IN THE SUPREME COURT OF THE STATE OF NEVADA

HELIX ELECTRIC OF NEVADA, LLC Appellant/Cross-Respondent vs. APCO CONSTRUCTION, INC., A NEVADA CORPORATION, Respondent/Cross-Appellant.	**Case No. 80508** District Court Case No. A606429

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APPENDIX TO DOCKETING STATEMENT
VOLUME 4

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APPENDIX TO DOCKETING STATEMENT
VOLUME 4

EX.	DOCUMENTS	BATES STAMP NO.	VOL.
1.	Eighth Judicial District Court Docket in Case No. A587168 and consolidated cases in A571228 (PART 1 of 2)	0001-0595	1, 2 & 3
2.	Notice of Entry of Order and Order (1) Granting APCO Construction, Inc's Motion for Attorneys' Fees and Costs (2) Granting APCO Construction, Inc.'s Memorandum of Costs in Part, (3) Granting Helix Electric of Nevada LLC's Motion to Retax in Part and Denying in Part, (4) Granting Plaintiff In Intervention National Wood Products LLC's Motion to Retax in Part and Denying in Part and (5) Granting National Wood Products, Inc's Motion to File a Surreply	0596-0610	3
3.	Chart outlining each the claims brought by and against the parties to Eighth Judicial District Court Case No. A587168 and how each claim was resolved	0611-0628	3
4.	Accuracy Glass & Mirror Co.'s First Amended Complaint	0629-0644	3
5.	APCO Construction, Inc.'s Counter and Claim Claims to Interstate Plumbing and Air Conditioning. Inc's Third Party Complaint	0645-0669	3
6.	Bruin Painting Corp.'s Third Party Complaint	0670-0682	3
7.	Cactus Rose Construction, Inc.'s Third Party Complaint dated April 1, 2010	0683-0696	3
8.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Dave Peterson Framing	0697-0721	3
9.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Helix Electric	0722-0744	4

10.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Accuracy Glass	0745-0764	4
11.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Bruin Painting	0765-0784	4
12.	Camco Pacific Construction Co.'s Answer and Counterclaim re: WRG Design, Inc.	0785-0805	4
13.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Cactus Rose Construction	0806-0823	4
14.	Camco Pacific Construction Co.'s Answer and Counterclaim re: Heinaman Contract Glazing	0824-0844	4
15.	Camco Pacific Construction Co.'s Amended Answer and Counterclaim re: HD Supply & Waterworks	0845-0851	4
16.	HD Supply Waterworks, LP's Third Party Complaint	0852-0869	4
17.	Helix Electric of Nevada, LLC's Third Party Complaint	0870-0885	4
18.	Heinaman Contract Glazing's Third Party Complaint	0886-0898	4
19.	Interstate Plumbing and Air Conditioning, LLC's Third Party Complaint	0899-0916	4
20.	WRG Design, Inc.'s Third Party Complaint	0917-0933	4
21.	April 5, 2010 Voluntary Dismissal	0934-0941	4
22.	May 26, 2010 Order Striking Gemstone's Answer and Counterclaims and Entering Default	0942-0944	4
23.	May 7, 2012 Order and Judgement on Scott Financial's Motion for Summary Judgment as to Priority of Liens	0945-0958	4
24.	April 4, 2013 Stipulation and Order to Dismiss	0959-0969	5
25.	October 7, 2016 Special Master Report Regarding Remaining Parties to the Litigation, Special Master Recommendation, and District Court Order	0970-0974	5

26.	September 20, 2017 Order Granting Plaintiff's Motion to Dismiss	0975-0977	5
27.	September 20, 2017 Stipulation and Order of Dismissal of All Claims Relating to Cardno WRG, Inc.	0978-0981	5
28.	February 5, 2018 Stipulation and Order to Dismiss Third Party Complaint of Interstate Plumbing & Air Conditioning, LLC Against APCO Construction With Prejudice	0982-0984	5
29.	April 25, 2018 4.25.18 Findings of Fact and Conclusions of Law as to the Claims of Helix Electric and Cabenetec Against APCO	0985-1056	5
30.	April 26, 2018 Findings of Fact and Conclusions of Law as to the Claims of Cactus Rose Construction Co., Inc.	1057-1069	5
31.	April 26, 2018 Findings of Fact and Conclusions of Law as to the Claims of Heinaman Contract Glazing	1070-1083	5
32.	April 26, 2018 Findings of Fact and Conclusions of Law as to the Claims of Helix Electric of Nevada, LLC Against Camco Pacific Construction, Inc.	1084-1094	5
33.	July 19, 2018 Order Granting Motion to Deposit Bond Penal Sum With Court, Exoneration of Bond, and Dismissal	1095-1097	5
34.	July 26, 2018 Order Approving Distribution of Fidelity and Deposit Company of Maryland's Bond	1098-1100	5
35.	Order Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	1101-1108	5

