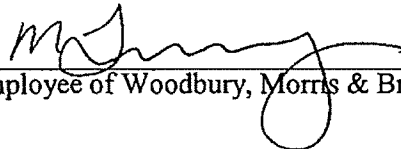
Attorneys for Camco

CERTIFICATE OF MAILING

I hereby certify that on the 11<sup>th</sup> day of September 2009, I served a copy of the  
ANSWER TO BRUIN PAINTING CORPORATION'S STATEMENT OF FACT'S  
CONSTITUTING LIEN, THIRD-PARTY COMPLAINT, AND CAMCO PACIFIC  
CONSTRUCTION'S COUNTERCLAIM by facsimile and by enclosing a true and correct  
copy of the same in a sealed envelope upon which first-class postage was fully prepaid, and  
addressed to the following:

RICHARD L. PEEL, ESQ  
PEEL BRIMLEY, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
Fax: 702-990-7273

and that there is regular communication by mail between the place of mailing and the place so  
addressed.

  
An Employee of Woodbury, Morris & Brown

WOODBURY, MORRIS & BROWN  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

# EXHIBIT A

JA008612



**Date:** April 28, 2009  
**To:** Nevada State Contractor's Board  
**From:** Scott Financial Corporation  
**Subject:** ManhattanWest Project

I am the President of Scott Financial Corporation ("SFC"), which is a seasoned commercial finance company located in Bismarck, North Dakota and licensed in Nevada.

SFC is the lender for ManhattanWest Buildings 2, 3, 7, 8, and 9 located at West Russell Road and Rocky Hill Street in Las Vegas, Nevada (the "Project"). No other ManhattanWest buildings were funded or constructed. The Project consisted of condominiums developed by Gemstone Development West, Inc. ("Gemstone").

The purpose of this letter is to explain the payment process for the Project and to demonstrate that Camco Pacific Construction Company, Inc. ("Camco") had no direct responsibility to pay the trade contractors or any other contracting parties on the Project.

As the Project's lender, SFC established a credit facility between SFC (with its network of participating community banks) and Gemstone. As the loan originator and lead lender, SFC established both the Senior and Mezzanine Credit Facilities that were forecasted to fund the entire construction cost to complete the Project; provided however, that an adequate level of condominium sales were closed by Gemstone in a timely manner.

In connection with its funding of the Project, SFC required a very detailed and disciplined payment procedure, which it has used successfully and extensively in the past. This payment procedure was developed collectively between SFC, Gemstone, and Nevada Construction Services ("NCS") to execute the monthly construction funding on the Project in a proper and timely manner.

This payment procedure was communicated to the general contractors and the trade contractors through them and was used to facilitate the payment structure for all trade contractors/vendors.

Prior to the commencement of the Project, SFC entered into a voucher control contract with NCS. First, pursuant to such agreement, NCS managed the voucher control and served as the third party disbursement agent. Second, as part of such agreement, NCS also performed third party site construction inspections for SFC prior to each disbursement. Please note that NCS is a disbursement agent for SFC and does not "approve funding", that is a role of SFC and our participating banks exclusively.

APCO Construction ("APCO") was the original General Contractor for the Project. The protocol for issuing payment involved APCO submitting a monthly payment application to Gemstone based on a schedule of values and materials delivered by the vendors and trade contractors (the "Payment Application").

Next, Gemstone would review the Payment Application and approve or reject its contents based upon the work completed as of the submission of such Payment Application. Upon the final agreement and approval of the Payment Application by Gemstone and APCO, Gemstone would send the Payment Application and any supporting documents to NCS. NCS

---

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Office: 701.255.2215 • Fax: 701.223.7299

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**JA008613**

would review the Payment Application and the supporting documents and compare them with its payment records. Thereafter, NCS would order a formal NCS inspection of the jobsite to verify that sufficient progress was made to warrant the amount in the Payment Application. After completing such inspection, NCS submitted its request for funding to SFC.

Upon receiving such approval, SFC conducted its final monthly creditor review and completed the funding approval process by taking the following steps: (a) formally signing-off on the Payment Application and (b) obtaining final approval of the Payment Application from the co-lead bank.

Finally, after the Payment Application was properly approved and verified, the corresponding funds were requested by SFC from its participating lenders and advanced into the SFC Project Control Account. Thereafter, the respective (a) soft costs in the Payment Application were advanced directly to Gemstone and (b) the hard costs in the Payment Application were wired directly to NCS for controlled disbursement.

Upon receiving such hard cost funds, NCS would send the corresponding payment directly to APCO for disbursement to the trade contractors. This was the payment process throughout the period that APCO remained on the Project, except for the June and July 2008 Pay Applications where NCS was notified by Gemstone to issue joint checks to the sub contractors.

APCO was terminated by Gemstone for cause in August 2008. After such termination, Gemstone engaged Camco to serve as the General Contractor for the Project. When this substitution occurred, the payment process used during the APCO engagement was continued with some alterations.

The most important of these alterations was based on the shift from a Guaranteed Maximum Price to a simple monthly fee. APCO had agreed to deliver the Project for a Guaranteed Maximum Price and received a fee for its services based on a percentage of each Payment Application. Consequently, APCO assumed responsibility for the financial aspects of the Project and the proper engagement and payment of the trade contractors.

In contrast, Camco was paid a basic fee of \$100,000 per month plus certain expenses to serve as the General Contractor for the project; provided however, that Gemstone, not Camco, was solely responsible for selecting and negotiating the engagement of the trade contractors by Camco. Because of this shift in responsibility, all decisions and communications for payment authorization and processing were handled by Gemstone, without Camco's ongoing involvement.

In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

Furthermore, NCS's protocol also changed to effectively limit Camco's involvement. Because Camco was not responsible for establishing or maintaining the budget, Camco's only role in the payment process was to compile and submit each initial Payment Application.

Thereafter, the review, negotiation, and request for the corresponding payments were handled by Gemstone. As a result, NCS never sent payment for trade contractors to Camco. Instead, such payments were sent directly to the trade contractors.

Furthermore, Camco (a) as a rule did not communicate directly with SFC; (b) only occasionally communicated with NCS regarding the payment process; and (c) did not make any decisions related to the Payment Application or the corresponding payments to Camco or the trade contractors. Payments decisions were all made by Gemstone because they were responsible for the budget and as they pertained to credit decisions reviewed by SFC.

In addition, Camco had no physical control over the funds, and all disbursements were completed between NCS and the trade contractors directly. We understand the trade contractors were aware of Camco's limited role in this payment process. First, the negotiation of each trade contractor's engagement was managed by Gemstone employees and only subsequently ratified by Camco. Second, the terms of the engagement contracts between Camco and each trade contractor and Camco and Gemstone described this relationship. Third, on several occasions when a particular trade contractor expressed concern regarding the timing of a forthcoming payment, Gemstone and Camco repeatedly and consistently explained that all lending decisions regarding funding (credit issues specifically) were ultimately made by SFC and that neither Gemstone nor Camco had the ability, authority, or resources to make any payments that did not come from SFC approval.

To this end, on occasion, trade contractors demanded that they be provided with some evidence of payment in order to continue working. In response, Camco could not, and to our understanding did not, promise that any payment was forthcoming.

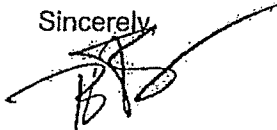
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate. Attached to this letter as Exhibit A are two such letters executed by SFC and delivered to certain trade contractors.

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as Exhibit B. SFC further requested that NCS return funds in the amount of \$993,866.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

Upon learning of SFC's decision to cease funding, we understand Camco terminated its engagement contract with Gemstone based on Gemstone's failure to pay Camco pursuant to the terms of such contract. As a result of changed circumstances on the Project after APCO's termination, Camco's role was limited with regard to payment.

As a result, SFC does not believe Camco or for that matter NCS can be held responsible for payment of any outstanding applications of the trade contractors.

Sincerely,



Brad Scott  
President  
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors





November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection, LLC~~

6380 South Valley View, Suite 110  
Las Vegas, NV 89118

**RE: ManhattanWest Funding**

Mr. Evans:

I have been asked by Gemstone to provide you with an update on the status of the September Draw.

As you may likely know Scott financial Corporation is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The September Draw was submitted to Scott Financial Corporation late last week. We are currently completing the final review of the ~~September Payment Application~~. However, in light of the complications related to the termination of the former general contractor, the approval of the September Payment Application has required more investigation and time than generally typical or expected.

Despite this temporary delay, the funding necessary to satisfy the outstanding amounts due pursuant to the September Payment Application are in final stages of approval and ~~are anticipated to be processed and funded to NES~~ (voucher control) by November 13, 2008.

The amount in processing includes a payment of \$1,092,121.34 to E&E Fire Protection LLC and its corresponding suppliers.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'BJ Scott', written over a horizontal line.

Brad J. Scott  
President

15010 Sundown Drive • Bismarck, ND 58503  
Office: 701.255.2215 • Fax: 701.223.7299

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**JA008617**



Exhibit "A"

December 1, 2008

Leo Duckstein

~~CabineTec Inc.~~

2711 E. Craig Road, Suite A  
North Las Vegas, NV 89030

**RE: ManhattanWest Funding**

Mr. Duckstein:

I have been asked by Gemstone to provide you with an update on the status of the October Draw.

As you may likely know Scott financial Corporation (SFC) is the Creditor of record and has been funding the vertical construction through the various credit facilities established.

The October Draw was submitted to SFC late last week.

We are currently completing the final review of the ~~October Payment Application~~. However, in light of the complications related to in large part to the termination of the former general contractor, the approval of the October Payment Application has required more review, investigation and time than in the past.

Despite this delay, the funding necessary to satisfy the outstanding amounts due pursuant to the October Payment Application are in being reviewed and a determination of approval is being considered by our team.

Clearly approval of the draw is subject to our complete review process.

~~Although we cannot guarantee the approval, SFC anticipates the draw request to be processed and funded to NCS (voucher control) in December.~~

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately \$598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is \$483,664.32.

I trust this letter assists you with your questions on the timing of the funding.

Please feel free to contact me directly if you have any questions.

Sincerely,

  
Brad J. Scott  
President

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Office: 701.255.2215 • Fax: 701.223.7299

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**JA008618**

Exhibit B

SFC Notice to NCS Regarding the Decision to Stop Funding the Project

Exhibit "B"

Jennifer Olivares

From: Brad Scott [mailto:brad@scottfinancialcorp.com]

Sent: Tuesday, December 16, 2008 9:38 AM

To: Jennifer Olivares

Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'

Subject: ManhattanWest Status

Importance: High

Jen:

As of right now 11AM CST 12/16/08 the October Draw is still on permanent hold.

A final decision confirming the lender's direction on Project was expected yesterday. It did not happen.

I anticipate this final decision will however likely lead to ~~the October Draw being approved~~

Foreclosure options and discussion on how we will proceed have been explored.

SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

Those funds will be held in the SFC escrow account at NSB for the time being, until further direction is provided to SFC.

SFC will keep you posted as a final determination is made.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)



Brad J. Scott, CRE  
President  
[brad@scottfinancialcorp.com](mailto:brad@scottfinancialcorp.com)  
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Cell: 701.220.3999

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4/1/2009

JA008620

Exhibit B

Jennifer Olivares

FROM: Brad Scott (brad@scottfinancialcorp.com)

Sent: Monday, December 15, 2008 3:00 PM

TO: Jennifer Olivares

Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Homing'; dparry@camcopacific.com

Subject: FW: ManhattanWest

Importance: High

Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

NSB is hereby instructed by SFC to wire the previously advanced but undispersed funds held on account at NSB in the amount of \$993,868.72 back to SFC using the attached wiring instructions.

This amount includes the Client Home Loan Payment request of \$66,827.29 as it has not been approved by SFC and its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

**Brad J. Scott**  
**Scott Financial Corporation**  
15010 Sundown Drive  
Bismarck, ND 58503  
W: 701.255.2215  
M: 701.220.3999  
F: 701.223.7299  
brad@scottfinancialcorp.com



**Brad J. Scott, CRE** 15010 Sundown Drive  
President Bismarck, ND 58503  
brad@scottfinancialcorp.com Office: 701.255.2215  
Fax: 701.223.7299  
Cell: 701.220.3999

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Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party. By continuing to use e-mail, you are agreeing to accept this risk.

4/1/2009

JA008621

# **EXHIBIT 10FF**

**JA008622**

  
CLERK OF THE COURT

1 **VDSM**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
6 DALLIN T. WAYMENT, ESQ.  
7 Nevada Bar No. 10270  
8 **PEEL BRIMLEY LLP**  
9 3333 E. Serene Avenue, Suite 200  
10 Henderson, NV 89074-6571  
11 Telephone: (702) 990-7272  
12 Fax: (702) 990-7273  
13 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
14 [mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
15 [dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)  
16 *Attorneys for Bruin Painting Corporation*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ACCURACY GLASS & MIRROR  
12 COMPANY, INC., a Nevada corporation,

13 Plaintiff,

14 vs.

15 ASPHALT PRODUCTS CORP., a Nevada  
16 corporation; APCO CONSTRUCTION, a  
17 Nevada corporation; CAMCO PACIFIC  
18 CONSTRUCTION COMPANY, INC., a  
19 California corporation; GEMSTONE  
20 DEVELOPMENT WEST, INC., Nevada  
21 corporation; FIDELITY AND DEPOSIT  
22 COMPANY OF MARYLAND; SCOTT  
23 FINANCIAL CORPORATION, a North Dakota  
24 corporation; DOES I through X; ROE  
25 CORPORATIONS I through X; BOE  
26 BONDING COMPANIES I through X; LOE  
27 LENDERS I through X, inclusive,

28 Defendants.

BRUIN PAINTING CORPORATION, a  
California corporation,

Plaintiff in Intervention,

vs.

CAMCO PACIFIC CONSTRUCTION  
COMPANY, INC., a California corporation;  
GEMSTONE DEVELOPMENT WEST, INC.,  
Nevada corporation; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND;  
SCOTT FINANCIAL CORPORATION, a  
North Dakota corporation; DOES I through X;

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

**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**

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074

ROE CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

Pursuant to NRCP 41(a)(1), Plaintiff-in-Intervention, BRUIN PAINTING CORPORATION, voluntarily dismisses FIDELITY AND DEPOSIT COMPANY OF MARYLAND ONLY, from Bruin Painting Corporation's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint from District Court Case A587168 without prejudice. No answer or motion for summary judgment has been served and the Court has set no trial date in this action.

Therefore, Plaintiff authorizes and directs the Clerk of this Court to enter a Dismissal of this action.

DATED this 3 day of August, 2009.

PEEL BRIMLEY LLP

By: 

RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

DALLIN T. WAYMENT, ESQ.

Nevada Bar No. 10270

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[mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)

[dwayment@peelbrimley.com](mailto:dwayment@peelbrimley.com)

Attorneys for Bruin Painting Corporation.



# **EXHIBIT 10GG**

**JA008625**

PEEL BRIMLEY LLP  
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1 **STMT**  
2 RICHARD L. PEEL, ESQ.  
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13 rpeel@peelbrimley.com  
14 mgebhardt@peelbrimley.com  
15 dwayment@peelbrimley.com  
16 *Attorneys for HD Supply Waterworks, LP*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **ACCURACY GLASS & MIRROR**  
12 **COMPANY, INC., a Nevada corporation,**

13 Plaintiff,

14 vs.

15 **ASPHALT PRODUCTS CORP., a Nevada**  
16 **corporation; APCO CONSTRUCTION, a**  
17 **Nevada corporation; CAMCO PACIFIC**  
18 **CONSTRUCTION COMPANY, INC., a**  
19 **California corporation; GEMSTONE**  
20 **DEVELOPMENT WEST, INC., Nevada**  
21 **corporation; FIDELITY AND DEPOSIT**  
22 **COMPANY OF MARYLAND; SCOTT**  
23 **FINANCIAL CORPORATION, a North Dakota**  
24 **corporation; DOES I through X; ROE**  
25 **CORPORATIONS I through X; BOE**  
26 **BONDING COMPANIES I through X; LOE**  
27 **LENDERS I through X, inclusive,**

28 Defendants.

22 **HD SUPPLY WATERWORKS, LP, a Florida**  
23 **limited partnership,**

24 Plaintiff in Intervention,

25 vs.

26 **APCO CONSTRUCTION, a Nevada**  
27 **corporation; CAMCO PACIFIC**  
28 **CONSTRUCTION COMPANY, INC., a**  
**California corporation; GEMSTONE**  
**DEVELOPMENT WEST, INC., Nevada**  
**corporation; JEFF HEIT PLUMBING CO, LLC,**

Electronically Filed  
06/24/2009 07:14:15 AM

*Edmund H. Hines*  
CLERK OF THE COURT

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*

A571792

A574391

A577623

A583289

A584730

A587168

**HD SUPPLY WATERWORKS'**  
**AMENDED STATEMENT OF FACTS**  
**CONSTITUTING A NOTICE OF LIEN**  
**AND THIRD-PARTY COMPLAINT**

09A587168  
211018



**EXEMPTION FROM ARBITRATION:**  
**Title to Real Estate**

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

a Nevada limited-liability company; E & E  
FIRE PROTECTION, LLC, a Nevada limited  
liability company; FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND; OLD  
REPUBLIC SURETY; PLATTE RIVER  
INSURANCE COMPANY; SCOTT  
FINANCIAL CORPORATION, a North Dakota  
corporation ; DOES I through X; ROE  
CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP ("HD Supply") by and through its attorneys PEEL  
BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third-  
Party Complaint ("Amended Complaint") against the above-named defendants complains, avers  
and alleges as follows:

#### THE PARTIES

1. HD Supply is and was at all times relevant to this action a Florida limited  
partnership, duly authorized, licensed and qualified to do business in Clark County, Nevada.

2. HD Supply is informed and believes and therefore alleges that Defendant  
GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all  
times relevant to this action, the owner, reputed owner, or the person, individual and/or entity  
who claims an ownership interest in that certain real property portions thereof located in Clark  
County, Nevada and more particularly described as follows:

Manhattan West Condominiums (Project)  
Spring Valley  
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &  
PT N2 NW4 SEC 32 21 60  
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and  
163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-  
001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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- HD Supply Waterworks\037 - E & E Fire  
Protection [Manhattan West]\PX\Originals\090622

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1 appurtenances thereto, and surrounding space may be required for the convenient use and  
2 occupation thereof, upon which Owners caused or allowed to be constructed certain  
3 improvements (the "Property").

4 3. The whole of the Property is reasonably necessary for the convenient use and  
5 occupation of the improvements.  
6

7 4. HD Supply is informed and believes and therefore alleges that Defendant APCO  
8 CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this  
9 action doing business as a licensed contractor authorized to conduct business in Clark County,  
10 Nevada.

11 5. HD Supply is informed and believes and therefore alleges that Defendant CAMCO  
12 PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was  
13 at all times relevant to this action doing business as a licensed contractor authorized to conduct  
14 business in Clark County, Nevada.  
15

16 6. HD Supply is informed and believes and therefore alleges that Defendant JEFF  
17 HEIT PLUMBING CO, LLC, a Nevada limited-liability company ("JHPC"), is and was at all  
18 times relevant to this action doing business as a licensed contractor authorized to conduct  
19 business in Clark County, Nevada.  
20

21 7. HD Supply is informed and believes and therefore alleges that Defendant E & E  
22 FIRE PROTECTION, LLC, a Nevada limited liability company ("E&E"), is and was at all times  
23 relevant to this action doing business as a licensed contractor authorized to conduct business in  
24 Clark County, Nevada.

25 8. HD Supply is informed and believes and therefore alleges that Defendant,  
26 FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was  
27 and is a bonding company licensed and qualified to do business as a surety in Nevada.  
28

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1           9.     HD Supply is informed and believes and therefore alleges that Defendant, OLD  
2 REPUBLIC SURETY (hereinafter "JHPC Surety"), was and is a bonding company licensed and  
3 qualified to do business as a surety in Nevada.

4           10.    HD Supply is informed and believes and therefore alleges that Defendant,  
5 PLATTE RIVER INSURANCE COMPANY (hereinafter "E&E Surety"), was and is a bonding  
6 company licensed and qualified to do business as a surety in Nevada.

7           11.    HD Supply is informed and believes and therefore alleges that Defendant Scott  
8 Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business  
9 in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans,  
10 selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust  
11 securing loans given to the Owner for, inter alia, development of the Property.

12           12.    HD Supply does not know the true names of the individuals, corporations,  
13 partnerships and entities sued and identified in fictitious names as DOES I through X, ROE  
14 CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE  
15 LENDERS I through X. HD Supply alleges that such Defendants claim an interest in or to the  
16 Properties, and/or are responsible for damages suffered by HD Supply as more fully discussed  
17 under the claims for relief set forth below. HD Supply will request leave of this Honorable Court  
18 to amend this Amended Complaint to show the true names and capacities of each such fictitious  
19 Defendant when HD Supply discovers such information.

20  
21  
22                           **FIRST CAUSE OF ACTION**  
23                           **(Breach of Contract – JHPC Credit Agreement)**

24           13.    HD Supply repeats and realleges each and every allegation contained in the  
25 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
26 alleges as follows:  
27  
28

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1           14.     In or around November 2008, HD Supply entered into a Credit Agreement ("JHPC  
2 Agreement) with JHPC to provide certain plumbing related materials and supplies to the Property  
3 located in Clark County, Nevada (the "JHPC Supplies")

4           15.     HD Supply furnished the JHPC Supplies for the benefit of and at the specific  
5 instance and request of the JHPC.  
6

7           16.     Pursuant to the JHPC Agreement, HD Supply was to be paid an amount in excess  
8 of Ten Thousand Dollars (\$10,000.00) (hereinafter "JHPC Outstanding Balance") for the JHPC  
9 Supplies.

10          17.     HD Supply furnished the JHPC Supplies and has otherwise performed its duties  
11 and obligations as required by the JHPC Agreement.

12          18.     JHPC has breached the JHPC Agreement by, among other things:

13               a.   Failing and/or refusing to pay the monies owed to HD Supply for the JHPC  
14 Supplies;  
15

16               b.   Failing to adjust the JHPC Agreement price to account for extra and/or  
17 changed work, as well as suspensions and delays of JHPC Supplies caused or ordered by the  
18 Defendants and/or their representatives;

19               c.   Failing to promptly recognize and grant time extensions to reflect additional  
20 time allowable under the JHPC Agreement and permit related adjustments in scheduled  
21 performance; and  
22

23               d.   Failing and/or refusing to comply with the JHPC Agreement and Nevada law.

24          19.     HD Supply is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for  
25 the JHPC Supplies.  
26  
27  
28

1           20.     HD Supply has been required to engage the services of an attorney to collect the  
2 JHPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's  
3 fees and interest therefore.

4                                   **SECOND CAUSE OF ACTION**  
5                                   **(Breach of Contract – E&E Credit Agreement)**

6           21.     HD Supply repeats and realleges each and every allegation contained in the  
7 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
8 alleges as follows:

9           22.     In or around December 2008 HD Supply entered into a Credit Agreement with  
10 E&E (the "E&E Agreement") to provide certain piping, valves and related materials and supplies  
11 to the Property located in Clark County, Nevada (the "E&E Supplies")

12           23.     HD Supply furnished the E&E Supplies for the benefit of and at the specific  
13 instance and request of E&E.

14           24.     Pursuant to the E&E Agreement, HD Supply was to be paid an amount in excess  
15 of Ten Thousand Dollars (\$10,000.00) (hereinafter "E&E Outstanding Balance") for the E&E  
16 Supplies.

17           25.     HD Supply furnished the E&E Supplies and has otherwise performed its duties  
18 and obligations as required by the E&E Agreement.

19           26.     E&E has breached the E&E Agreement by, among other things:

20                   a.   Failing and/or refusing to pay the monies owed to HD Supply for the E&E  
21 Supplies;

22                   b.   Failing to adjust the E&E Agreement price to account for extra and/or changed  
23 work, as well as suspensions and delays of E&E Supplies caused or ordered by the Defendants  
24 and/or their representatives;

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1 c. Failing to promptly recognize and grant time extensions to reflect additional  
2 time allowable under the E&E Agreement and permit related adjustments in scheduled  
3 performance; and

4 d. Failing and/or refusing to comply with the E&E Agreement and Nevada law.

5  
6 27. HD Supply is owed an amount in excess of Ten Thousand Dollars (\$10,000.00) for  
7 the E&E Supplies.

8 28. HD Supply has been required to engage the services of an attorney to collect the  
9 E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's  
10 fees and interest therefore.

11 **THIRD CAUSE OF ACTION**

12 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)**

13 29. HD Supply repeats and realleges each and every allegation contained in the  
14 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
15 alleges as follows:

16 30. There is a covenant of good faith and fair dealing implied in every agreement,  
17 including the JHPC Agreement.

18  
19 31. JHPC breached its duty to act in good faith by performing the JHPC Agreement in  
20 a manner that was unfaithful to the purpose of the JHPC Agreement, thereby denying HD  
21 Supply's justified expectations.

