

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

**Supreme Court Case No. 78092**

Tonopah Solar Energy, LLC,  
*Appellant*

v.

Brahma Group, Inc.,  
*Respondent*

Electronically Filed  
Oct 03 2019 04:22 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appeal  
Fifth Judicial District Court  
The Honorable Steven P. Elliott  
Case No. CV 39348

**APPELLANT'S APPENDIX  
VOLUME 9**

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	Exhibit 6 – Notice of Voluntary Dismissal Without Prejudice	AA0068-0078	1
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**EXHIBIT 5**

**EXHIBIT 5**

*Steven D. Grierson*

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2 Nevada Bar No. 9407  
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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 AND ALL RELATED MATTERS.  
20

CASE NO.: A571228

DEPT. NO.: XIII

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

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

21  
22 Helix Electric of Nevada, LLC ("Helix") by and through its counsel of record, the  
23 law firm of PEEL BRIMLEY LLP, hereby respectfully submits the following Motion for  
24 Attorney's Fees, Interest and Costs.

25 ///

26 ///

27 ///

28

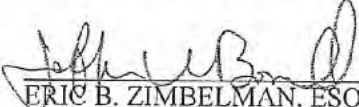
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PEEL BRIMLEY LLP  
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(702) 990-7272 + FAX (702) 990-7273

1 This Motion is made and based on the points and authorities provided below, the papers  
2 and pleadings on file herein, and any oral argument to be heard by this Court at the hearing on  
3 this matter.

4 Respectfully submitted this 31 day of May, 2018.

5 PEEL BRIMLEY LLP

6  
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9 Nevada Bar No. 9407  
10 RICHARD L. PEEL, ESQ.  
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14 Attorneys for Helix Electric of Nevada, LLC

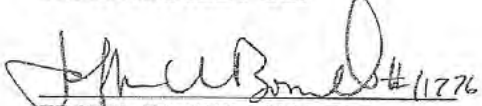
15 NOTICE OF MOTION

16 TO: ALL PARTIES IN INTEREST:

17 Please take notice that the undersigned will bring the foregoing MOTION FOR  
18 ATTORNEY'S FEES, INTEREST AND COSTS on for hearing before the Court on the  
19 \_\_\_\_\_ day of \_\_\_\_\_, 2018, at the time of 9:00 a.m./p.m. in  
20 Department XIII.

21 DATED this 31 day of May 2018.

22 PEEL BRIMLEY LLP

23  #11776  
24 ERIC B. ZIMBELMAN, ESQ  
25 Nevada Bar No. 9407  
26 RICHARD L. PEEL, ESQ.  
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Attorneys for Helix Electric of Nevada, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 26, 2018, this Court issued Findings of Fact and Conclusions of Law in favor of Helix Electric of Nevada, LLC. ("Helix") and against Camco Pacific Construction Co., Inc. ("Camco").<sup>1</sup> Among other things the Court found the following facts and issued the following conclusions:

- Camco and Helix entered into contractor/subcontractor relationship and agreement whereby they agreed on the materials terms of a contract, which Camco breached by failing to pay Helix the sum of \$834,476.45. [See FF ¶ 14; CL ¶ 2];
- Helix timely recorded a mechanic's lien, as amended ("the Helix Lien"), pursuant to NRS Chapter 108 and perfected the same. [See FF ¶ 15];
- Helix is entitled to an award of the principal sum of \$834,476.45 (i.e., exclusive of interest, costs and attorney's fees) against Camco and may apply for judgment as to the same. [See CL ¶ 6];<sup>2</sup>
- The Court denies all of Camco's affirmative defenses. [See CL ¶ 8];
- Helix is entitled to prejudgment interest pursuant to NRS 108.237 and/or NRS 17.130 and is granted leave to apply for the same by way of an amendment or supplement to these Findings of Fact and Conclusions of Law and for judgment as to the same. [See CL ¶ 9];
- Helix is the prevailing party and/or prevailing lien claimant as to Camco and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237 and/or Camco Subcontract. Helix is granted leave to apply for the same. [See CL ¶ 9]; and

///

///

<sup>1</sup> See Exhibit 1.

<sup>2</sup> The Court has since entered a judgment. By way of this motion, Helix seeks an amended judgment as anticipated by the Findings of Fact and Conclusions of Law.

- As the prevailing party, Helix may also apply for an award of costs in accordance with the relevant statutes and for judgment as to the same. [See CL ¶ 10].

As set forth below, Helix hereby requests that the Court award it attorney's fees, costs and interest against Camco.

## II. ARGUMENT/AUTHORITY

### A. Helix is entitled to Costs.

NRS 18.110(1) provides:

The party in whose favor judgment is rendered, and who claims costs, must file with the clerk, and serve a copy upon the adverse party, within 5 days after the entry of judgment, or such further time as the court or judge may grant, a memorandum of the items of the costs in the action or proceeding, which memorandum must be verified by the oath of the party, or the party's attorney or agent, or by the clerk of the party's attorney, stating that to the best of his or her knowledge and belief the items are correct, and that the costs have been necessarily incurred in the action or proceeding.

Attached to this Motion as **Exhibit 2** is Helix's Verified Memorandum of Costs ("Verified Memorandum") identifying the costs that may and should be awarded to Helix pursuant to NRS 17.005 in the amount of \$19,021.90.

Helix's Verified Memorandum was submitted to this Court on May 3, 2018. Pursuant to NRS 18.110(4), Camco was required to file a motion to retax costs within two days thereafter. Having failed to do so, Camco has waived its right to object and the costs should be awarded. Irrespective of such waiver, these costs were, as set forth in the Verified Memorandum, (i) expended by or on behalf of Helix, (ii) necessarily incurred and paid in this action and (iii) awardable as costs pursuant to NRS 18.005. [See Ex. 2]. Accordingly, Helix respectfully requests that the Court award costs in the amount of \$19,021.90.

### B. Helix is Entitled to Prejudgment Interest.

Helix is entitled to prejudgment interest pursuant to NRS 108.237. Pursuant to NRS 108.237, the Court shall calculate interest based upon the rate agreed upon in the lien claimant's contract, if any, or at prime plus 4 percent. *See* NRS 108.237(2). While NRS 108.237 does not expressly identify the date upon which interest begins to run, that date is presumably the date of the Notice of Lien, which for Helix was December 18, 2008. [See Trial Exhibit 805-001]. Here,

the Camco Subcontract does not contain an interest provision.

Because the statutory interest will result in a higher recovery, the Court should award interest pursuant to NRS 108.237(2) – i.e., prime plus 4 percent calculated from the date its lien was first recorded, January 12, 2009. [See Trial Exhibit 512-007]. Interest is calculated as follows in accordance with the prime rate as ascertained by the Commissioner of Financial Institutions of Nevada:<sup>3</sup>

<u>Period</u>	<u>Prime Rate</u>	<u>Interest Earned</u>
January 13, 2009 - June 30, 2009	3.25%	\$12,482.85
July 1, 2009 – December 31, 2009	3.25%	\$13,608.99
January 1, 2010 – June 30, 2010	3.25%	\$13,608.99
July 1, 2010 – December 31, 2010	3.25%	\$13,608.99
January 1, 2011 – June 30, 2011	3.25%	\$13,608.99
July 1, 2011 – December 31, 2012	3.25%	\$13,608.99
January 1, 2012 – June 30, 2012	3.25%	\$13,608.99
July 1, 2012 – December 31, 2012	3.25%	\$13,608.99
January 1, 2013 – June 30, 2013	3.25%	\$13,608.99
July 1, 2013 – December 31, 2013	3.25%	\$13,608.99
January 1, 2014 – June 30, 2014	3.25%	\$13,608.99
July 1, 2014 – December 31, 2014	3.25%	\$13,608.99
January 1, 2015 – June 30, 2015	3.25%	\$13,608.99
July 1, 2015 – December 31, 2015	3.25%	\$13,608.99
January 1, 2016 – June 30, 2016	3.50%	\$14,603.33
July 1, 2016 – December 31, 2016	3.50%	\$14,603.33
January 1, 2017 – June 30, 2017	3.75%	\$15,646.43
July 1, 2017 – December 31, 2017	4.25%	\$17,732.62

<sup>3</sup> See Exhibit 3.

January 1, 2018 – May 31, 2018 <sup>4</sup>	4.50	\$18,775.72
<b>TOTAL INTEREST:</b>		<b>\$270,761.37</b>

**C. Helix is Entitled to Reasonable Attorney's Fees**

The award of costs and attorneys' fees to Helix under NRS 108.237 is mandatory<sup>5</sup>, but the attorneys' fees must be reasonable. See *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172, 176 n. 4 (1999). In *Brunzell v. Golden Gate Nat'l Bank* and *Shuette v. Beazer Homes Holding Corp.*, the Nevada Supreme Court enumerated the factors that the district court should consider in awarding attorney fees. See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008). Specifically, this Court must consider the following factors, with no one factor controlling:

- 1) The advocate's qualities, including ability, training, education, experience, professional standing, and skill;
- 2) The character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed, and the prominence and character of the parties when affecting the importance of the litigation;
- 3) The work performed, including the skill, time, and attention given to the work; and
- 4) The result—whether the attorney was successful and what benefits were derived.

More recently, the Nevada Supreme Court recognized the continued applicability of these factors and required the district court to provide sufficient reasoning and findings in support of its ultimate determination. See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829, 192 P.3d 730, 736 (2008).

In support of its claim that Helix's attorneys' fees are reasonable, Helix has submitted

<sup>4</sup> Helix assumes an Order on the present motion will not be issued until at least May 31, 2018. Helix is also entitled to continuing interest once the interest judgment is entered as a judgment.

<sup>5</sup> NRS 108.237(1) provides: The court shall award to a prevailing lien claimant, whether on its lien or on a surety bond, the lienable amount found due to the lien claimant by the court and the cost of preparing and recording the notice of lien, including, without limitation, attorney's fees, if any, and interest. The court shall also award to the prevailing lien claimant, whether on its lien or on a surety bond, the costs of the proceedings, including, without limitation, reasonable attorney's fees, the costs for representation of the lien claimant in the proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant. [Emphasis added].

1 among other things, an affidavit of Helix's attorney and time records for which recovery is  
2 sought. [See Exhibits 4 and 5]. These documents show that the amount of time and labor Helix's  
3 attorneys expended was reasonable; that Helix's attorneys demonstrated the skill requisite to  
4 perform the legal service properly; that Helix's attorneys' hourly rates were customary; that  
5 Helix's overall attorneys' fees were consistent with a case of this nature; and that Helix's  
6 attorneys held a high level of experience, reputation, and abilities with respect to cases of this  
7 nature. Under the circumstances, Helix's attorneys' fees are reasonable. Finally, and although  
8 Helix is entitled to attorney's fees from the commencement of the action, Helix is seeking only  
9 those fees incurred since *en banc* review was denied by the Nevada Supreme Court on February  
10 19, 2016 with respect to the issue of priority (on which Helix and Camco were aligned), after  
11 which Helix began pursuing claims against Camco in earnest.

12 **1. Experience and Qualification of Helix's Attorneys**

13 Helix's attorneys are experienced and qualified to handle this type of case. Peel Brimley  
14 is a Henderson, Nevada based law firm currently consisting of eight attorneys and one paralegal.<sup>6</sup>  
15 Peel Brimley's primary practice is construction law, and although the majority of Peel Brimley's  
16 clients are subcontractors, Peel Brimley also represents owners, engineers, architects, general  
17 contractors and suppliers in a variety of construction related matters.<sup>7</sup> Peel Brimley's clientele  
18 has consisted of some of the largest and most respected construction related companies operating  
19 in Nevada.<sup>8</sup>

20 Peel Brimley and its partners have taken a lead role in instructing and teaching the  
21 construction community in a wide range of construction related classes and seminars sponsored  
22 by various trade, professional, and educational organizations (e.g., Lorman Education Services,  
23 Associated General Contractors, National Business Institute, The Seminar Group, and various  
24 local construction trade organizations).<sup>9</sup> Peel Brimley's partners have lectured and presented  
25 materials at many construction related seminars and classes in Las Vegas and Seattle addressing  
26 the following topics: advanced construction law, construction payment remedies, mechanic's lien

27 <sup>6</sup> See, Exhibit 4.

28 <sup>7</sup> See, Exhibit 4.

<sup>8</sup> See, Exhibit 4.

<sup>9</sup> See, Exhibit 4.