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9(d)(b)(e), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this 4th day of March, 2020, I caused the true and correct copy of this document to be served electronically through the Court's e-filing system to the following the attorney(s) associated with this case:

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Attorneys for Appellant/Cross Respondent Helix Electric of Nevada, LLC

/s/ Elizabeth J. Bassett
An employee of Fennemore Craig P.C.

EXHIBIT "9"

EXHIBIT "9"

ORIGINAL

ANS/CTCM
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Fidelity and Deposit Company of Maryland

FILED
Sep 10 4 22 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

08A571228
330564

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SEP 10 2009

HELIX ELECTRIC OF NEVADA, LLC, a Nevada limited-liability company, d/b/a HELIX ELECRTRIC,

Plaintiff-in-Intervention,

vs.

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

Defendants-in-Intervention.

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

Counterclaimant,

vs.

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

Counterdefendants.

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

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

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

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

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

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

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

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

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

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

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

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

expressly set forth hereinabove.

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

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and fair dealing are barred by the statute of frauds.

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

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

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

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

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

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

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

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

19. There is no justiciable case or controversy as between Plaintiff and Cameo and/or Fidelity.

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

21. Cameo's performance on any contract was excused by Plaintiff's material breach thereof.

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

23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

FIRST CAUSE OF ACTION

(Abuse of Process)

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Contract - In the Alternative)

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

29. As a result of its breach of the covenant of good faith and fair dealing, Helix has injured Cameo in an amount in excess of $10,000.00.

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

FOURTH CAUSE OF ACTION

(Declaratory Relief)

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

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

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

FIFTH CAUSE OF ACTION

(Attorneys' Fees)

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

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 7th day of September 2009.

WOODBURY, MORRIS & BROWN

#11657 for

STEVEN L. MORRIS, ESQ.
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Henderson, NV 89074-6178
Attorneys for Camco and Fidelity

CERTIFICATE OF MAILING

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

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

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

Barbara Andrews-Tappe

An Employee of Woodbury, Morris & Brown

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EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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Office: 701.255.3215 • Fax: 701.223.7280
A licensed and bonded corporate finance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
E&E Fire Protection LLC
7180 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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

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Exhibit "A"

Scott
Financial Corporation

December 1, 2008

Lee Duckstein
CabineTec Inc.
2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

I understand the MHW draw which is in the review process at SFC includes a payment amount of approximately $598,475.00 to CabineTec Inc. and its corresponding suppliers. I believe the Developer approved payment amount is $483,684.32.

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

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

Sincerely,

Brad J. Scott
President

16010 Sundown Drive ! Bismarck, ND 58503
Office: 701.255.2215 ! Fax: 701.223.7299
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Exhibit "B"

Jennifer Olivares

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

Jen:

As of right now11AM CST 12/16/08 the October Draw is still on permanent hold.

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

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

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

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

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

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

Thanks.

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

1/2009

Exhibit "B"

Jennifer Olivares

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
Scott Financial Corporation
15010 Sundown Drive
Bismarck, ND 58503
W 701.255.2215
M 701.220.3899
F 701.223.7299
brad@scottfinancialcorp.com

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

Exhibit B

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

EXHIBIT "10"

EXHIBIT "10"

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

FILED

SEP 11 5 25 PM '09

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation

Counterclaimant,

vs.

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

Counterdefendant.

Case No: A587168
Dept. No: XIII

Consolidated with A571228

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

09A587168
389415

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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Henderson, Nevada 89074
(702)304-0777 ◆ Fax (702)304-0779

"Project").