22 32. Due to the actions of JHPC, HD Supply has suffered damages in an amount to be  
23 determined at trial for which HD Supply is entitled to judgment plus interest.

24  
25 33. HD Supply has been required to engage the services of an attorney to collect the  
26 JHPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's  
27 fees and interest therefore.



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1 **FOURTH CAUSE OF ACTION**  
2 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

3 34. HD Supply repeats and realleges each and every allegation contained in the  
4 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
5 alleges as follows:

6 35. There is a covenant of good faith and fair dealing implied in every agreement,  
7 including the E&E Agreement.

8 36. E&E breached its duty to act in good faith by performing the E&E Agreement in a  
9 manner that was unfaithful to the purpose of the E&E Agreement, thereby denying HD Supply's  
10 justified expectations.

11 37. Due to the actions of E&E, HD Supply has suffered damages in an amount to be  
12 determined at trial for which HD Supply is entitled to judgment plus interest.

13 38. HD Supply has been required to engage the services of an attorney to collect the  
14 E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's  
15 fees and interest therefore.

16 **FIFTH CAUSE OF ACTION**  
17 **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

18 39. HD Supply repeats and realleges each and every allegation contained in the  
19 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
20 alleges as follows:

21 40. HD Supply furnished the JHPC Supplies and E&E Supplies for the benefit of and  
22 at the specific instance and request of the Defendants.

23 41. As to JHPC and E&E, this cause of action is being pled in the alternative.

24 42. The Defendants accepted, used and enjoyed the benefit of the JHPC Supplies and  
25 E&E Supplies.

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1           43.     The Defendants knew or should have known that HD Supply expected to be paid  
2     for the JHPC Supplies and E&E Supplies.

3           44.     HD Supply has demanded payment of the JHPC Outstanding Balance and E&E  
4     Outstanding Balance.

5           45.     To date, the Defendants have failed, neglected, and/or refused to pay the JHPC  
6     Outstanding Balance and E&E Outstanding Balance.

7           46.     The Defendants have been unjustly enriched, to the detriment of HD Supply.

8           47.     HD Supply has been required to engage the services of an attorney to collect the  
9     JHPC Outstanding Balance and E&E Outstanding Balance, and HD Supply is entitled to recover  
10    its reasonable costs, attorney's fees and interest therefore.  
11

12                               **SIXTH CAUSE OF ACTION**  
13                               **(Foreclosure of Mechanic's Lien – JHPC Lien)**

14           48.     HD Supply repeats and realleges each and every allegation contained in the  
15    preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
16    alleges as follows:

17           49.     The provision of the JHPC Supplies was at the special instance and request of the  
18    Defendants for the Property.

19           50.     As provided at NRS 108.245 and common law, the Defendants had knowledge of  
20    HD Supply's delivery of the JHPC Supplies to the Property or HD Supply provided a Notice of  
21    Right to Lien.  
22

23           51.     HD Supply demanded payment of an amount in excess of Ten Thousand and  
24    no/100 Dollars (\$10,000.00), which amount remains past due and owing.  
25

26           52.     On or about December 29, 2008, HD Supply timely recorded a Notice of Lien in  
27    Book 20081229 of the Official Records of Clark County, Nevada, as Instrument No. 0000767  
28    (the "JHPC Original Lien").

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- HD Supply Waterworks\037 - E & E Fire  
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1           53.    On or about February 4, 2009, HD Supply timely recorded an Amended Notice of  
2   Lien in Book 20090204 of the Official Records of Clark County, Nevada, as Instrument No.  
3   0004357 (the "JHPC Amended Lien").

4           54.    The JHPC Original Lien and JHPC Amended Lien are collectively hereinafter  
5   referred to as the "JHPC Liens."  
6

7           55.    The JHPC Liens were in writing and were recorded against the Property for the  
8   outstanding balance due to HD Supply in the amount of Twenty-Five Thousand Four Hundred  
9   Forty-One and 40/100 Dollars (\$25,441.40).

10          56.    The JHPC Liens were served upon the Owner and/or its authorized agents, as  
11   required by law.

12          57.    HD Supply is entitled to an award of reasonable attorney's fees, costs and interest  
13   on the JHPC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.  
14

15                   **SEVENTH CAUSE OF ACTION**  
16                   **(Foreclosure of Mechanic's Lien – E&E Lien)**

17          58.    HD Supply repeats and realleges each and every allegation contained in the  
18   preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
19   alleges as follows:

20          59.    The provision of the E&E Supplies was at the special instance and request of the  
21   Defendants for the Property.

22          60.    As provided at NRS 108.245 and common law, the Defendants had knowledge of  
23   HD Supply's delivery of the E&E Supplies to the Property or HD Supply provided a Notice of  
24   Right to Lien.  
25

26          61.    HD Supply demanded payment of an amount in excess of Ten Thousand and  
27   no/100 Dollars (\$10,000.00), which amount remains past due and owing.  
28

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1           62.    On or about February 3, 2009, HD Supply timely recorded a Notice of Lien in  
2 Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0004359  
3 (the "E&E Lien").

4           63.    The E&E Lien was in writing and was recorded against the Property for the  
5 outstanding balance due to HD Supply in the amount of One Hundred Fifty-Nine Thousand Four  
6 Hundred Seventy-Eight and 55/100 Dollars (\$159,478.55).

7           64.    The E&E Lien was served upon the Owner and/or its authorized agents, as  
8 required by law.  
9

10          65.    HD Supply is entitled to an award of reasonable attorney's fees, costs and interest  
11 on the E&E Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

12                               **EIGHTH CAUSE OF ACTION**  
13                               **(Claim of Priority)**

14          66.    HD Supply repeats and realleges each and every allegation contained in the  
15 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
16 alleges as follows:

17          67.    HD Supply is informed and believes and therefore alleges that construction on the  
18 Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the  
19 Property, including the deeds of trust recorded by SFC.

20          68.    HD Supply is informed and believes and therefore alleges that even if a deed(s) of  
21 trust and/or other interest(s) in the Property were recorded before construction on the Property  
22 commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to  
23 HD Supply's statutory mechanics' lien thereby elevating HD Supply's statutory mechanics' lien  
24 to a position superior to those deed(s) of trust and/or other interests(s) in the Property.  
25

26          69.    HD Supply's claim against the Property is superior to the claim(s) of SFC, any  
27 other defendant, and/or any Loe Lender.  
28

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1           70.     HD Supply has been required to engage the services of an attorney to collect the  
2 JHPC Outstanding Balance due and owing for the JHPC Supplies and the E&E Outstanding  
3 Balance due and owing for the E&E Supplies, and HD Supply is entitled to recover its reasonable  
4 costs, attorney's fees and interest therefore.  
5

6                           **NINTH CAUSE OF ACTION**  
7                           **(Claim Against Bond – CPCC Surety)**

8           71.     HD Supply repeats and realleges each and every allegation contained in the  
9 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
10 alleges as follows:

11           72.     Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued  
12 License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars  
13 (\$50,000.00).

14           73.     CPCC is named as principal and CPCC Surety is named as surety on the Bond.

15           74.     The Bond was provided pursuant to the requirements of NRS 624.270, which  
16 Bond was in force during all times relevant to this action.  
17

18           75.     HD Supply furnished the E&E Supplies as stated herein and has not been paid for  
19 the same. HD Supply therefore claims payment on said Bond.

20           76.     The CPCC Surety is obligated to pay HD Supply the sums due.

21           77.     Demand for the payment of the sums due to HD Supply has been made, but CPCC  
22 and the CPCC Surety have failed, neglected and refused to pay the same to HD Supply.

23           78.     CPCC and the CPCC Surety owe HD Supply the penal sum of the Bond.

24           79.     HD Supply was required to engage the services of an attorney to collect the E&E  
25 Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its  
26 reasonable attorney's fees and costs therefore.  
27  
28

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**TENTH CAUSE OF ACTION**  
**(Claim Against Bond – JHPC Surety)**

80. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Prior to the events giving rise to this Amended Complaint, the JHPC Surety issued License Bond No. 1225706 (hereinafter the "Bond") in the sum of Five Thousand Dollars (\$5,000.00).

82. JHPC is named as principal and JHPC Surety is named as surety on the Bond.

83. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

84. HD Supply furnished the JHPC Supplies as stated herein and has not been paid for the same. HD Supply therefore claims payment on said Bond.

85. The JHPC Surety is obligated to pay HD Supply the sums due.

86. Demand for the payment of the sums due to HD Supply has been made, but JHPC and the JHPC Surety have failed, neglected and refused to pay the same to HD Supply.

87. JHPC and the JHPC Surety owe HD Supply the penal sum of the Bond.

88. HD Supply was required to engage the services of an attorney to collect the JHPC Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its reasonable attorney's fees and costs therefore.

**ELEVENTH CAUSE OF ACTION**  
**(Claim Against Bond – E&E Surety)**

89. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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1 90. Prior to the events giving rise to this Amended Complaint, the E&E Surety issued  
2 License Bond No. 41104547 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars  
3 (\$50,000.00).

4 91. E&E is named as principal and E&E Surety is named as surety on the Bond.

5 92. The Bond was provided pursuant to the requirements of NRS 624.270, which  
6 Bond was in force during all times relevant to this action.

7 93. HD Supply furnished the E&E Supplies as stated herein and has not been paid for  
8 the same. HD Supply therefore claims payment on said Bond.

9 94. The E&E Surety is obligated to pay HD Supply the sums due.

10 95. Demand for the payment of the sums due to HD Supply has been made, but E&E  
11 and the E&E Surety have failed, neglected and refused to pay the same to HD Supply.

12 96. E&E and the E&E Surety owe HD Supply the penal sum of the Bond.

13 97. HD Supply was required to engage the services of an attorney to collect the E&E  
14 Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its  
15 reasonable attorney's fees and costs therefore.

16 **TWELFTH CAUSE OF ACTION**  
17 **(Declaratory Judgment)**

18 98. HD Supply repeats and realleges each and every allegation contained in the  
19 preceding paragraphs of this Amended Complaint, incorporates them by reference, and further  
20 alleges as follows:

21 99. Upon information and belief, Owner is the Trustor and SFC is the beneficiary  
22 under the following deeds of trust covering the real property at issue:

23 a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
24 20060705, Instrument No. 0004264;

25 b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
26 20060705, Instrument No. 0004265;

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1  
2 c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book  
20060705, Instrument No. 0004266; and,

3  
4 d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book  
20080207, Instrument No. 01482.

5 100. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination  
6 Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior  
7 Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority  
8 otherwise available to SFC by law or agreement".  
9

10 101. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that  
11 it shall not be construed as affecting the priority of any other lien or encumbrances in favor of  
12 SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the  
13 priority of competing liens or encumbrances on the property, such as HD Supply's mechanics'  
14 lien.  
15

16 102. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to  
17 cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they  
18 were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books  
19 conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the  
20 Senior Debt Deed of Trust.

21 103. HD Supply is informed and believes and therefore alleges that construction on the  
22 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by  
23 law, all mechanics' liens, including HD Supply's, enjoy a position of priority over the Senior  
24 Debt Deed of Trust.  
25

26 104. Because the Mezzanine Deeds of Trust Subordination Agreement renders the  
27 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,  
28



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1 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly  
2 subordinate to all mechanics' liens, including HD Supply's.

3 105. A dispute has arisen, and an actual controversy now exists over the priority issue  
4 of HD Supply's mechanics' lien over other encumbrances on the property.

5 106. HD Supply is entitled to a court order declaring that its mechanics' lien has a  
6 superior lien position on the Property over any other lien or encumbrance created by or for the  
7 benefit of SFC or any other entity.

8  
9 **WHEREFORE**, HD Supply prays that this Honorable Court:

10 1. Enters judgment against the Defendants, and each of them, jointly and severally, in  
11 the JHPC Outstanding Balance and E&E Outstanding Balance amounts;

12 2. Enters a judgment against Defendants, and each of them, jointly and severally, for  
13 HD Supply's reasonable costs and attorney's fees incurred in the collection of the JHPC  
14 Outstanding Balance and E&E Outstanding Balance, as well as an award of interest thereon;

15 3. Enter a judgment declaring that HD Supply has valid and enforceable mechanic's  
16 liens against the Property, with priority over all Defendants, in an amount of the JHPC  
17 Outstanding Balance and E&E Outstanding Balance;

18 4. Adjudge a lien upon the Property for the JHPC Outstanding Balance and E&E  
19 Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this  
20 Honorable Court enter an Order that the Property, and improvements, such as may be necessary,  
21 be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied  
22 to the payment of sums due HD Supply herein;

23 5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of  
24 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other  
25 entity; and  
26  
27  
28

6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

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**MICHAEL T. GEBHART, ESQ.**  
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*Attorneys for HD Supply Waterworks, LP*

# EXHIBIT 10HH

JA008643

  
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14 Attorneys for APCO Construction

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada  
13 corporation,

14 Plaintiff,

15 vs.

16 GEMSTONE DEVELOPMENT WEST, INC.,  
17 a Nevada corporation; NEVADA  
18 CONSTRUCTION SERVICES, a Nevada  
19 corporation; SCOTT FINANCIAL  
20 CORPORATION, a North Dakota  
21 corporation; COMMONWEALTH LAND  
22 TITLE INSURANCE COMPANY; FIRST  
23 AMERICAN TITLE INSURANCE  
24 COMPANY; and DOES I through X,

25 Defendants.

26 HD SUPPLY WATERWORKS, LP, a Florida  
27 limited partnership,

28 Lien Claimant/Intervenor,

vs.

APCO CONSTRUCTION, a Nevada

CASE NO.: 08-A-571228  
DEPT. NO.: XIII

Consolidated with: A574391, A574792,  
A577623, A583289, A584730, A587168,  
A580889 and A589195

**APCO CONSTRUCTION'S ANSWER TO  
HD SUPPLY WATERWORKS'  
AMENDED STATEMENT OF FACTS  
CONSTITUTING A NOTICE OF LIEN  
AND THIRD-PARTY COMPLAINT**

corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., a Nevada  
corporation; JEFF HEIT PLUMBING CO.,  
LLC, a Nevada limited liability company;  
E&E FIRE PROTECTION, LLC, a Nevada  
limited liability company; FIDELITY AND  
DEPOSIT COMPANY OF MARYLAND;  
OLD REPUBLIC SURETY; PLATTE RIVER  
INSURANCE COMPANY; SCOTT  
FINANCIAL CORPORATION, a North  
Dakota corporation; DOES I through X; ROE  
CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive

Respondents.

AND ALL RELATED CASES AND  
MATTERS.

**APCO CONSTRUCTION'S ANSWER TO  
HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS  
CONSTITUTING LIEN**

APCO CONSTRUCTION ("APCO"), by and through its attorneys, Gwen Rutar Mullins, Esq. and Wade B. Gochnour, Esq., of the law firm of Howard and Howard Attorneys PLLC, hereby files this Answer to HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint (hereinafter "Complaint") and hereby responds and alleges as follows:

**THE PARTIES**

1. Answering Paragraph 1, 5, 6, 7, 8, 9, 10, 11. and 12 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

2. Answering Paragraphs 2, 3 and 4 of the Complaint, APCO admits the allegations contained therein.

**FIRST CAUSE OF ACTION**

**(Breach of Contract – JHPC Credit Agreement)**

3. Answering Paragraph 13 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 and 2 of this Answer to the Complaint as though fully set forth herein.

4. Answering Paragraphs 14, 15, 16, 17, 18, 19, and 20 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

**SECOND CAUSE OF ACTION**

**(Breach of Contract – E&E Credit Agreement)**

5. Answering Paragraph 21 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 4 of this Answer to the Complaint as though fully set forth herein.

6. Answering Paragraphs 22, 23, 24, 25, 26, 27, and 28 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein on those basis.

**THIRD CAUSE OF ACTION**

**(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)**

7. Answering Paragraph 29 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 6 of this Answer to the Complaint as though fully set forth herein..

8. Answering Paragraphs 30, 31, 32, and 33 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the

1 allegations contained therein, and upon said grounds, denies each and every allegation  
2 contained therein on those basis.

3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

5 9. Answering Paragraph 34 of the Complaint, APCO repeats and realleges each  
6 and every allegation contained in paragraphs 1 through 8 of this Answer to the Complaint as  
7 though fully set forth herein.

8 10. Answering Paragraphs 35, 36, 37, and 38 of the Complaint, APCO does not  
9 have sufficient knowledge or information upon which to base a belief as to the truth of the  
10 allegations contained therein, and upon said grounds, denies each and every allegation  
11 contained therein on those basis.

12 **FIFTH CAUSE OF ACTION**

13 **(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

14 11. Answering Paragraph 39 of the Complaint, APCO repeats and realleges each  
15 and every allegation contained in paragraphs 1 through 10 of this Answer to the Complaint as  
16 though fully set forth herein.

17 12. Answering Paragraphs 40, 41, 42, 43, 44, 45, 46, and 47 of the Complaint,  
18 APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With  
19 respect to any allegations that have been asserted against the remaining Defendants, APCO  
20 does not have sufficient knowledge or information upon which to base a belief as to the truth of  
21 the allegations contained therein, and upon said grounds, denies each and every allegation  
22 contained therein.

23 **SIXTH CAUSE OF ACTION**

24 **(Foreclosure of Mechanic's Lien – JHPC Lien)**

25 13. Answering Paragraph 48 of the Complaint, APCO repeats and realleges each  
26 and every allegation contained in paragraphs 1 through 12 of this Answer to the Complaint as  
27 though fully set forth herein.  
28

1           14.     Answering Paragraphs 49, 50, 51, 52, 53, 54, 55, 56, and 57 of the Complaint,  
2     APCO denies all the allegations as they pertain to, or as they are or may be alleged against,  
3     APCO. With respect to any allegations that have been asserted against the remaining  
4     Defendants, APCO does not have sufficient knowledge or information upon which to base a  
5     belief as to the truth of the allegations contained therein, and upon said grounds, denies each  
6     and every allegation contained therein.

7                                 **SEVENTH CAUSE OF ACTION**

8                                 **(Foreclosure of Mechanic's Lien – E&E Lien)**

9           15.     Answering Paragraph 58 of the Complaint, APCO repeats and realleges each  
10    and every allegation contained in paragraphs 1 through 14 of this Answer to the Complaint as  
11    though fully set forth herein.

12           16.     Answering Paragraphs 59, 60, 61, 62, 63, 64, and 65 of the Complaint, APCO  
13    denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect  
14    to any allegations that have been asserted against the remaining Defendants, APCO does not  
15    have sufficient knowledge or information upon which to base a belief as to the truth of the  
16    allegations contained therein, and upon said grounds, denies each and every allegation  
17    contained therein.

18                                 **EIGHTH CAUSE OF ACTION**

19                                 **(Claim of Priority)**

20           17.     Answering Paragraph 66 of the Complaint, APCO repeats and realleges each  
21    and every allegation contained in paragraphs 1 through 16 of this Answer to the Complaint as  
22    though fully set forth herein.

23           18.     Answering Paragraph 67 of the Complaint, APCO admits the allegations  
24    contained therein.

25           19.     Answering Paragraph 68 of the Complaint, APCO does not have sufficient  
26    knowledge or information upon which to base a belief as to the truth of the allegations  
27    contained therein, and upon said grounds, denies each and every allegation contained therein.  
28



20. Answering Paragraphs 69 and 70 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**NINTH CAUSE OF ACTION**

**(Claim Against Bond – CPCC Surety)**

21. Answering Paragraph 71 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 20 of this Answer to the Complaint as though fully set forth herein.

22. Answering Paragraphs 72, 73, 74, 75, 76, 77, 78 and 79 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**TENTH CAUSE OF ACTION**

**(Claim Against Bond – JHPC Surety)**

23. Answering Paragraph 80 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 22 of this Answer to the Complaint as though fully set forth herein.

24. Answering Paragraphs 81, 82, 83, 84, 85, 86, 87, and 88 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

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...

**ELEVENTH CAUSE OF ACTION**

**(Claim Against Bond – E&E Surety)**

25. Answering Paragraph 89 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 24 of this Answer to the Complaint as though fully set forth herein.

26. Answering Paragraphs 90, 91, 92, 93, 94, 95, 96, and 97 of the Complaint, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**TWELFTH CAUSE OF ACTION**

**(Declaratory Judgment)**

27. Answering Paragraph 98 of the Complaint, APCO repeats and realleges each and every allegation contained in paragraphs 1 through 26 of this Answer to the Complaint as though fully set forth herein.

28. Answering Paragraphs 99, 100, 101, 102, 103, 104, and 105 of the Complaint, APCO, upon information and belief, admits the allegations contained therein.

29. Answering Paragraph 106 of the Complaint, APCO denies all the allegations as they pertain to, or as they are alleged against, APCO. With respect to any allegations that have been asserted against the remaining Defendants, APCO does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein, and upon said grounds, denies each and every allegation contained therein.

**FIRST AFFIRMATIVE DEFENSE**

HD Supply has failed to state a claim against APCO upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The claims of the HD Supply have been waived as a result of their respective acts and conduct.

...

**THIRD AFFIRMATIVE DEFENSE**

No monies are due HD Supply from APCO and APCO has not been unjustly enriched as APCO has not received payment for HD Supply's work or supply of materials from Gemstone, the developer of the Manhattan West Project and/or to the extent APCO received such payment, APCO paid HD Supply.

**FOURTH AFFIRMATIVE DEFENSE**

Any and all damages sustained by HD Supply are the result of negligence, breach of contract and/or breach of warranty, express and/or implied, of a third-party over whom APCO has no control, and for whose acts APCO is not responsible or liable to HD Supply.

**FIFTH AFFIRMATIVE DEFENSE**

At the time and place under the circumstances alleged by the HD Supply, HD Supply had full and complete knowledge and information with regard to the conditions and circumstances then and there existing, and through HD Supply's own knowledge, conduct, acts and omissions, assumed the risk attendant to any condition there or then present.

**SIXTH AFFIRMATIVE DEFENSE**

Whatever damages, if any, were sustained by HD Supply, were caused in whole or in part or were contributed to by reason of HD Supply's own actions.

**SEVENTH AFFIRMATIVE DEFENSE**

The liability, if any, of APCO must be reduced by the percentage of fault of others, including HD Supply.

**EIGHTH AFFIRMATIVE DEFENSE**

The damages alleged by HD Supply were caused by and arose out of the risk which HD Supply had knowledge and which HD Supply assumed.

**NINTH AFFIRMATIVE DEFENSE**

The alleged damages complained of by HD Supply were caused in whole or in part by a new, independent and intervening cause over which APCO had no control. Said independent, intervening cause was the result of any alleged damages resulting to HD Supply.

**TENTH AFFIRMATIVE DEFENSE**

APCO had no contractual or other obligations to HD Supply.

**ELEVENTH AFFIRMATIVE DEFENSE**

APCO has been forced to retain the services of an attorney to defend this action and therefore is entitled to reasonable attorneys' fees and costs.

**TWELFTH AFFIRMATIVE DEFENSE**

HD Supply has failed to comply with the requirements of NRS 624.

**THIRTEENTH AFFIRMATIVE DEFENSE**

HD Supply may have failed to comply with all requirements of NRS 108 to perfect its lien.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Pursuant to NRCP Rule 8 and 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to the Complaint, and therefore, APCO reserves the right to amend their Answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, APCO prays for judgment as follows:

1. That HD Supply take nothing by way of its Complaint on file herein and that the same be dismissed with prejudice against APCO;
2. For an award of attorneys' fees and costs incurred herein by APCO; and

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HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

1 3. For such other and further relief as this Court may deem just and proper.

2 DATED this 5 day of August, 2009.

3 HOWARD & HOWARD ATTORNEYS PLLC

4   
5 Owen Mullins, Esq.

6 Nevada Bar No. 3146

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8 Nevada Bar No. 6314

9 3800 Howard Hughes Parkway

10 Suite 1400

11 Las Vegas, NV 89169

12 *Attorneys for APCO Construction*

CERTIFICATE OF MAILING

On the 8th day of August, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING LIEN, by U.S. Mail, postage prepaid, upon the following:

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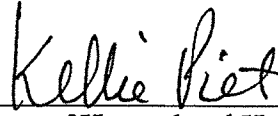
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Accuracy Glass & Mirror Company, Inc.;  
Bruin Painting Corporation; Helix Electric  
of Nevada, LLC; and WRG Design, Inc.*



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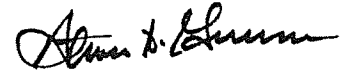
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An employee of Howard and Howard Attorneys PLLC

# **EXHIBIT 10II**

**JA008658**

  
CLERK OF THE COURT

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4 Zachariah B. Parry, Esq.  
5 Nevada Bar No. 11677  
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10 zparry@wmb-law.net  
11 (702) 933-0777  
12 *Attorneys for*  
13 *Camco Pacific Construction Company, Inc. and*  
14 *Fidelity and Deposit Company of Maryland*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 In re:  
12 Manhattan West Mechanics' Lien Litigation

Case No: A571228  
Dept. No: XXV  
And All Consolidated Cases

**AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF  
FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT**

15 Third Party Defendants CAMCO PACIFIC CONSTRUCTION COMPANY, INC.  
16 (hereinafter "Camco") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
17 (hereinafter "Fidelity") (Camco and Fidelity are sometimes collectively referred to herein as  
18 "Defendants"), by and through their counsel, Steven L. Morris, Esq. of the law firm of  
19 Woodbury, Morris & Brown, hereby answer the Third-Party Complaint of HD SUPPLY &  
20 WATERWORKS, LP (hereinafter "Plaintiff" or "HD Supply"), on file herein, and admit, deny,  
21 and allege as follows:

22 1. Camco and Fidelity are without information or knowledge sufficient to ascertain  
23 the truth of the allegations contained in Paragraphs 4, 6, 7, 9, 10, 12, 14, 15, 16, 17, 18, 19, 22,  
24 23, 24, 25, 26, 27, 31, 32, 33, 35, 36, 37, 52, 53, 54, 55, 56, 62, 63, 64, 68, 81, 82, 83, 84, 85,  
25 86, 87, 90, 91, 92, 93, 94, 95, and 96 of Plaintiff's Complaint, and therefore deny each and  
26 every allegation contained therein.