1 law and strategies, construction law and practice, Nevada construction law, Nevada construction  
2 issues, construction defects, and other related topics.<sup>10</sup>

3 In addition, Peel Brimley is and has been extensively involved in drafting and passing  
4 construction related legislation sponsored by construction organizations such as: Sheet Metal &  
5 Air Conditioning Contractors Nat'l Assoc. (SMACNA) of Southern Nevada, Associated General  
6 Contractors (AGC), Plumbing & Mechanical Contractors of Nevada, Associated Building  
7 Contractors (ABC), National Electrical Contractors Association (NECA), Mechanical  
8 Contractors Association (MCA), Nevada Association of Mechanical Contractors, and others.<sup>11</sup>  
9 Peel Brimley drafted and lobbied for Nevada's public works prompt pay statute, NRS 338.400  
10 through 338.645, which passed in 1999, and Nevada's new private right to stop work legislation,  
11 NRS 624.606 through 624.630, which became effective October 1, 2001 and was amended in  
12 2003 & 2005, including some of the very provisions Helix relied upon in its motions and at  
13 trial.<sup>12</sup> Also, Peel Brimley drafted and introduced several senate bills which passed in the 2001,  
14 2003 & 2005 legislative session, which made extensive modification, changes, and additions to  
15 Nevada's existing mechanic's lien statutes, NRS 108.221 through 108.246, including some of the  
16 very provisions Helix relied upon in its motions and at trial.<sup>13</sup>

17 The firm's partners have been extensively involved and have taken lead roles in almost  
18 every major construction litigation in Las Vegas, Nevada over the past 15 years, including: The  
19 City Center Litigation, The Fontainebleau matter, The Westgate Planet Hollywood Litigation,  
20 The Resort at Summerlin Construction Litigation, The Venetian Lien Litigation, The Aladdin  
21 Hotel and Casino Construction Litigation, Lied Library Construction Litigation, Flamingo Hilton  
22 Phase VI Construction Litigation, Hilton Sign Litigation, Red Rock, Las Vegas Hilton Sky Villa  
23 Suites, Stratosphere Tower Construction Litigation, the Allstar Café Litigation, VA Ambulatory  
24 Care Facility Litigation, Federal Courthouse Litigation, Southern Nevada Veteran's  
25 Administration, the Regional Justice Center, and a number of others.<sup>14</sup>

26 <sup>10</sup> See, Exhibit 4.

27 <sup>11</sup> See, Exhibit 4.

28 <sup>12</sup> See, Exhibit 4.

<sup>13</sup> See, Exhibit 4.

<sup>14</sup> See, Exhibit 4.

1 In addition to the partners, Peel Brimley has hired qualified and experienced associates,  
2 most with established backgrounds in construction law.<sup>15</sup> Peel Brimley's associates have access  
3 to a variety of construction materials and resources gathered by the firm, access to partners and  
4 senior associates experienced in the construction industry, and ample opportunities to participate  
5 in construction related training classes and seminars inside and outside of the firm.<sup>16</sup>

6 Helix's lead trial counsel is Eric Zimbelman, a Partner in Peel Brimley LLP. Mr.  
7 Zimbelman has been principally responsible for the prosecution of Helix's claims against Camco  
8 since no later than 2015. He was also heavily involved in the District Court proceedings prior to  
9 and during the Writ Petition proceedings at the Nevada Supreme Court regarding lien priority.  
10 He also worked extensively on the Joint Writ Petition and related briefing to the Nevada  
11 Supreme Court, working hand in hand with, among others, counsel for APCO Construction. He  
12 also sat at counsel table for the oral argument at the Supreme Court and assisted in preparing  
13 APCO's counsel for argument.

14 Mr. Zimbelman has been licensed to practice law since 1992 (Washington) and was  
15 admitted in Nevada in 2005 and in North Dakota in 2014. He is admitted to practice before the  
16 Court of Federal Claims, the US District Courts for the Western District of Washington and the  
17 District of Nevada, the Ninth Circuit Court of Appeals, and the United States Supreme Court.  
18 He has also been admitted *pro hac vice* in multiple state and federal jurisdictions. In addition to  
19 numerous trials and arbitrations in multiple states, Mr. Zimbelman has several reported favorable  
20 appellate decisions including *Byrd Underground v. Angaur, LLC*, 332 P.3d 273 (Nevada  
21 Supreme Court, 2014).

## 22 2. *Peel Brimley's Rates*

23 Helix's attorneys' billing rates are reasonable. Peel Brimley performed its work under an  
24 hourly rate contract with Helix, charging the following rates:

Partners:	\$310-\$375
Associates:	\$250-\$275
Paralegals:	\$125 <sup>17</sup>

27 <sup>15</sup> See, Exhibit 4.

28 <sup>16</sup> See, Exhibit 4.

<sup>17</sup> See, Exhibit 4.

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1 The rates Helix paid are comparable to the rates charged by other similarly situated  
2 attorneys who practice construction law and have the same or similar level of skill.<sup>18</sup>

3 **3. The difficulty of the work**

4 This Court is of course aware of the nature and complexity of the claims, defense and  
5 legal issues addressed in motions and at trial with respect to this long-running, multi-party  
6 consolidated action. Among other issues, Helix's attorneys successfully briefed and obtained a  
7 summary judgment with respect to Pay-if-Paid and otherwise successfully navigated their clients  
8 through complex statutory and common law claims and defenses. This case has been unusually  
9 challenging in many respects, requiring skilled and experienced counsel.

10 **4. Peel Brimley's Results**

11 Owing at least in part to the experience, skills and efforts of its counsel, Helix received an  
12 award of 100% of its claims. Such a result weighs strongly in favor of an award of the fees  
13 requested.

14 **III. CONCLUSION**

15 Based on the foregoing, this Court should award Helix the following: (i) interest in the  
16 amount of \$270,761.37 through May 31, 2018 (and continuing to accrue until paid), (ii) costs of  
17 \$19,021.90 and (iii) reasonable attorneys' fees in the amount of \$153,342.10.

18 Helix therefore requests a total amended judgment in the amount of \$1,277,601.82 with  
19 interest accruing thereon from the date of judgment at prime plus 4%.

20 Respectfully submitted this 31 day of May, 2018.

21 **PEEL BRIMLEY LLP**

22  11776  
ERIC B. ZIMBELMAN, ESQ.

23 Nevada Bar No. 9407

24 RICHARD L. PEEL, ESQ.

25 Nevada Bar No. 4359

26 3333 E. Serene Avenue, Suite 200

27 Henderson, NV 89074-6571

28 *Attorneys for Helix Electric of Nevada, LLC*

<sup>18</sup> See, Exhibit 4.

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

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

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

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An employee of **PEEL BRIMLEY, LLP**

# **Exhibit 1**

*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.

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.**

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:

Party	Counsel for Party
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

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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.

1           9. Camco also presented subcontractors who had previously worked for  
2 APCO, including Helix and Cabintec (National Wood), with a document titled Ratification  
3 and Amendment of Subcontract Agreement ("the Camco Ratification"). [See e.g., Exhibit  
4 3164].

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

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

13           12. Helix submitted gross payment applications to Camco totaling  
14 \$1,010,255.25 (i.e., inclusive of retention). [See Ex. 508-001-002; 037-038; 049; 068-  
15 069].<sup>6</sup> Helix was paid only \$175,778.80 and is owed the balance, \$834,476.45.

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

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

26  
27 <sup>6</sup> See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See  
28 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  
28

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.

1 9. Helix is the prevailing party and/or prevailing lien claimant as to Camco  
2 and Helix and is entitled to an award of reasonable attorney's fees pursuant to NRS  
3 108.237 and/or the Camco Subcontract. Helix is granted leave to separately apply for the  
4 same.

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

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

9 ORDER

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

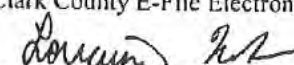
12 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact  
13 and Conclusions of Law, and those made regarding the other parties and claims  
14 involved in the consolidated cases, the Court shall issue a separate Judgment or  
15 Judgments reflective of the same at the appropriate time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

17 DATED this 24<sup>th</sup> day of April, 2018.

18   
19 DISTRICT COURT JUDGE  
20

21 CERTIFICATE

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

24   
25 LORRAINE TASHIRO  
26 Judicial Executive Assistant  
27 Dept. No. XIII  
28

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

# **Exhibit 2**

*Steven D. Grierson*

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*Attorneys for Helix Electric of Nevada, LLC*

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

10 APCO CONSTRUCTION, a Nevada  
corporation,

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

11 Plaintiff,

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

12 vs.

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

19 Defendants.

**MEMORANDUM OF COSTS AND  
DISBURSEMENTS**  
(Helix Electric of Nevada, LLC)

20 **AND ALL RELATED MATTERS**  
21

22 Filing (NRS 18.005(1)) ..... \$1,125.92  
23 Service of Process (NRS 18.005(7)) ..... \$641.02  
24 Runner's Fees ..... \$876.56  
25 Reporters' fees (NRS 18.005(2)) ..... \$10,159.59  
26 Fees for Witnesses at Trial (NRS 18.005(4)) ..... \$0.00  
27 Telecopies (NRS 18.005(11)) ..... \$3.50  
28

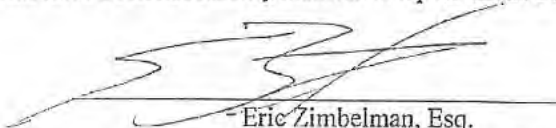
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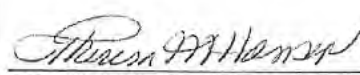
1 Photocopies (NRS 18.005(12)) ..... \$491.97  
2 Long Distance Calls (NRS 18.005(13)) ..... \$8.06  
3 Postage (NRS 18.005(14)) ..... \$181.43  
4 Travel and Lodging taking depositions and conducting discovery (NRS 18.005(15)) ..... \$0.00  
5 Fees charged pursuant to NRS 19.0335 (NRS 18.005(16)) NRS 18.005(17): ..... \$0.00  
6 Reasonable and necessary expenses for computerized services for legal research  
7 reasonable and necessary expense incurred in connection with the action..... \$4,191.36  
8 Mediation Fee ..... \$741.55  
9  
10 TOTAL.....\$19,021.90

11 STATE OF NEVADA )  
12 ) ss.  
13 COUNTY OF CLARK )

14 Eric Zimbelman being duly sworn, states: that Affiant is the attorney for the Plaintiff  
15 and has personal knowledge of the above costs and disbursements expended; that the items  
16 contained in the above memorandum are true and correct to the best of this Affiant's knowledge  
17 and belief; and that the said disbursements have been necessarily incurred and paid in this action.

18  
19   
20 - Eric Zimbelman, Esq.  
Attorney for Helix Electric of Nevada, LLC

21 SIGNED AND SWORN to before me  
22 this 3rd day of May, 2018.

23   
24 NOTARY PUBLIC in and for Said  
25 County and State  
26  
27  
28



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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 24<sup>th</sup> day of May, 2018, I caused the above and foregoing document, **MEMORANDUM OF COSTS AND DISBURSEMENTS (Helix Electric of Nevada, LLC)**, 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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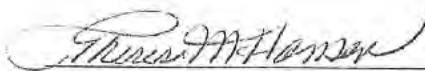
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16 Michael Rawlins ([mrawlins@rookerlaw.com](mailto:mrawlins@rookerlaw.com))  
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An employee of PEEL BRIMLEY, LLP

# **Exhibit 3**

# PRIME INTEREST RATE

**NRS 99.040(1)** requires:

*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . ."*

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2018	4.50%	July 1, 2018	
January 1, 2017	3.75%	July 1, 2017	4.25%
January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

<sup>4</sup> Attorney General Opinion No. 98-20:

*If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.*

# **Exhibit 4**

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

1 **DECL**

2 ERIC B. ZIMBELMAN, ESQ.

3 Nevada Bar No. 9407

4 RICHARD L. PEEL, ESQ.

5 Nevada Bar No. 4359

6 **PEEL BRIMLEY LLP**

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13 *Attorneys for Helix Electric of Nevada, LLC*

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  
25 corporation; COMMONWEALTH LAND  
26 TITLE INSURANCE COMPANY; FIRST  
27 AMERICAN TITLE INSURANCE  
28 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

**DECLARATION OF ERIC  
ZIMBELMAN, ESQ. IN SUPPORT OF  
HELIX ELECTRIC OF NEVADA,  
LLC'S MOTION FOR ATTORNEY'S  
FEES, INTEREST AND COSTS**

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

1. I am a Partner with the law firm of Peel Brimley, LLP; I have personal knowledge of the facts stated herein, except as otherwise stated upon information and belief, and I am competent to testify to their truthfulness if called upon to do so.

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1           2.     I make this Declaration in support of Helix Electric of Nevada, LLC's ("Helix")  
2     Motion for Attorney's Fees, Interest and Costs. Based on the following, this Court should grant  
3     Helix an award of reasonable attorney's fees in the amount of \$153,342.10 as set forth in the  
4     summary of billed fees submitted with Helix' Motion. [See Exhibit 5]. Although Helix's counsel  
5     also performed work relating to its claims against APCO, Helix is, by way of this motion, only  
6     seeking fees with respect to work performed relating to Helix's claims against Camco. In  
7     addition, because Helix, APCO, Camco and the other lien claimants involved in this  
8     consolidated litigation ("the Lien Claimants") were aligned against the project owner and  
9     pursuing their respective lien claims, Helix is only seeking fees incurred after the date the  
10    Nevada Supreme Court denied the Lien Claimants motion for en banc review of the Supreme  
11    Court's decision granting priority to the lender in February 2016.