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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Henderson, Nevada 89074
(702) 933-4070 • Fax (702) 933-4072

reference and further allege:

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

David B. Lee #11059 for

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

WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702)934-4777 • Fax (702)933-4811

CERTIFICATE OF MAILING

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

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

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

An Employee of
Woodbury, Morris & Brown

WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 562-8171 • Fax (702) 990-7273

EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
[redacted]
6930 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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

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Exhibit "A"

Scott
Financial Corporation

December 1, 2008

Leo Duckstein
[redacted]
2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

[redacted]

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

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

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

Sincerely,

Brad A. Scott
President

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

A licensed and bonded corporate finance company.

Exhibit B

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

Exhibit "B"

Jennifer Olivares

[redacted]rad@scottfinancialcorp.com]
Sent: Tuesday, December 16, 2008 9:38 AM
[redacted]
Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'
Subject: ManhattanWest Status
Importance: High

Jan:

As of right now11AM CST 12/16/08 the October Draw is still on permanent hold.

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

I anticipate this final decision will however likely lead to [redacted]

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

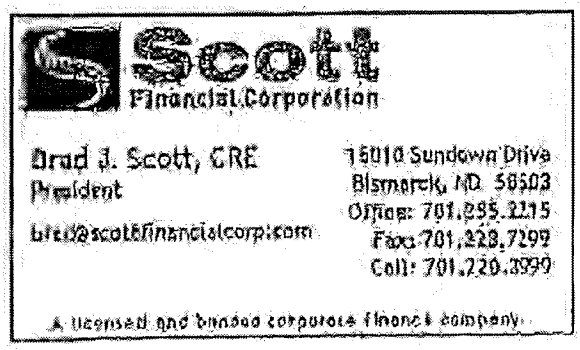
SFC has requested our legal counsel to address the return wire from NCS to SFC discussed yesterday.

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

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

Thanks.

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



1/1/2009

Exhibit "B"

Jennifer Olivares

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

Jennifer & Anne!

[redacted] is hereby instructed by SFC to wire the previously advanced, but undisbursed funds held on the annual Nonrefundable Interest [redacted] back to SFC [redacted] per wire instructions.

The amount includes the current Holdback Payment Requested [redacted] as has not been approved by SFC for disbursements.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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

Scott Financial Corporation

Brad J. Scott, CRE
President
brad@scottfinancialcorp.com

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Cell: 701.220.3999

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

4/1/2009

EXHIBIT "11"

EXHIBIT "11"

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

FILED
SEP 11 5 22 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

09A587168
389434

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

BRUIN PAINTING CORPORATION, a California corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

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

Counterclaimant,

vs.

BRUIN PAINTING CORPORATION, a California corporation; and DOES I through X, inclusive,

Counterdefendants.

WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
(702) 939-0772 ◆ Fax (702) 939-0778

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

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

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

and therefore denies each and every allegation contained therein.

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

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

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

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

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

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

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

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

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

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

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

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Henderson, Nevada 89074
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14. As to Paragraph 64 Camco admits that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but denies the remaining allegations therein.

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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Henderson, Nevada 89074
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8. The claims of Plaintiff have been waived as a result of the acts and the conduct of the Plaintiff.

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

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

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

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

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

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

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

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

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

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

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

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

21. Plaintiff has failed to mitigate its damages.

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

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

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

WHEREFORE, Third Party Defendant Camco prays as follows:

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

2. Counterdefendant BRUIN PAINTING CORPORATION, a California corporation (hereinafter referred to as "Bruin") is and was at all times relevant to this action, a corporation conducting business in Clark County, Nevada.

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

5. On or about September 8, 2008, Camco and Bruin entered into a Subcontract

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Henderson, Nevada 89074
(702) 933-0777 ✦ Fax (702) 933-0778

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

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

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

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

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

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

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

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

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reasonable attorneys' fees and costs therefor.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Cameo prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

Donald Blue #11-59 for

STEVEN L. MORRIS, ESQ.
Nevada Bar No. 7454
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Cameo

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

CERTIFICATE OF MAILING

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

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

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

An Employee of Woodbury, Morris & Brown

WOODBURY, MORRIS & BROWN
761 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89014
(702) 933-9333 • Fax (702) 933-9310

EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In December 2008, SFC sent correspondence to NCS that due to uncured loan defaults by Gemstone, a decision was made to cease all funding on the Project. The communications regarding this decision are attached to this letter as **Exhibit B**. SFC further requested that NCS return funds in the amount of $993,886.72. NCS returned the funds requested and no additional payment for previous work performed was disbursed to Gemstone, Camco, or any of the trade contractors for the Project. Camco was not a part of these transactions, was not a participant in these decisions, and was unaware of such decisions until the above notice was sent to NCS.