27 2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 5, 8,  
28

**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

11, 30, 67, 99, 100, 103, 104, of Plaintiff's Complaint.

3. Camco and Fidelity deny each and every allegation contained in Paragraphs 20, 28, 38, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 57, 59, 60, 61, 65, 70, 72, 73, 74, 75, 76, 77, 78, 79, 88, 97, and 106 of Plaintiff's Complaint.

4. As to Paragraph 69, Camco and Fidelity admit that HD Supply's claim against the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained therein.

5. As to Paragraphs 101 and 102, Camco and Fidelity admit that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations contained therein.

6. As to paragraph 105, Camco and Fidelity admit that a dispute has arisen, and an actual controversy now exists, but deny the remaining allegations contained therein.

7. As to Paragraphs 13, 21, 29, 34, 39, 48, 58, 66, 71, 80, 89, 98, of Plaintiff's Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 88 as though fully set forth herein.

8. To the extent that any allegations set forth in Plaintiff's Complaint have not been answered, these answering Defendants deny each and every allegation or inference thereof not expressly set forth hereinabove.

9. It has become necessary for these answering Defendants to retain the services of WOODBURY, MORRIS, & BROWN, attorneys at law, to defend this action, and as a result, these answering Defendants have been damaged by the Plaintiff, and these answering Defendants are accordingly entitled to their attorney fees and costs incurred herein.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint on file herein fails to state a claim against Camco and Fidelity upon which relief can be granted.

2. That any or all negligence or fault on the part of the Plaintiff would be active and primary, and any negligence or fault of Camco, if any, would be secondary and passive.

1           3.       Any and all damages sustained by Plaintiff are the result of its own negligence  
2 and breach of contract.

3           4.       Camco is not negligent with respect to the transactions that are the subject of the  
4 Complaint, and is and was not in breach of contract.

5           5.       At the time and place under the circumstances alleged by the Plaintiff, Plaintiff  
6 had full and complete knowledge and information in regard to the conditions and circumstances  
7 then and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions,  
8 assume the risk attendant to any condition there or then present.

9           6.       The liability, if any, of Camco must be reduced by the percentage of fault of  
10 others, including the Plaintiff.

11           7.       The claims, and each of them, are barred by the failure of the Plaintiff to plead  
12 those claims with particularity.

13           8.       The claims of Plaintiff have been waived as a result of the acts and the conduct  
14 of the Plaintiff.

15           9.       The claim for breach of contract is barred as a result of the failure to satisfy  
16 conditions precedent.

17           10.      The claims for breach of contract and breach of implied covenant of good faith  
18 and fair dealing are barred by the statute of frauds.

19           11.      Plaintiff brought the case at bar without reasonable grounds upon which to base  
20 a claim for relief.

21           12.      Plaintiff maintained the present action without reasonable grounds upon which  
22 to base a claim for relief.

23           13.      Plaintiff's claims are not well grounded in fact.

24           14.      Plaintiff's claims are not warranted by existing law.

25           15.      Plaintiff is barred from recovering by the doctrine of unclean hands.

26           16.      Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

27           17.      To the extent that Plaintiff's work was substandard, not workmanlike, defective,  
28

1 incomplete, or untimely, Plaintiff is not entitled to recover for said work.

2 18. Plaintiff has approved and ratified the alleged acts of Camco for which Plaintiff  
3 now complains.

4 19. There is no justiciable case or controversy as between Plaintiff and Camco  
5 and/or Fidelity.

6 20. Plaintiff lacks standing to assert all or part of the causes of action contained in  
7 their complaint.

8 21. Camco's performance on any contract was excused by Plaintiff's material breach  
9 thereof.

10 22. Plaintiff failed to comply with the requirements of NRS Chapter 108 to perfect  
11 its mechanic's lien and therefore would not be entitled to any recovery on its lien foreclosure  
12 claim.

13 23. Plaintiff has failed to mitigate its damages.

14 24. Defendant Fidelity is informed and believes that it is entitled to assert all of the  
15 defenses available to its principal, and Fidelity hereby incorporates by reference all defenses  
16 raised, or that could have been raised, by Fidelity's principal.

17 25. Fidelity alleges that its liability, if any exists, which is expressly denied, is  
18 limited to the penal sum of the applicable Contractor's License Bond.

19 26. Any license or surety bond executed by Fidelity was limited to the classification  
20 of contracting activities as set forth in its Nevada State Contractor's License Bond.

21 27. The liability of Fidelity if any, is limited to its obligations as set forth in its  
22 surety bond agreement.

23 28. The liability of Fidelity if any, is limited to the statutory liability as set forth in  
24 NRS 624.273.

25 29. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
26 partnerships, corporations, associations, or other organizations that are not its named principal.

27 30. The damages sustained by Plaintiff, if any, were caused by the acts of third  
28

1 persons who were not agents, servants, or employees of Fidelity, or its principal, and who were  
2 not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or  
3 its principal are not liable in any manner to the Plaintiff.

4 31. Fidelity is not liable for the acts or omissions of persons, individuals, firms,  
5 partnerships, corporations, associations, or other organizations that are not its named principal.

6 32. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond  
7 because no judgment or court decree has been entered against its principal.

8 33. It has been necessary for Camco and Fidelity to retain the services of the law  
9 offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this  
10 action, and Camco is entitled to payment of all costs, fees, and expenses associated with and/or  
11 arising out of the defense of this action.

12 34. Pursuant To NRCP 8, all possible affirmative defenses may not have been  
13 alleged herein, inasmuch as sufficient facts were not available after reasonable investigation  
14 and inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right  
15 to amend their Answer to allege additional affirmative defenses if subsequent investigation  
16 warrants.

17 WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

- 18 1. That Plaintiff take nothing by way of its Complaint;  
19 2. For an award of reasonable attorneys' fees and costs for having to defend this  
20 action; and  
21 3. For such other and further relief as the Court deems just and proper.

22 DATED this 26th day of April 2010.

23 WOODBURY, MORRIS & BROWN

24 /s/ Zachariah B. Parry  
25 Steven L. Morris, Esq.  
26 Nevada Bar No. 7454  
27 Zachariah B. Parry, Esq.  
28 Nevada Bar No. 11677  
701 N. Green Valley Pkwy., Suite 110  
Henderson, NV 89074-6178  
Attorneys for Camco and Fidelity

**WOODBURY, MORRIS & BROWN**  
701 N. Green Valley Parkway, Suite 110  
Henderson, Nevada 89074  
(702) 933-0777 ♦ Fax (702) 933-0778

**CERTIFICATE OF MAILING**

I hereby certify that on the 28th day of April 2010, I served a copy of the **AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT** by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

/s/ Zachariah B. Parry  
An Employee of Woodbury, Morris & Brown



# **EXHIBIT 10JJ**

**JA008665**

of Facts and Third Party Complaint.wpd

**FILED**

AUG 7 4 12 PM '08

*E. J. Smith*  
CLERK OF THE COURT

1 **ANS**

2 Keith E. Gregory, Esq.

3 Nevada Bar No. 00232

4 **KEITH E. GREGORY & ASSOCIATES**

5 2300 West Sahara Avenue, Suite 680 Box 23

6 Las Vegas, Nevada 89102

7 Telephone: (702) 382-3636

8 Facsimile: (702) 382-5400

9 Attorneys for Defendants, Jeff Heit Plumbing Co, LLC

10 and Old Republic Surety

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*\*\*

9 **ACCURACY GLASS & MIRROR )**

10 **COMPANY, INC., a Nevada corporation, )**

11 **Plaintiff, )**

12 **vs. )**

13 **ASPHALT PRODUCTS CORP., a Nevada )**

14 **corporation; APCO CONSTRUCTION, a )**

15 **Nevada corporation; CAMCO PACIFIC )**

16 **CONSTRUCTION COMPANY, INC., a )**

17 **California corporation; GEMSTONE )**

18 **DEVELOPMENT WEST, INC., Nevada )**

19 **corporation; FIDELITY AND DEPOSIT )**

20 **COMPANY OF MARYLAND; SCOTT )**

21 **FINANCIAL CORPORATION, a North )**

22 **Dakota corporation; DOES I through X; )**

23 **ROE CORPORATIONS I through X; BOE )**

24 **BONDING COMPANIES I through X; LOE )**

25 **LENDERS I through X, inclusive, )**

26 **Defendants. )**

27 **HD SUPPLY WATERWORKS, LP, a )**

28 **Florida limited partnership, )**

**Plaintiff in Intervention, )**

**vs. )**

**)**

**APCO CONSTRUCTION, a Nevada )**

**corporation; CAMCO PACIFIC )**

**CONSTRUCTION COMPANY, INC., a )**

**California corporation; GEMSTONE )**

**DEVELOPMENT WEST, INC., Nevada )**

**corporation; JEFF HEIT PLUMBING CO, )**

**LLC, )**

Case No.: A571228

Dept. No.: XIII

Consolidated with:

A571792

A574391

A577623

A583289

A584730

A587168

*A587168*

**DEFENDANTS ANSWER TO HD  
SUPPLY WATERWORKS' AMENDED  
STATEMENT OF FACTS AND  
THIRD-PARTY COMPLAINT**

09A587168  
311553



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**CLERK OF THE COURT**

AUG 07 2009

**RECEIVED**

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Las Vegas, Nevada 89102  
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1 a Nevada limited liability company E&M )  
2 FIRE PROTECTION, LLC, a Nevada )  
3 limited liability company; FIDELITY AND )  
4 DEPOSIT COMPANY OF MARYLAND; )  
5 OLD REPUBLIC SURETY; PLATTE )  
6 RIVER INSURANCE COMPANY; SCOTT )  
7 FINANCIAL CORPORATION, a North )  
8 Dakota corporation; DOES I through X; )  
9 ROE CORPORATIONS I through X; BOE )  
10 BONDING COMPANIES I through X; LOE )  
11 LENDERS I through X, inclusive, )  
12 )  
13 Defendants. )  
14 )

15 COMES NOW Defendants, JEFF HEIT PLUMBING CO., LLC., a Nevada limited liability  
16 company (hereinafter jointly referred to as "Heit") and OLD REPUBLIC SURETY (hereinafter  
17 jointly referred to as "ORS"), by and through their counsel, Keith E. Gregory, Esq., of the law firm  
18 of Keith E. Gregory & Associates, and hereby answer the Amended Statement of Facts Constituting  
19 A Notice of Lien and Third-Party Complaint by Plaintiff in Intervention, HD SUPPLY  
20 WATERWORKS, LP, and admit, deny and allege as follows:

21 **THE PARTIES**

22 1. Answering paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11 and 12 of the Amended Complaint  
23 these answering Defendants are without sufficient knowledge or information upon which to form  
24 a belief as to the truth or falsity of the allegations contained therein and based upon such lack of  
25 knowledge and information, deny each and every allegation contained therein.

26 2. Answering paragraphs 6 and 9 of the Amended Complaint these answering  
27 Defendants admits each and every allegation contained therein..

28 ///

**FIRST CAUSE OF ACTION**  
**(Breach of Contract-JHPC Credit Agreement)**

3. Answering paragraph 13 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 12 of the Amended Complaint and incorporate the same herein.

4. Answering paragraphs 14, 15, 16, 17, 18, 19 and 20 of the Amended Complaint \ these answering Defendants deny each and every allegation contained herein.

**SECOND CAUSE OF ACTION**  
**(Breach of Contract-E&E Credit Agreement)**

5. Answering paragraph 21 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 20 of the Amended Complaint and incorporate the same herein.

6. Answering paragraphs 22, 23, 24, 25, 26, 27, and 28 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**THIRD CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)**

7. Answering paragraph 29 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 28 of the Amended Complaint and incorporate the same herein.

8. Answering paragraphs 30, 31, 32, and 33 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**FOURTH CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

9. Answering paragraph 34 of the Amended Complaint these answering Defendants

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1 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
2 33 of the Amended Complaint and incorporate the same herein.

3 10. Answering paragraphs 35, 36, 37, and 38 of the Amended Complaint these  
4 answering Defendants deny each and every allegation contained herein.  
5

6 **FIFTH CAUSE OF ACTION**  
7 **(Unjust Enrichment or in the Alternative Quantum Meruit- Against All Defendants)**

8 11. Answering paragraph 39 of the Amended Complaint these answering Defendants  
9 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
10 38 of the Amended Complaint and incorporate the same herein.

11 12. Answering paragraphs 40, 41, 42, 43, 44, 45, 46, and 47 of the Amended Complaint  
12 these answering Defendants deny each and every allegation contained herein.  
13

14 **SIXTH CAUSE OF ACTION**  
15 **(Foreclosure of Mechanic's Lien-JHPC Lien)**

16 13. Answering paragraph 48 of the Amended Complaint these answering Defendants  
17 repeat and reallege and incorporate by express reference their responses to paragraphs 1 through  
18 47 of the Amended Complaint and incorporate the same herein.

19 14. Answering paragraphs 49, 50, 51, 52, 53, 54, 55, 56, and 57 of the Amended  
20 Complaint these answering Defendants deny each and every allegation contained herein.  
21

22 **SEVENTH CAUSE OF ACTION**  
23 **(Foreclosure of Mechanic's Lien-E&D Lien)**

24 15. Answering paragraph 58 of the Amended Complaint these answering Defendants  
25 repeat and realleges and incorporate by express reference their responses to paragraphs 1 through  
26 57 of the Amended Complaint and incorporate the same herein.

27 16. Answering paragraphs 59, 60, 61, 62, 63, 64 and 65 of the Amended Complaint  
28

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these answering Defendants deny each and every allegation contained herein.

**EIGHTH CAUSE OF ACTION**  
**(Claim of Priority)**

17. Answering paragraph 66 of the Amended Complaint this answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 65 of the Amended Complaint and incorporate the same herein.

18. Answering paragraphs 67, 68, 69 and 70 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

**NINTH CAUSE OF ACTION**  
**(Claim Against Bond-CPCC Surety)**

19. Answering paragraph 71 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 70 of the Amended Complaint and incorporate the same herein.

20. Answering paragraphs 72, 73, 74, 75, 76, 77, 78 and 79 of the Amended Complaint this answering Defendants deny each and every allegation contained herein.

**TENTH CAUSE OF ACTION**  
**(Claim Against Bond-JHPC Surety)**

21. Answering paragraph 80 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 79 of the Amended Complaint and incorporate the same herein.

22. Answering paragraphs 81, 82, 83, 84, 85, 86, 87 and 88 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

///

ELEVENTH CAUSE OF ACTION  
(Claim Against Bond- E&E Surety)

23. Answering paragraphs 89 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 88 of the Amended Complaint and incorporate the same herein.

24. Answering paragraphs 90, 91, 92, 93, 94, 95, 96 and 97 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

TWELFTH CAUSE OF ACTION  
(Declaratory Judgment)

25. Answering paragraph 98 of the Amended Complaint these answering Defendants repeat and reallege and incorporate by express reference their responses to paragraphs 1 through 97 of the Amended Complaint and incorporate the same herein.

26. Answering paragraphs 99, 100, 101, 102, 103, 104, 105, and 106 of the Amended Complaint these answering Defendants deny each and every allegation contained herein.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim against these answering Defendants upon which relief can be granted.

2. Any and all damages sustained by Plaintiff are the result of negligence, breach of contract and breach of warranty, express and/or implied of third-parties over whom these answering Defendants have no control.

3. At all times herein, the product or products supplied or installed by these answering Defendants were fit and proper for the use for which they were designed and intended.

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1           4.     At the time and place, and under the circumstances alleged the damages of the  
2 plaintiff, if any, were caused solely by the breach of contract, and the breach of warranty, expressed  
3 or implied and the acts or omissions, of some third-party or parties over whom these answering  
4 defendants had no control, and for whose acts said defendants are not responsible nor liable to  
5 plaintiff.  
6

7           5.     At the time and place under the circumstances alleged by the Plaintiff, Plaintiff had  
8 full and complete knowledge and information in regard to the conditions and circumstances then  
9 and there existing, and through Plaintiff's own knowledge, conduct, acts and omissions, assumed  
10 the risk attendant to any condition there or then present.  
11

12           6.     These answering Defendants are without knowledge of the acts giving rise to and  
13 could not have averted the damages alleged by the Plaintiff.  
14

15           7.     The claims, and each of them, are barred as a result of the failure of the Plaintiff to  
16 timely make those claims as against these answering Defendant and allow these answering  
17 Defendants to collect evidence sufficient to establish their nonliability. These answering Defendants  
18 relied upon the failure to allege claims by the Plaintiff and as a result the plaintiff's claims are barred  
19 by the doctrine of laches.

20           8.     The claims of the Plaintiff are barred as a result of an accord and satisfaction.  
21

22           9.     The claims of the Plaintiff have been waived as a result of the acts and the conduct  
23 of the Plaintiff.

24           10.    The claim for breach of contract or warranty is barred as a result of the failure to  
25 satisfy conditions precedent.

26           11.    The claims, and each of them, for breach of contract and breach of warranty are  
27 barred by the failure to satisfy conditions subsequent.  
28

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12. Plaintiff has failed to mitigate its damages.

13. Pursuant to NRCP 11 as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer, and therefore these answering Defendants reserve the right to amend its Answer to allege additional affirmative defenses.

14. Plaintiff has failed to comply with the requirements of NRS Chapter 108 for perfection of its Mechanic's Lien.

15. If these answering Defendants failed to perform any contractual obligation owed to plaintiff, which they expressly deny, there existed a valid excuse for such non-performance.

16. Defendants have been required to retain the services of counsel to assist in defense of the claims which have been asserted in the Amended Complaint and therefore, Defendants are entitled to recover reasonable attorneys fees and costs incurred.

17. Defendants incorporate by reference each and every affirmative defense set forth in N.R.C.P. 8 (c) as fully set forth herein.

18. Some of the Affirmative Defenses as pled herein are for purposes of non-waiver. Defendants have not conducted discovery in this matter and specifically reserve the right to amend its answer to include additional Affirmative Defenses if discovery of facts so warrant.

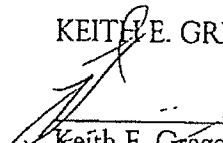
WHEREFORE, Defendants, Jeff Heit Plumbing Co, LLC and Old Republic Surety pray for judgment as follows:

1. That Plaintiff take nothing by virtue of the Amended Statement of Facts and Third-Party Complaint on file herein and the same be dismissed with prejudice; and
2. That this Court make an award in favor in defendants for their reasonable attorneys' fees and costs of suit incurred herein; and

3. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 7<sup>th</sup> day of August, 2009.

KEITH E. GREGORY & ASSOCIATES

  
Keith E. Gregory, Esq.  
Nevada Bar No. 0232  
2300 W. Sahara Avenue, Suite 680, Box 23  
Las Vegas, Nevada 89102-4368  
Counsel for Defendants, Jeff Heit Plumbing Co,  
LLC and Old Republic Surety

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the DEFENDANTS ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS AND THIRD-PARTY COMPLAINT was deposited in the United States mail in Las Vegas, Nevada, this 7<sup>th</sup> day of August, 2009, addressed as follows:

Michael T. Gebhart, Esq.  
Travis N. Barrick, Esq.  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
Counsel for Plaintiff,  
HD Waterworks, LP

  
An Employee of KEITH E. GREGORY & ASSOCIATES

Law Offices of  
KEITH E. GREGORY & ASSOCIATES  
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Las Vegas, Nevada 89102  
(702) 382-3636 • Fax (702) 382-5400

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

3. Within ten (10) business days of the entry of this Order, HD Supply will cause its Notice of Lien which it caused to be recorded with the Office of the County Recorder, Clark County, Nevada as Instrument #200902130004359 to be discharged.

4. Nothing herein shall be deemed to be a waiver or release of the rights, claims or causes of action other than those specifically set forth above.

5. Each party shall bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of March 2013.

Dated this 29 day of March 2013.

**PEEL BRIMLEY LLP**

**T. JAMES TRUMAN & ASSOCIATES**

RICHARD L. PEEL, ESQ.  
Nevada Bar No. 4359  
MICHAEL T. GEBHART, ESQ.  
Nevada Bar No. 7718  
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[mgebhart@peelbrimley.com](mailto:mgebhart@peelbrimley.com)  
*Attorneys for HD Supply Waterworks, LP*

  
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Fax: (702) 396-3035  
[tjamestruman@gmail.com](mailto:tjamestruman@gmail.com)  
*Attorneys for E & E Fire Protection, LLC*

Dated this \_\_\_\_ day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

**KEMP, JONES & COULTHARD, LLP**

**HOWARD & HOWARD**

J. RANDALL JONES, ESQ.  
Nevada Bar No. 1927  
MARK M. JONES, ESQ  
Nevada Bar No. 267  
MATTHEW S. CARTER, ESQ  
Nevada Bar No. 9524  
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*Attorneys for Scott Financial Corp &  
Bradley J. Scott*

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HENDERSON, NEVADA 89074  
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4. Nothing herein shall be deemed to be a waiver or release of the rights, claims or causes of action other than those specifically set forth above.

5. Each party shall bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of March 2013.

Dated this \_\_\_\_ day of March 2013.

**PEEL BRIMLEY LLP**

**T. JAMES TRUMAN & ASSOCIATES**

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[tjamestruman@gmail.com](mailto:tjamestruman@gmail.com)  
*Attorneys for E & E Fire Protection, LLC*

Dated this 25 day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

**KEMP, JONES & COULTHARD, LLP**

**HOWARD & HOWARD**

  
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3. Within ten (10) business days of the entry of this Order, HD Supply will cause its Notice of Lien which it caused to be recorded with the Office of the County Recorder, Clark County, Nevada as Instrument #200902130004359 to be discharged.

4. Nothing herein shall be deemed to be a waiver or release of the rights, claims or causes of action other than those specifically set forth above.

5. Each party shall bear their own attorney's fees and costs.

Dated this \_\_\_\_ day of March 2013.

**PEEL BRIMLEY LLP**

Dated this \_\_\_\_ day of March 2013.

**T. JAMES TRUMAN & ASSOCIATES**

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Dated this \_\_\_\_ day of March, 2013.

**KEMP, JONES & COULTHARD, LLP**

Dated this 25 day of March, 2013.

**HOWARD & HOWARD**

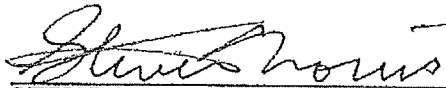
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1 Dated this 25<sup>th</sup> day of March, 2013.

2 **GRANT MORRIS & DODD**

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14 Dated this \_\_\_\_\_ day of March, 2013.

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Dated this \_\_\_\_\_ day of March, 2013.

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20 Attorneys for Old Republic Surety & Jeff Height Plumbing Co., LLC

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Dated this 1<sup>st</sup> April day of March, 2013.

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14 Dated this 25 day of March, 2013.

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Dated this \_\_\_\_\_ day of March, 2013.

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Ce# A571228 SWS

ORDER Dismissing E & E Fire Protection LLC  
Only

IT IS SO ORDERED as stipulated.

Dated this 3rd day of April, 2013.

  
DISTRICT COURT JUDGE

Respectfully Submitted by:

PEEL BRIMLEY LLP

 (#12723)  
For

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MICHAEL T. GEBHART, ESQ.

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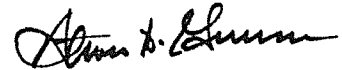
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# **EXHIBIT 10KK**

**JA008682**



CLERK OF THE COURT

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2 RICHARD L. PEEL, ESQ.  
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4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
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13 *Attorneys for HD Supply Waterworks, LP*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 ACCURACY GLASS & MIRROR  
17 COMPANY, INC., a Nevada corporation,

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

18 Plaintiff,

*Consolidated with:*

19 vs.