12           3.     I have been licensed to practice law since 1992 (Washington) and was admitted  
13    in Nevada in 2005 and in North Dakota in 2014. I am admitted to practice before the Court of  
14    Federal Claims, the US District Courts for the Western District of Washington and the District  
15    of Nevada, the Ninth Circuit Court of Appeals, and the United States Supreme Court. In  
16    addition, I have been admitted *pro hac vice* in multiple state and federal jurisdictions. In addition  
17    to numerous trials and arbitrations in multiple states over the course of my career, I have several  
18    reported favorable appellate decisions including *Byrd Underground v. Angaur, LLC*, 332 P.3d  
19    273 (Nevada Supreme Court, 2014). My time appears in the time entries [Ex. 5] as "EBZ." In  
20    addition to my time entries, Exhibit 5 lists time entries from Richard L. Peel ("RLP"), the  
21    founding member of our firm, as well as Terri Hansen ("TH"), a paralegal in the firm.

22           4.     Peel Brimley is a Henderson, Nevada based law firm currently consisting of eight  
23    attorneys and one paralegal.

24           5.     Peel Brimley's primary practice is construction law, and although the majority of  
25    Peel Brimley's clients are subcontractors, Peel Brimley also represents owners, engineers,  
26    architects, general contractors and suppliers in a variety of construction related matters.

27    ///

28    ///

1           6.     Peel Brimley's clientele has consisted of some of the largest and most respected  
2 construction related companies operating in Nevada.

3           7.     Peel Brimley and its partners have taken a lead role in instructing and teaching  
4 the construction community in a wide range of construction related classes and seminars  
5 sponsored by various trade, professional, and educational organizations (e.g., Lorman Education  
6 Services, Associated General Contractors, National Business Institute, The Seminar Group, and  
7 various local construction trade organizations).

8           8.     I and other Peel Brimley partners have lectured and presented materials at many  
9 construction related seminars and classes in Las Vegas and Seattle addressing the following  
10 topics: advanced construction law, construction payment remedies, mechanic's lien law and  
11 strategies, construction law and practice, Nevada construction law, Nevada construction issues,  
12 construction defects, and other related topics.

13          9.     In addition, Peel Brimley is and has been extensively involved in drafting and  
14 passing construction related legislation in Nevada sponsored by construction organizations such  
15 as: Sheet Metal & Air Conditioning Contractors Nat'l Assoc. (SMACNA) of Southern Nevada,  
16 Associated General Contractors (AGC), Plumbing & Mechanical Contractors of Nevada,  
17 Associated Building Contractors (ABC), National Electrical Contractors Association (NECA),  
18 Mechanical Contractors Association (MCA), Nevada Association of Mechanical Contractors,  
19 and others.

20          10.    Peel Brimley drafted and lobbied for Nevada's public works prompt pay statute,  
21 NRS 338.400 through 338.645, which passed in 1999, and Nevada's new private right to stop  
22 work legislation, NRS 624.606 through 624.630, which became effective October 1, 2001 and  
23 was amended in 2003 & 2005, including some of the very provisions Helix relied upon in its  
24 motions and at trial.

25          11.    Also, Peel Brimley drafted and introduced several senate bills which passed in  
26 the 2001, 2003 & 2005 legislative session, which made extensive modification, changes, and  
27 additions to Nevada's existing mechanic's lien statutes, NRS 108.221 through 108.246,  
28 including some of the very provisions Helix relied upon in its motions and at trial.

12. The firm's partners, including the undersigned, have been extensively involved and have taken lead roles in almost every major construction litigation in Las Vegas, Nevada over the past 15 years, including: The City Center Litigation, The Fontainebleau matter, The Westgate Planet Hollywood Litigation, The Resort at Summerlin Construction Litigation, The Venetian Lien Litigation, The Aladdin Hotel and Casino Construction Litigation, Lied Library Construction Litigation, Flamingo Hilton Phase VI Construction Litigation, Hilton Sign Litigation, Red Rock, Las Vegas Hilton Sky Villa Suites, Stratosphere Tower Construction Litigation, the Allstar Café Litigation, VA Ambulatory Care Facility Litigation, Federal Courthouse Litigation, Southern Nevada Veteran's Administration, the Regional Justice Center, and a number of others.

13. In addition to the partners, Peel Brimley has hired qualified and experienced associates, most with established backgrounds in construction law. Peel Brimley's associates have access to a variety of construction materials and resources gathered by the firm, access to partners and senior associates experienced in the construction industry, and ample opportunities to participate in construction related training classes and seminars inside and outside of the firm.

14. I personally served as Helix's lead trial counsel and have been principally responsible for the prosecution of Helix's claims against Camco since no later than 2015. I was also heavily involved in the District Court proceedings prior to and during the Writ Petition proceedings at the Nevada Supreme Court regarding lien priority. I also worked extensively on the Joint Writ Petition and related briefing to the Nevada Supreme Court, working hand in hand with, among others, counsel for APCO Construction. I sat at counsel table for the oral argument at the Supreme Court and assisted in preparing APCO's counsel for argument.

15. Helix's attorneys' billing rates are reasonable. Peel Brimley performed its work under an hourly rate contract with Helix, charging the following rates:

Partners:	\$310-\$375
Associates:	\$250-275
Paralegals:	\$125

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Dated this 31st day of May, 2018.

ERIC B. ZIMBELMAN, ESQ.

Attorneys for Helix Electric of Nevada, LLC

# **Exhibit 5**

Date	Lwyr	Hours	Fee Amount	Explanation
3/18/16	EBZ	0.34	\$ 103.20	Receive and review proposed stipulation regarding release of funds; Exchange email with Scott Financial counsel, APCO counsel and Richard regarding same need for motion regarding same
3/21/16	RLP	0.26	\$ 96.75	Receipt, review and respond to correspondence from Scott's counsel regarding release of funds;
4/7/16	EBZ	2.58	\$ 774.00	Prepare client communication regarding Scott Financial's motion for release of funds and strategy going forward; Investigate legal standing, licensing, financial standing and related issues of Camco and APCO
4/11/16	EBZ	0.86	\$ 258.00	Exchange email with Richard regarding client update and case strategy; Revise, finalize and send update to clients
4/21/16	EBZ	1.29	\$ 387.00	Prepare for an attend status check; Matter continued to next status check
5/4/16	RLP	0.17	\$ 64.50	Receipt, review APCO's motion to appoint special master; conference with Eric regarding same;
5/5/16	EBZ	0.34	\$ 103.20	Teleconference and exchange email with other lien claimant counsel regarding strategy going forward
5/9/16	EBZ	0.52	\$ 154.80	Receive and review APCO's motion to appoint special master; Exchange email with Richard regarding same and possible opposition to same; Receive and review Order regarding status check
5/12/16	EBZ	2.75	\$ 825.60	Begin outline and work on limited opposition to motion to appoint special master
5/24/16	EBZ	2.58	\$ 774.00	Prepare limited opposition to APCO's motion to appoint special master
5/25/16	RLP	0.26	\$ 96.75	Review and revise draft of Limited Opposition;
5/25/16	EBZ	1.12	\$ 335.40	Revise and finalize limited opposition to APCO motion to appoint special master; Exchange email with Richard regarding same
6/1/16	RON	0.95	\$ 236.50	Discussion with Eric regarding status check and motion to appointment special master; receive and review Motion to Appoint Special Master, PB's Limited Opposition and APCO's reply brief and prepare for hearing;

6/2/16	RON	1.98	\$	494.50	Travel to and attend hearing; discussion with APCO's attorney regarding language of proposed order and concerns with the same; prepare and send email to E. Zimbelman regarding outcome of hearing and conversation with APCO's attorney; prepare and send email to APCO's attorney;
6/6/16	RON	0.69	\$	172.00	Receive and revise APCO's proposed order to appoint special master and send the same to E. Zimbelman; send proposed revisions to Jack;
6/6/16	EBZ	0.17	\$	51.60	Review and revise proposed order regarding motion to appoint special master; Exchange email with Ronnie regarding same
6/7/16	RON	0.95	\$	236.50	Phone conversations with attorney Juan; research special master appointment and provide email to Eric; exchange emails with Eric and further revise proposed Order;
6/8/16	RON	0.43	\$	107.50	Phone conversation with Jack regarding proposed order; make further revisions to proposed order and send the same to Eric; forward proposed changes to attorney Juan;
6/9/16	RON	1.55	\$	387.00	Travel to and attend hearing on motion to appoint special master;
6/20/16	RON	2.24	\$	559.00	Review briefing regarding Insulpro's Renewed Motion for Summary Judgment; travel to and attend hearing and prepare and send email to Eric regarding outcome of the same;
6/20/16	EBZ	0.26	\$	85.14	Teleconferences and emails with Ronnie regarding hearing on Insulpro's motion for summary judgment and related issues
6/24/16	EBZ	0.17	\$	56.76	Exchange email with Special Masters office regarding scheduling of the initial conference
6/28/16	RON	0.17	\$	43.00	Receive and review correspondence from attorney Muntear and prepare and send email to Eric regarding the same;
7/26/16	RLP	0.20		\$70.00	Conference with Victor regarding status of the case; give direction to Eric regarding things to do;
8/1/16	EBZ	2.15	\$	709.50	Prepare for and attend hearing with Special Master Hale regarding discovery and scheduling
8/2/16	KAG	0.60	\$	75.25	Communications with EZ regarding: initial disclosures; electronic file client research and EZ spreadsheet regarding: same and provide updated info; update calendar regarding: new discovery dates.

8/3/16	EBZ	3.01	\$	993.30	Begin work on initial disclosures and review of client files to determine what documents and information are needed
8/4/16	EBZ	2.15	\$	709.50	Prepare client update regarding special master hearing, initial disclosures, other deadlines and continue work on initial disclosure format; Exchange email with counsel for APCO regarding preparation of questionnaire per Special Master order
8/4/16	KAG	0.17	\$	21.50	Communications with EZ regarding: initial disclosure pleadings, docs, etc.;
8/5/16	EBZ	1.12	\$	368.94	Receive, review and revise draft Special Master Questionnaire; Exchange multiple emails with counsel for APCO regarding same
8/8/16	KAG	0.52	\$	64.50	Communications with EZ regarding: initial disclosures, finalize template for individual client disclosures.
8/8/16	KAG	0.40	\$	50.00	Draft initial disclosures.
8/9/16	EBZ	0.26	\$	85.14	Exchange emails with APCO counsel regarding revisions to special master questionnaire; Review and revise same
8/11/16	EBZ	0.70	\$	210.00	Review, organize and prepare documents for in
8/25/16	KAG	0.17	\$	21.50	Communications with EZ regarding: initial disclosure deadline, drafts, etc.
8/26/16	EBZ	0.43	\$	141.90	Exchange email with counsel for APCO regarding revisions to questionnaire and related issues; Work on same
8/29/16	EBZ	0.26	\$	85.14	Exchange email with counsel for APCO regarding special master questionnaire. Revise and finalize same
8/30/16	CJT	3.87	\$	483.75	Numerous emails with Eric to obtain documents for 9 parties. Download each clients documents from Box and process documents to convert to PDF and apply bates number. Create index of all bates numbered documents with begin and end bates as well as party name. Upload all 9 client documents with bates numbers to Box and create link. Add link to index and finalize for production.
8/30/16	EBZ	0.17	\$	56.76	Email Eric and Kathy with bates ranges and link information for pleading.
8/30/16	KAG	0.20	\$	25.00	Prepare letter to special master regarding questionnaire
8/30/16	EBZ	1.40	\$	420.00	Communications with EZ & CT regarding: initial disclosures
					Continue work on preparation of initial disclosures

8/31/16	EBZ	0.30			\$90.00	Revise and finalize initial disclosures
9/1/16	EBZ	0.43		\$	141.90	Receive and review various party initial disclosures
9/2/16	EBZ	0.34		\$	113.52	Receive and review various party initial disclosures; Receive and review correspondence for counsel for Scott Financial regarding questionnaire and related issues; Exchange email with counsel for Scott Financial regarding same Exchange email with counsel for Scott Financial regarding confirmation that Scott Financial has no claims affecting lien claimants other than priority to sales proceeds
9/7/16	EBZ	0.17		\$	56.76	
9/21/16	EBZ	0.80			\$240.00	Prepare response to special master questionnaire
9/22/16	EBZ	0.52		\$	170.28	Receive and review Special Master Questionnaire responses from multiple parties
9/27/16	EBZ	0.34		\$	113.52	Receive and review multiple additional responses to Special Master questionnaire
9/29/16	EBZ	2.32		\$	766.26	Receive and review letter to Special Master from counsel for APCO regarding questionnaire allocation and objection thereto; Prepare letter to Special Master responding to same; Prepare for and attend Special Master hearing
9/29/16	EBZ	0.26		\$	85.14	Receive and review United Subcontractors response to questionnaire, 16.1 disclosure and request to Special Master regarding same
10/13/16	EBZ	0.26		\$	85.14	Receive and review additional party disclosures
10/14/16	EBZ	1.29		\$	425.70	Receive and review special master recommendation and court order regarding discovery, scheduling and related matters; Prepare client group update
12/16/16	EBZ	0.69		\$	227.04	Receive and briefly review multiple discovery requests
1/12/17	RLP	0.17		\$	64.50	Conference with Eric regarding response to discovery requests;
1/16/17	EBZ	2.75		\$	908.16	Begin work on responses to discovery requests; Begin research and analysis of tax write-off issue; Exchange email and office conferences with colleagues regarding same and strategy for response to same; Exchange email with opposing counsel regarding extension and related issues