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
[redacted]
8310 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

The amount in processing includes a payment of $1,092,121.94 to E&E Fire Protection LLC and its corresponding suppliers.

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

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

Sincerely,

Brad J. Scott
President

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

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Exhibit "A"

Scott
Financial Corporation

December 1, 2008

Leo Duckstein
Gemstone Tec Inc
2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

We anticipate communicating to the Corporation SFC's decision regarding the draw request before the end of business on December 2nd. Additional information may be required.

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

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

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

Sincerely,

Eliot J. Scott
President

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

A licensed and bonded corporate finance company.

Exhibit B

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

Exhibit "B"

Jennifer Olivares

[redacted]brad@scottfinancialcorp.com]

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

[redacted]

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

Subject: ManhattanWest Status

Importance: High

Jen:

As of right now11AM CST 12/16/08 the October Draw is still on permanent hold.

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

I anticipate this final decision will however likely lead to [redacted]

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

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

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

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

Thanks.

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

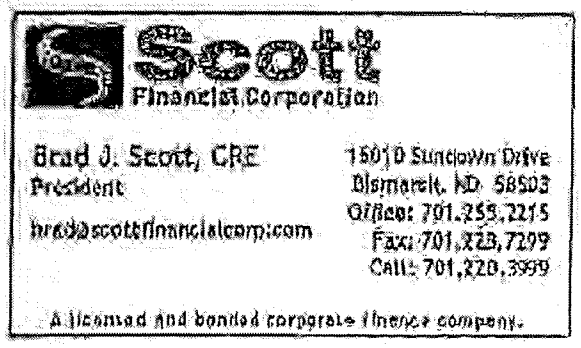


Exhibit B

Jennifer Olivares

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

Jennifer & Anne:

[redacted]

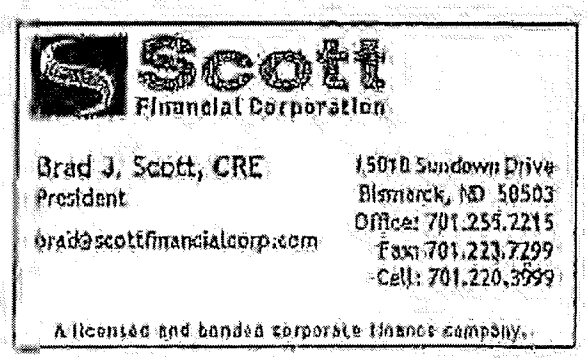
[redacted]

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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



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

EXHIBIT "12"

EXHIBIT "12"

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

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

FILED
Sep 11 5 21 PM '09
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with A571228

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

09A587168
389442

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

WRG DESIGN, INC., a Delaware corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendants.

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

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

Docket 80508 Document 2020-08758

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

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

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

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

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

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

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

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

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

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

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

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

the remaining allegations therein.

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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NRS 624.273.

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

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Morris & Brown complains as follows:

JURISDICTIONAL ALLEGATIONS

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

18. Cameo has been required to engage the services of the law firm of

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

WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a reasonable attorneys' fees and costs therefor.

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

Richard Blakey #10594 for

STEVEN L. MORRIS, ESQ.
Nevada Bar No. 7454
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Camco and Fidelity

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CERTIFICATE OF MAILING

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

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

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

An Employee of Woodbury, Morris & Brown

EXHIBIT A 0796

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7209

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
[redacted]
8380 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7209
A licensed and bonded corporate finance company.

Exhibit "A"

Scott Financial Corporation

December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein

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

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

The October Draw was submitted to SFC late last week.

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

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

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

Although we remain confident SFC will process the draw request in a timely manner, we do not control the review process and cannot guarantee the exact timing of the funding.

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

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

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

Sincerely,

Brad J. Scott
President

15010 Sundown Drive • Bismarck, ND 58503
Office: 701.255.2215 • Fax: 701.223.7299
A licensed and bonded corporate finance company.