A574792

A574391

A577623

A580889

A583289

A584730

A587168

A589195

A589677

A590319

A592826

A596924

A597089

A606730

A608717

A608718

20 ASPHALT PRODUCTS CORP., a Nevada  
21 corporation; APCO CONSTRUCTION, a  
22 Nevada corporation; CAMCO PACIFIC  
23 CONSTRUCTION COMPANY, INC., a  
24 California corporation; GEMSTONE  
25 DEVELOPMENT WEST, INC., Nevada  
26 corporation; FIDELITY AND DEPOSIT  
27 COMPANY OF MARYLAND; SCOTT  
28 FINANCIAL CORPORATION, a North Dakota  
corporation; DOES I through X; ROE  
CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

**STIPULATION AND ORDER TO  
DISMISS E & E FIRE PROTECTION,  
LLC ONLY PURSUANT TO THE  
TERMS STATED BELOW**

HD SUPPLY WATERWORKS, LP, a Florida  
limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada  
corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 ♦ FAX (702) 990-7273

California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; JEFF HEIT PLUMBING CO, LLC, a Nevada limited-liability company; E & E FIRE PROTECTION, LLC, a Nevada limited liability company; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, a North Dakota corporation ; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

The Undersigned Parties (the "Parties") by and through their respective attorneys of record as identified below hereby stipulate and agree as follows:

1. The Parties represent and warrant that they have the necessary authority and capacity to enter into the instant Stipulation and agree to be bound by the terms and conditions contained herein.

2. The Parties hereby stipulate and agree to dismiss the following claims pursuant to Nevada's Rules of Civil Procedure, Rule 41(a)(1) and 41(c) with prejudice, as follows:

a. Any and all claims, counterclaims and third-party claims that HD Supply Waterworks, LP ("HD Supply") brought against E&E Fire Protection, LLC ("E&E") or any other named Party in its Amended Statement of Facts Constituting A Notice of Lien and Third-Party Complaint ("Statement of Facts"), with respect to the materials that HD Supply provided to E&E for the Project ("Materials"); and

b. Any and all claims, counterclaims and third-party claims that E&E brought against HD Supply in this action with respect to the Materials that HD Supply provided to E&E for the Project.

///

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3. Within ten (10) business days of the entry of this Order, HD Supply will cause its Notice of Lien which it caused to be recorded with the Office of the County Recorder, Clark County, Nevada as Instrument #200902130004359 to be discharged.

4. Nothing herein shall be deemed to be a waiver or release of the rights, claims or causes of action other than those specifically set forth above.


5. Each party shall bear their own attorney's fees and costs.

Dated this 25<sup>th</sup> day of March 2013.

Dated this \_\_\_\_ day of March 2013.

**PEEL BRIMLEY LLP**

**T. JAMES TRUMAN & ASSOCIATES**

 (12725) For  
RICHARD L. PEEL, ESQ.  
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*Attorneys for E & E Fire Protection, LLC*

Dated this \_\_\_\_ day of March, 2013.

Dated this \_\_\_\_ day of March, 2013.

**KEMP, JONES & COULTHARD, LLP**

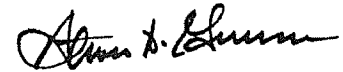
**HOWARD & HOWARD**

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# **EXHIBIT 10LL**

**JA008686**



CLERK OF THE COURT

1 **VDSM**  
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4 MICHAEL T. GEBHART, ESQ.  
5 Nevada Bar No. 7718  
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12 [mgebhardt@peelbrimley.com](mailto:mgebhardt@peelbrimley.com)  
13 Attorneys for HD Supply Waterworks, LP

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

14 ACCURACY GLASS & MIRROR  
15 COMPANY, INC., a Nevada corporation,

16 Plaintiff,

17 vs.

18 ASPHALT PRODUCTS CORP., a Nevada  
19 corporation; APCO CONSTRUCTION, a  
20 Nevada corporation; CAMCO PACIFIC  
21 CONSTRUCTION COMPANY, INC., a  
22 California corporation; GEMSTONE  
23 DEVELOPMENT WEST, INC., Nevada  
24 corporation; FIDELITY AND DEPOSIT  
25 COMPANY OF MARYLAND; SCOTT  
26 FINANCIAL CORPORATION, a North Dakota  
27 corporation; DOES I through X; ROE  
28 CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP, a Florida  
limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada  
corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., Nevada  
corporation; JEFF HEIT PLUMBING CO, LLC,  
a Nevada limited-liability company; E & E  
FIRE PROTECTION, LLC, a Nevada limited  
liability company; FIDELITY AND DEPOSIT

LEAD CASE NO.: A571228  
DEPT. NO.: XIII

*Consolidated with:*

A571792  
A574391  
A577623  
A583289  
A584730  
A587168

**HD SUPPLY WATERWORKS, LP'S  
VOLUNTARY DISMISSAL OF  
PLATTE RIVER INSURANCE  
COMPANY ONLY WITHOUT  
PREJUDICE**

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COMPANY OF MARYLAND; OLD  
REPUBLIC SURETY; PLATTE RIVER  
INSURANCE COMPANY; SCOTT  
FINANCIAL CORPORATION, a North Dakota  
corporation ; DOES I through X; ROE  
CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X; LOE  
LENDERS I through X, inclusive,

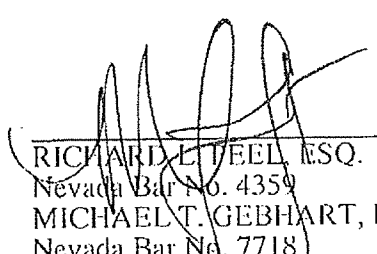
Defendants.

Pursuant to NRCP 41(a)(1), Plaintiff-in-Intervention, HD SUPPLY WATERWORKS, LP  
voluntarily dismisses the above referenced matter as to PLATTE RIVER INSURANCE  
COMPANY only. No answer or motion for summary judgment has been served and the Court  
has set no trial date in this action.

Therefore, Plaintiff-in-Intervention authorizes and directs the Clerk of this Court to enter a  
Dismissal of PLATTE RIVER INSURANCE COMPANY from this action without prejudice.

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP

  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 5<sup>th</sup> day of April 2010, I served the above and foregoing **HD SUPPLY WATRWORKS, LLP'S VOLUNTARY DISMISSL OF PLATTE RIVER INSURANCE COMPANY ONLY WITHOUT PREJUDICE**, in accordance with EDCR 7.25(A)(3), by placing a true and correct copy by electronic means via the courts website (Wiznet):

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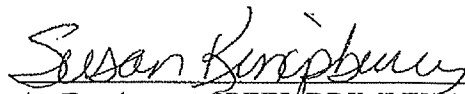
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24  
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# **EXHIBIT 10MM**

**JA008694**

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CLERK OF THE COURT

NOV 18 2009

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9 SCOTT FINANCIAL CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, INC., a Nevada  
11 corporation,

12 Plaintiff,

13 vs.

14 GEMSTONE DEVELOPMENT WEST, INC., a  
15 Nevada corporation; NEVADA CONSTRUCTION  
16 SERVICES, a Nevada corporation; SCOTT  
17 FINANCIAL CORPORATION, a North Dakota  
18 corporation; COMMONWEALTH LAND TITLE  
19 INSURANCE COMPANY; FIRST AMERICAN  
20 TITLE INSURANCE COMPANY; and DOES I  
21 through X,

22 Defendants.

Case No. A571228  
Dept. No. XIII

Consolidated With

~~A596924~~

~~A590319~~

~~A592826~~

A574391

A574792

A577623

A583289

~~A584960~~

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SCOTT FINANCIAL  
CORPORATION'S ANSWER  
TO HD SUPPLY WATERWORKS'  
AMENDED STATEMENT OF  
FACTS CONSTITUTING A  
NOTICE OF LIEN AND THIRD  
PARTY COMPLAINT

23 AND ALL RELATED CASES.

24 SCOTT FINANCIAL CORPORATION'S ANSWER TO HD SUPPLY  
25 WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A  
26 NOTICE OF LIEN AND THIRD PARTY COMPLAINT

COMES NOW Defendant, SCOTT FINANCIAL CORPORATION, by and through its  
attorneys of record, MEIER & FINE, LLC, and hereby files its ANSWER TO HD SUPPLY  
WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A NOTICE OF  
LIEN AND THIRD-PARTY COMPLAINT as follows:

FILED  
NOV 18 2009  
CLERK OF COURT

**THE PARTIES**

1  
2 1. Answering paragraph 1 of HD Supply Waterworks' Amended Statement of Facts  
3 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
4 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
5 allegations contained in said paragraph in their entirety.

6 2. Answering paragraph 2 of HD Supply Waterworks' Amended Statement of Facts  
7 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
8 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
9 allegations contained in said paragraph in their entirety.

10 3. Answering paragraph 3 of HD Supply Waterworks' Amended Statement of Facts  
11 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
12 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
13 allegations contained in said paragraph in their entirety.

14 4. Answering paragraph 4 of HD Supply Waterworks' Amended Statement of Facts  
15 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
16 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
17 allegations contained in said paragraph in their entirety.

18 5. Answering paragraph 5 of HD Supply Waterworks' Amended Statement of Facts  
19 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
20 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
21 allegations contained in said paragraph in their entirety.

22 6. Answering paragraph 6 of HD Supply Waterworks' Amended Statement of Facts  
23 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
24 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
25 allegations contained in said paragraph in their entirety.

26 7. Answering paragraph 7 of HD Supply Waterworks' Amended Statement of Facts  
27 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without

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1 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
2 allegations contained in said paragraph in their entirety.

3 8. Answering paragraph 8 of HD Supply Waterworks' Amended Statement of Facts  
4 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
5 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
6 allegations contained in said paragraph in their entirety.

7 9. Answering paragraph 9 of HD Supply Waterworks' Amended Statement of Facts  
8 Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without  
9 knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the  
10 allegations contained in said paragraph in their entirety.

11 10. Answering paragraph 10 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 11. Answering paragraph 11 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 admits the allegations contained in said paragraph in their entirety.

18 12. Answering paragraph 12 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
20 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
21 the allegations contained in said paragraph in their entirety.

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract – JHPC Credit Agreement)**

24 13. Answering paragraph 13 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
26 repeats and realleges each and every allegation contained in Paragraphs 1 through 13, as  
27 though fully set forth herein.

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1           14.     Answering paragraph 14 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4     the allegations contained in said paragraph in their entirety.

5           15.     Answering paragraph 15 of HD Supply Waterworks' Amended Statement of  
6     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8     the allegations contained in said paragraph in their entirety.

9           16.     Answering paragraph 16 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12    the allegations contained in said paragraph in their entirety.

13          17.     Answering paragraph 17 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16    the allegations contained in said paragraph in their entirety.

17          18.     Answering paragraph 18 of HD Supply Waterworks' Amended Statement of  
18    Facts Constituting a Notice of Lien and Third-Party Complaint, including subparts "a." through  
19    "d." thereto, this answering Defendant is without knowledge as to the truth of the matters  
20    alleged therein, and upon said grounds, denies the allegations contained in said paragraph in  
21    their entirety.

22          19.     Answering paragraph 19 of HD Supply Waterworks' Amended Statement of  
23    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
24    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
25    the allegations contained in said paragraph in their entirety.

26          20.     Answering paragraph 20 of HD Supply Waterworks' Amended Statement of  
27    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

28    ///

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 **SECOND CAUSE OF ACTION**

4 **(Breach of Contract -- E&E Credit Agreement)**

5 21. Answering paragraph 21 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
7 repeats and realleges each and every allegation contained in Paragraphs 1 through 21, as  
8 though fully set forth herein.

9 22. Answering paragraph 22 of HD Supply Waterworks' Amended Statement of  
10 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12 the allegations contained in said paragraph in their entirety.

13 23. Answering paragraph 23 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16 the allegations contained in said paragraph in their entirety.

17 24. Answering paragraph 24 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 25. Answering paragraph 25 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 26. Answering paragraph 26 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, including subparts "a." through  
27 "d." thereto, this answering Defendant is without knowledge as to the truth of the matters

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1 alleged therein, and upon said grounds, denies the allegations contained in said paragraph in  
2 their entirety.

3 27. Answering paragraph 27 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 28. Answering paragraph 28 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 **THIRD CAUSE OF ACTION**

12 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)**

13 29. Answering paragraph 29 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15 repeats and realleges each and every allegation contained in Paragraphs 1 through 29, as  
16 though fully set forth herein.

17 30. Answering paragraph 30 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 31. Answering paragraph 31 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 32. Answering paragraph 32 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28 the allegations contained in said paragraph in their entirety.

1 33. Answering paragraph 33 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5 **FOURTH CAUSE OF ACTION**

6 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)**

7 34. Answering paragraph 34 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
9 repeats and realleges each and every allegation contained in Paragraphs 1 through 34, as  
10 though fully set forth herein.

11 35. Answering paragraph 35 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 36. Answering paragraph 36 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
17 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
18 the allegations contained in said paragraph in their entirety.

19 37. Answering paragraph 37 of HD Supply Waterworks' Amended Statement of  
20 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
21 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
22 the allegations contained in said paragraph in their entirety.

23 38. Answering paragraph 38 of HD Supply Waterworks' Amended Statement of  
24 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26 the allegations contained in said paragraph in their entirety.

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**FIFTH CAUSE OF ACTION**

**(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)**

39. Answering paragraph 39 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant repeats and realleges each and every allegation contained in Paragraphs 1 through 39, as though fully set forth herein.

40. Answering paragraph 40 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

41. Answering paragraph 41 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

42. Answering paragraph 42 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

43. Answering paragraph 43 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies the allegations contained in said paragraph in their entirety.

44. Answering paragraph 44 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

45. Answering paragraph 45 of HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant denies the allegations contained in said paragraph in their entirety.

///

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1           46.     Answering paragraph 46 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
3     denies the allegations contained in said paragraph in their entirety.

4           47.     Answering paragraph 47 of HD Supply Waterworks' Amended Statement of  
5     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
6     denies the allegations contained in said paragraph in their entirety.

7                                 **SIXTH CAUSE OF ACTION**

8                                 **(Foreclosure of Mechanic's Lien – JHPC Lien)**

9           48.     Answering paragraph 48 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
11    repeats and realleges each and every allegation contained in Paragraphs 1 through 48, as  
12    though fully set forth herein.

13          49.     Answering paragraph 49 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15    denies the allegations contained in said paragraph in their entirety.

16          50.     Answering paragraph 50 of HD Supply Waterworks' Amended Statement of  
17    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
18    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
19    the allegations contained in said paragraph in their entirety.

20          51.     Answering paragraph 51 of HD Supply Waterworks' Amended Statement of  
21    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
22    denies the allegations contained in said paragraph in their entirety.

23          52.     Answering paragraph 52 of HD Supply Waterworks' Amended Statement of  
24    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26    the allegations contained in said paragraph in their entirety.

27          53.     Answering paragraph 53 of HD Supply Waterworks' Amended Statement of  
28    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 54. Answering paragraph 54 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 55. Answering paragraph 55 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 56. Answering paragraph 56 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15 57. Answering paragraph 57 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 denies the allegations contained in said paragraph in their entirety.

18 **SEVENTH CAUSE OF ACTION**

19 **(Foreclosure of Mechanic's Lien – E&E Lien)**

20 58. Answering paragraph 58 of HD Supply Waterworks' Amended Statement of  
21 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
22 repeats and realleges each and every allegation contained in Paragraphs 1 through 58, as  
23 though fully set forth herein.

24 59. Answering paragraph 59 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
26 denies the allegations contained in said paragraph in their entirety.

27 60. Answering paragraph 60 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is



1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 61. Answering paragraph 61 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
5 denies the allegations contained in said paragraph in their entirety.

6 62. Answering paragraph 62 of HD Supply Waterworks' Amended Statement of  
7 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
8 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
9 the allegations contained in said paragraph in their entirety.

10 63. Answering paragraph 63 of HD Supply Waterworks' Amended Statement of  
11 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
12 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
13 the allegations contained in said paragraph in their entirety.

14 64. Answering paragraph 64 of HD Supply Waterworks' Amended Statement of  
15 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
16 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
17 the allegations contained in said paragraph in their entirety.

18 65. Answering paragraph 65 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
20 denies the allegations contained in said paragraph in their entirety.

21 **EIGHTH CAUSE OF ACTION**

22 **(Claim of Priority)**

23 66. Answering paragraph 66 of HD Supply Waterworks' Amended Statement of  
24 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
25 repeats and realleges each and every allegation contained in Paragraphs 1 through 66, as  
26 though fully set forth herein.

27 67. Answering paragraph 67 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**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.

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**JOINT APPENDIX**  
**VOLUME 113**

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## **CHRONOLOGICAL APPENDIX OF EXHIBITS**

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
06-24-09	<b>Helix Electric's Statement of Facts Constituting Lien and Third-Party Complaint</b>	<b>JA000001- JA000015</b>	<b>1</b>
08-05-09	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
04-26-10	<b>CAMCO and Fidelity's Answer and CAMCO's Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
07-02-10	<b>Order Striking Defendant Gemstone Development West, Inc.'s Answer and Counterclaim and Entering Default</b>	<b>JA000042- JA000043</b>	<b>1</b>
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	Exhibit 1 – Affidavit of Randy Nickerl in Support of (1) APCO's Limited Motion to Lift Sta for Purposes of this Motion Only; (2) APCO's Motion for Judgment Against Gemstone Only	<b>JA000055- JA000316</b>	<b>1/2/4/5/6</b>
	Exhibit 2 – Findings of Fact and Conclusions of Law and Judgment in Favor of APCO Construction Against Gemstone Development West, Inc. Only	<b>JA000317- JA000326</b>	<b>6</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
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 <i>Ex Parte</i> 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- JA000379	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- JA000418	7
11-06-17	Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6	JA000419- JA000428	7

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>Helix Electric of Nevada’s Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.’s Omnibus Motion in Limine</b>	<b>JA000590 JA000614</b>	<b>9</b>
	Exhibit 1 – Second Amended Notice of taking NRCB 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
11-14-17	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>Helix Electric of Nevada's Opposition to APCO Construction's Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
	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	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>12-29-17</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion in <i>Limine</i> 1-6</b>	<b>JA001161- JA001169</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part Helix Electric of Nevada, LLC’s Motion in <i>Limine</i> 1-4</b>	<b>JA001170- JA001177</b>	<b>22</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction’s Omnibus Motion in <i>Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>01-03-18</b>	<b>Notice of Entry of Order Granting Peel Brimley Lien Claimants’ Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA001187- JA001198</b>	<b>22</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
	Exhibit 1 – Subcontract Agreement (Helix Electric of Nevada, LLC)	JA001218- JA001245	22/23/24
	Exhibit 2 – Subcontract Agreement (Zitting Brothers)	JA001246- JA001263	24

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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	<b>Peel Brimley Lien Claimants’ Opposition to APCO Construction’s Motion for Reconsideration of Order</b>	<b>JA001552- JA001560</b>	<b>27</b>

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	<b>Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>		
<b>01-10-18</b>	<b>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</b>	<b>JA001561- JA001573</b>	<b>27</b>
<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
	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 <i>in Limine</i>	JA001644- JA001647	28

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 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 <i>in Limine</i>	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
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>1</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	Trial Exhibit 1 - Grading Agreement ( <i>Admitted</i> )	JA001803- JA001825	30
	Trial Exhibit 2 – APCO/Gemstone General Construction Agreement ( <i>Admitted</i> )	JA001826- JA001868	30
	Trial Exhibit 3 - Nevada Construction Services /Gemstone Cost Plus/GMP Contract Disbursement Agreement ( <i>Admitted</i> )	JA001869- JA001884	30

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<sup>1</sup> Filed January 31, 2018

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 4 - APCO Pay Application No. 9 Submitted to Gemstone <i>(Admitted)</i>	JA001885- JA001974	30/31/32
	Trial Exhibit 5 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001975- JA001978	32
	Trial Exhibit 6 - Letter from J. Barker to A. Edelstein re: APCO's Notice of Intent to Stop Work <i>(Admitted)</i>	JA001979- JA001980	32
	Trial Exhibit 10 - Letter from J. Barker to A. Edelstein Re: Notice of Intent to Stop Work (Second Notice) <i>(Admitted)</i>	JA001981- JA001987	32
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	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 <i>(Admitted)</i>	JA002015- JA002016	33

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record ( <i>Admitted</i> )	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks ( <i>Admitted</i> )	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment ( <i>Admitted</i> )	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP ( <i>Admitted</i> )	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner ( <i>Admitted</i> )	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement ( <i>Admitted</i> )	JA002121- JA002146	35
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
01-18-18	<b>Stipulation and Order Regarding Trial Exhibit Admitted into Evidence</b>	<b>JA002199- JA002201</b>	<b>36</b>
	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
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>HELIX Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		
	Trial Exhibit 501 - Payment Summary	JA003339 – JA003732	55/56/57 /58/59/60
	Trial Exhibit 508 – Helix Pay Application	JA003733- JA003813	60/61

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>01-19-18</b>	<b>Order Denying APCO Construction's Motion for Reconsideration of Order Granting Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA005282- JA005283</b>	<b>78</b>
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>2</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>3</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix's Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80

<sup>2</sup> Filed January 31, 201879

<sup>3</sup> Filed January 31, 2018



<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>4</sup></b>	<b>JA005820- JA005952</b>	81
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC’s (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.’s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>APCO Construction Inc.’s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC’s Responses to APCO Construction’s Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>

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<sup>4</sup> Filed January 31, 201883

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
05-08-18	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Exhibit 7B – Time Recap	JA006443- JA006474	88
	Exhibit 8 – Declaration of Cody S. Munteer, 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
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC’s Motion for Attorneys’ Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
<b>06-15-18</b>	<b>APCO Construction, Inc.’s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.’s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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 Munteer in Support of APCO’s Supplement to its Motion for Attorney’s Fees	JA006639- JA006916	91/92/93 94/95/96
<b>06-15-18</b>	<b>Helix Electric of Nevada, LLC’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA006917 – JA006942</b>	<b>96</b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>En Banc</i> 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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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 <i>in Limine</i>	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	Judgment Precluding Defenses Based on Pay-if-Paid Agreements		
	Exhibit 15 – Notice of Association of Counsel	JA007088- JA007094	97
06-15-18	<b>Plaintiff in Intervention National Wood Products, Inc.’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007095- JA007120</b>	<b>97/98</b>
06-15-18	<b>Declaration of S. Judy Hirahara in support of National Woods’s Opposition to APCO Construction’s Motion for Attorneys’ Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
06-18-18	<b>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</b>	<b>JA007190- JA007192</b>	<b>99</b>
06-21-18	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
06-29-18	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
<b>06-29-18</b>	<b>Helix Electric of Nevada, LLC's Reply Re: Motion to Retax</b>	<b>JA007225- JA007237</b>	<b>100</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>07-19-18</b>	<b>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</b>	<b>JA007246- JA007261</b>	<b>100</b>
<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>
<b>07-12-19</b>	<b>Order Dismissing Appeal (Case No. 76276)</b>	<b>JA007313- JA007315</b>	<b>101</b>



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
08-06-19	<b>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</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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
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	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
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	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
<b>08-29-19</b>	<b>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)</b>	<b>JA009117- JA009123</b>	<b>119</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	<b>Dismiss All Unresolved Claims and/or (III) In The Alternative for a Rule 54(B) Certification as to Helix and APCO</b>		
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	120
<b>02-11-20</b>	<b>APCO's Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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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<b>08-05-09</b>	<b>APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint</b>	<b>JA000016 – JA000030</b>	<b>1</b>
<b>05-08-18</b>	<b>APCO Construction, Inc.'s Motion for Attorneys' Fees and Costs Against Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.</b>	<b>JA006265- JA006284</b>	<b>85</b>
	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. Mounter, 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
<b>06-06-13</b>	<b>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</b>	<b>JA000044- JA000054</b>	<b>1</b>
	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
<b>02-11-20</b>	<b>APCO’s Notice of Cross Appeal</b>	<b>JA009164- JA010310</b>	<b>120</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>11-06-17</b>	<b>APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i></b>	<b>JA000590 JA000614</b>	<b>9</b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>03-23-18</b>	<b>APCO Opposition to Helix Electric of Nevada, LLC’s Findings of Fact and Conclusions of Law</b>	<b>JA006125- JA006172</b>	<b>83/84</b>
<b>08-16-19</b>	<b>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</b>	<b>JA008811- JA008821</b>	<b>114</b>
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
06-15-18	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Motions to Retax Costs</b>	<b>JA006615- JA006637</b>	<b>90/91</b>
	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	<b>APCO Construction, Inc.'s Opposition to Helix Electric of Nevada, LLC's Motions in Limine Nos. 1-4</b>	<b>JA000929- JA000940</b>	<b>13/14</b>
	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	<b>APCO Construction's Opposition to Peel Brimley Lien Claimants' Partial Motion for Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000393- JA000409</b>	<b>6/7</b>
	Exhibit A – Excerpt from 30(b)(6) Witness for Helix Electric of Nevada, LLC taken July 20, 2017	JA000410- JA000412	7
03-08-18	<b>APCO Construction Inc.'s Post-Trial Brief</b>	<b>JA006059- JA006124</b>	<b>82/83</b>
11-15-17	<b>APCO Construction, Inc.'s Reply in Support of its Omnibus Motion in Limine</b>	<b>JA001133 JA001148</b>	<b>21</b>