1/16/17	JEF	0.43	\$ 122.55	Emails with E. Zimbelman regarding legal research needed regarding accepting benefit of a claim by taking advantage of tax loss; office conference to discuss the same;
1/17/17	EBZ	0.17	\$ 56.76	Receive and review motion for order to show cause regarding dispute with broker over commissions
1/31/17	EBZ	4.90	\$ 1,617.66	Continue work on discovery responses; Receive and review various subcontractor responses to APCO discovery requests
2/2/17	EBZ	3.61	\$ 1,191.96	Work on review and annotation of APCO documents; Continue work on discovery responses
2/3/17	EBZ	2.32	\$ 766.26	Continue work on discovery responses
2/6/17	EBZ	2.50	\$ 750.00	Work on client-specific discovery responses;
2/7/17	EBZ	4.50	\$ 1,350.00	Continue work on and revise discovery responses
2/8/17	EBZ	0.40	\$ 120.00	Finalize discovery responses; Exchange email
2/16/17	EBZ	1.29	\$ 425.70	Prepare for and attend hearing with Special Master Hale; Receive and review Special Master Order
2/27/17	EBZ	0.86	\$ 283.80	Receive and review correspondence from APCO counsel to special master regarding request to have the liens claims dismissed; Prepare letter to special master regarding same; Receive and review letter from special master regarding denial of request to dismiss lien claims
3/6/17	EBZ	1.03	\$ 340.56	Receive and review multiple discovery requests and responses
3/17/17	EBZ	0.26	\$ 85.14	Receive and review APCOs motion for summary judgment against Unitah
3/30/17	EBZ	0.30	\$ 90.00	Receive and review PMK deposition notice; Exchange email with Victor regarding same
4/13/17	RLP	0.80	\$ 280.00	Telephone call with Victor Fuchs
4/13/17	EBZ	0.50	\$ 150.00	Begin work on requests for admission
4/13/17	TH	2.00	\$ 250.00	Prepare shell Requests for Admissions
4/14/17	TH	1.20	\$ 150.00	Revise and finalize Helix's First Set of Requests for admission
4/14/17	EBZ	2.00	\$ 600.00	Continue work on requests for admission, interrogatories and requests for production
4/25/17	EBZ	2.40	\$ 720.00	Work on notice of PMK depositions
4/26/17	EBZ	0.60	\$ 180.00	Revise and finalize notice of PMK depositions

5/4/17	EBZ	0.06	\$	85.14	Exchange multiple emails with counsel for Camco regarding deposition schedules, special master hearing and outcome
5/5/17	EBZ	0.43	\$	141.90	Exchange multiple emails with counsel for APCO and other counsel regarding Special Master order to extend discovery and scheduling depositions; Exchange email with counsel for Camco regarding deposition scheduling
5/9/17	EBZ	0.26	\$	85.14	Exchange multiple emails with other counsel regarding deposition scheduling issues
5/9/17	EBZ	0.30	\$	\$90.00	Receive and review subpoena duces tecum
5/10/17	EBZ	0.34	\$	113.52	Receive and review new correspondence from Special Master and Special Master Order regarding discovery extension and other matters; Exchange multiple emails regarding depositions
5/12/17	EBZ	1.03	\$	340.56	Receive and review responses to discovery requests; Exchange multiple emails with Camco counsel and others regarding PMK deposition, need for subpoena to Mr. Parry and related matters; Give instructions to paralegal regarding same
5/15/17	TH	0.43	\$	53.75	Receive and review APCO Constructions Answers to Interstate Plumbing and Air Conditioning LLCs Interrogatories; Receive and review APCO Constructions Response to Interstate Plumbing and Air Conditioning LLCs Request for Production of Documents and Things; Receive and review APCO Constructions response to Helix Electrics First set of Requests for Admissions; Receive and review APCO Constructions Response to Helix Electrics First Request for Production of Documents and Things; Receive and review APCO Constructions Answers to Helix Electrics First Interrogatories;
5/15/17	EBZ	1.29	\$	425.70	Exchange multiple emails with counsel for Camco and Apco and other counsel regarding deposition scheduling and issues; Work on multiple amended notices of deposition; Teleconferences and emails with staff regarding same and things to do; Review, revise and finalize notices of deposition and subpoenas
5/15/17	EBZ	0.60	\$	\$180.00	Teleconference with Victor

5/16/17	EBZ	0.30		\$90.00	Exchange multiple emails with client and counsel for APCO regarding deposition
5/16/17	EBZ	0.52	\$	170.28	Receive and review multiple deposition notices; Review revised deposition notices to Camco and Apco; Provide instructions to team regarding same
5/17/17	TH	1.03	\$	129.00	Revise Amended Notices of Deposition and Subpoena; Receive and review Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada LLC; Receive and review Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of Person Most Knowledgeable for Steel Structures, Inc.; Receive and review Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of Person Most Knowledgeable for Nevada Prefab Engineers; Receive and review Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of Person Most Knowledgeable for Interstate Plumbing & Air Conditioning, LLC; Receive and review Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of Person Most Knowledgeable for Uintah Investments LLC dba Sierra Reinforcing; Calendar deposition dates as noticed;
5/17/17	EBZ	0.20		\$60.00	Receive and review notice of deposition; Email to Andy regarding same
5/18/17	TH	0.09	\$	10.75	Receive and review Amended Notice of Taking Nev. R. Civ. P. 30(b)(6) Deposition of the Person Most Knowledgeable for Nevada Prefab Engineers; Update calendar accordingly;
5/22/17	TH	0.95	\$	118.25	Receive and review Notice of Vacating Deposition of Martin-Harris; Receive conformed copies of Amended Notices of Deposition; Calendar same; Telephone call to Esquire Deposition Solutions regarding Helix's Notice of Depositions scheduled for June 5, 2017 and June 6, 2017; Reserve Court Reporter for June 20, 2017 and June 22, 2017 depositions;

5/23/17	TH	0.34	\$ 43.00	Receive and review Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for National Wood Products, Inc.; Calendar same; Receive and review correspondence to all counsel from Marquis Aurbach Coffing regarding APCO's Person(s) Most Knowledgeable for deposition; Receive and review Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for ZittingBros. Construction, Inc.;
5/31/17	TH	0.52	\$ 64.50	Receive and review Proposed Order on Motion for Partial Summary Judgment; Receive and review Camco Pacific Construction's Reply to Helix Electric's Requests for Admissions; Receive and review Camco Pacific Construction's Reply to Fast Glass, Inc.'s Requests for Admissions; Receive and review Camco Pacific Construction's Reply to Cactus Rose Construction's Requests for Admissions; Exchange email with counsel for Camco regarding discovery responses extension; Begin work on preparation for APCO deposition
6/1/17	EBZ	4.73	\$ 1,560.90	
6/2/17	TH	6.88	\$ 860.00	Gather and assemble documents for use at APCO's deposition; Review file for specific Bates Stamped range; Telephone conference with Pedro of Litigation Services to request APCO documents; Receive and review e-mail transmissions from Pedro attaching requested documents;
6/2/17	TH	0.26	\$ 32.25	Receive and review Proof of Service of Deposition Notices; Receive and review Trustee's Notice of Taking of Deposition Oral Examination of APCO Construction; Trustee's Notice of Taking of Deposition on Oral Examination of Camco Pacific Construction, Inc.; Calendar same;
6/2/17	EBZ	2.41	\$ 794.64	Continue work on preparation for APCO deposition; Receive notice of yet another large production of documents by APCO; Download same and begin review same in preparation for APCO deposition
6/6/17	EBZ	1.50	\$ 450.00	Exchange email with Andy and Victor regarding
6/5/17	EBZ	5.59	\$ 1,844.70	Prepare for and attend day one of APCO PMK deposition; Continue review and analysis of newly produced documents
6/6/17	EBZ	0.26	\$ 85.14	Exchange emails with APCO counsel regarding re-scheduling day two of APCO depositions and related issues

6/7/17	TH	0.17	\$ 21.50	Receive and review Amended Notice of Taking NRC 30(b)(6) Deposition of Person Most Knowledgeable for Helix Electric of Nevada; Receive and review correspondence from Marquis Aurbach Coffing regarding the continued deposition dates for APCO and Helix;
6/7/17	EBZ	0.09	\$ 28.38	Receive and review correspondence from APCO counsel regarding APCO PMK deposition re-scheduling
6/7/17	EBZ	0.20	\$ 60.00	Receive and review amended notice of deposition
6/9/17	EBZ	2.75	\$ 908.16	Receive and review numerous discovery responses by Camco; Consider same, pay-if-paid issues and strategy regarding same; Legal research regarding pay-if-paid; Exchange email with Camco counsel regarding discovery responses and issues regarding same
6/13/17	EBZ	1.89	\$ 624.36	Receive and study Camcos discovery responses and begin work on preparations for deposition; Exchange email regarding efforts to obtain Camco documents
6/16/17	EBZ	3.01	\$ 993.30	Begin review and annotation of Camcos newly produced documents (more than 3000 pages) in preparation for Camco PMK deposition
6/19/17	EBZ	2.75	\$ 908.16	Continue review and annotation of Camcos newly produced documents (more than 3000 pages) and prepare for Camco PMK deposition; Research and analysis of pay-if-paid provisions and anticipated arguments by Camco and APCO regarding same
6/20/17	TH	0.09	\$ 10.75	Receive and review Stipulation and Order for Dismissal with Prejudice of Insulpro Projects, Inc.;
6/20/17	EBZ	6.45	\$ 2,128.50	Prepare for and participate in deposition of Camcos person most knowledgeable, Dave Parry; Work on strategy and outline of motion for summary judgment regarding pay-if-paid clause; Office conference with Richard Peel regarding same
6/21/17	EBZ	0.34	\$ 113.52	Exchange email with counsel for IPAC and Camco regarding need for day two of Camco PMK deposition; Prepare letter to all counsel regarding same
6/22/17	EBZ	3.87	\$ 1,277.10	Prepare for and participate in day two of deposition of Camco PMK; Conference with counsel for other subcontractors regarding strategy

6/27/17	EBZ	0.86	\$ 283.80	Receive and review APCOs motion for summary judgment regarding lien claims; Office conference with Richard regarding same, strategy and outline for opposition to same; Exchange email with counsel for APCO regarding hearing, rescheduling and setting briefing schedule for same; Prepare letter to all counsel regarding proposed schedule for motion briefing and hearing
7/6/17	EBZ	0.26	\$ 85.14	Exchange emails with APCO counsel regarding rescheduling of hearing and briefing for motion for summary judgment regarding liens
7/7/17	EBZ	2.15	\$ 709.50	Begin review of another 10GB of data produced by APCO
7/10/17	EBZ	0.34	\$ 113.52	Teleconference with counsel for Zitting Brothers regarding cooperation in response to APCO motion for partial summary judgment regarding liens and motion to reschedule same; Exchange email with counsel for APCO regarding non-opposition to motion to continue hearing and procedure regarding same
7/11/17	EBZ	0.26	\$ 85.14	Review draft motion to continue hearing and briefing dates regarding APCO motion regarding liens; Exchange email with counsel for Zitting and APCO regarding same
7/13/17	EBZ	0.17	\$ 56.76	Teleconference and exchange email with counsel for APCO regarding possible mediation or settlement discussions
7/17/17	EBZ	3.50	\$ 1,050.00	Prepare for deposition of APCO PMK regarding
7/18/17	TH	0.34	\$ 43.00	Receive and review Joint Motion to Continue Hearing on APCO Construction's Motion to Dismiss or for Summary Judgment; E-mail transmission to Attorney Zimbelman regarding opposition and reply deadlines and contacting Judy with Caden & Fuller in California regarding the new date of July 24, 2017; Receive and review Zitting Brothers Construction Inc.'s Notice of Taking Continued Deposition of APCO Construction Pursuant to NRC 30(b)(6);
7/18/17	EBZ	6.40	\$ 1,920.00	Prepare for and take deposition of APCO PMK
7/19/17	EBZ	4.20	\$ 1,260.00	Prepare for and meet with Andy to prepare for deposition
7/20/17	EBZ	4.50	\$ 1,350.00	Attend and defend deposition of Helix PMK
7/24/17	EBZ	2.15	\$ 709.50	Begin work on opposition to APCOs motion to dismiss liens
7/25/17	RLP	1.60	\$ 560.00	Review and revise draft of Opposition to Apco