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

As of right now11AM CST 12/16/08 the October Draw is still on permanent hold.

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

I anticipate this final decision will however likely lead to [redacted]

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

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

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

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

Thanks.

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

Scott Financial Corporation

Brad J. Scott, CRE
President
brad@scottfinancialcorp.com

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Bismarck, ND 58503
Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

A licensed and bonded corporate finance company.

Exhibit "B"

Jennifer Olivares

[redacted](brad@scottfinancialcorp.com)
Sent: Monday, December 15, 2008 3:00 PM
[redacted]
Cc: 'Alex Edelstein'; 'Peter Smith'; 'Jim Horning'; dperry@camcopacific.com
Subject: FW: ManhattanWest
Importance: High
Attachments: Document.pdf; 09004-20-04 Billing #4 2008-12-12.pdf; Wiring Instructions TO SFC at NSB.XLS

Jennifer & Anne:

[redacted]

[redacted]

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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

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

EXHIBIT "13"

EXHIBIT "13"

Electronically Filed
04/13/2010 11:14:24 AM

CLERK OF THE COURT

ANS/CTCM
Steven L. Morris, Esq.
Nevada Bar No. 7454
Zachariah B. Parry, Esq.
Nevada Bar No. 11677
WOODBURY, MORRIS & BROWN
701 N. Green Valley Parkway, Suite 110
Henderson, Nevada 89074
slmorris@wmb-law.net
zparry@wmb-law.net
(702) 933-0777
Attorneys for Camco Pacific Construction Company, Inc. and Fidelity and Deposit Company of Maryland

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

1. Camco and Fidelity are without information or knowledge sufficient to ascertain the truth of the allegations contained in Paragraphs 7, 34, 35, and 39 of Plaintiff's Complaint, and therefore deny each and every allegation contained therein.

2. Camco and Fidelity admit the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 38, 58, 59, 62, and 63 of Plaintiff's Complaint.

3. Camco and Fidelity deny each and every allegation contained in Paragraphs 9, 10, 11,

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12, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 36, 38, 41, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, and 65 of Plaintiff's Complaint.

4. As to Paragraph 17, Camco and Fidelity admit that there is a covenant of good faith and fair dealing implied in every agreement, and admit that Camco acted fairly and in good faith. Camco and Fidelity deny all remaining allegations therein.

5. As to Paragraph 40, Camco and Fidelity admit that Helix's claim against the Property is superior to the claim(s) of SFC, but deny the remaining allegations contained therein.

6. As to Paragraph 52, Camco and Fidelity admit that NRS §§ 624.606 to 624.630 speak for themselves, but deny the remaining allegations contained therein.

7. As to Paragraphs 60 and 61, Camco and Fidelity admit that the Mezzanine Deeds of Trust Subordination Agreement speaks for itself, but deny the remaining allegations contained therein.

8. As to paragraph 64, Camco and Fidelity admit that a dispute has arisen, and an actual controversy now exists, but deny the remaining allegations contained therein.

9. As to Paragraphs 8, 16, 21, 30, 37, 42, 51, and 57 of Plaintiff's Complaint, Camco and Fidelity repeat and reallege the answers to paragraphs 1 through 65 as though fully set forth herein.

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

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

AFFIRMATIVE DEFENSES

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

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which relief can be granted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

Counterclaimant CAMCO PACIFIC CONSTRUCTION COMPANY, INC. (hereinafter

"Camco") by and through its attorney, Steven L. Morris, Esq. of the law firm of Woodbury, Morris & Brown complains as follows:

JURISDICTIONAL ALLEGATIONS

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

2. Counterdefendant CACTUS ROSE CONSTRUCTION, an Arizona corporation (hereinafter referred to as "Cactus") is and was at all times relevant to this action, a corporation conducting business in Clark County, Nevada.

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

FIRST CAUSE OF ACTION

(Abuse of Process)

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Contract - In the Alternative)

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

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

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

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

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

20. All payments made to subcontractors and suppliers on the Project were made directly by

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Gemstone through Nevada Construction Services. (See Exhibit A, attached hereto and incorporated herein by this reference).