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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
<b>06-29-18</b>	<b>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.</b>	<b>JA007198- JA007220</b>	<b>99</b>
	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
<b>04-26-10</b>	<b>CAMCO and Fidelity’s Answer and CAMCO’s Counterclaim</b>	<b>JA000031- JA000041</b>	<b>1</b>
<b>11-14-17</b>	<b>Camco Pacific Construction Company, Inc.’s Opposition to Lien Claimants’ Motions in Limine Nos. 1-6</b>	<b>JA000898- JA000905</b>	<b>12</b>
	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
<b>02-11-20</b>	<b>Case Appeal Statement</b>	<b>JA009157- JA009163</b>	<b>120</b>

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<b>08-08-18</b>	<b>Court's Decision on Attorneys' Fees and Cost Motions</b>	<b>JA007262- JA007280</b>	<b>100</b>
<b>06-15-18</b>	<b>Declaration of S. Judy Hirahara in support of National Woods's Opposition to APCO Construction's Motion for Attorneys' Fees and Costs</b>	<b>JA007121- JA007189</b>	<b>98</b>
<b>06-13-13</b>	<b>Docket Entry and Minute Order Granting APCO's Motion for Summary Judgment Against Gemstone</b>	<b>JA000327</b>	<b>6</b>
<b>04-25-18</b>	<b>Findings of Fact and Conclusions of Law and Order as the Claims of Helix Electric and Cabinetec Against APCO</b>	<b>JA006194- JA006264</b>	<b>84/85</b>
<b>11-06-17</b>	<b>Helix Electric of Nevada's Motion <i>in Limine</i> Nos. 1-4</b>	<b>JA000534- JA000542</b>	<b>8</b>
	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
<b>06-01-18</b>	<b>Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA006551- JA006563</b>	<b>90</b>
	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
	Exhibit 3 – Prime Interest Rate	JA006581- JA006601	90

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
<b>08-06-19</b>	<b>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</b>	<b>JA007316- JA007331</b>	<b>101</b>
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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 5A – 5F -Notices of Entry of Order as to the Claims of Cactus Rose Construction, Fast Glass, Inc., Heinaman Contract Glazing, Helix Electric of	JA007401- JA007517	102/103

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
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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
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	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 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 10S – Findings of Fact and Conclusions of Law and Order as to the Claims of Helix Electric and Cabenotec 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
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	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
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	Exhibit 10LL – HD Supply Waterworks, LP's Voluntary Dismissal of Platte River Insurance Company Only Without Prejudice	JA008686- JA008693	112
	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
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	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
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	Exhibit 16 – Notice of Appeal	JA008799- JA008810	113
<b>05-08-18</b>	<b>Helix Electric of Nevada, LLC’s Motion to Retax Costs Re: Defendant APCO Construction’s Memorandum of Costs and Disbursements</b>	<b>JA006509- JA006521</b>	<b>89</b>
<b>06-21-18</b>	<b>Helix Electric of Nevada, LLC’s Notice of Non-Opposition to its Motion for Attorney’s Fees, Interest and Costs</b>	<b>JA007193- JA007197</b>	<b>99</b>
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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
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	Exhibit 6C – Zitting Brothers Construction, Inc.’s Response to Special Master Questionnaire	JA006985- JA006993	96/97
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	Exhibit 6 E – Unitah Investments, LLC’s Special Master Questionnaire	JA007002- JA007005	97
	Exhibit 7A – Motion to Appoint Special Master	JA007006- JA007036	97
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	Exhibit 9 – Stipulation and Order for Dismissal with Prejudice	JA007054- JA007056	97
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<b>11-14-17</b>	<b>Helix Electric of Nevada’s Opposition to APCO Construction’s Omnibus Motion in Limine</b>	<b>JA000994- JA001008</b>	<b>20</b>
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	Exhibit 3 – Special Master Order Requiring Completion of Questionnaire	JA001056- JA001059	20
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	Exhibit 5 - Excerpts from the Deposition Transcript of David E. Parry taken June 20, 2017	JA001065 JA001132	20/21
<b>08-29-19</b>	<b>Helix Electric of Nevada LLC’s Reply to APCO’s Opposition to Helix Electric of Nevada LLC’s Motion to (I) Re-</b>	<b>JA009117- JA009123</b>	<b>119</b>

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<b>03-23-18</b>	<b>Helix Electric of Nevada, LLC's Responses to APCO Construction's Post-Trial Brief</b>	<b>JA006173- JA006193</b>	<b>84</b>
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<b>01-12-18</b>	<b>Joint Pre-Trial Memorandum [for APCO Construction, Inc., the Peel Brimley Lien Claimants and National Wood Products, LLC ONLY]</b>	<b>JA001574- JA001594</b>	<b>27/28</b>
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	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
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	Exhibit 9 - Amended <i>nunc pro tunc</i> order regarding APCO Construction, Inc.'s Omnibus Motion <i>in Limine</i> No. 7	JA001648- JA001650	28
	Exhibit 10 - Order Granting in Part and Denying in part Helix Electric of Nevada, LLC's Motions <i>in Limine</i> 1-4 (Against APCO Construction)	JA001651- JA001653	28
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	Exhibit 12 - Order Granting Plaintiff in Intervention, National Wood Products, Inc.'s Motion <i>in Limine</i>	JA001658- JA001660	28
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<b>03-08-18</b>	<b>Letter to Judge Denton submitting APCO Construction, Inc.'s Proposed Findings of Fact and Conclusions of Law</b>	<b>JA005986- JA006058</b>	<b>8/821</b>
<b>03-08-18</b>	<b>Letter to Judge Denton submitting Helix Electric of Nevada, LLC's (Proposed) Findings of Fact and Conclusions of Law</b>	<b>JA005953- JA005985</b>	<b>81</b>
<b>01-04-18</b>	<b>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</b>	<b>JA001199- JA001217</b>	<b>22</b>
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	Exhibit 4 – Amended Notice of Lien	JA001282- JA001297	25
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	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 <i>En Banc</i> 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
<b>01-29-20</b>	<b>Notice of Appeal</b>	<b>JA009132- JA009136</b>	<b>119/120</b>
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<b>05-31-18</b>	<b>Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against Camco Construction, Co., Inc.]</b>	<b>JA006522 JA006540</b>	<b>89</b>
<b>06-01-18</b>	<b>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.]</b>	<b>JA006541 JA006550</b>	<b>90</b>
<b>09-28-18</b>	<b>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</b>	<b>JA007281- JA007299</b>	<b>100</b>
<b>12-29-17</b>	<b>Notice of Entry of Order Granting in Part and Denying in Part APCO Construction's Omnibus Motion <i>in Limine</i></b>	<b>JA001178- JA001186</b>	<b>22</b>
<b>07-02-18</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Attorneys' Fees, Interest and Costs</b>	<b>JA007238- JA007245</b>	<b>100</b>
<b>01-03-20</b>	<b>Notice of Entry of Order Granting Helix Electric of Nevada, LLC's Motion for Rule 54(b) Certification</b>	<b>JA009124- JA009131</b>	<b>119</b>



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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
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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 <i>Ex Parte</i> Application for Order Shortening Time	JA000328- JA000342	6
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11-06-17	Peel Brimley Lien Claimants' Motion <i>in Limine</i> Nos. 1-6	JA000419- JA000428	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
<b>09-28-17</b>	<b>Peel Brimley Lien Claimants’ Reply to Oppositions to Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements</b>	<b>JA000413- JA00418</b>	<b>7</b>
<b>01-09-18</b>	<b>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</b>	<b>JA001552- JA001560</b>	<b>27</b>
<b>06-18-18</b>	<b>Plaintiff in Intervention National Wood Products, Inc.’s Joinder to Helix Electric of Nevada, LLC’s Opposition</b>	<b>JA007190- JA007192</b>	<b>99</b>

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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
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	Exhibit 3 – Exhibit List Plaintiff in Intervention National Wood Products, Inc.	JA002224- JA002242	36/37
	<b>APCO TRIAL EXHIBITS:</b>		
	<b>APCO Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	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
	<b>HELIX Related Exhibits:</b>		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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>Zitting Brothers Related Exhibits:</b>		
	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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



<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood Products Related Exhibits:</b>		
	Trial Exhibit 160 - Documents provided for settlement	JA002599- JA002612	46
	<b>CAMCO Related Exhibits:</b>		
	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
	<b>Helix Related Exhibits:</b>		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

<u>Date</u>	<u>Description</u>	<u>Bates Number</u>	<u>Volume(s)</u>
	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
	<b>National Wood/Cabinetec Related Exhibits:</b>		
	Trial Exhibit 184 - Ratification and Amendment of Subcontract Agreement between CabineTec and Camco (fully executed copy)	JA002798- JA002825	49
	<b>General Related Exhibits:</b>		
	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
	<b>Helix Trial Exhibits:</b>		

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	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	63/64/65/66/6 7/ 68/69/70 /71/72 /73/74/75/ 76/77
<b>01-17-18</b>	<b>Transcript Bench Trial (Day 1)<sup>5</sup></b>	<b>JA001668- JA001802</b>	<b>29/30</b>
	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

<sup>5</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 13 - Letter from A. Edelstein to Re. Nickerl Re: Termination for Cause (Gemstone) <i>(Admitted)</i>	JA001988- JA002001	32
	Trial Exhibit 14 - Letter from W. Gochmour to Sean Thueson Re: [APCO's] Response to [Gemstone's] Termination for Cause <i>(Admitted)</i>	JA002002- JA002010	33
	Trial Exhibit 15 - Letter from R. Nickerl to A. Edelstein Re: 48-Hour Notices <i>(Admitted)</i>	JA002011- JA002013	33
	Trial Exhibit 16 - Email from J. Horning to A. Berman and J. Olivares re: Joint Checks <i>(Admitted)</i>	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 <i>(Admitted)</i>	JA002015- JA002016	33
	Trial Exhibit 24 - Letter from R. Nickerl to Clark County re: Notification of APCO's withdrawal as General Contractor of Record <i>(Admitted)</i>	JA002017- JA002023	33
	Trial Exhibit 26 - Email from J. Gisondo to Subcontractors re: June checks <i>(Admitted)</i>	JA002024	34
	Trial Exhibit 27 - Letter from A. Edelstein to R. Nickerl re: June Progress Payment <i>(Admitted)</i>	JA002025- JA002080	34
	Trial Exhibit 28 - Letter from J. Barker to A. Edelstein Re: Termination of Agreement for GMP <i>(Admitted)</i>	JA002081	34
	Trial Exhibit 31 - Transmission of APCO's Pay Application No. 11 as Submitted to Owner <i>(Admitted)</i>	JA002082- JA002120	34/35
	Trial Exhibit 45 - Subcontractor Agreement <i>(Admitted)</i>	JA002121- JA002146	35

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Bates Number</b></u>	<u><b>Volume(s)</b></u>
	Trial Exhibit 162 - Amended and Restated General Construction Agreement between Gemstone and CAMCO ( <i>Admitted</i> )	JA002147- JA002176	35/36
	Trial Exhibit 212 - Letter from Edelstein to R. Nickerl re: NRS 624 Notice ( <i>Admitted</i> )	JA002177- JA002181	36
	Trial Exhibit 215 - Email from C. Colligan to Subcontractors re: 48-hour Termination Notice ( <i>Admitted</i> )	JA002182- JA002185	36
	Trial Exhibit 216 - Email from C. Colligan re: Meeting with Subcontractors ( <i>Admitted</i> )	JA002186- JA002188	36
	Trial Exhibit 506 – Email and Contract Revisions ( <i>Admitted</i> )	JA002189 – JA002198	36
<b>01-18-18</b>	<b>Transcript – Bench Trial (Day 2)<sup>6</sup></b>	JA005284- JA005370	78
	Trial Exhibit 535 – Deposition Transcript of Andrew Rivera (Exhibit 99) ( <i>Admitted</i> )	JA005371- JA005623	78/79/80
<b>01-19-18</b>	<b>Transcript – Bench Trial (Day 3)<sup>7</sup></b>	JA005624- JA005785	80
	Trial Exhibit 231 – Helix Electric’s Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint ( <i>Admitted</i> )	JA005786- JA005801	80
	Trial Exhibit 314 - Declaration of Victor Fuchs in support of Helix’s Motion for Partial Summary Judgment against Gemstone ( <i>Admitted</i> )	JA005802- JA005804	80
	Trial Exhibit 320 – June-August Billings—not paid to APCO ( <i>Admitted</i> )	JA005805	80
	Trial Exhibit 321 – Overpayments to Cabinetec ( <i>Admitted</i> )	JA005806-	80

<sup>6</sup> Filed January 31, 201879

<sup>7</sup> Filed January 31, 2018

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Bates Number</u></b>	<b><u>Volume(s)</u></b>
	Trial Exhibit 536 – Lien math calculations (handwritten) ( <i>Admitted</i> )	JA005807- JA005808	80
	Trial Exhibit 804 – Camco Correspondence ( <i>Admitted</i> )	JA005809- JA005816	80
	Trial Exhibit 3176 – APCO Notice of Lien ( <i>Admitted</i> )	JA005817- JA005819	81
<b>01-24-18</b>	<b>Transcript – Bench Trial (Day 5)<sup>8</sup></b>	<b>JA005820- JA005952</b>	81
<b>01-24-19</b>	<b>Transcript for All Pending Fee Motions on July 19, 2018</b>	<b>JA007300- JA007312</b>	<b>100/101</b>

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<sup>8</sup> Filed January 31, 2018

1 denies the allegations contained in said paragraph in their entirety.

2 68. Answering paragraph 68 of HD Supply Waterworks' Amended Statement of  
3 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
4 denies the allegations contained in said paragraph in their entirety.

5 69. Answering paragraph 69 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
7 denies the allegations contained in said paragraph in their entirety.

8 70. Answering paragraph 70 of HD Supply Waterworks' Amended Statement of  
9 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
10 denies the allegations contained in said paragraph in their entirety.

11 **NINTH CAUSE OF ACTION**

12 **(Claim Against Bond – CPCC Surety)**

13 71. Answering paragraph 71 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
15 repeats and realleges each and every allegation contained in Paragraphs 1 through 71, as  
16 though fully set forth herein.

17 72. Answering paragraph 72 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21 73. Answering paragraph 73 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25 74. Answering paragraph 74 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28 the allegations contained in said paragraph in their entirety.

1           75.     Answering paragraph 75 of HD Supply Waterworks' Amended Statement of  
2     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4     the allegations contained in said paragraph in their entirety.

5           76.     Answering paragraph 76 of HD Supply Waterworks' Amended Statement of  
6     Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7     without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8     the allegations contained in said paragraph in their entirety.

9           77.     Answering paragraph 77 of HD Supply Waterworks' Amended Statement of  
10    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12    the allegations contained in said paragraph in their entirety.

13          78.     Answering paragraph 78 of HD Supply Waterworks' Amended Statement of  
14    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16    the allegations contained in said paragraph in their entirety.

17          79.     Answering paragraph 79 of HD Supply Waterworks' Amended Statement of  
18    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19    without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20    the allegations contained in said paragraph in their entirety.

21                   **TENTH CAUSE OF ACTION**

22                   **(Claim Against Bond – JHPC Surety)**

23          80.     Answering paragraph 80 of HD Supply Waterworks' Amended Statement of  
24    Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
25    repeats and realleges each and every allegation contained in Paragraphs 1 through 80, as  
26    though fully set forth herein.

27    ///

28    ///



1           81.    Answering paragraph 81 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5           82.    Answering paragraph 82 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8 the allegations contained in said paragraph in their entirety.

9           83.    Answering paragraph 83 of HD Supply Waterworks' Amended Statement of  
10 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
11 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
12 the allegations contained in said paragraph in their entirety.

13           84.    Answering paragraph 84 of HD Supply Waterworks' Amended Statement of  
14 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
15 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
16 the allegations contained in said paragraph in their entirety.

17           85.    Answering paragraph 85 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
19 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
20 the allegations contained in said paragraph in their entirety.

21           86.    Answering paragraph 86 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
23 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
24 the allegations contained in said paragraph in their entirety.

25           87.    Answering paragraph 87 of HD Supply Waterworks' Amended Statement of  
26 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
27 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
28 the allegations contained in said paragraph in their entirety.

1           88.     Answering paragraph 88 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5                           **ELEVENTH CAUSE OF ACTION**

6                           **(Claim Against Bond – E&E Surety)**

7           89.     Answering paragraph 89 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
9 repeats and realleges each and every allegation contained in Paragraphs 1 through 89, as  
10 though fully set forth herein.

11           90.     Answering paragraph 90 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

15           91.     Answering paragraph 91 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
17 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
18 the allegations contained in said paragraph in their entirety.

19           92.     Answering paragraph 92 of HD Supply Waterworks' Amended Statement of  
20 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
21 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
22 the allegations contained in said paragraph in their entirety.

23           93.     Answering paragraph 93 of HD Supply Waterworks' Amended Statement of  
24 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
25 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
26 the allegations contained in said paragraph in their entirety.

27           94.     Answering paragraph 94 of HD Supply Waterworks' Amended Statement of  
28 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is

1 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
2 the allegations contained in said paragraph in their entirety.

3 95. Answering paragraph 95 of HD Supply Waterworks' Amended Statement of  
4 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
5 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
6 the allegations contained in said paragraph in their entirety.

7 96. Answering paragraph 96 of HD Supply Waterworks' Amended Statement of  
8 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
9 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
10 the allegations contained in said paragraph in their entirety.

11 97. Answering paragraph 97 of HD Supply Waterworks' Amended Statement of  
12 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
13 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
14 the allegations contained in said paragraph in their entirety.

### 15 TWELFTH CAUSE OF ACTION

#### 16 (Declaratory Judgment)

17 98. Answering paragraph 98 of HD Supply Waterworks' Amended Statement of  
18 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
19 repeats and realleges each and every allegation contained in Paragraphs 1 through 98, as  
20 though fully set forth herein.

21 99. Answering paragraph 99 of HD Supply Waterworks' Amended Statement of  
22 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant this  
23 answering Defendant admits the allegations contained in said paragraph in their entirety.

24 100. Answering paragraph 100 of HD Supply Waterworks' Amended Statement of  
25 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
26 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
27 the allegations contained in said paragraph in their entirety.

28 ///

1           101. Answering paragraph 101 of HD Supply Waterworks' Amended Statement of  
2 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
3 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
4 the allegations contained in said paragraph in their entirety.

5           102. Answering paragraph 102 of HD Supply Waterworks' Amended Statement of  
6 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant is  
7 without knowledge as to the truth of the matters alleged therein, and upon said grounds, denies  
8 the allegations contained in said paragraph in their entirety.

9           103. Answering paragraph 103 of HD Supply Waterworks' Amended Statement of  
10 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
11 denies the allegations contained in said paragraph in their entirety.

12           104. Answering paragraph 104 of HD Supply Waterworks' Amended Statement of  
13 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
14 denies the allegations contained in said paragraph in their entirety.

15           105. Answering paragraph 105 of HD Supply Waterworks' Amended Statement of  
16 Facts Constituting a Notice of Lien and Third-Party Complaint, this answering Defendant  
17 admits the allegations contained in said paragraph in their entirety.

18           106. Answering paragraph 106 of HD Supply Waterworks' Amended Statement of  
19 Facts Constituting a Notice of Lien and Third-Party Complaint denies the allegations contained  
20 in said paragraph in their entirety.

21                           **AFFIRMATIVE DEFENSES**

22           1. HD Supply Waterworks' Amended Statement of Facts Constituting a Notice of  
23 Lien and Third-Party Complaint, on file herein, fails to state a claim against this Defendant  
24 upon which relief can be granted.

25           2. HD Supply Waterworks has failed to properly perfect its Mechanic's Lien.

26           3. HD Supply Waterworks' claims are barred by the Doctrine of Laches.

27           4. HD Supply Waterworks' equitable claims are barred by unclean hands.

28    ///

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1           5. Defendant's interest in the property has priority over HD Supply Waterworks'  
2     lien.

3           6. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have  
4     been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon  
5     the filing of Defendant's Answer, and therefore, this answering Defendant reserves the right to  
6     amend this Answer to allege additional affirmative defenses , if subsequent investigation so  
7     warrants.

8           WHEREFORE, Defendant SCOTT FINANCIAL CORPORATION prays that HD  
9     SUPPLY WATERWORKS, take nothing by way of its Amended Statement of Facts  
10    Constituting a Notice of Lien and Third-Party Complaint, on file herein; that Defendant be  
11    awarded reasonable attorney's fees and costs herein and for such other relief as the Court may  
12    deem just and proper.

13           DATED this 17<sup>th</sup> day of November, 2009.

MEIER & FINE, LLC

By 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of SCOTT FINANCIAL CORPORATION'S ANSWER TO HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A NOTICE OF LIEN AND THIRD PARTY COMPLAINT was deposited in the United States mail in Las Vegas, Nevada, this 19<sup>th</sup> day of November, 2009, addressed to the following:

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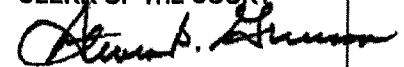
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# **EXHIBIT 10NN**

**JA008718**



Electronically Filed  
Jul 05 2018 03:28 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada  
11 corporation,

12 Plaintiff,

13 vs.

14 GEMSTONE DEVELOPMENT WEST,  
15 INC., Nevada corporation; NEVADA  
16 CONSTRUCTION SERVICES, a Nevada  
17 corporation; SCOTT FINANCIAL  
18 CORPORATION, a North Dakota  
19 corporation; COMMONWEALTH LAND  
20 TITLE INSURANCE COMPANY; FIRST  
21 AMERICAN TITLE INSURANCE  
22 COMPANY and DOES I through X,

23 Defendants.

24 AND ALL RELATED MATTERS

25 ///

26 ///

27 ///

Case No. : 08A571228

Dept. No. : XIII

*Consolidated with:*

*A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168*

NOTICE OF APPEAL

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**NOTICE OF APPEAL**

Notice is hereby given that HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys, Eric B. Zimbelman, Esq. and Peel Brimley, LLP, hereby appeals to the Supreme Court of Nevada from the Judgment as to the Claims of Helix Electric of Nevada, LLC and Plaintiff-in-Intervention National Wood Products, Inc. against APCO Construction, Inc. entered in this action June 1, 2018, a true and correct copy of which is attached hereto as Exhibit "A."

DATED this 28<sup>th</sup> day of June, 2018.

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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 28<sup>th</sup> day of June, 2018, I caused the above and foregoing document, **NOTICE OF APPEAL**, 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 \_\_\_\_\_

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# **EXHIBIT 1000**

**JA008724**



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Nov 05 2018 08:48 a.m.  
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7 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada  
corporation,

11 Plaintiff,

12 vs.  
13

14 GEMSTONE DEVELOPMENT WEST,  
INC., Nevada corporation; NEVADA  
15 CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
16 CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
17 TITLE INSURANCE COMPANY; FIRST  
18 AMERICAN TITLE INSURANCE  
COMPANY and DOES I through X,

19 Defendants.  
20

21 AND ALL RELATED MATTERS  
22

23 ///

24 ///

25 ///

Case No. : 08A571228

Dept. No. : XIII

*Consolidated with:*

*A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168*

**AMENDED NOTICE OF APPEAL**

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**AMENDED NOTICE OF APPEAL**

Notice is hereby given that HELIX ELECTRIC OF NEVADA, LLC ("Helix"), by and through its attorneys, Eric B. Zimbelman, Esq. and Peel Brimley, LLP, hereby appeals to the Supreme Court of Nevada from (i) the Judgment as to the Claims of Helix Electric of Nevada, LLC and Plaintiff-in-Intervention National Wood Products, Inc. against APCO Construction, Inc. entered in this action June 1, 2018, a true and correct copy of which is attached hereto as Exhibit "A"<sup>1</sup> and (ii) Order (1) Granting APCO Construction, Inc.'s Motion for Attorneys Fees and Costs, (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part, and (3) Granting Helix Electric of Nevada, LLC's Motion to Retax in Part and Denying in Part entered in this action September 28, 2018, a true and correct copy of which is attached as Exhibit "B."<sup>2</sup>

DATED this 25<sup>th</sup> day of October, 2018.

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<sup>1</sup> Notice of Entry of Order entered June 1, 2018 and original Notice of Appeal filed June 28, 2018.

<sup>2</sup> Notice of Entry of Order entered September 28, 2018

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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 25<sup>th</sup> day of October, 2018, I caused the above and foregoing document, **AMENDED NOTICE OF APPEAL**, 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 \_\_\_\_\_

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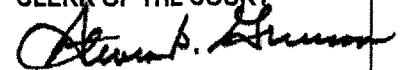
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# **EXHIBIT 10PP**

**JA008730**



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25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 **APCO CONSTRUCTION,** a Nevada  
28 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

**NOTICE OF CROSS-APPEAL**



**NOTICE IS HEREBY GIVEN** that APCO Construction, Inc. (“APCO”) by and through its undersigned counsel of record, the law firms of SPENCER FANE LLP and MARQUIS AURBACH COFFING, appeals to the Supreme Court of Nevada from the Order 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 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 Product, Inc.’s Motion to File a Surreply, entered on September 28, 2018, attached as **Exhibit A**.

Dated this 26<sup>th</sup> day of October, 2018.