					Continue work on opposition to APCOs motion to dismiss lien claims; Teleconferences and emails with Richard regarding same; Teleconferences and emails with other subcontractor counsel regarding same; Review Zitting Brothers draft opposition; Exchange emails with Zitting Brothers attorney regarding same; Teleconference with IPAC counsel regarding same; Revise and finalize opposition; Begin work on motion for summary judgment regarding pay-if-paid agreements
7/25/17	EBZ	5.59	\$ 1,844.70		Continue work on motion for summary judgment regarding Pay-if-Paid
7/27/17	EBZ	4.73	\$ 1,560.90		Continue work on motion for summary judgment regarding Pay-if-Paid
7/28/17	EBZ	6.45	\$ 2,128.50		Continue work on motion for summary judgment regarding Pay-if-Paid
7/31/17	RLP	0.86	\$ 322.50		Receipt, review and provide changes to Eric concerning Motion for Summary Judgment on pay-if-paid; review and sign documents to be filed;
7/31/17	EBZ	1.89	\$ 624.36		Revise, finalize and direct submission of motion for partial summary judgment regarding Pay-if-Paid
7/31/17	TH	0.43	\$ 53.75		Revise and finalize Peel Brimley's Lien Claimant's Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreement and Ex-Parte Application for Order Shortening Time;
8/2/17	TH	1.03	\$ 129.00		Receive and review Interstate Plumbing & Air Conditionings Joinder to Helixs Opposition to APCOs Motion to Dismiss or for Summary Judgment; Receive and review APCOs Reply in Support of Motion to Dismiss or for Summary Judgment; Receive and review Order Granting Gerdau Reinforcing Steels Motion to Substitute; Receive and process Zitting Bros. Motion for Partial Summary Judgment Against APCO; Receive and review Notice of Entry of Order Granting Gerdau Reinforcing Steel's Motion to Substitute; File review regarding Trial and deadlines; File and serve Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses on Pay-if-Paid Agreement on Order Shortening time;

8/3/17	EBZ	1.20	\$ 397.32	Multiple teleconferences and emails with counsel for APCO and Camco regarding hearing on Motion for Summary Judgment; Receive and review Zitting Brothers Motion for Summary Judgment and several joinders to our motion for summary judgment regarding pay-if-paid
8/7/17	TH	0.60	\$ 75.25	Receive and review Zitting Brothers Construction, Inc.'s Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements; Receive and review Joinder to Peel Brimley Lien Claimants' Motion for Partial Summary Judgment Precluding Defenses Based on Pay-if-Paid Agreements and Ex-Parte Application for Order Shortening Time; Summarize and provide same to attorney; Prepare Notice of Entry of Order on Order Shortening Time on Lien Claimants' Motion for Partial Summary Judgment (Pay-if-Paid); File and Serve Notice of Entry of Order on Order Shortening Time on Lien Claimants' Motion for Partial Summary Judgment (Pay-if-Paid)
8/7/17	EBZ	2.50	\$750.00	Prepare pretrial disclosures
8/10/17	TH	0.52	\$ 64.50	Receive and summarize for attorney National Woods Joinder to Motion for Partial Summary Judgment (Pay-if-Paid); Receive and summarize for attorney Interstate Plumbings Joinder to Motion for Partial Summary Judgment (Pay-if-Paid); Receive and summarize for attorney Pro Hac Vice Applicant S. Judy Hiraharas Notice of Compliance with SCR 42; Receive and process Motion to Associate Counsel filed by National Wood Products;
8/10/17	EBZ	3.61	\$ 1,191.96	Prepare for and argue in opposition to APCO's motion for summary judgment regarding lien claims; Exchange multiple emails with APCO and Camco counsel regarding pre-trial disclosures and strategy regarding same; Finalize and direct filing and service of initial disclosures
8/11/17	EBZ	0.20	\$60.00	Exchange email with Victor
8/14/17	EBZ	0.30	\$90.00	Teleconference with Victor

8/14/17	TH	0.77	\$ 96.75	Receive and summarize Pre-Trial Disclosures of United Subcontractors dba Skyline Insulation; Receive and summarize Pre-Trial Disclosures of Camco; Receive and summarize Pre-Trial Disclosures of SWPP; Receive and summarize Pre-Trial Disclosures for APCO; Receive and summarize Pre-Trial Disclosures for National Wood; Receive and review Skyline's First Supplemental Disclosure Pursuant to Nev. R. Civ. P. 16.1 and Special Master Order; Receive and process Skyline's Joinder to Lien Claimants Motion for Partial Summary Judge (Pay-if-Paid); Receive and process E&E Fire Protections Joinder to Lien Claimants Motion for Partial Summary Judge (Pay-if-Paid);
8/16/17	TH	2.15	\$ 268.75	Receive and summarize Steel Structures, Inc.'s Pre-Trial Disclosures; Receive and summarize Nevada Prefab Engineers' Pre-Trial Disclosures; Receive and summarize Gerdau Reinforcing Steel's Pre-Trial Disclosures; Receive and process Gerdau Reinforcing Steel's Second Supplemental Disclosure Statement; Continue file review; Review 16.1 Initial Disclosures; Review Pre-Trial Disclosures; Summarize same for Attorney;
8/16/17	EBZ	0.52	\$ 170.28	Work on order denying APCOs motion to dismiss or for summary judgment
8/17/17	EBZ	0.26	\$ 85.14	Exchange email with APCO counsel regarding order denying motion for partial summary judgment; Direct submission of same to the court for signature
8/22/17	EBZ	1.03	\$ 340.56	Receive and review APCOs opposition to motion for partial summary judgment regarding pay-if-paid; Exchange email with APCO counsel regarding deadline for reply; Outline reply issues and responses
8/29/17	EBZ	0.26	\$ 85.14	Exchange multiple emails with counsel for Zitting Bros., APCO and Camco regarding hearing on pay-if-paid motion and strategy regarding same; Review and revise stipulation regarding same
8/30/17	TH	0.09	\$ 10.75	Receive and review Zitting Bros. Objection to APCO's Pre-Trial Disclosures; Summarize same for attorney;
8/31/17	EBZ	3.01		WO reply re: motion for summary judgment re: Pay-if-paid

9/1/17	EBZ	0.26	\$	85.14	Teleconferences and emails with counsel for APCO and Camco regarding calendar call and strategy for reducing number of lien claimants
9/5/17	TH	0.17	\$	21.50	Receive and process Order Shortening Time on Hearing for Motion to Associate Counsel;
9/5/17	EBZ	1.89	\$	624.36	Prepare for and attend calendar call
9/6/17	TH	0.43	\$	53.75	Receive and review Notice of Entry of Order Shortening Time on Hearing for Motion to Associate Counsel; Receive and review Order Admitting to Practice; Receive and review Notice of Entry of Order Admitting to Practice; Receive and process Court's Minute Order dated September 6, 2017; Receive and process Chapter 7 Trustee's Amended Pre-Trial Disclosures of Interstate Plumbing & Air Conditioning Pursuant to Rule 16(a)(3) of Nev. R. Civ. P.;
9/6/17	EBZ	0.26	\$	85.14	Teleconferences and exchange email with APCO counsel and settlement conference department regarding location and participation in settlement conference
9/7/17	TH	0.17	\$	21.50	Review and process United Subcontractors Pre-Trial Statement/Memorandum; Summarize same for attorney;
9/12/17	EBZ	2.50	\$	750.00	Prepare settlement conference brief and exchange email with Victor e
9/13/17	EBZ	0.60	\$	180.00	Revise and finalize settlement conference brief; Direct submission of same with selected exhibits
9/13/17	EBZ	0.26	\$	85.14	Receive, review and approve order dismissing parties who did not provide pretrial disclosures
9/14/17	TH	0.17	\$	21.50	Receive and review letter from Marquis Aurbach regarding proposed Order to Dismiss parties who did not file Pre-Trial Disclosures;
9/20/17	EBZ	0.20	\$	60.00	Exchange email with Victor regarding settlement authority
9/21/17	EBZ	4.20	\$	1,260	Participate in settlement conference; Teleconferences with Victor regarding same, strategy and related issues
9/27/17	EBZ	2.15	\$	709.50	Work on reply to oppositions to motion for partial summary judgment regarding pay-if-paid provisions
9/28/17	EBZ	2.41	\$	794.64	Continue work on reply to oppositions to motion for partial summary judgment regarding pay-if-paid provisions

10/4/17	EBZ	1.29	\$	425.70	Prepare for hearing on motion for summary judgment
					Prepare for and attend hearing on motion for summary judgment and to set trial date; Extended discussions regarding allowing additional depositions, dates for motions in limine and trial setting; Trial set for November 28, 2017 and motions continued to November 16, 2017; Discussion with APCO attorney regarding trial issues and settlement discussions; Receive and review letter from APCO counsel and proposed order; Revise and transmit same
10/5/17	EBZ	3.87	\$	1,277.10	
10/16/17	TH	0.43	\$	53.75	Receive and process Order Setting Civil Non-jury Trial and Calendar Call;
					Receive and process APCO's Amended Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for National Wood Products; Receive and process APCO's Amended Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for United Subcontractors, Inc. dba Skyline Insulation; Receive and process APCO's Amended Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers Construction, Inc.;
10/18/17	TH	0.52	\$	64.50	Receive and process Second Amended Notice of Taking NRCP Rule 30(b)(6) Deposition of Person Most Knowledgeable for National Wood Products, Inc.;
10/23/17	TH	0.26	\$	32.25	Summarize same to attorney;
10/23/17	TH	0.17	\$	21.50	Review and process APCO's Second Amended Notice of Taking Nev. R. Civ. P. Rule 30(b)(6) Deposition of PMK for Zitting Brothers; Summarize same to attorney;
					Receive and process Second Amended Notice of Taking NRCP 30(b)(6) Video Conference Deposition of B Person Most Knowledgeable for United Subcontractors, Inc. dba Skyline Insulation; Receive and process Zitting Brothers' Objection to APCO's Second Amended Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for Zitting Brothers; Receive and process APCO's Notice of Vacating 30(b)(6) Deposition of United Subcontractors, Inc. dba Skyline Insulation;
10/25/17	TH	0.34	\$	43.00	
10/31/17	EBZ	4.50	\$	\$1,350.00	Receive and review email from APCO counsel

11/2/17	EBZ	1.50			\$450.00	Continue work on initial draft of four motion
11/3/17	EBZ	2.50			\$750.00	Continue work on four motions in limine again
11/3/17	EBZ	3.01		\$	993.30	Prepare first draft of four motions in limine against Camco; Exchange email with opposing counsel regarding meet and confer; Exchange email with other subcontractor counsel regarding pending motions, joint strategy and related issues
11/3/17	TH	0.26		\$	32.25	Revise Motions in Limine 1-4;
11/6/17	EBZ					Prepare for and participate in meet and confer with counsel for Camco regarding motions in limine and settlement discussions; Revise and finalize motions in limine and direct filing and service of same
11/6/17	EBZ	1.50			\$450.00	Prepare for and participate in meet and confer
11/7/17	TH	1.12		\$	139.75	Receive and process APCO's Supplemental Briefing in Opposition to Zitting Brothers Motion for Partial Summary Judgment; Receive and process Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for Cabinetec, Inc.; Receive and process Notice of Vacating NRCP 30(b)(6) Deposition of Person Most Knowledgeable for Cabinetec, Inc.; Receive and process Third Amended Notice of Taking NRCP 30(b)(6) Deposition of Person Most Knowledgeable for National Wood Products, Inc.; Receive and process Notice of Vacating NRCP 30(b)(6) Deposition of Person Most Knowledgeable for National Wood Products, Inc.; Receive and process Zitting Brothers' Motion in Limine to Limit the Defenses of APCO Construction to the Enforceability of Pay-if-Paid Provision; Receive and process APCO's Omnibus Motion in Limine; Telephone call with District Court Clerk regarding the status of accepting Lien Claimant's Motion in Limine and Notices of Hearing;
11/7/17	EBZ	0.80			\$240.00	Receive and review APCOs supplemental respon
11/8/17	EBZ	0.69		\$	227.04	Receive and review multiple motions in limine filed by multiple parties; Teleconferences and emails with other subcontractor counsel regarding coordination of responses to motions in limine and other matters