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

22. Cactus Rose agreed and expressly acknowledged that it assumed the risk of non-payment by the Owner.

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

30. Camco has been required to engage the services of the law firm of

WOODBURY, MORRIS & BROWN to prosecute this matter and Camco is entitled to a reasonable attorneys fees and costs therefor.

FOURTH CAUSE OF ACTION

(Declaratory Relief)

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

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

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

FIFTH CAUSE OF ACTION

(Attorney's Fees)

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

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

36. In this case, pursuant to NRS Chapter 30, the Uniform Declaratory Judgment Act, and more particularly, NRS 30.030 and NRS 30.040, Camco has requested that this Court

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declare the rights, status and relationships between the parties under the Agreement. Camco has been forced to retain the services of an attorney and has incurred costs in seeking such declaratory relief from this Court.

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 13th day of April 2010.

WOODBURY, MORRIS & BROWN

/s/ Zachariah B. Parry
Steven L. Morris, Esq.
Nevada Bar No. 7454
Zachariah B. Parry, Esq.
Nevada Bar No. 11677
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Camco and Fidelity

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CERTIFICATE OF MAILING

I hereby certify that on the 13th day of April 2010, I served a copy of the **ANSWER TO CACTUS ROSE'S STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND COMPLAINT AND CAMCO PACIFIC CONSTRUCTION COMPANY INC.'S COUNTERCLAIM** on the interested parties by serving the same to the following parties in the below-indicated way:

Counsel of Record	Method of Service
Brian K. Berman, Esq. 721 Gass Avenue Las Vegas, NV 89101 *Attorney for Ready Mix, Inc.* Fax: 382-6450 E-mail: b.k.berman@att.net	☐ U.S. Mails, first class postage fully prepaid ☐ Facsimile at the number listed ■ Electronic transmission (Wiznet) ☐ Personal Service / Hand delivery
Andrew F. Dixon, Esq. Jonathan W. Barlow, Esq. BOWLER, DIXON & TWITCHELL 400 North Stephanie #235 Henderson, NV 89014 *Attorneys for The Pressure Grout Company* Fax: 260-8983 E-mail: andrew@bdtlawyers.com	☐ U.S. Mails, first class postage fully prepaid ☐ Facsimile at the number listed ■ Electronic transmission (Wiznet) ☐ Personal Service / Hand delivery
Richard Dreitzer, Esq. BULLIVANT HOUSER BAILEY PC 3883 Howard Hughes Pkwy., Suite 550 Las Vegas, Nevada 89169 *Attorneys for Plaintiff Wiss, Janney, Elstner Associates, Inc.* Fax: 650-2995 E-mail: richard.dreitzer@bullivant.com	☐ U.S. Mails, first class postage fully prepaid ☐ Facsimile at the number listed ■ Electronic transmission (Wiznet) ☐ Personal Service / Hand delivery
Cabinetec, Inc. 2711 East Craig Road North Las Vegas, NV 89030-3367	☐ U.S. Mails, first class postage fully prepaid ☐ Facsimile at the number listed ■ Electronic transmission (Wiznet) ☐ Personal Service / Hand delivery
Matthew Q. Callister, Esq. CALLISTER & REYNOLDS 823 S. Las Vegas Blvd. South, 5th Floor Las Vegas, NV 89101 *Attorney for Executive Plastering, Inc.* Fax: 385-2899 E-mail: www.cllister-reynolds.com	☐ U.S. Mails, first class postage fully prepaid ☐ Facsimile at the number listed ■ Electronic transmission (Wiznet) ☐ Personal Service / Hand delivery

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Counsel of Record	Method of Service
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/s/ Zachariah B. Parry
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EXHIBIT "14"

EXHIBIT "14"

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Fidelity and Deposit Company of Maryland

FILED

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

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HEINAMAN CONTRACT GLAZING, a California corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

12. As to Paragraph 63 Cameo admits that the Mezzanine Deeds of Trust

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

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Attorneys for Camco and Fidelity

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CERTIFICATE OF MAILING

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

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

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

An Employee of Woodbury, Morris & Brown

EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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A licensed and bonded corporate finance company

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott Financial Corporation

November 4, 2008

Mr. Mike Evans
[redacted]
8360 South Valley View, Suite 110
Las Vegas, NV 89118

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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Exhibit "A"