MARQUIS AURBACH COFFING

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*Attorneys for Apco Construction, Inc.*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Marquis Aurbach Coffing and that a copy  
3 of the foregoing **NOTICE OF CROSS-APPEAL** was served by electronic transmission  
4 through the E-Filing system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by  
5 mailing a copy to their last known address, first class mail, postage prepaid for non-  
6 registered users, on this 26<sup>th</sup> day of October, 2018, as follows:

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11 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

12 **Intervenor: National Wood Products, Inc.'s**

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23 **Third Party Plaintiff: E & E Fire Protection LLC**

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# EXHIBIT 10QQ

JA008737

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

**Supreme Court Case No. 77320**

Electronically Filed  
Apr 08 2019 05:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

**HELIX ELECTRIC OF NEVADA, LLC**

Appellant/Cross-Respondent

v.

**APCO CONSTRUCTION, INC, A NEVADA CORPORATION,**

Respondent/Cross-Appellant.

---

Appeal from Judgment  
Eighth Judicial District Court, Clark County  
The Honorable Mark Denton, District Court Judge  
District Court Case No. **08A571228**

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**MOTION TO SUSPEND BRIEFING PENDING OUTCOME OF ORDER  
TO SHOW CAUSE IN SUPREME COURT CASE NO. 76276**

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## INTRODUCTION

Two appeals arising from the same matter involving the same parties are currently pending before this Court: this Case, Supreme Court Case No. 77320 and Supreme Court Case No. 76276. Case No. 76726 appeals of the dismissal of Appellant Helix Electric Nevada, LLC's ("Helix") claims ("the Primary Case") against Respondent APCO Construction ("APCO") while Case No. 77320 was created by the Court when Helix filed an Amended Notice of Appeal seeking review of the Primary Case and the Court's subsequent award of attorney's fees and costs to APCO ("the Attorney's Fees Case"), for which APCO filed a Cross-Appeal.

On January 17, 2019, APCO filed a Motion to Consolidate with this Court seeking to combine the two cases in order to preserve judicial economy, which motion remains pending. Recently, this Court issued an Order to Show Cause in the Primary Case asking for Appellant Helix Electric of Nevada, LLC ("Helix") to demonstrate to the Court "why [the Primary Case] should not be dismissed for lack of jurisdiction."<sup>1</sup> These two appeals are inextricably intertwined and, as the Court has noted, the underlying case is "extraordinarily complex."<sup>2</sup> While Helix believes it can demonstrate to the Court's satisfaction that appellate jurisdiction exists in the Primary Case, if the Court lacks jurisdiction to consider the Primary Case, the Attorney's Fees Case would inevitably suffer the same flaw.

Accordingly, Helix requests, in the interest of non-duplication of briefing in these related appeals and for the sake of preserving judicial economy, that briefing in the Attorney's Fees Case be suspended pursuant to NRAP 2 for such a time as needed for the Order to Show Cause in the Primary Case to be resolved. Helix further requests that the Court suspend Helix's obligation to issue a docketing statement in

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<sup>1</sup> A true and correct copy of the Order to Show Cause issued by this Court on March 21, 2019 in Appeal No. 76276 is attached hereto as **Exhibit 1**.

<sup>2</sup> *Id.* at 2



the Attorney's Fees Case until the Court issues its ruling on the Show Cause Order in the Primary Case because (as part of its response to the Show Case Order) Helix is preparing (but has not yet completed<sup>3</sup>) a revised docketing statement that it proposes for file in both actions. Alternatively, if all other relief is denied, Helix respectfully requests that it be granted an extension of 60 days to file an opening brief and 30 days to submit a docketing statement in the Attorney's Fees Case.

### **STATEMENT OF FACTS**

Appellant filed its original Notice of Appeal on June 28, 2018, challenging the District Court's ruling after trial in favor of APCO on Helix' claims as they related to APCO. This Notice of Appeal led the Court to create the Primary Case (Appeal No. 76276).<sup>4</sup> On August 8, 2018, Helix filed its original Docketing Statement.<sup>5</sup> After the District Court entered and awarded attorney fees and cost in favor of APCO, Helix filed an Amended Notice of Appeal on October 25, 2018.<sup>6</sup> On October 26, 2018, APCO filed its Notice of Cross-Appeal.<sup>7</sup> On November 5, 2018, the Court created the Attorney's Fees Case (Appeal No. 77320) consisting of Helix' Amended Notice of Appeal and APCO's Notice of Cross-Appeal.

In response to the Court's request, Helix filed an Amended Docketing Statement relating to the Primary Case on November 27, 2018.<sup>8</sup> APCO then filed a Partial Joinder to Helix Electric of Nevada's Docketing Statement and Amended

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<sup>3</sup> Helix's Response to the Show Cause Order is due on Monday April 22, 2019.

<sup>4</sup> A true and correct copy of the Notice of Appeal in Appeal No. 76276 filed on June 28, 2018 is attached hereto as **Exhibit 2**.

<sup>5</sup> A true and correct copy of the Docketing Statement in Appeal No. 76276 filed on August 8, 2018 is attached hereto as **Exhibit 3**.

<sup>6</sup> A true and correct copy of the Amended Notice of Appeal in Appeal No. 77320 filed on October 25, 2018 is attached hereto as **Exhibit 4**.

<sup>7</sup> A true and correct copy of the Notice of Cross Appeal in Appeal 77320 filed on October 26, 2018 is attached hereto as **Exhibit 5**.

<sup>8</sup> A true and correct copy of the Amended Docketing Statement in Appeal 76276 filed on November 27, 2018 is attached hereto as **Exhibit 6**.

Docketing Statement on January 4, 2019.<sup>9</sup> On January 9, 2019, the Court filed an Order Reinstating Briefing Pursuant to NRAP 16 because the parties were unable to agree to a settlement.<sup>10</sup>

On January 17, 2019, APCO filed a Motion to Consolidate Appeals seeking to combine the Attorney's Fees Case and Primary Case because both appeals arise from the same District Court trial.<sup>11</sup> On February 6, 2019, in the Primary Case, the Court issued an Order to File Amended Docketing Statement.<sup>12</sup> On March 4, 2019 APCO filed a Docketing Statement in the Attorney's Fees Case.<sup>13</sup> In response to the Court's February 6, 2019 Order to File Amended Docketing Statement in the Primary Case, Helix filed its Second Amended Docketing Statement on March 8, 2019.<sup>14</sup>

On March 21, 2019, in the Primary Case, the Court issued an Order to Show Cause ordering Helix to show cause within 30 days why the Primary Case should not be dismissed for lack of jurisdiction.<sup>15</sup> The Order to Show Cause suspended briefing in the Primary Case until further order of this Court. On April 3, 2019, in

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<sup>9</sup> A true and correct copy of the Partial Joinder to Helix Electric of Nevada's Docketing Statement and Amended Docketing Statement in Appeal No. 76276 filed on January 4, 2019 is attached hereto as **Exhibit 7**.

<sup>10</sup> A true and correct copy of the Order Reinstating Briefing in Appeal No. 77320 filed on January 9, 2019 is attached hereto as **Exhibit 8**.

<sup>11</sup> A true and correct copy of the Motion to Consolidate Appeals in Appeal 76276 filed on January 19, 2019 is attached hereto as **Exhibit 9**. One of the grounds for appeal of the Attorneys Fees Case is that if the Court reverses the underlying judgment in the Primary Case, there would be no grounds for an award of fees to APCO.

<sup>12</sup> A true and correct copy of the Order to File Amended Docketing Statement in Appeal 76276 filed on February 6, 2019 is attached hereto as **Exhibit 10**.

<sup>13</sup> A true and correct copy of Respondent's Docketing Statement in Appeal No. 77320 filed on March 4, 2019 is attached hereto as **Exhibit 11**.

<sup>14</sup> A true and correct copy of the Second Amended Docketing Statement in Appeal 76276 filed on March 8, 2019 is attached hereto as **Exhibit 12**.

<sup>15</sup> **Exhibit 1**.

the Attorney's Fees Case the Court filed an Order to File Document because "appellant/cross-respondents have failed to file the docketing statement"<sup>16</sup>

### **ARGUMENT**

Nevada Rule of Appellate Procedure 2 gives this Court the discretion to suspend any provision of the Rules governing Appeals for "good cause." Here, Helix requests that the Court suspend all briefing in the Attorneys Fees Case pending the outcome of the Order to Show Cause in the related Primary Case. APCO's Motion to Consolidate these two appeals remains pending before this Court and the Court has expressed concern that it lacks jurisdiction over the Primary Case. The only difference between the Primary Case and the Attorney's Fees Case is the additional issues on review relating to the District Court's award of attorney's fees and costs and the cases are otherwise procedurally identical. Accordingly, if the Court lacks jurisdiction over the Primary Case, the Court may similarly lack jurisdiction over the Attorney's Fees Case. In this event, briefing in the Attorney's Fees Case would be moot.

Rather than require the parties and Court to move forward with the Attorney's Fees Case while the jurisdictional fate of the Primary Case remains uncertain, it would be far more economical for the Court to effectively pause the proceedings in the Attorney's Fees Case until a decision has been with respect to the Show Cause Order in the Primary Case.<sup>17</sup> As such, it would create a burdensome logistical situation if one portion of the appeal was moving forward into its briefing phase, while the underlying judgment is still facing jurisdictional concerns. In the event the Court allows the Primary Case to move forward, it makes sense for the Primary Case

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<sup>16</sup> A true and correct copy of the Order to File Document in Appeal 77320 filed on April 3, 2019 is attached hereto as **Exhibit 13**.

<sup>17</sup> Additionally, Helix joins APCO in the belief that these two appeals should be consolidated

and the Attorney's Fees Case to move forward together (as appears was originally intended), rather than on separate tracks with duplicative and repetitive briefing.

Helix also requests that it be granted an extension to file its docketing statement in the Attorney's Fees Case, which docketing statement will largely mirror its docketing statement (to be amended in response to the Show Cause Order) in the Primary Case. Helix does not wish to file an unsatisfactory docketing statement in the Attorney's Fees Case while it is working to correct the confusion created by its submission of that same document in the Primary Case. Helix intends to file an amended docketing statement in the Primary Case as part of its Response to the Show Cause Order and respectfully requests that it be allowed to submit that same or substantially similar) amended docketing statement in the Attorney's Fees Case.

Alternatively, and to the extent the Court denies the present motion, Helix respectfully requests that it be granted (1) an extension of 30 days to file a docketing statement in the Primary Case (Case No. 76726) and (2) an extension of 60 days to file an opening brief in the Attorney's Fees Case (Case No. 77320).

### **CONCLUSION**

For the foregoing reasons, Helix respectfully requests:

- (i) That the briefing be suspended in the Attorney's Fees Case (Case No. 77320) until resolution of the Show Cause proceedings in the Primary Case (Case No. 76726);
- (ii) That Helix be granted an extension to file its docketing statement in the Attorney's Fees Case (Case No. 77320) until it files its Response to the Show Cause Order in the Primary Case (Case No. 76726), which will include an amended docketing statement, and
- (iii) Alternatively (if the other relief is denied), that Helix be granted an extension of 60 days to file its opening brief in the Attorney's Fees Case

(Case No. 77320) and an extension of 30 days to file its docketing statement in the Attorney's Fees Case (Case No. 77320).

Respectfully submitted this 8th day of April, 2019.

**PEEL BRIMLEY LLP**

/s/ Eric B. Zimbelman

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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 5<sup>th</sup> day of April, 2019, I caused the above and foregoing document, **MOTION TO SUSPEND BRIEFING PENDING OUTCOME OF ORDER TO SHOW CAUSE IN SUPREME COURT CASE NO. 76276**, 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 Nevada Supreme 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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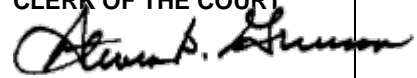
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**DISTRICT COURT**

**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.

CASE NO. : A571228  
DEPT. NO. : XIII

*Consolidated with:*  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

**EXHIBITS 11 THROUGH 16 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**

AND ALL RELATED MATTERS.

Helix Electric of Nevada, LLC ("Helix") by and through its counsel of record, the law  
firm of PEEL BRIMLEY LLP, hereby respectfully submits Exhibits 11 through 16 to its  
Motion to (I) Re-Open Statistically Closed Case, (II) Deem All Constituent Case Claims Resolved  
and/or, (III) in the Alternative, for a Rule 54(b) Certification as to Helix and APCO Construction,  
Inc. ("APCO").

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2 The Exhibits are being submitted separately due to volume.

3 Respectfully submitted this 6th day of August, 2019.

4 **PEEL BRIMLEY LLP**

5 */s/ Eric B. Zimbelman*

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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 August, 2019, I caused the above and foregoing document entitled **EXHIBIT 11 THROUGH 16 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** 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 11**

**JA008752**

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

**ORDER  
HOWARD & HOWARD ATTORNEYS PLLC**

Gwen Mullins, Esq.  
Nevada Bar No. 3146  
Wade B. Gochmour, Esq.  
Nevada Bar No. 6314  
3800 Howard Hughes Parkway  
Suite 1400  
Las Vegas, NV 89169  
Telephone (702) 257-1483  
Facsimile (702) 567-1568  
E-mails: [grm@h2law.com](mailto:grm@h2law.com)  
[wbg@h2law.com](mailto:wbg@h2law.com)  
*Attorneys for APCO Construction*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

vs.

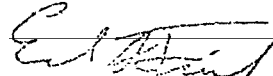
GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation; NEVADA  
CONSTRUCTION SERVICES, a Nevada  
corporation; SCOTT FINANCIAL  
CORPORATION, a North Dakota  
corporation; COMMONWEALTH LAND  
TITLE INSURANCE COMPANY; FIRST  
AMERICAN TITLE INSURANCE  
COMPANY; and DOES I through X,

Defendants.

**AND ALL RELATED CASES AND  
MATTERS.**

**FILED**

2009 JUN 29 A 9 38

  
CLERK OF THE COURT

CASE NO.: A571228  
DEPT. NO.: X

**ORDER TO CONSOLIDATE THIS  
ACTION WITH CASE NOS. A574391,  
A574792, A577623, A583289, A584730,  
A587168, A580889 AND A589195**

Date: June 3, 2009  
Time: 9:00 a.m.

This matter having come before this Court for a hearing on APCO Construction's Motion To Consolidate With Case Nos. A574391, A574792, A577623, A579963 A583289, A584730, A580889 and A587168 and on the Supplement to APCO's Construction's Motion to

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

1 Consolidate to Include Case No. A589195 In Consolidation ("Motion") on June 3, 2009 at  
2 9:00 a.m. Plaintiff APCO CONSTRUCTION, appearing by and through Wade B. Gochnour,  
3 Esq. of the law firm of HOWARD & HOWARD ATTORNEYS PLLC, Defendant SCOTT  
4 FINANCIAL CORPORATION appearing by and through Mark M. Jones, Esq. of the law firm  
5 of KEMP, JONES & COULTHARD, LLP, as counsel of record in the Club Vista action  
6 (A579963) and by and through Glenn F. Meier, of the law firm of MEIER & FINE, as counsel  
7 of record in this action, Lien Claimant ATLAS CONSTRUCTION SUPPLY, INC., appearing  
8 by and through its counsel David W. Dachelet, Esq. of the law firm of FENNEMORE CRAIG  
9 P.C., and other counsel appearing, and the Court having heard the arguments of counsel and  
10 further

11 considered all the papers and pleadings filed in this action, and other good cause appearing  
12 therefore,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that APCO Construction's  
14 Motion is hereby granted in part and denied in part.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lien foreclosure  
16 cases that have been filed relating to the Manhattan West mixed-use development project,  
17 namely cases identified by Case Nos. A574391, A574792, A577623, A583289, A584730,  
18 A587168, A580889 AND A589195 be and hereby are consolidated with this case, Case No.  
19 A571228.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that APCO  
21 Construction's request to consolidate the case entitled *Club Vista Financial Services, LLC et.*  
22 *al. v. Scott Financial Corporation, Bradley Scott, et. al.*, Case No. A579963 is denied without  
23 prejudice at this time and as such Case No. A579963 shall not be consolidated with Case No.  
24 A571228 at this time.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter  
26 (A571228) and all cases consolidated with this matter be and hereby are transferred to the  
27 Business Court.  
28

Howard & Howard Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169  
(702) 257-1483

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any lien foreclosure  
2 action relating to the Manhattan West mixed-use development Project that is or was pending as  
3 of June 3, 2009 or that is filed after the hearing on this Motion, shall be automatically  
4 consolidated with Case No. A571228, by any party simply filing a Notice of Consolidation  
5 with the Court.

6 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in interest of judicial  
7 economy, the requirements of NRCP Rule 24 are hereby waived and that any person or entity  
8 that has an alledged lien against the Manhattan West mixed-use development Project and that  
9 files a timely Statement of Facts Constituting Lien and Complaint In Intervention becomes a  
10 proper party in this action without having to file a motion and/or stipulation to intervene.

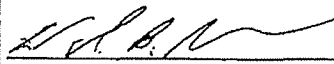
11 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the consolidation of  
12 the lien foreclosure action A574792 with Case No. A571228 does not affect lien claimant  
13 Ahern Rentals, Inc.'s Judgment by Default dated April 14, 2009.

14  
15 DATED this 24 day of June, 2009.

16  
17   
18 DISTRICT COURT JUDGE

19  
20 Respectfully Submitted By:

21 **HOWARD & HOWARD ATTORNEYS PLLC**

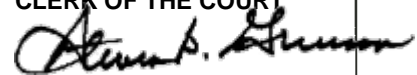
22  
23   
24 Gwen Rutar Mullins, Esq.  
25 Nevada Bar No. 3146  
26 Wade B. Gochnour, Esq.  
27 Nevada Bar No. 6314  
28 3800 Howard Hughes Pkwy., Suite 1400  
Las Vegas, NV 89169

*Attorneys for APCO Construction*



# **EXHIBIT 12**

**JA008756**



**SAO**  
SULLIVAN HILL LEWIN REZ & ENGEL  
A Professional Law Corporation  
Elizabeth E. Stephens, NV SBN 5788  
228 South Fourth Street, First Floor  
Las Vegas, NV 89101  
Telephone: (702) 382-6440  
Fax Number: (702) 384-9102

*Attorneys for William A. Leonard, Jr., Chapter 7 Trustee of the Jointly Administered Bankruptcy Estate of Interstate Plumbing & Air Conditioning, LLC dba Interstate Services, dba IPAC Mechanical, in the United States Bankruptcy Court, District of Nevada, Case No. 11-25053-BAM*

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR  
COMPANY, INC., a Nevada corporation,

Plaintiff,

v.

ASPHALT PRODUCTS CORP., a Nevada  
corporation; APCO CONSTRUCTION, a  
Nevada corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., a Nevada  
corporation; FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND; SCOTT  
FINANCIAL CORPORATION, a North  
Dakota corporation; DOES I through X;  
ROE CORPORATIONS I through X; BOE  
BONDING COMPANIES I through X;  
LOE LENDERS I through X, inclusive,

Defendants.

INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC, a Nevada limited –  
liability company,

Plaintiff in Intervention,

v.

ASPHALT PRODUCTS CORP., a Nevada  
corporation; APCO CONSTRUCTION, a  
Nevada corporation; CAMCO PACIFIC  
CONSTRUCTION COMPANY, INC., a  
California corporation; GEMSTONE  
DEVELOPMENT WEST, INC., a Nevada  
corporation; FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND; SCOTT  
FINANCIAL CORPORATION, a North

) LEASE CASE NO. A571228  
) DEPT. NO.” XIII

) Consolidated with:

) A571792

) A574391

) A577623

) A583289

) A584730

) A587168

) **STIPULATION AND ORDER TO DISMISS  
THIRD PARTY COMPLAINT OF  
INTERSTATE PLUMBING & AIR  
CONDITIONING, LLC AGAINST APCO  
CONSTRUCTION, INC. WITH  
PREJUDICE**

JA0087571 -

RECEIVED

JAN 30 2018

DISTRICT COURT DEPT 13

1 Dakota corporation; DOES I through X; )  
2 ROE CORPORATIONS I through X; BOE )  
3 BONDING COMPANIES I through X; )  
4 LOE LENDERS I through X, inclusive, )  
5 Defendants. )

6 Third party Plaintiff, William A. Leonard, Jr., trustee of the Interstate Plumbing & Air  
7 Conditioning, LLC ("IPAC") ("Plaintiff" or "Trustee"), by and through his counsel of record,  
8 Elizabeth E. Stephens, Esq., of the law office of Sullivan Hill Lewin Rez & Engel, APLC  
9 ("Sullivan Hill") and APCO Construction, Inc. ("APCO") by and through its attorneys John  
10 Randall Jefferies, Esq. and Mary E. Bacon, Esq. of the law office of Spencer Fane, LLP hereby  
11 represent and stipulate as follows: APCO and the Trustee hereby stipulate and agree to dismiss  
12 IPAC's complaint in its entirety *with prejudice*. Each party will bear its own attorneys' fees and  
13 costs.

14 IT IS SO STIPULATED.

15 Dated: January 29, 2018

SULLIVAN HILL LEWIN REZ & ENGEL  
A Professional Law Corporation

17 By:

  
Elizabeth E. Stephens  
Attorneys for William A. Leonard, Jr.,  
Chapter 7 Trustee

19 Dated: January 29, 2018

SPENCER FANE, LLP

22 By:

  
Mary E. Bacon  
Attorneys for APCO Construction

25 IT IS SO ORDERED.

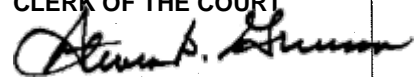
27 Date:

  
January 30, 2018

DISTRICT JUDGE

# **EXHIBIT 13**

**JA008759**



**SPENCER FANE LLP**

John H. Mowbray, Esq. (Bar No. 1140)  
John Randall Jefferies, Esq. (Bar No. 3512)  
Mary E. Bacon, Esq. (Bar No. 12686)  
400 S. Fourth Street, Suite 500  
Las Vegas, NV 89101  
Telephone: (702) 408-3411  
Facsimile: (702) 408-3401  
E-mail: [JMowbray@spencerfane.com](mailto:JMowbray@spencerfane.com)  
[RJJefferies@spencerfane.com](mailto:RJJefferies@spencerfane.com)  
[MBacon@spencerfane.com](mailto:MBacon@spencerfane.com)

-and-

**MARQUIS AURBACH COFFING**

Cody S. Mounteer, Esq. (Bar No. 11220)  
10001 Park Run Drive  
Las Vegas, NV 89145  
Telephone: 702.207.6089  
Email: [cmounteer@maclaw.com](mailto:cmounteer@maclaw.com)  
*Attorneys for Apco Construction, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

v.

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


**STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff APCO Construction ("Plaintiff"), through the law firm of Marquis Aurbach Coffing, and Defendants Steel Structures, Inc., Nevada Prefab Engineers, Inc. and Gerdau Reinforcing Steel (collectively "Defendants"), through the law firm of Jolley Urga Woodbury Holthus & Rose, as follows:

1           1.       That Defendants Steel Structures, Inc., Nevada Prefab Engineers, Inc. and Gerdau  
2 Reinforcing Steel's Complaints, and any related claims in the above entitled action, shall be  
3 dismissed in their entirety with prejudice as to the Defendants named herein, with each party to  
4 bear their own attorney fees and costs.

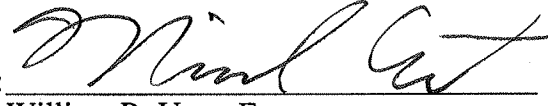
5 Dated this 27 day of ~~April~~<sup>May</sup>, 2018.

6 MARQUIS AURBACH COFFING

7  
8 By:   
9 Jack Chen Min Juan, Esq.  
10 Nevada Bar No. 6367  
11 Cody S. Mounteer, Esq.  
12 Nevada Bar No. 11220  
13 10001 Park Run Drive  
14 Las Vegas, NV 89145  
15 *Attorneys for Plaintiff*  
16 *APCO Construction*

Dated this 5th day of April, 2018.

JOLLEY URG A WOODBURY HOLTHUS  
& ROSE

By:   
William R. Urga, Esq.  
Nevada Bar No. 1195  
Michael R. Ernst, Esq.  
Nevada Bar No. 11957  
330 S. Rampart Boulevard, Suite 380  
Las Vegas, NV 89145  
*Attorney for Defendants*  
*Steel Structures, Inc., Nevada Prefab*  
*Engineers, Inc. and Gerdau Reinforcing*  
*Steel*

**ORDER**


15           IT IS SO ORDERED that Defendants Steel Structures, Inc., Nevada Prefab Engineers, Inc.  
16 and Gerdau Reinforcing Steel's Complaints and any related claims as to the Defendants named  
17 herein in the above-entitled matter (Case No. 08A571228) shall be dismissed in their entirety with  
18 prejudice with each party to bear their own attorney fees and costs.