11/9/17	TH	0.17	\$	21.50	Receive and process letter from Attorney John R. Jefferies regarding Pre-Trial Conference and trial availability and scheduling of sub-contractors;
11/9/17	EBZ	1.12	\$	368.94	Prepare for and participate in conference call with other subcontractors regarding coordination of defenses, claims, responses to motions in limine and other matters; Receive and review letter from APCO counsel regarding meet and confer and trial scheduling issues
11/9/17	EBZ	2.80		\$840.00	Prepare extended email to client
11/10/17	RLP	0.70		\$245.00	Participate in conference call with Victor
11/10/17	EBZ	3.50		\$1,050.00	Work on opposition to APCO's motions in limine
11/10/17	EBZ	0.69	\$	227.04	Multiple teleconferences and emails regarding pay-if-paid motion arguments, recent unpublished case and related issues; Review and analyze unpublished decision and brief and distinguish same
11/13/17	EBZ	0.52	\$	170.28	Prepare joinder to various oppositions to APCO's Omnibus Motion in Limine
11/13/17	EBZ	5.50		\$1,650.00	Continue work on opposition to APCO's Omnibus Motions in Limine
11/13/17	TH	2.50		\$312.00	Revise Helix's Opposition to APCO's Omnibus Motions in limine
11/14/17	EBZ	0.34	\$	113.52	Exchange multiple emails with other counsel regarding joint pretrial memorandum, conference regarding same and related issues
11/15/17	EBZ	2.15	\$	709.50	Prepare for oral argument regarding pay-if paid and motions in limine
11/16/17	EBZ	2.30		\$690.00	Exchange emails with Victor and Richard
11/16/17	EBZ	2.15	\$	709.50	Prepare for and attend oral argument regarding pay-if-paid and motions in limine
11/17/17	EBZ	3.01	\$	993.30	Continue work on trial exhibits and multiple emails with trial assistant regarding same and processing same for pre-trial conference; Prepare for pretrial conference; Teleconferences and emails with other counsel regarding same. Receive and review letter from APCO counsel regarding pretrial conference
11/20/17	RLP	0.20		\$70.00	Receipt, review correspondence exchanged between counsel

11/20/17	EBZ	4.47	\$ 1,475.76	Prepare for and attend pretrial conference; Prepare for and attend calendar call; Meetings with APCO counsel and Camco counsel regarding settlement discussions; Meetings with other subcontractor counsel regarding trial strategy, pending motions and related issues
11/27/17	EBZ	1.03	\$ 340.56	Receive and review Decision regarding Zitting Bros. motion for summary judgment; Receive and review decision regarding our motion for partial summary judgment regarding pay-if-paid; Begin outline of Order
12/6/17	EBZ	0.60	\$180.00	Receive and review APCOs 11th supplemental disclosures
12/6/17	EBZ	0.17	\$ 56.76	Receive and review order setting bench trial and calendar call
12/12/17	TH	0.43	\$ 53.75	Receive, process and summarize Court Minutes on National Wood Products Motion in Limine to Exclude Testimony, Documents and Things not Property Produced by APCO; Receive and process Court Minutes on Peel Brimley Lien Claimants' Motion in Limine Nos. 1-6; Receive and process Court Minutes on Zitting Brothers' Motion in Limine to Limit the Defenses of APCO (Pay-if-Paid Provision); Receive and process Court Minutes on Helix's Motions in Limine Nos. 1-4;
12/12/17	EBZ	0.43	\$ 141.90	Receive and review several minute orders regarding motions in limine; Begin work on orders regarding same
12/12/17	RLP	0.20	\$70.00	Receipt, review correspondence from Eric conc
12/12/17	EBZ	0.40	\$120.00	Email to client regarding minutes orders gran
12/15/17	EBZ	3.61	\$ 1,191.96	Work on order granting motion for partial summary judgment regarding pay-if-paid and letter to counsel regarding same
12/18/17	EBZ	2.15	\$ 709.50	Work on orders granting and denying multiple motions in limine; Exchange email with opposing counsel regarding same, presentation of same and revisions to same
12/21/17	TH	0.09	\$ 10.75	Receive e-mail from Mary Bacon advising client is reviewing proposed Orders;
12/22/17	EBZ	0.34	\$ 113.52	Review Zitting Bros. proposed order regarding summary judgment; Exchange email with APCO counsel regarding exhibit numbering and related issues

12/26/17	EBZ	0.69	\$ 227.04	Receive and review APCO counsels proposed revisions to proposed orders regarding motions in limine, motion for partial summary judgment regarding pay-if-paid; Teleconference with APCO counsel regarding meet and confer regarding proposed orders and exchange email regarding same
12/27/17	EBZ	2.15	\$ 709.50	Teleconference with APCO counsel regarding proposed orders, partial agreement and disagreement regarding same; Revise and finalize proposed orders; Prepare multiple letters to Judge Denton regarding proposed orders
12/27/17	TH	0.43	\$ 53.75	Telephone conference with Attorney Judy Hirahara regarding submission of proposed Order on the Omnibus Motion in Limine; Receive and process Court conformed letters and proposed Orders; Receive and process letter from Wilson Elser to Dept. 13 submitting competing Order Granting Zitting Brothers Motion for Partial Summary Judgment Against APCO; Receive and process letter to Dept. 13 from Spencer Fane submitting competing Order granting Zitting Brothers Motion for Partial Summary Judgment; Receive letter from Spencer Fane to Dept. 13 submitting competing Order on Peel Brimley's Lien Claimants Motion for Partial Summary Judgment on Pay-if-Paid Agreements;
12/28/17	EBZ	3.87	\$ 1,277.10	Review APCO trial disclosures and work on trial preparation
12/29/17	EBZ	3.01	\$ 993.30	Continue review of APCO trial disclosures and continue work on trial preparation; Exchange emails regarding signed orders, National Woods belated objection to order denying APCO motions in limine
1/2/18	RLP	0.40	\$140.00	Conference with Eric regarding outcome of hearing
1/2/18	EBZ	3.01	\$ 993.30	Continue review of APCO trial disclosures and work on trial preparation; Appear for calendar call

1/3/18	TH	0.69	\$ 86.00	Receive and process Court filed Order Granting Motion for Partial Summary Judgment regarding: Pay-if-Paid Agreement; Prepare Notice of Entry of Order; File and Serve Notice of Entry of Order Granting Motion for Partial Summary Judgment regarding: Pay-if-Paid Agreement; Receive and process Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Zitting Brows. Motion for Partial Summary Judgment Against APCO; Provide Attorney Zimbelman with documents as requested;
1/3/18	EBZ	3.01	\$ 993.30	Continue review of APCO trial disclosures and continue work on trial preparation; Receive and review multiple signed orders; Exchange email with paralegal regarding same and entry of same
1/4/18	EBZ	3.61	\$ 1,191.96	Receive and review motion for reconsideration regarding pay-if-paid order; Continue work on trial preparation
1/5/18	TH	0.43	\$ 53.75	Receive and process Notice of Entry of Order on Amended Nuncpro Tunch Order Regarding APCOs Omnibus Motion in Limine No. 7; Receive and process Order on Amended Nuncpro Tunch Order Regarding APCOs Omnibus Motion in Limine No. 7; Receive and process APCO's Motion for Reconsideration of Court's Order Granting Peel Brimley Lien Claimant's Partial Motion for Summary Judgment to Preclude Defenses Based on Pay-if-Paid Provisions on an Order Shortening Time;
1/5/18	EBZ	3.27	\$ 1,078.44	Continue work on trial preparation; Exchange emails with other counsel regarding pre-trial brief and other issues
1/5/18	EBZ	1.50	\$450.00	Prepare extended email to Andy, Bob and Victor

1/8/18	TH	3.44	\$ 430.00	Receive and process Notice of Attorney's Lien filed by Steven Morris, Esq. of Grant, Morris Dodds; Receive and process Camco's Joinder to APCO's Motion for Reconsideration; E-mail transmissions with Attorney Zimbelman regarding trial preparation; Provide Attorney Zimbelman with trial exhibits for Cactus Rose, Fast Glass, Heinaman; Helix and SWPPP; Telephone call with LDG regarding trial exhibits; Meet with LDG representative regarding instructions for trial exhibits; Telephone call with Dept. 13 JEA regarding delivery of trial exhibits; Review Dept. 13's Exhibit Guidelines; Review APCO's Exhibit List;
1/8/18	EBZ	5.59	\$ 1,844.70	Prepare for and participate in conference call with other counsel regarding trial procedures and issues; Receive and review re-numbered APCO exhibits; Receive and review video clips that APCO intends to use at trial; Continue work on trial preparation; Begin work on inserts to pre-trial memorandum
1/9/18	TH	5.16	\$ 645.00	Receive and process APCO's Motion for Reconsideration of the Court's Order Granting Zitting Brothers Motion for Partial Summary Judgment on OST; Prepare Trial Exhibit Lists for Cactus Rose, Fast Glass, Heinaman, Helix, SWPPP in compliance of Dept. 13's Trial Exhibit Guidelines; Forward same to LDG for placement in Trial Exhibit binders; Prepare binder side labels for Cactus Rose, Fast Glass, Heinaman, Helix and SWPPP in compliance of Dept. 13 Trial Exhibit Guidelines; Forward same to LDG for placement in binders; Review file; Gather original sealed deposition transcripts for submission to Court - Dept. 13; Review file for additional deposition transcripts; Review Opposition to Motion for Reconsideration; File and serve same;
1/9/18	EBZ	4.73	\$ 1,560.90	Prepare opposition to motion for reconsideration; Continue work on trial preparation; Multiple teleconferences and emails regarding same, trial document issues and related matters

1/10/18	EBZ	2.15	\$ 709.50	Continue work on trial preparation; Receive and review reply regarding motion for reconsideration of summary judgment regarding pay-if-paid; Prepare outline for hearing regarding same; Continue work on edits to joint pre-trial memorandum and provide the same to counsel for APCO; Teleconference with counsel for National Wood regarding same
1/11/18	EBZ	4.73	\$ 1,560.90	Continue work on trial preparation; Prepare for and participate in hearing regarding motion for reconsideration of summary judgment regarding pay-if-paid; Prepare Order denying motion and exchange email with other counsel regarding same and other trial issues
1/11/18	TH	0.77	\$ 96.75	Receive and process Plaintiff-in-Intervention National Wood Products, Inc.'s Opposition to APCO's Motion for Reconsideration of the Court's Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment to Preclude Defenses of Pay-if-Paid Provisions; Receive and process Plaintiff-in-Intervention National Wood Products Motion in Limine; Receive and process APCO's Reply in Support of its Motion for Reconsideration of the Court's Order Granting Peel Brimley Lien Claimants' Motion for Partial Summary Judgment to Preclude Defenses of Pay-if-Paid Provisions; Receive and process Zitting Bros. Opposition to APCO's Motion for Reconsideration of Court's Order Granting Zitting Bros. Partial Motion for Summary Judgment; Receive and process Notice of Entry of Order Granting Plaintiff-in-Intervention National Wood Products Motion in Limine;
1/12/18	EBZ	3.87	\$ 1,277.10	Continue work on trial preparation; Multiple teleconferences and emails with other counsel regarding Pre-Trial Memorandum, revisions to same and issues regarding same
1/12/18	TH	1.72	\$ 215.00	Identify trial exhibits for Court's use; Deliver 2 sets of the Trial Exhibit binders to Dept. 13; Continue trial preparation;
1/13/18	EBZ	3.44	\$ 1,135.20	Continue work on trial preparation
1/14/18	EBZ	5.50	\$1,650.00	Work on client-specific trial preparation
1/15/18	EBZ	5.20	\$1,560.00	Work on client-specific trial preparation
1/16/18	EBZ	10.50	\$3,150.00	Work on client-specific trial preparation; Me

1/17/18	EBZ	11.00	\$3,300.00	Prepare for and participate in day one of trial
1/18/18	TH	1.20	\$ 150.50	Receive and process Plaintiff-in-Intervention National Wood Products, Inc.'s Trial Brief; Receive and process Zitting Bros. Opposition to Motion to Stay Pending Entry of Final Judgment Pursuant to NRCP 62(B) and 62(H); Research APCO's Lien and Amended/Restated Lien; Telephone call with County Recorder's Office regarding liens; Obtain certified copies of lien; Arrange delivery of same to Attorney Zimbelman, District Court - Dept. 13; Receive and process Stipulation and Order Regarding Trial Exhibits Admitted into Evidence;
1/18/18	TH	0.86	\$ 107.50	Receive and process Notice of Entry of Stipulation and Order Regarding Trial Exhibits Admitted into Evidence;
1/18/18	AEA	0.26	\$ 32.25	Searched Clark County Recorder's website for requested documents from EBZ for trial; Spoke with T. Hansen regarding the same;
1/18/18	EBZ	8.50	\$2,550.00	Prepare for and participate in day two of trial
1/18/18	RLP	0.40	\$140.00	Receipt, review correspondence from Eric to Victor
1/19/18	EBZ	6.50	\$1,950.00	Prepare for and participate in day three of trial
1/20/18	EBZ	4.50	\$1,350.00	Begin work on closing argument
1/21/18	EBZ	2.50	\$750.00	Continue work on closing argument and outline
1/22/18	EBZ	6.50	\$1,950.00	Continue work on closing argument and outline
1/23/18	EBZ	5.50	\$1,650.00	Attend day four of trial; Continue work on closing
1/24/18	EBZ	8.00	\$2,400.00	Prepare for and attend day five of trial;
1/25/18	EBZ	4.50	\$1,350.00	Begin work on findings of fact and conclusion
1/26/18	TH	0.26	\$ 32.25	Receive and process Notice of Change of Firm Affiliation and Address; Receive and process Order Denying APCO's Motion for Reconsideration of Court's Order Granting Zitting Brothers Construction, Inc.'s Partial Motion for Summary Judgment;
1/29/18	EBZ	0.26	\$ 85.14	Exchange emails with Camco counsel regarding witness needs and order and possible stipulation to avoid need for live testimony
1/26/18	EBZ	2.50	\$750.00	Continue work on findings of fact and conclusions of law
1/30/18	EBZ	1.00	\$300.00	Exchange multiple emails and teleconferences
2/1/18	EBZ	3.50	\$1,050.00	Exchange emails with other counsel regarding
2/2/18	EBZ	4.20	\$1,260.00	Exchange email with Victor