Scott Financial Corporation

December 1, 2008

Leo Ducksteln
[redacted]
2711 E. Craig Road, Suite A
North Las Vegas, NV 89030

RE: ManhattanWest Funding

Mr. Ducksteln:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

[redacted]

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

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

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

Sincerely,

Bill J. Scott
President

Exhibit B

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

Exhibit "B"

Jennifer Ollvares

From: [redacted] (brad@scottfinancialcorp.com)
Sent: Tuesday, December 16, 2008 9:38 AM
To: [redacted]
Cc: 'Margo Scott'; 'Jason Ulmer'; Patricia Curtis; 'Tim James'
Subject: ManhallanWest Status
Importance: High

Jen:

As of right now17AM CST 12/16/08 the October Draw is still on permanent hold.

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

I anticipate this final decision will however likely lead to [redacted]

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

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

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

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

Thanks.

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

Scott Financial Corporation

Brad J. Scott, CRE
President
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Cell: 701.220.3999

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4/1/2009

Exhibit B

Jennifer Olivares

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

Jennifer & Anne:

[redacted] hereby instructed by SFC to wire the previously advanced but undispersed funds held on [redacted] in the amount of $[redacted] back to SFC using the attached wiring instructions.

Please apply this payment to the current Horizon Bank Loan balance of $[redacted] as it has not been received by SFC until this date.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks,

Brad J. Scott
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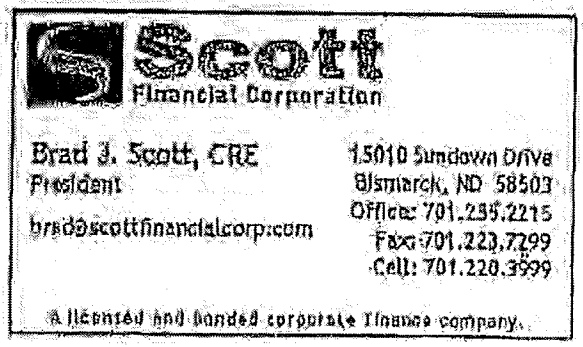
F: 701.223.7299
bjs@scottfinancialcorp.com



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

4/1/2009

EXHIBIT "15"

EXHIBIT "15"

Electronically Filed
04/28/2010 05:30:57 PM

CLERK OF THE COURT

ANS
Steven L. Morris, Esq.
Nevada Bar No. 7454
Zachariah B. Parry, Esq.
Nevada Bar No. 11677
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slmorris@wmb-law.net
zparry@wmb-law.net
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Attorneys for
Camco Pacific Construction Company, Inc. and
Fidelity and Deposit Company of Maryland

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Plaintiff has failed to mitigate its damages.

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

25. Fidelity alleges that its liability, if any exists, which is expressly denied, is limited to the penal sum of the applicable Contractor's License Bond.

26. Any license or surety bond executed by Fidelity was limited to the classification of contracting activities as set forth in its Nevada State Contractor's License Bond.

27. The liability of Fidelity if any, is limited to its obligations as set forth in its surety bond agreement.

28. The liability of Fidelity if any, is limited to the statutory liability as set forth in NRS 624.273.

29. Fidelity is not liable for the acts or omissions of persons, individuals, firms, partnerships, corporations, associations, or other organizations that are not its named principal.

30. The damages sustained by Plaintiff, if any, were caused by the acts of third

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persons who were not agents, servants, or employees of Fidelity, or its principal, and who were not acting on behalf of Fidelity or its principal in any manner or form, and as such, Fidelity or its principal are not liable in any manner to the Plaintiff.

31. Fidelity is not liable for the acts or omissions of persons, individuals, firms, partnerships, corporations, associations, or other organizations that are not its named principal.

32. Plaintiff's suit against Fidelity is not timely brought under the terms of the bond because no judgment or court decree has been entered against its principal.

33. It has been necessary for Camco and Fidelity to retain the services of the law offices of Woodbury, Morris & Brown, attorneys at law, for the purpose of defending this action, and Camco is entitled to payment of all costs, fees, and expenses associated with and/or arising out of the defense of this action.