19           DATED this 23<sup>rd</sup> day of May, 2018.

  
DISTRICT COURT JUDGE 

22 Submitted By:

23 MARQUIS AURBACH COFFING

24 By:   
25 Jack Chen Min Juan, Esq.  
26 Nevada Bar No. 6367  
27 Cody S. Mounteer, Esq.  
28 Nevada Bar No. 11220  
10001 Park Run Drive  
Las Vegas, NV 89145  
*Attorneys for Plaintiff*  
*APCO Construction*

# **EXHIBIT 14**

**JA008762**

07/02/2018 Motion to Enforce ▼

Judicial Officer  
Denton, Mark R.

Hearing Time  
9:00 AM

Result  
Granted

Comment  
United Subcontractors, Inc. dba Skyline Insulation's Motion to Enforce Settlement Agreement and Enter Judgment

07/02/2018 Motion for Attorney Fees and Costs ▼

Judicial Officer  
Denton, Mark R.

Hearing Time  
9:00 AM

Result  
Granted

Comment  
Helix Electric of Nevada, LLC's Motion for Attorney's Fees, Interest and Costs

07/02/2018 Motion for Attorney Fees and Costs ▼

Judicial Officer  
Denton, Mark R.

Hearing Time  
9:00 AM

Result  
Granted

Comment  
Heinaman Contract Glazing's Motion for Attorney's Fees, Interest and Costs

07/02/2018 Motion for Attorney Fees and Costs ▼

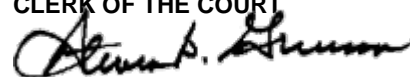
Judicial Officer  
Denton, Mark R.

Hearing Time  
9:00 AM

Result  
Granted

**JA008763**





**MENF**  
Benjamin D. Johnson, Esq.  
Nevada Bar No. 7764  
BENNETT TUELLER JOHNSON & DEERE  
3165 East Millrock Drive  
Salt Lake City, Utah 84105  
Telephone: (801) 438-2000  
Facsimile: (801) 438-2050

Bradley S. Slighting, Esq.  
Nevada Bar No. 10225  
FABIAN VANCOTT  
601 South Tenth Street, Suite 204  
Las Vegas, Nevada 89101  
Telephone: (702) 233-4444  
Facsimile: (877) 898-1168

Attorneys for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

UNITED SUBCONTRACTORS, INC. dba  
SKYLINE INSULATION, a foreign  
corporation,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada  
corporation, and DOE Defendants 1-40,

Defendants.

AND ALL RELATED MATTERS

**UNITED SUBCONTRACTORS, INC. DBA  
SKYLINE INSULATION'S MOTION TO  
ENFORCE SETTLEMENT AGREEMENT  
AND ENTER JUDGMENT**

Case No. A571228  
Dept. No. XIII

Consolidated with:  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

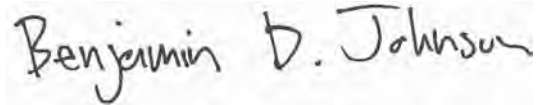
Plaintiff UNITED SUBCONTRACTORS, INC. dba SKYLINE INSULATION  
("USI"), by and through counsel and pursuant to Rule 7 of the Nevada Rules of Civil  
Procedure, hereby moves the Court to enforce the settlement agreement reached by USI  
and Defendant CAMCO PACIFIC CONSTRUCTION CO., INC. ("Camco") and enter  
judgment against Camco.

**NOTICE OF MOTION**

TO: All parties and their counsel of record

PLEASE TAKE NOTICE that the above motion will be heard on the 2 day  
of July 2018 in the above-entitled courtroom at 9:00 a.m. or as  
soon thereafter as the matter can be heard.

**BENNETT TUELLER JOHNSON & DEERE**



By \_\_\_\_\_

BENJAMIN D. JOHNSON, ESQ.  
Nevada Bar No. 7764  
3165 East Millrock Drive  
Salt Lake City, Utah 84105

**STATEMENT OF RELIEF REQUESTED**

USI seeks to enforce its settlement agreement with Camco as Camco has failed  
and refused to execute a written settlement agreement and as Camco has failed to make  
the agreed upon payments. Given Camco's breach of the settlement agreement, USI also  
seeks entry of judgment against Camco in the amount of \$212,444.00, plus attorney's  
fees, costs and interest, as allowed by contract or statute.

**RELEVANT FACTS**

On February 6, 2018, USI and Camco appeared for the trial of USI's claims  
against Camco. *See* Declaration of Benjamin D. Johnson, ¶ 3, attached hereto as Exhibit  
1. Shortly before the trial began, USI and Camco continued with the settlement  
negotiations that had been ongoing, and the parties were able to reach an agreement just  
minutes before trial was to begin. *See* ¶ 4, Exhibit 1. The parties informed the Court of  
the fact of a settlement but did not put the specific terms of the settlement on the record.  
*See* ¶ 5, Exhibit 1. USI's counsel thereafter drafted a settlement agreement reflecting the

1 essential terms of the parties' settlement. *See* Confidential Settlement Agreement &  
2 Release of Claims ("Agreement"), attached hereto as Exhibit A; ¶ 6, Exhibit 1.

3 The language in the Agreement reflects the intentions of USI and Camco when  
4 they entered into the settlement agreement on February 6, 2018. *See* ¶ 7, Exhibit 1. The  
5 Agreement provides:  
6

7 In consideration for the agreements, stipulations, representations and  
8 unconditional release of all claims provided herein, CAMCO agrees to  
9 pay or cause to be paid to UNITED SUBCONTRACTORS – d.b.a.  
10 SKYLINE INSULATION, the sum of **Ten Thousand and 00/100**  
11 **Dollars (\$10,000.00)** (hereinafter, the "Settlement Amount"). The  
12 Settlement Amount shall be payable to UNITED SUBCONTRACTORS  
13 and shall be made in four monthly installments of **Two Thousand Five**  
14 **Hundred and 00/100 Dollars (\$2,500.00)**, commencing on February 26,  
15 2018 and continuing on March 15, 2018, April 15, 2018 and May 15,  
16 2018. Should CAMCO fail to timely pay the Settlement Amount,  
17 CAMCO hereby agrees to pay to UNITED SUBCONTRACTORS –  
18 d.b.a. SKYLINE INSULATION the principal amount of \$212,444.00.,  
19 less any payments made under this Agreement, plus an award of all fees  
20 and costs incurred by UNITED SUBCONTRACTORS – d.b.a. SKYLINE  
21 INSULATION in the Action, and an award of interest at the rate of 18%  
22 per annum, both pre- and post-judgment.

23 Agreement, ¶ 2(a). The Agreement was sent to counsel for Camco, Steve Morris, on or  
24 about February 20, 2018. *See* ¶ 8, Exhibit 1. Mr. Morris lodged no objection to the  
25 Agreement but directed that counsel for USI correspond with Josef Rodarti to get the  
26 Agreement signed and finalized. *See* ¶ 9, Exhibit 1. Counsel for USI contacted Mr.  
27 Rodarti by e-mail on March 13, 2018 but received no response or objection to the  
28 Agreement. *See* ¶ 10, Exhibit 1.

### ARGUMENT

29 "Because a settlement agreement is a contract, its construction and enforcement  
30 are governed by principles of contract law." *May v. Anderson*, 121 Nev. 668, 672 (Nev.  
31 2005). Accordingly, an enforceable settlement agreement requires "an offer and

1 acceptance, meeting of the minds, and consideration.” *Id.* An enforceable settlement  
2 agreement may be formed when “the parties have agreed to the material terms” of the  
3 agreement. *Id.*

4  
5 Camco has not disputed that the Agreement is enforceable or that the Agreement  
6 satisfies the essential requirements to form a contract. The terms of the Agreement  
7 represent valid consideration and offer and acceptance. *Id.* Camco agreed to pay an  
8 amount for USI to release its claims against Camco. The fact that the parties informed  
9 the Court of a settlement on the record demonstrates that the Agreement exists and that  
10 both parties accepted the terms and had a meeting of the minds. *Id.* Further, the fact that  
11 USI’s counsel drafted the Agreement representing the essential terms of the settlement  
12 demonstrates that both parties intended to enter the Agreement and had a meeting of the  
13 minds. Camco has never disputed that it intended to settle or that the Agreement reflects  
14 the essential terms for settlement. Accordingly, USI and Camco have an enforceable  
15 agreement.  
16

17  
18 An enforceable settlement agreement is treated the same as any other contract. *Id.*  
19 The Agreement is binding for both USI and Camco. Camco has breached the essential  
20 terms of the Agreement because it has failed to make timely payments pursuant to the  
21 Agreement. As a result, the Court should enter judgment against Camco as set forth in  
22 the Agreement:  
23

24 Should Camco fail to timely pay the Settlement Amount, CAMCO hereby agrees  
25 to pay to United SUBCONTRACTORS – d.b.a. SKYLINE INSULATION the  
26 principal amount of \$212,444.00., less any payments made under this Agreement,  
27 plus an award of all fees and costs incurred by UNITED SUBCONTRACTORS  
– d.b.a. SKYLINE INSULATION in the Action, and an aware of interest at the  
rate of 18% per annum, both pre- and post-judgment.

28 Agreement, ¶ 2(a).

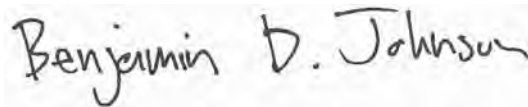
1 In addition to the fact that USI and Camco have an enforceable agreement,  
2 Nevada encourages settlement. *See RTTC Communications, LLC v. Saratoga Flier, Inc.*,  
3 121 Nev. 34, 42 (Nev. 2005); Nev. R. Civ. Pro. 68 (2005). “There is a strong judicial  
4 policy that favors settlements.” *In re Syncor ERISA Litigation*, 516 F.3d 1095, 1101 (9th  
5 Cir. 2008). USI and Camco informed the Court that they had reached a settlement, and  
6 Nevada policy supports the parties’ decision to settle. The Court should enforce the  
7 Agreement because settlement agreements benefit both the parties and the judicial  
8 system.  
9

10  
11 **CONCLUSION**

12 The Court should hold Camco responsible for the terms it agreed to in the  
13 Agreement. The parties both intended to settle and to move on, but Camco has decided  
14 to ignore its obligations provided in the Agreement. The Court should respect the terms  
15 of the Agreement and enter judgment against Camco, ordering it to pay the amount of  
16 \$212,444, plus fees and costs.  
17

18 DATED this 31st day of May, 2018.

19 **BENNETT TUELLER JOHNSON & DEERE**

20 

21 By \_\_\_\_\_

22 BENJAMIN D. JOHNSON, ESQ.  
23 Nevada Bar No. 7764  
24 3165 East Millrock Drive  
25 Salt Lake City, Utah 84105  
26  
27  
28

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 31st day of May, 2018, I served a copy of the foregoing **UNITED SUBCONTRACTORS, INC. DBA SKYLINE INSULATION'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND ENTER JUDGMENT** by the mandated e-file system which will cause the document to be served upon all counsel of record.

/s/ Kenzie Dunn  
An employee of Bennett Tueller Johnson & Deere

# EXHIBIT

# 1

**DECL**  
Benjamin D. Johnson, Esq.  
Nevada Bar No. 7764  
BENNETT TUELLER JOHNSON & DEERE  
3165 East Millrock Drive  
Salt Lake City, Utah 84105  
Telephone: (801) 438-2000  
Facsimile: (801) 438-2050

Bradley S. Slighting, Esq.  
Nevada Bar No. 10225  
FABIAN VANCOTT  
601 South Tenth Street, Suite 204  
Las Vegas, Nevada 89101  
Telephone: (702) 233-4444  
Facsimile: (877) 898-1168

Attorneys for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

UNITED SUBCONTRACTORS, INC. dba  
SKYLINE INSULATION, a foreign  
corporation,

Plaintiff,

vs.

APCO CONSTRUCTION, a Nevada  
corporation, and DOE Defendants 1-40,

Defendants.

AND ALL RELATED MATTERS

**DECLARATION OF BENJAMIN D.  
JOHNSON**

Case No. A571228  
Dept. No. XIII

Consolidated with:  
A571792, A574391, A577623, A580889,  
A583289, A584730, and A587168

I, Benjamin D. Johnson, hereby verify and state as follows:

1. I am an individual over the age of eighteen and have personal knowledge  
of the matters set forth in this Declaration.

2. I am familiar with the Motion to Enforce Settlement Agreement and Enter  
Judgment filed herewith.



1           3.       On February 6, 2018, Plaintiff United Subcontractors, Inc. dba Skyline  
2       Insulation (“USI”) and Defendant Camco Pacific Construction Co., Inc. (“Camco”)  
3       appeared at court for the trial of USI’s claims against Camco.

4           4.       USI and Camco were able to reach a settlement agreement just minutes  
5       before the trial was to begin.

6           5.       USI and Camco informed the Court of the fact of a settlement but did not  
7       put the specific terms of the settlement on the record.

8           6.       I thereafter drafted a settlement agreement reflecting the essential terms  
9       of the parties’ settlement. *See Confidential Settlement Agreement & Release of Claims*  
10       (“Agreement”), attached hereto as Exhibit A.

11           7.       The language in the Agreement reflects the intentions of USI and Camco  
12       when they entered into the settlement agreement on February 6, 2018.

13           8.       The Agreement was sent to counsel for Camco, Steve Morris, on or about  
14       February 20, 2018. *See February 20, 2018 email from Benjamin Johnson to Steve*  
15       *Morris, attached hereto as Exhibit B.*

16           9.       Mr. Morris lodged no objection to the Agreement but directed that  
17       counsel for USI correspond with Josef Rodarti to get the Agreement signed and  
18       finalized. *See March 13, 2018 email from Steve Morris to Benjamin Johnson, attached*  
19       *hereto as Exhibit C.*

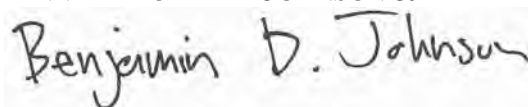
20           10.      Counsel for USI contacted Mr. Rodarti by e-mail on March 13, 2018 but  
21       received no response or objection to the Agreement. *See March 13, 2018 email from*  
22       *Benjamin Johnson to Josef Rodarti, attached hereto as Exhibit D; March 22, 2018 email*  
23       *from Benjamin Johnson to Steve Morris and Josef Rodarti, attached hereto as Exhibit E.*

11. The Agreement sets forth a schedule for payments by Camco to USI  
starting on February 26, 2018, but Camco has failed to make any payment to date. *See*  
Agreement, ¶ 2(a).

I declare under criminal penalty of the State of Nevada that the foregoing is true  
and correct.

Executed this 31<sup>st</sup> day of May, 2018.

**BENNETT TUELLER JOHNSON & DEERE**



By \_\_\_\_\_

BENJAMIN D. JOHNSON, ESQ.  
Nevada Bar No. 7764  
3165 East Millrock Drive  
Salt Lake City, Utah 84105

# EXHIBIT

# A

## **CONFIDENTIAL SETTLEMENT AGREEMENT & RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (the "Agreement") is made and entered into this 6<sup>th</sup> day of February, 2018 (the "Effective Date"), by and between CAMCO PACIFIC CONSTRUCTION CO., INC. ("CAMCO") and SUBCONTRACTOR ("UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION"). CAMCO and UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION are individually referred to in this Agreement at times as a "Party" and collectively at times as the "Parties".

### **RECITALS**

A. Gemstone hired APCO Construction ("APCO") to act as general contractor on the Manhattan Condominiums construction project ("Project").

B. On July 16, 2008, APCO entered into a Subcontract Agreement with UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION for the "Manhattan West" Project for Insulation and Edge of Slab Firestopping work.

C. UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION's original Subcontract was for \$379,255.00.

D. On or about August 21, 2008, APCO ceased acting as the General Contractor on the project and was replaced with CAMCO by the owner Gemstone Development.

E. The Parties, in an effort to determine the issues presented above, filed claims with the District Court Clark County, Nevada in the lead case, A571228 and/or the cases consolidated therewith – A574391; A574792; A577623; A583289; A587168; A580889; A584730; A589195; A595552; A597089; A592826; A589677; A596924; A584960; A608717; A608718 and A590319 (hereinafter collectively referred to as the "Action").

F. After extensive discovery the Parties now desire and intend to fully settle and release any and all claims, rights and demands they may now possess or hereafter acquire with respect to, arising out of or related to the Project in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, based on the foregoing factual recitals, and in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the terms, provisions and covenants contained herein, the Parties agree as follows:

### **AGREEMENT**

1. **CONFIDENTIALITY AND NONDISCLOSURE**. The Parties, their representatives and their attorneys shall keep the specific terms and conditions of this Agreement confidential except: (a) where it mutually agreed in writing by the Parties; (b) where necessary to share information with the Parties' auditors, accountants, or attorneys, provided they agree to maintain the confidentiality of the information; (c) where disclosure to a governmental agency is required

by applicable law, rule, or regulation, or to comply with the terms of this Agreement itself; or (d) where disclosure is requested by subpoena or ordered by a court of competent jurisdiction.

## **2. SETTLEMENT AMOUNT TERMS.**

a. **Payment to UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION.** In consideration for the agreements, stipulations, representations and unconditional release of all claims provided herein, CAMCO agrees to pay or cause to be paid to UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION, the sum of **Ten Thousand and 00/100 Dollars (\$10,000.00)** (hereinafter, the “Settlement Amount”). The Settlement Amount shall be payable to UNITED SUBCONTRACTORS and shall be made in four monthly installments of **Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00)**, commencing on February 26, 2018 and continuing on March 15, 2018, April 15, 2018 and May 15, 2018. Should CAMCO fail to timely pay the Settlement Amount, CAMCO hereby agrees to pay to UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION the principal amount of \$212,444.00., less any payments made under this Agreement, plus an award of all fees and costs incurred by UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION in the Action, and an award of interest at the rate of 18% per annum, both pre- and post-judgment. Further, the Parties agree that the Settlement Amount is secured by the license bond of CAMCO and should CAMCO fail to pay the Settlement Amount, UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION may make claim against the license bond for any portion of the Settlement Amount that has not been made, plus all attorney’s fees and costs incurred in making claim against the license bond and interest at the rate of 18% per annum.

b. Upon payment of the Settlement Amount, the Parties within five business days will execute a stipulation and order for dismissal with prejudice of their respective claims asserted in the Action.

3. **WAIVER AND UNCONDITIONAL RELEASE OF ALL CLAIMS.** In consideration of payment of the Settlement Amount to UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION and the promises and covenants as set forth herein, the following waivers and unconditional releases are hereby applicable to the Parties:

a. Except as otherwise provided in paragraph 2 herein of the Agreement, UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION and CAMCO on behalf of themselves and their successors, predecessors, assigns, current and former officers, directors, foundation members and managers, shareholders, agents, family members, heirs, employees, representatives, principals, partners, current and former subsidiaries, attorneys, insurers, unincorporated divisions, affiliated, related and parent corporations, companies, and limited liability companies, and anyone related to or affiliated with either of the Parties hereby forever release, knowingly and willingly waive, acquit, exonerate and mutually discharge each other, and each of their successors, predecessors, assigns, current and former officers, directors, managers, members, shareholders, architects, attorneys, agents, consultants, subconsultants, employees, representatives, sole proprietors, partners, current and former subsidiaries, unincorporated divisions, affiliated and parent corporations, companies, insurers and reinsurers from any and all claims, actions, causes of action involving or surrounding the Project, regardless of description

or nature, known or unknown, suspected or unsuspected, and whether or not latent, concealed or patent, which either of the Parties own, hold, held, have or claims to have, or at any time heretofore owned, held, have or claimed to have, or may at any time own, hold, held or claim to have on account of, or in any way concerning any and all, known and unknown, foreseen and unforeseen, matters, events, occurrences, causes or issues whatsoever occurred, done, omitted or suffered to be done prior to and after the Effective Date of this Agreement relating to, concerning, or pertaining to the Project.

b. The Parties acknowledge that they may hereafter discover claims or facts now unknown or unsuspected from those which the Parties now know or believe to be true with respect to the Waiver and Unconditional Release of All Claims contained in this Agreement. Nevertheless, by way of this Agreement, the Parties intend to (i) fully, finally, and forever waive, discharge and release any and all such claims even those that may be unknown and/or concealed as of the Effective Date of the Agreement, and (ii) the Release contained in this Agreement shall remain in full force and effect as a complete release and resolution of any and all such claims notwithstanding the discovery or existence of any such additional or different claims or facts before or after the Effective Date of this Agreement. This Agreement is intended to be final and binding regardless of any claims of misrepresentations, failure to disclose, promises made without the intent of performance, of concealments of facts, of mistake of fact or law or of any other circumstances whatsoever.

*The Parties represent that they understand and acknowledge the legal significance and consequences of a release of unknown claims against each of the other and hereby assume full responsibility for any injuries, damages, or losses or liabilities that hereafter may occur with respect to the matters released by this Agreement.*

c. Each Party to this Agreement shall be responsible for payment of their own attorney's fees and costs for this Agreement. However, in the event any of the Parties hereto bring an action to enforce the terms of this Agreement or have the Agreement interpreted by the Court, the prevailing party in any such action shall be entitled to recovery of reasonable attorney's fees and costs concerning such enforcement and/or interpretation action.

4. **NO ADMISSION OF LIABILITY.** This Agreement is intended as a compromise of disputed claims. This Agreement and compliance with its terms shall not be construed as an admission of any liability, misconduct, or wrongdoing whatsoever, or of any violation of any order, law, statute, duty, or contract whatsoever as to any of the Parties to this Agreement.

5. **REPRESENTATIONS AND WARRANTIES.** The Parties hereby acknowledge, covenant and agree that as of the Effective Date of this Agreement (i) they have not sold, assigned or transferred any part or portion of the claims and issues being released herein, (ii) they will not file any future complaints, claims or lawsuits pertaining or related to the subject matter being released in this Agreement, (iii) that any subcontractors or suppliers who worked on the Project have not made a claim for loss or payment since at least July of 2014, (iv) they have not made a general assignment for the benefit of creditors.

6. **TIME IS OF THE ESSENCE**. The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

7. **ENTIRE AGREEMENT AND MODIFICATION**. This Agreement sets forth the entire and complete understanding between the Parties in connection with the subject matter hereof, and that all prior or contemporaneous agreements, understandings or representations of the parties, whether expressed or implied, are no longer in force or effect. The Parties further agree that this Agreement may not be modified except by an instrument in writing signed by all Parties.

8. **CONSTRUCTION**. This Agreement has been jointly prepared by all Parties hereto. The Parties and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their consent and resolution agreement and should not be interpreted in favor or against any Party.

9. **ATTORNEY REPRESENTATION**. In negotiation, preparation and execution of this Agreement, the Parties hereby acknowledge that each Party has been represented by counsel, that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Agreement, and has been advised that it is in its best interests to do so. The Parties have read this Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Agreement freely and voluntarily and accept the terms, conditions and provisions of this Agreement, and state that the execution by each of them of this Agreement is free from any coercion whatsoever.

10. **GOVERNING LAW AND VENUE**. This Agreement is intended to be performed in the State of Nevada, and the laws of Nevada shall govern its interpretation and effect. The Parties hereto consent to the exclusive jurisdiction of Eighth Judicial District Court, Clark County, Nevada for any action commenced hereunder.

11. **SEVERABILITY**. If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

12. **PREVAILING PARTY**. In the event of the bringing of any action or suit by a Party hereto by reason of any breach of any of the covenants, agreements or provisions arising out of this Agreement, then in that event, the prevailing Party shall be entitled to recover all costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

13. **COUNTERPARTS AND FACSIMILE/SCAN SIGNATURES**. This Agreement may be executed in one or more counterparts, each which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the Parties. The Parties agree that facsimile/scanned signatures will be treated in all manner

and respects as a binding and original document, and the signature of any Party shall be considered for these purposes as an original signature.

14. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and inures to the benefit of the successors, assigns, and nominees of the Parties hereto. This Agreement is also binding on any officers, members, directors, board members, owners, principals and founding members of the Parties.

15. **TITLES AND HEADINGS.** Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

16. **VARIATIONS OF PRONOUNS/REASONABLE INTERPRETATIONS.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require. Any spelling, grammar or typographical error shall be read in a reasonable manner that effectuates the Parties' intent in entering this Agreement including the intent to resolve all claims, issues and damages related to the Project that is the subject of this Agreement.

17. **FURTHER DOCUMENTS.** Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary or proper to carry out the intent of this Agreement. Once this Agreement is fully executed, the Parties shall file a Stipulation and Order for Dismissal With Prejudice with the Court.

18. **ACKNOWLEDGEMENT.** The Parties acknowledge and agree that they were supplied a copy of this Agreement, that they or their authorized representative has carefully read and understands the Agreement, that they have been advised as to the content of this Agreement by counsel of their own choice, and that they voluntarily accept the terms and conditions of this Agreement.

19. **AUTHORITY.** The Parties, and each of them, represent and warrant that each Party hereto holds the requisite power and authority to enter into this Agreement.

20. **TAXES.** UNITED SUBCONTRACTORS – d.b.a. SKYLINE INSULATION shall be responsible for the payment of taxes, if any, relating to the payment made to it by CAMCO pursuant to the terms of this Agreement.