2/5/18	EBZ	4.73	\$ 1,560.90	Prepare for day 6 of trial; Exchange multiple emails with other counsel regarding proposed deadlines for findings of fact and conclusions of law and post-trial briefs
2/6/18	TH	0.26	\$ 32.25	Receive and process Camco's Exhibit List; Receive and process Camco's Trial Exhibit Nos. 5001 through 5010;
2/6/18	EBZ	7.57	\$ 2,497.44	Prepare for and participate in day 6 of trial; Outline relevant facts and issues for inclusion in proposed findings of fact and conclusions of law
2/7/18	EBZ	2.15	\$ 709.50	Continue work on proposed findings of facts and conclusions of law
2/12/18	EBZ	5.16	\$ 1,702.80	Continue work on Findings of Fact and Conclusions of Law
2/13/18	EBZ	5.59	\$ 1,844.70	Continue work on Findings of Fact and Conclusions of Law
2/14/18	EBZ	4.99	\$ 1,646.04	Continue work on Findings of Fact and Conclusions of Law
2/19/18	EBZ	0.17	\$ 56.76	Exchange emails regarding stipulation for extension of deadline to submit findings of fact, conclusions of law and post-trial briefs
2/20/18	EBZ	0.26	\$ 85.14	Exchange emails regarding stipulation for extension of deadline for post-trial submissions; Review, revise and exchange stipulation drafts
2/20/18	RLP	0.20	\$70.00	Conference with Victor regarding various issues; conference with Eric regarding same; prepare and send correspondence to Victor;
2/21/18	EBZ	2.15	\$ 709.50	Continue work on findings of fact and conclusions of law
2/22/18	EBZ	3.01	\$ 993.30	Continue work on findings of fact and conclusion of law
2/23/18	EBZ	3.44	\$ 1,135.20	Continue work on findings of fact and conclusion of law
2/27/18	EBZ	3.87	\$ 1,277.10	Continue work on findings of fact and conclusion of law
3/3/18	RLP	1.50	\$525.00	Review and provide comments and suggested changes
3/3/18	EBZ	6.50	\$1,950.00	Continue work on findings of fact and conclusion of law
3/5/18	EBZ	1.50	\$450.00	Revise and finalize findings of fact and conclusions of law
3/7/18	EBZ	3.01	\$ 993.30	Revise and finalize proposed findings of fact and conclusions of law
3/14/18	EBZ	2.15	\$ 709.50	Review, study and annotate Camcos post-trial brief; Begin outline of reply
3/21/18	EBZ	5.16	\$ 1,702.80	Work on response to Camcos Post-Trial Brief
3/22/18	EBZ	3.01	\$ 993.30	Continue work on response to Camcos Post-Trial Brief
3/22/18	EBZ	2.50	\$750.00	Work on revisions to APCOs Post-Trial Brief
3/23/18	EBZ	1.50	\$450.00	Final review and revisions to response to APCO brief



## **EXHIBIT 6**

## **EXHIBIT 6**

*Steven D. Grierson*

1 **COMP**  
2 RICHARD L. PEEL, ESQ.  
3 Nevada Bar No. 4359  
4 ERIC B. ZIMBELMAN, ESQ.  
5 Nevada Bar No. 9407  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, Nevada 89074-6571  
9 Telephone: (702) 990-7272  
10 Facsimile: (702) 990-7273  
11 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
12 [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
13 *Attorneys for Plaintiff*  
14 **BRAHMA GROUP, INC.**

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 **BRAHMA GROUP, INC.**, a Nevada Corporation,  
12  
13 **Plaintiff,**  
14  
15 **vs.**

CASE NO.: A-18-777815-C  
DEPT. NO.: Department 14

16 **TONOPAH SOLAR ENERGY, LLC**, a Delaware  
17 **Limited Liability Company; DOES I through X;**  
18 **and ROE CORPORATIONS I through X,**  
19  
20 **Defendants.**

**COMPLAINT**  
*(Arbitration Exempt: Amount in  
Controversy Exceeds \$50,000.00)*

21  
22 Plaintiff, BRAHMA GROUP, INC. ("BGI"), by and through its attorneys of record, the  
23 law firm of PEEL BRIMLEY LLP, as and for its Complaint against the above-named Defendants  
24 complains, avers and alleges as follows:

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**THE PARTIES**

1. BGI is and was at all times relevant to this action (i) a Nevada limited liability  
company, duly authorized and qualified to do business in the state of Nevada, and (ii) a contractor,  
holding a Nevada State Contractor's license, which license is in good standing.

2. BGI is informed, believes and therefore alleges that Defendant Tonopah Solar  
Energy, LLC ("TSE") is and was at all times relevant to this action a foreign limited liability  
corporation, duly authorized to conduct business in Nevada.

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

1           3.     BGI and TSE are parties to a Services Agreement that establishes jurisdiction and  
2 venue in this Court with respect to all disputes between the parties. Accordingly, this Court has  
3 jurisdiction over the parties and the subject matter of this action.

4           4.     BGI does not know the true names of the individuals, corporations, partnerships  
5 and entities sued and identified in fictitious names as DOES I through X and ROE  
6 CORPORATIONS I through X (collectively, "Doe Defendants"). BGI alleges that such Doe  
7 Defendants are responsible for damages suffered by BGI as more fully discussed under the claims  
8 for relief set forth below. BGI will request leave of this Honorable Court to amend this Complaint  
9 to show the true names and capacities of each such fictitious Doe Defendant when BGI discovers  
10 such information.

11                               **FIRST CAUSE OF ACTION**  
12                               **(Breach of Contract)**

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

15           6.     On or about February 1, 2017, BGI entered a Services Agreement (the  
16 "Agreement") with TSE, wherein BGI agreed to provide a portion of the work, materials and/or  
17 equipment (the "Work") for or relating to the Crescent Dunes Concentrated Solar Power Plant  
18 ("the Project") in or near Tonopah, Nevada.

19           7.     BGI furnished the Work for the benefit of and/or at the specific instance and request  
20 of TSE and has otherwise performed its duties and obligations as required by the Agreement.

21           8.     As required by the Agreement, BGI has, on a monthly basis and in the form and  
22 manner required by the Agreement, provided numerous invoices to TSE for the Work in an amount  
23 totaling in excess of Twenty-Six Million U.S. Dollars (\$26,000,000.00).

24           9.     Pursuant to the Agreement and Nevada law, TSE agreed to and is obligated to pay  
25 BGI for its Work within no more than 45 days after TSE's receipt of BGI's invoices

26           10.    TSE breached the Agreement by, among other things:

- 27               a.    Failing and/or refusing to pay the Services Fees and other monies owed to  
28                      BGI for the Work; and

b. Otherwise failing and/or refusing to comply with the Agreement and Nevada law.

11. BGI is owed an amount in excess of Eleven Million Nine Hundred Thousand U.S. Dollars (\$11,900,000) (the "Outstanding Balance") from TSE for the Work.

12. BGI has been required to engage the services of an attorney to collect the Outstanding Balance, and BGI is entitled to recover its reasonable costs, attorney's fees and interest therefor.

**SECOND CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing)**

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

14. There is a covenant of good faith and fair dealing implied in every agreement, including the Agreement between BGI and TSE.

15. TSE breached its duty to act in good faith by performing the Agreement in a manner that was unfaithful to the purpose of the Agreement, thereby denying BGI's justified expectations.

16. Specifically, but without limitation, TSE breached its duty to act in good faith by asserting pre-textual, extra-contractual and inaccurate reasons for withholding payments long after the time required by the Agreement and Nevada law has elapsed. Also, and as part of the Outstanding Balance, TSE has improperly withheld moneys totaling in excess of One Million U.S. Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1). While that statutory provision permits withholding (on a payment-by-payment basis) a retention amount, not to exceed five percent (5%), such retention must be authorized pursuant to the Agreement, which is it not. Furthermore, and even if the Agreement allowed TSE to withhold retention from monthly payments (which it does not), TSE's withholding of retention amounts retroactively aggregated from invoices issued (and, in some cases, payments previously made) long ago constitutes extreme bad faith.

17. Due to the actions of TSE, BGI suffered damages in the amount of or exceeding the Outstanding Balance for which BGI is entitled to judgment in an amount to be determined at trial.

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

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

4 **THIRD CAUSE OF ACTION**  
5 **(Unjust Enrichment)**

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

8 20. This cause of action is being pled in the alternative.

9 21. BGI furnished the Work for the benefit of and/or at the specific instance and request  
10 of TSE.

11 22. TSE accepted, used and enjoyed the benefit of the Work.

12 23. Owner and TSE knew or should have known that BGI expected to be paid for the  
13 Work.

14 24. BGI has demanded payment of the Outstanding Balance.

15 25. To date, TSE has failed, neglected, and/or refused to pay the Outstanding Balance.

16 26. TSE has been unjustly enriched, to the detriment of BGI.

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

20 **FOURTH CAUSE OF ACTION**  
21 **(Violation of NRS 624)**

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

24 29. NRS 624.609 and NRS 624.610 (the "Statute") requires owners (such as TSE as  
25 defined by the Statute) to, among other things, (i) timely pay their prime contractors (such as BGI  
26 as defined by the Statute), and (ii) respond to payment applications and change order requests, as  
27 provided in the Statute.

28 30. TSE violated the Statute by failing or refusing to comply with the requirements set  
forth therein.

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HENDERSON, NEVADA 89074  
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1 31. By reason of the foregoing, BGI is entitled to a judgment against TSE in the amount  
2 of the Outstanding Balance as well as other remedies as defined by the applicable statutes.

3 32. BGI has been required to engage the services of an attorney to collect the  
4 Outstanding Balance due and owing for the Work, and BGI is entitled to recover its reasonable  
5 costs, attorney's fees and interest therefore.

6 WHEREFORE, BGI prays that this Honorable Court:

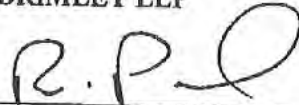
7 1. Enters judgment against TSE in the amount of the Outstanding Balance;

8 2. Enters a judgment against TSE for BGI's reasonable costs and attorney's fees  
9 incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

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

12 Dated this 17th day of July, 2018.

13 PEEL BRIMLEY LLP

14 

15 RICHARD L. PEEL, ESQ.  
16 Nevada Bar No. 4359  
17 ERIC B. ZIMBELMAN, ESQ.  
18 Nevada Bar No. 9407  
19 3333 E. Serene Avenue, Suite 200  
20 Henderson, Nevada 89074-6571  
21 Telephone: (702) 990-7272  
22 [rpeel@peelbrimley.com](mailto:rpeel@peelbrimley.com)  
23 [ezimbelman@peelbrimley.com](mailto:ezimbelman@peelbrimley.com)  
24 Attorneys for Plaintiff  
25 BRAHMA GROUP, INC.  
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28

**EXHIBIT 7**

**EXHIBIT 7**

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*Steven D. Grierson*

WEINBERG WHEELER  
HUDGINS GUNN & DIAL



**NOTC**

D. Lee Roberts, Jr., Esq.  
Nevada Bar No. 8877  
*lroberts@wwhgd.com*  
Colby L. Balkenbush, Esq.  
Nevada Bar No. 13066  
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WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 South Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
Telephone: (702) 938-3838  
Facsimile: (702) 938-3864  
*Attorneys for Defendant*  
*Tonopah Solar Energy, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BRAHMA GROUP, INC., a Nevada corporation,

Plaintiff,

vs.

TONOPAH SOLAR ENERGY, LLC, a Delaware  
limited liability company; DOES I through X; and  
ROE CORPORATIONS I through X,

Defendants.

Case No. A-18-777815-B  
Dept. No. 11

**NOTICE OF REMOVAL TO FEDERAL  
COURT**

**TO THE EIGHTH JUDICIAL DISTRICT COURT:**

PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed by  
Defendant Tonopah Solar Energy, LLC on September 10, 2018 in Nevada Federal District Court.  
A copy of the Notice of Removal is attached to this Notice as **Exhibit 1**, and is served and filed  
herewith.

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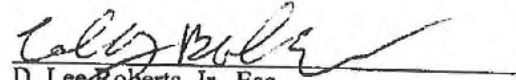
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NOTICE IS FURTHER GIVEN that the filing of the Notice of Removal, together with a copy of the notice with the Clerk of this Court, effectuates the removal of this action in accordance with 28 U.S.C. § 1446(d).

DATED this <sup>th</sup>10 day of September, 2018.

  
D. Lee Roberts, Jr., Esq.  
Colby L. Balkenbush, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Suite 400  
Las Vegas, NV 89118  
*Attorneys for Defendant*  
*Tonopah Solar Energy, LLC*



CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of September, 2018, a true and correct copy of the foregoing **NOTICE TO STATE COURT OF REMOVAL TO FEDERAL COURT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Richard L. Peel, Esq.  
Eric B. Zimbelman, Esq.  
Ronald J. Cox, Esq.  
Peel Brimley, LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
*Attorneys for Plaintiff Brahma Group, Inc.*

Cynthia S. Berman

An employee of WEINBERG, WHEELER, HUDGINS  
GUNN & DIAL, LLC

## **EXHIBIT 8**

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## **EXHIBIT 8**

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# DOC #899351

Official Records Nye County NV  
Deborah Beatty - Recorder  
09/14/2018 04:24:42 PM  
Requested By: PEEL BRIMLEY LLP  
Recorded By: MJ RPTT:\$0  
Recording Fee: \$35.00  
Non Conformity Fee: \$  
Page 1 of 8

APN 012-031-04; 012-131-03;  
APN 012-131-04; 612-141-01;  
APN 012-151-01; 012-141-01;  
APN 012-431-06; 012-140-01; 012-150-01

Recording Requested By:

Name Ronald J. Cox, Esq. - Peel Brimley LLP

Address 3333 E. Serene Ave., #200

City / State / Zip Henderson, NV 89074

Fourth Amended and/or Restated Notice of Lien

(Print Name Of Document On The Line Above)

☐ I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.

This cover page must be typed or printed. Additional recording fee applies.

AA000675

#### ***FOURTH AMENDED AND/OR RESTATED NOTICE OF LIEN***

This Fourth Amended and/or Restated Notice of Lien ("Restated Lien"):

- Amends, restates and incorporates (by this reference):
  - That certain Notice of Lien recorded by Brahma Group, Inc. ("Lien Claimant") in the official records of the County Recorder's Office for Nye County, Nevada, on April 9, 2018, as Document No. 890822 (the "Original Lien");
  - That certain Notice of First Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 16, 2018, as Document No. 891073, and as corrected by Document No. 891507 (collectively, the "First Amended Lien");
  - That certain Notice of Second Amended and Restated Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on April 24, 2018, as Document No. 891766 ("Second Amended Lien"); and
  - That certain Third Amended and/or Restated Notice of Lien recorded in the Official records of the County Recorder's Office for Nye County, Nevada, on July 19, 2018, as Document No. 896269 ("Third Amended Lien");<sup>1</sup> or
- To the extent allowed by law and to the extent the statutory period to record a notice of lien against the Work of Improvement (defined below) has not expired, shall act as a newly recorded notice of lien, which replaces and supersedes the Lien.

By way of this Restated Lien, Lien Claimant:

- Does hereby claim a lien against:
  - The real property described in Exhibit A (the "Land"), to the extent not owned by the Bureau of Land Management ("BLM") or Liberty Moly, LLC; and/or
  - The improvements located and constructed on the Land, including, but not limited to the improvements identified as the Crescent Dunes Solar Energy Plant (collectively, the "Improvements").
- Does hereby reserve the right to further amend this Restated Lien or to record a new notice of lien with respect to the Work it has furnished or may furnish on, about or for the benefit of any part of portion of the overall Work of Improvement (defined below), for which it is not paid, even if the same was previously the subject of the Lien; and

---

<sup>1</sup> The Original Lien, First Amended Lien, Second Amended Lien and Third Amended Lien are collectively referred to herein as the "Lien."

- Does not cancel, withdraw, discharge or release and expressly reserves all rights, remedies and claims that it may possess with respect to the Work it has furnished or may furnish on, about or for the benefit of the Improvements and the Work of Improvement.
1. The amount of the original contract is:
    - \$27,315,971.63.
  2. The amount of additional or changed work, materials and equipment, if any, is:
    - \$0.00.
  3. The total amount of all payments received to date is:
    - \$14,456,393.89.
  4. The amount of the lien, after deducting all just credits and offsets, is:
    - \$12,859,577.74.
  5. The name of the owner, if known, of the Improvements is:
    - Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (collectively, "TSE").
    - Upon information and belief, TSE's principal address is believed to be 520 Broadway, 6<sup>th</sup> Floor, Santa Monica, CA 90401.
  6. The name of the owner, if known, of the Land is:
    - As to APNs 612-141-01, 012-031-04, 012-131-03, 012-131-04:
      - TSE, with its principal address at 520 Broadway, 6<sup>th</sup> Floor, Santa Monica, CA 90401.
    - As to APNs 012-151-01 and 012-141-01:
      - The Bureau of Land Management ("BLM"), with its principal address at 1340 Financial Blvd., Reno, NV 89502.
    - As to APN 012-431-06:
      - Liberty Moly, LLC, with its principal address at 790 Commercial St. #B, Elko, NV 89801-3858.
    - As to APNs 012-140-01 and 012-150-01:
      - Unknown.
  7. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is:
    - TSE, with its principal address at 520 Broadway, 6<sup>th</sup> Floor, Santa Monica, CA 90401.
  8. A brief statement of the terms of payment of the lien claimant's contract is:
    - As required by Nevada law, but in no event later than 45 days after the submission of an invoice.

9. A description of the Land and the Improvements thereon to be charged with the Restated Lien (the "Work of Improvement") is:
- See Attached Exhibit A.

**BRAHMA GROUP, INC.**


By   
Print Name: Sean Davis  
Title: President and Chief Operating Officer

STATE OF UTAH                    )  
  ) ss:  
COUNTY OF SALT LAKE    )


Sean Davis, being first duly sworn on oath according to law, deposes and says:

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

**BRAHMA GROUP, INC.**

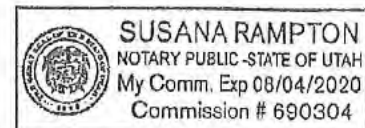
By   
Print Name: Sean Davis  
Title: President and Chief Operating Officer

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of September 2018, by Sean Davis, President and Chief Operating Officer of Brahma Group, Inc.

  
\_\_\_\_\_  
NOTARY PUBLIC In and For Said  
County & State

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN  
TO:

*Brahma Group, Inc.*  
c/o PEEL BRIMLEY LLP  
3333 E. Serene Avenue Suite 200  
Henderson, NV 89074-6571



AA000678

## EXHIBIT A

### Improvements:

The Crescent Dunes Solar Energy Project is a 110 MW plant constructed on the Land in Tonopah, Nevada.

### Land:

Nye County Assessor Parcels:

APN	Owner or Reputed Owner
012-031-04	Tonopah Solar Energy, LLC
012-131-03	Tonopah Solar Energy, LLC
012-131-04	Tonopah Solar Energy, LLC
012-140-01	Unknown
012-150-01	Unknown
012-141-01	Bureau of Land Management
012-431-06	Liberty Moly, LLC
012-151-01	Bureau of Land Management
612-141-01	Tonopah Solar Energy, LLC

AND MORE PARTICULARLY DESCRIBED BY DOCUMENTS PREPARED BY OR FOR TONOPAH SOLAR ENERGY, LLC AS FOLLOWS:

All that land situated in the County of Nye, State of Nevada, more particularly described as follows:

### PARCEL 1: GEN-TIE LINE (NVN-087933)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

- Section 2: The SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ ;
- Section 11: The W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;
- Section 14: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;
- Section 15: The E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 22: The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 27: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$ ;
- Section 28: The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 33: The NW  $\frac{1}{4}$  NE  $\frac{1}{4}$

PARCEL 2: SOLAR ENERGY PROJECT (NVN-086292)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

- Section 33: The SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;
- Section 34: The W  $\frac{1}{2}$ , the SE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;
- Section 35: The SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

All that property lying within Township 4 North, Range 41 East, M.D.B.&M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

- Section 2: Lot 4 and the W  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$
- Section 3: The N  $\frac{1}{2}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the N  $\frac{1}{2}$  S  $\frac{1}{2}$  SW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;
- Section 4: The NE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  of Lot 4 and the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

PARCEL 3:

ANACONDA-MOLY SUBSTATION EXPANSION (NVN-089273)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 2: The E  $\frac{1}{2}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NE  $\frac{1}{4}$

And

A TRACT OF LAND SITUATED IN LOT 2 OF SECTION 2, TOWNSHIP 5 NORTH, RANGE 41 EAST, M.D.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°34'27" WEST, 331.44 FEET TO THE NORTHWEST CORNER OF THE EAST HALF (E  $\frac{1}{2}$ ) OF THE NORTHEAST QUARTER (NE  $\frac{1}{4}$ ) OF THE SOUTHWEST QUARTER (SW  $\frac{1}{4}$ ) OF THE NORTHEAST QUARTER (NE  $\frac{1}{4}$ ) OF SAID SECTION 2;

THENCE ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE THEREOF, NORTH 00°20'22" EAST, 663.03 FEET; THENCE SOUTH 88°42'55" EAST, 331.39 FEET TO THE EAST LINE OF SAID LOT 2; THENCE ALONG SAID EAST LINE, SOUTH 00°20'11" WEST, 663.85 FEET TO THE POINT OF BEGINNING.

PARCEL 4-1:

The North One Half (N ½) of the Southeast Quarter (SE ¼) and the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section 12 in Township 6 North, Range 40 East, M.D.B.&M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel 4 of Parcel Map recorded July 25, 1980, as File No. 26731, Nye County, Nevada Records.

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel Two (2) of Parcel Map recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

Together with an easement for the purpose of installing and maintaining an irrigation well, more particularly described as follows:

Commencing at the Northeast corner of Section 13, Township 6 North, Range 40 East, M.D.B.&M.;

Thence South 200 feet at the True Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

Thence Easterly for 20 feet, at the true point of beginning.

PARCEL 4-3

East Half (E ½) of the Northwest Quarter (NW ¼) of Section 18, Township 6 North, Range 41 East, M.D.B.&M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel One (1) of Parcel Maps, recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

PARCEL 5:

All land defined as "Servient Property," described and depicted in that certain document entitled "Grant of Generation-Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B.&M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.

### CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of September 2018, I served a true and correct copy of Brahma Group, Inc.'s Fourth Amended and/or Restated Notice of Lien on the interested parties by serving the same in the following manner to the addresses listed below:

<b>OWNER</b>	<b>MANNER OF SERVICE</b>
BLM Washington Office 1849 C Street NW, Rm 5665 Washington, DC 20240	Certified Mail – 7017 3040 0000 8289 7541 Regular Mail
BLM Nevada Office 1340 Financial Blvd. Reno, NV 89502	Certified Mail – 7017 3040 0000 8289 7558 Regular Mail
Bureau of Land Management Tonopah Field Station PO Box 911 Tonopah, NV 89049	Certified Mail – 7017 3040 0000 8289 7565 Regular Mail
Liberty Moly, LLC 790 Commercial St., #B Elko, NV 89801-3585	Certified Mail – 7017 3040 0000 8289 7572 Regular Mail
Liberty Moly, LLC c/o Ross Delipkau 50 West Liberty Street Reno, NV 89501	Certified Mail – 7017 3040 0000 8289 7589 Regular Mail
<b>OWNER/LESSEE</b>	
Tonopah Solar Energy, LLC c/o Kevin B. Smith, President 520 Broadway, 6 <sup>th</sup> Floor Santa Monica, CA 90401	Certified Mail – 7017 3040 0000 8289 7596 Regular Mail
Tonopah Solar Energy LLC c/o CSC Services of Nevada Inc. 2215 B Renaissance Drive Las Vegas, NV 89119	Certified Mail – 7017 3040 0000 8289 7602 Regular Mail
Tonopah Solar Energy, LLC c/o SolarReserve LLC Attn: Rob Howe 7881 W. Sahara Avenue, Suite 230 Las Vegas, NV 89117	Certified Mail – 7017 3040 0000 8289 7619 Regular Mail
D. Lee Roberts, Jr., Esq. Colby L. Balkenbush, Esq. Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 S. Rainbow Blvd., Suite 400 Las Vegas, NV 89118	Certified Mail – 7017 3040 0000 8289 7626 Regular Mail

  
Employee of PFEI. BRIM FV 118

AA000683