**THE UNDERSIGNED HEREBY ACKNOWLEDGE THEY HAVE READ, UNDERSTOOD AND AGREED TO EACH OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. THE UNDERSIGNED FURTHER STIPULATE, REPRESENT AND WARRANT THAT THEY HAVE AUTHORITY TO EXECUTE THIS AGREEMENT AS PROPER OFFICERS OR DULY AUTHORIZED REPRESENTATIVES FOR THE ENTITY (OR ENTITIES) ON WHOSE BEHALF THEY ARE SIGNING.**



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth herein.

**(I) UNITED SUBCONTRACTORS, INC.– d.b.a. SKYLINE INSULATION**

By: \_\_\_\_\_  
Authorized Signatory

Its: \_\_\_\_\_

**(II) CAMCO PACIFIC CONSTRUCTION CO., INC.**

By: \_\_\_\_\_  
Authorized Signatory

Its: \_\_\_\_\_

# EXHIBIT B

## Ben Johnson

---

**From:** Ben Johnson  
**Sent:** Tuesday, February 20, 2018 1:51 PM  
**To:** Steve Morris  
**Subject:** USI  
**Attachments:** CAMCO General Settlement Agreement and Release.docx

Steve, please see attached draft settlement agreement. Please let me know, what changes, if any, you would like. I would like to get this wrapped up this week. Thanks.

Benjamin D. Johnson  
BENNETT TUELLER JOHNSON & DEERE  
3165 Millrock Drive, Suite 500  
Salt Lake City, Utah 84121  
801-438-2000 phone  
801-438-2050 fax  
[ben.johnson@btjd.com](mailto:ben.johnson@btjd.com)

# EXHIBIT C

## Ben Johnson

---

**From:** Steve Morris <Steve@gmdlegal.com>  
**Sent:** Tuesday, March 13, 2018 3:53 PM  
**To:** Ben Johnson  
**Subject:** RE: USI

Ben,

Please contact Josef Rodarti for a status at: [jrodarti@constructionriskmanagers.com](mailto:jrodarti@constructionriskmanagers.com)

Thanks,

Steve

# EXHIBIT D

## Ben Johnson

---

**From:** Ben Johnson  
**Sent:** Tuesday, March 13, 2018 3:59 PM  
**To:** jrodarti@constructionriskmanagers.com  
**Subject:** Fwd: USI

Josef, I need immediate resolution of this matter or we are going to need to reschedule the trial. I need to hear back from you by tomorrow am.

Ben.  
Benjamin D. Johnson  
**BENNETT TUELLER JOHNSON & DEERE**  
3165 Millrock Drive, Suite 500  
Salt Lake City, Utah 84121  
801-438-2000 phone  
801-438-2050 fax  
ben.johnson@btjd.com

# EXHIBIT E



## **Ben Johnson**

---

**From:** Ben Johnson  
**Sent:** Thursday, March 22, 2018 3:41 PM  
**To:** jrodarti@constructionriskmanagers.com; Steve Morris  
**Subject:** Re: USI

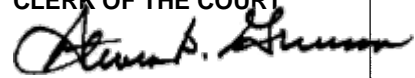
Steve, no one has gotten back to me. If I don't have a signed settlement agreement by Monday, I will move for entry of judgment for the full claim.

Thanks.

Ben

# **EXHIBIT 15**

**JA008789**



**SPENCER FANE LLP**

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John Randall Jefferies, Esq. (Bar No. 3512)  
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[RJefferies@spencerfane.com](mailto:RJefferies@spencerfane.com)  
[MBacon@spencerfane.com](mailto:MBacon@spencerfane.com)

-and-

**MARQUIS AURBACH COFFING**

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Telephone: 702.207.6089  
Email: [cmounteer@maclaw.com](mailto:cmounteer@maclaw.com)

*Attorneys for Apco Construction, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

v.

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

**NOTICE OF ENTRY OF ORDER**

Please take notice that the Order Granting Motion for 54(b) Certification and for Stay  
Pending Appeal was entered in the above-captioned matter on the 30th day of July, 2018, a copy

///

///

1 Of which is attached hereto.

2 Dated this 31st day of July, 2018.

3  
4 MARQUIS AURBACH COFFING

5  
6 By /s/Cody S. Munteer  
7 Cody S. Munteer, Esq.  
8 Nevada Bar No. 11220  
9 10001 Park Run Drive  
10 Las Vegas, Nevada 89145  
11 *Attorneys for Plaintiff*  
12  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted  
3 electronically for filing and/or service with the Eighth Judicial District Court on the 31<sup>st</sup> day of  
4 July, 2018. Electronic service of the foregoing document shall be made in accordance with the  
5 E-Service List as follows:<sup>1</sup>

6  
7 **Counter Claimant: Camco Pacific Construction Co Inc**

8 Steven L. Morris (steve@gmdlegal.com)

9 **Intervenor Plaintiff: Cactus Rose Construction Inc**

10 Eric B. Zimbelman (ezimbelman@peelbrimley.com)

11 **Intervenor Plaintiff: Interstate Plumbing & Air Conditioning Inc**

12 Jonathan S. Dabbieri (dabbieri@sullivanhill.com)

13 **Intervenor: National Wood Products, Inc.'s**

14 Dana Y Kim (dkim@caddenfuller.com)

15 Richard L Tobler (rltldck@hotmail.com)

16 Richard Reincke (rreincke@caddenfuller.com)

17 S. Judy Hirahara (jhirahara@caddenfuller.com)

18 Tammy Cortez (tcortez@caddenfuller.com)

19 **Other: Chapter 7 Trustee**

20 Elizabeth Stephens (stephens@sullivanhill.com)

21 Gianna Garcia (ggarcia@sullivanhill.com)

22 Jennifer Saurer (Saurer@sullivanhill.com)

23 Jonathan Dabbieri (dabbieri@sullivanhill.com)

24 **Plaintiff: Apco Construction**

25 Rosie Wesp (rwesp@maclaw.com)

26 **Third Party Plaintiff: E & E Fire Protection LLC**

27 TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

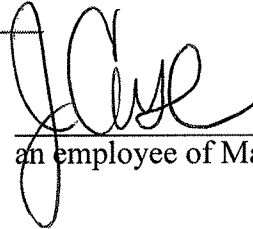
28 <sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

**Other Service Contacts**

"Caleb Langsdale, Esq." . (caleb@langsdalelaw.com)  
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Donna Wolfbrandt . (dwolfbrandt@dickinsonwright.com)


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Pamela Montgomery . (pym@kempjones.com)  
Phillip Aurbach . (paurbach@maclaw.com)  
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6 S. Judy Hirahara . (jhirahara@caddenfuller.com)  
7 Sarah A. Mead . (sam@juww.com)  
8 Steven Morris . (steve@gmdlegal.com)  
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10 Taylor Fong . (tfong@marquisaurbach.com)  
11 Terri Hansen . (thansen@peelbrimley.com)  
12 Timother E. Salter . (tim.salter@procopio.com)  
13 Wade B. Gochmour . (wbg@h2law.com)



an employee of Marquis Aurbach Coffing





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jjuan@maclaw.com  
cmounteer@maclaw.com  
*Attorneys for APCO Construction*

-and-

**SPENCER FANE LLP**  
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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

**ORDER GRANTING MOTION  
FOR 54(b) CERTIFICATION AND FOR  
STAY PENDING APPEAL**

AND ALL RELATED MATTERS

Plaintiff APCO Construction's Motion for 54(b) Certification and for Stay Pending  
Appeal on Order Shortening Time having come on for hearing before this Court on June 21,

**MARQUIS AURBACH COFFING**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**RECEIVED**

**JUL 20 2018**

**DISTRICT COURT DEPT# 13**

1 2018, Plaintiff APCO Construction, being represented by and through its attorney of record,  
2 Cody S. Mounteer, Esq. of the law firm of Marquis Aurbach Coffing, and Defendant Zitting  
3 Brothers Construction, Inc., being represented by and through its attorney of record, I-Che Lai,  
4 Esq. of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP; the Court having  
5 reviewed the papers and pleadings on file herein, having heard arguments of the parties, and for  
6 good cause shown;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, APCO's Motion for  
8 NRCP 54(b) Certification is GRANTED;

9 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
10 enters an express direction for the entry of judgment as to the Findings of Fact, Conclusions of  
11 Law, and Order Granting Zitting Brother Construction, Inc.'s Motion for Partial Summary  
12 Judgment, which is hereby certified as final under NRCP 54(b);

13 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
14 enters an express direction for the entry of judgment as to the Order Denying APCO's Motion  
15 for Reconsideration of Court's Order Granting Zitting Brother Construction, Inc.'s Partial  
16 Motion for Summary Judgment, which is hereby certified as final under NRCP 54(b);

17 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
18 enters an express direction for the entry of judgment as to Order Determining Amount of Zitting  
19 Brothers Construction, Inc.'s Attorney's Fees, Costs, and Prejudgment Interest, which is hereby  
20 certified as final under NRCP 54(b);

21 IT IS FURTHER ORDERED that because no just reason for delay exists, this Court  
22 enters an express direction for the entry the Judgment in Favor of Zitting Brothers Construction,  
23 Inc., which is hereby is certified as final under NRCP 54(b);

24 IT IS FURTHER ORDERED that APCO's Motion for Stay Pending Appeal is also  
25 GRANTED;

1 IT IS FURTHER ORDERED that APCO shall have thirty days from notice of entry of  
2 this order to post a bond for the full amount of the Judgment in favor of Zitting Brothers  
3 Construction, Inc., \$1,516,723.46, in order to stay these proceedings pending appeal.

4 **ORDER**

5 IT IS SO ORDERED.

6 Dated this 28<sup>th</sup> day of July, 2018

7  
8   
9 DISTRICT COURT JUDGE

10 Respectfully submitted by:

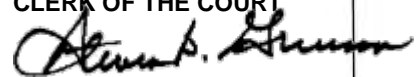
11 MARQUIS AURBACH COFFING

12 By 

13 Jack Chen Min Juan, Esq.  
14 Nevada Bar No. 6367  
15 Cody S. Mounteer, Esq.  
16 Nevada Bar No. 11220  
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19 10001 Park Run Drive  
20 Las Vegas, Nevada 89145  
21 Attorneys for APCO Construction  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 16**

**JA008799**



1 **APEL**  
2 JORGE RAMIREZ, ESQ.  
3 Nevada Bar No. 6787  
4 I-CHE LAI, ESQ.  
5 Nevada Bar No. 12247  
6 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
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8 Las Vegas, NV 89101-6014  
9 Telephone: (702) 727-1400  
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11 [Jorge.Ramirez@wilsonelser.com](mailto:Jorge.Ramirez@wilsonelser.com)  
12 [I-Che.Lai@wilsonelser.com](mailto:I-Che.Lai@wilsonelser.com)  
13 *Attorneys for Lien Claimant,*  
14 *Zitting Brothers Construction, Inc.*

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

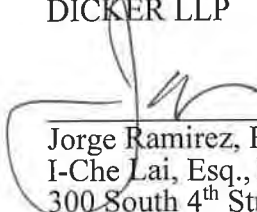
**NOTICE OF APPEAL**

AND ALL RELATED MATTERS

Notice is hereby given that Zitting Brothers Construction, Inc. hereby appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law, and Order Granting Fennemore Craig, P.C.'s Motion for Determination of Potential Conflict entered in this action on June 26, 2019, attached as **Exhibit "A."**

Dated: July 25<sup>th</sup>, 2019

WILSON ELSE MOSKOWITZ EDELMAN &  
DICKER LLP



Jorge Ramirez, Esq., Nevada Bar No. 6787  
I-Che Lai, Esq., Nevada Bar No. 12247  
300 South 4<sup>th</sup> Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
*Attorneys for Lien Claimant,*  
*Zitting Brothers Construction, Inc.*

**JA008800**

**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 25 day of July, 2019, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** document as follows:

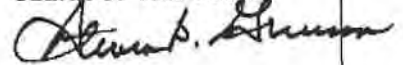
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic 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.

BY

  
An Employee of WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER LLP

# Exhibit A

**JA008802**



FFCO  
FENNEMORE CRAIG, P.C.  
John Randall Jefferies, Esq. (No. 3512)  
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*Attorneys for Cross-Appellant/Respondent*  
*APCO Construction, Inc.*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

APCO CONSTRUCTION, a Nevada  
corporation,

Plaintiff,

v.

GEMSTONE DEVELOPMENT WEST, INC.,  
a Nevada corporation,

Defendant.

Case No. : 08A571228  
Supreme Ct. Case No.: 77320

Dept. No.: XIII

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING  
FENNEMORE CRAIG, P.C.'S MOTION  
FOR DETERMINATION OF POTENTIAL  
CONFLICT**

**Hearing Date: June 6, 2019**  
**Hearing Time: 9:00 a.m.**

AND ALL RELATED MATTERS.

Consolidated with:  
A574391; A574792; A577623; A583289;  
A587168; A580889; A584730; A589195;  
A595552; A597089; A592826; A589677;  
A596924; A584960; A608717; A608718; and  
A590319

On June 6, 2019, this Court heard Fennemore Craig, P.C.'s ("Fennemore Craig") Motion for Determination of Potential Attorney Conflict on an Order Shortening Time ("Motion"). Christopher H. Byrd of Fennemore Craig appeared at the hearing on behalf of Fennemore Craig and Jorge A. Ramirez and I-Che Lai of Wilson Elser Moskowitz Edelman & Dicker, LLC ("Wilson Elser") appeared for Zitting Brother's Construction, Inc. ("Zitting"). Having considered the Motion, Zitting's opposition, Helix Electric of Nevada, LLC's opposition and joinder to Zitting's opposition, Fennemore Craig's reply, the pleadings and papers filed in this case, and oral arguments of counsel, this Court makes the following findings of fact and conclusions of law:

///

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DISTRICT COURT DEPT#13



1 **FINDINGS OF FACT**

2 **A. Manhattan West Mechanic's Lien Litigation**

3 1. The litigation underlying the potential attorney conflict at issue in the Motion is  
4 known as the Manhattan West Mechanic's Lien Litigation ("Manhattan West Litigation"). The  
5 Manhattan West Litigation, which was initiated in 2008, has lasted for more than 10 years and has  
6 involved seventeen consolidated cases and nearly ninety parties. The current service list consists  
7 of more than 100 attorneys.

8 2. The Manhattan West Litigation has been the subject of multiple appeals and writ  
9 proceedings and has resulted in two published opinions.

10 3. The Manhattan West Litigation is a complex case.

11 4. This Court has presided over the Manhattan Lien Litigation since 2008.

12 5. Wilson Elser has represented Zitting in the Manhattan West Litigation since 2009.

13 6. Fennemore Craig represents APCO Construction ("APCO") in the Manhattan  
14 West Litigation.

15 7. The claims between Zitting and APCO and the claims of the remaining parties in  
16 the Manhattan West Litigation have been reduced to judgment and are now on appeal to the  
17 Nevada Supreme Court. The issues raised in this Motion are collateral to any issues presently on  
18 appeal.

19 **B. Richard Dreitzer's Involvement in the Manhattan West Litigation**

20 8. Richard Dreitzer was formerly a partner at Wilson Elser. Mr. Dreitzer left Wilson  
21 Elser in April 2019.

22 9. At all relevant times herein, Wilson Elser attorneys Jorge Ramirez and I-Che Lai  
23 had primary responsibility (as the Partner and Associate, respectively) for representing Zitting in  
24 the Manhattan West Litigation.

25 10. Mr. Dreitzer's involvement in the Manhattan West Litigation on behalf of Zitting  
26 was limited to the following:

- 27 a. Preparation for and defense of the deposition of Sam Zitting, the NRCP  
28 30(b)(6) witness for Zitting. Mr. Dreitzer's preparation for defending this

- 1 deposition consisted of reviewing discovery responses, several  
2 conversations with Mr. Zitting, and a discussion of the case with Mr.  
3 Ramirez;
- 4 b. Discussion of a potential settlement offer with Mr. Zitting that was  
5 subsequently conveyed to and rejected by counsel for APCO;
- 6 c. Appearance at a mandatory pretrial conference;
- 7 d. Participation in an approximately fifteen-minute conversation between Mr.  
8 Ramirez and Mr. Lai on the general topic of strategies under consideration  
9 by Wilson Elser regarding negotiating a settlement with APCO; and
- 10 e. Being present at Wilson Elser partner lunches where the Manhattan West  
11 Litigation was discussed.

12 11. Mr. Dreitzer's billed work on the Manhattan West Litigation was limited to less  
13 than 12 total hours.

14 12. At no time did Mr Dreitzer direct how any of the work on the Zitting matter would  
15 be performed. Nor did he direct any of the strategy in the case, or which strategies would be  
16 implemented on Zitting's behalf.

17 13. At no time did Mr. Dreitzer have primary responsibility for the representation of  
18 Zitting in the Manhattan West Litigation.

19 14. Wilson Elser offered an in camera discussion of the exact input Mr. Dreitzer had in  
20 the Manhattan West Litigation, but the Court declined the request. The Court finds that the  
21 Declarations submitted to the Court were sufficient for the Court to determine Mr. Dreitzer's role  
22 in the representation of Zitting in the Manhattan West Litigation.

23 15. Mr. Dreitzer did not have a substantial role in the representation of Zitting in the  
24 Manhattan West Litigation, for purposes of the Nevada Rules of Professional Conduct (NRPC).

25 **C. Richard Dreitzer's Offer to Join Fennemore Craig**

26 16. Fennemore Craig has extended an offer for Mr. Dreitzer to join its firm. Mr.  
27 Dreitzer intends to join Fennemore Craig once the issue of the potential conflict in the Manhattan  
28 West Litigation is resolved.

1           17.     Mr. Dreitzer requested a waiver of the conflict from Zitting after Fennemore Craig  
2 extended its offer to Mr. Dreitzer.

3           18.     After receiving this request, Wilson Elser partner, Jorge Ramirez, represented he  
4 advised Zitting to seek advice from "independent counsel", who recommended that Zitting refuse  
5 to waive the conflict. This "independent counsel" was Reuben Cawley, a former partner at Wilson  
6 Elser and cousin to Mr. Zitting.

7           19.     Upon Mr. Cawley's advice, Zitting refused to waive the conflict.

8           20.     Fennemore Craig filed the Motion to determine whether NRPC 1.10(e) would  
9 apply if Mr. Dreitzer joins the firm, which would allow Fennemore Craig to continue its  
10 representation of APCO in the Manhattan West Litigation when Mr. Dreitzer joins the firm.

11          21.     In support of the Motion, Fennemore Craig provided the Declaration of Timothy  
12 Berg, Esq., General Counsel for Fennemore Craig, outlining the screen that would be put in place  
13 if Mr. Dreitzer joins Fennemore Craig. Mr. Berg attested that Mr. Dreitzer would be screened as  
14 follows if he joins the firm:

- 15               a.     The firm's Information Systems department would deprive Mr. Dreitzer of  
16 any electronic access to the to Manhattan West Litigation file;
- 17               b.     A screening memo would be circulated to the entire law firm explaining  
18 the conflict and that Mr. Dreitzer is being screened from the Manhattan West  
19 Litigation matter, that the matter should not be discussed with Mr. Dreitzer,  
20 and that Mr. Dreitzer should not be given the client files or other  
21 documents relating to the Manhattan West Litigation;
- 22               c.     Mr. Dreitzer would be provided with a copy of screening memo, the  
23 screening memo would be explained to him, and Mr. Dreitzer would be  
24 required to sign a copy of the screening memo acknowledging that he has  
25 been screened from the Manhattan West Litigation matter;
- 26               d.     Fennemore Craig would also provide a copy of the screening memo to  
27 Zitting and Wilson Elser.
- 28



1 issue raised in the Motion is suitable for review because Mr. Dreitzer has left Wilson Elser, and  
2 the facts relevant to and necessary for this Court's consideration of the issue are fixed and fully  
3 available to the parties and the Court. *Eberle Design, Inc. v. Reno A & E*, 354 F. Supp. 2d 1093,  
4 1094 (D. Ariz. 2005) (deciding a factually similar potential disqualification issue prior to an  
5 attorney joining a new law firm "[b]ecause the Court will be called upon to decide any  
6 disqualification motion that is filed as a result of this development and because Bryan Cave has  
7 sought the Court's guidance before Mr. Watts joins the firm this week").

8         24. Mr. Dreitzer testified that he intends to accept Fennemore Craig's offer if this  
9 Court determines that NRPC 1.10(e) applies in this case. The issue raised in the Motion is  
10 therefore not speculative.

11         **NRPC 1.10(e)**

12         25. NRPC 1.10(e) permits the screening of disqualified attorneys to prevent an  
13 associated law firms imputed disqualification where:

- 14                 (1) The personally disqualified lawyer did not have a substantial  
15                 role in or primary responsibility for the matter that causes the  
16                 disqualification under Rule 1.9;  
17                 (2) The personally disqualified lawyer is timely screened from any  
18                 participation in the matter and is apportioned no part of the fee  
19                 therefrom; and  
20                 (3) Written notice is promptly given to any affected former client  
21                 to enable it to ascertain compliance with the provisions of this  
22                 Rule.

23         *See New Horizon Kids Quest III, Inc. v. Eighth Judicial Dist. Court*, 392 P.3d 166, 169 (2017)  
24 ("Pursuant to RPC 1.10(a), an attorney's disqualification under RPC 1.9 is imputed to all other  
25 attorneys in that disqualified attorney's law firm. However, a disqualified attorney's law firm may  
26 nevertheless represent a client in certain circumstances if screening and notice procedures are  
27 followed" citing to NRPC 1.10(e)).

28         26. Mr. Ramirez and Mr. Lai had primary responsibility for Zitting's representation in  
the Manhattan West Litigation. Mr. Dreitzer did not have primary responsibility under NRPC  
1.10(e)(1).

1           27.     Given the size, length and complexity of the Manhattan West Litigation, Mr.  
2     Dreitzer's limited involvement in the matter does not rise to the level of a "substantial role" in the  
3     matter under NRPC 1.10(e)(1).

4           28.     NRPC 1.0(l) defines "[s]ubstantial" as "denot[ing] a material matter of clear and  
5     weighty importance." Thus, under NRPC 1.10(e), in order to preclude Fennemore Craig from  
6     continuing its representation of APCO if Mr. Dreitzer were to join the Fennemore firm, Mr.  
7     Dreitzer's role in the Manhattan West Litigation would have to be deemed as having clear and  
8     weighty importance.

9           29.     Yet, the facts of Mr. Dreitzer's involvement in the Manhattan West Litigation  
10    strongly suggest otherwise.

11          30.     Zitting contends that the number of hours that Mr. Dreitzer worked on the  
12    Manhattan West Litigation is immaterial and that the Court's analysis needs to be "qualitative"  
13    rather than "quantitative". In the Court's view, Mr. Dreitzer's role in the Manhattan West  
14    Litigation was not substantial for purposes of NRPC 1.10(e)(1), from both a qualitative and  
15    quantitative standpoint.

16          31.     It is undisputed that Mr. Dreitzer did not direct any of the work on the Manhattan  
17    West Litigation; he was not responsible for directing the strategy of the case; and he neither  
18    managed the case nor the client, Zitting.

19          32.     Mr. Dreitzer's limited 12-hours of billable work on a matter that has been in  
20    litigation for over 10 years and has included nearly 90 parties does not rise to the level of  
21    "substantial" or "clear and weighty importance". *Eberle Design, Inc. v. Reno A & E*, 354 F. Supp.  
22    2d 1093, 1097 (D. Ariz. 2005).

23          33.     Given the number of law firms and attorneys that have worked on the Manhattan  
24    West Litigation, a finding that Mr. Dreitzer's limited involvement in the matter would improperly  
25    invade on a client's right to its choice of counsel and Mr. Dreitzer's right to choose his  
26    employment. *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 295, 279 P.3d 166, 170  
27    (2012).

28    ///

1 **ORDER**

2 **THEREFORE, IT IS HEREBY ORDERED** that Fennemore Craig's Motion is  
3 **GRANTED.**

4 **IT IS FURTHER ORDERED** that so long as the screening procedures outlined in Mr.  
5 Berg's declaration in support of the Motion are implemented, and written notice is promptly given  
6 to Zitting to enable it to ascertain compliance with the requirements of NRPC 1.10(e), as required  
7 by NRPC 1.10(e)(2) and (3), Fennemore Craig will not be disqualified under NRPC 1.10 from  
8 continuing its representation of APCO in the Manhattan West Litigation when Mr. Dreitzer joins  
9 Fennemore Craig.

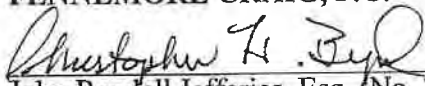
10 **IT IS SO ORDERED**

11 Dated this 21<sup>st</sup> day of June, 2019.

  
DISTRICT COURT JUDGE

12  
13 Respectfully submitted by:

14 **FENNEMORE CRAIG, P.C.**

15   
16 John Randall Jefferies, Esq. (No. 3512)  
17 Christopher H. Byrd, Esq. (No. 1633)  
18 300 South Fourth St. 14<sup>th</sup> Floor  
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