34. Pursuant To NRCP 8, all possible affirmative defenses may not have been alleged herein, inasmuch as sufficient facts were not available after reasonable investigation and inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserves the right to amend their Answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Third Party Defendants Camco and Fidelity pray as follows:

1. That Plaintiff take nothing by way of its Complaint;

2. For an award of reasonable attorneys' fees and costs for having to defend this action; and

3. For such other and further relief as the Court deems just and proper.

DATED this 26th day of April 2010.

WOODBURY, MORRIS & BROWN

/s/ Zachariah B. Parry
Steven L. Morris, Esq.
Nevada Bar No. 7454
Zachariah B. Parry, Esq.
Nevada Bar No. 11677
701 N. Green Valley Pkwy., Suite 110
Henderson, NV 89074-6178
Attorneys for Camco and Fidelity

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of April 2010, I served a copy of the **AMENDED ANSWER TO HD SUPPLY & WATERWORKS, LP'S STATEMENT OF FACTS CONSTITUTING LIEN AND THIRD-PARTY COMPLAINT** by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

/s/ Zachariah B. Parry
An Employee of Woodbury, Morris & Brown

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Henderson, Nevada 89074
(702) 933-0777 ♦ Fax (702) 933-0778

EXHIBIT "16"

EXHIBIT "16"

STMT
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
MICHAEL T. GEBHART, ESQ.
Nevada Bar No. 7718
DALLIN T. WAYMENT, ESQ.
Nevada Bar No. 10270
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rpeel@peelbrimley.com
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dwayment@peelbrimley.com
Attorneys for HD Supply Waterworks, LP

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06/24/2009 07:14:15 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP, a Florida limited partnership,

Plaintiff in Intervention,

vs.

APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; JEFF HEIT PLUMBING CO, LLC,

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

HD SUPPLY WATERWORKS' AMENDED STATEMENT OF FACTS CONSTITUTING A NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

09A587168
211018

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
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17

a Nevada limited-liability company; E & E FIRE PROTECTION, LLC, a Nevada limited liability company; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, a North Dakota corporation ; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

HD SUPPLY WATERWORKS, LP ("HD Supply") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third-Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. HD Supply is and was at all times relevant to this action a Florida limited partnership, duly authorized, licensed and qualified to do business in Clark County, Nevada.

2. HD Supply is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

3. The whole of the Property is reasonably necessary for the convenient use and occupation of the improvements.

4. HD Supply is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

5. HD Supply is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

6. HD Supply is informed and believes and therefore alleges that Defendant JEFF HEIT PLUMBING CO, LLC, a Nevada limited-liability company ("JHPC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

7. HD Supply is informed and believes and therefore alleges that Defendant E & E FIRE PROTECTION, LLC, a Nevada limited liability company ("E&E"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

8. HD Supply is informed and believes and therefore alleges that Defendant, FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

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9. HD Supply is informed and believes and therefore alleges that Defendant, OLD REPUBLIC SURETY (hereinafter "JHPC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

10. HD Supply is informed and believes and therefore alleges that Defendant, PLATTE RIVER INSURANCE COMPANY (hereinafter "E&S Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

11. HD Supply is informed and believes and therefore alleges that Defendant Scott Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans, selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust securing loans given to the Owner for, inter alia, development of the Property.

12. HD Supply does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, ROE BONDING COMPANIES I through X and ROE LENDERS I through X. HD Supply alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by HD Supply as more fully discussed under the claims for relief set forth below. HD Supply will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Defendant when HD Supply discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract – JHPC Credit Agreement)

13. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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14. In or around November 2008, HD Supply entered into a Credit Agreement ("JHPC Agreement) with JHPC to provide certain plumbing related materials and supplies to the Property located in Clark County, Nevada (the "JHPC Supplies")

15. HD Supply furnished the JHPC Supplies for the benefit of and at the specific instance and request of the JHPC

16. Pursuant to the JHPC Agreement, HD Supply was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "JHPC Outstanding Balance") for the JHPC Supplies.

17. HD Supply furnished the JHPC Supplies and has otherwise performed its duties and obligations as required by the JHPC Agreement.

18. JHPC has breached the JHPC Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to HD Supply for the JHPC Supplies;

b. Failing to adjust the JHPC Agreement price to account for extra and/or changed work, as well as suspensions and delays of JHPC Supplies caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the JHPC Agreement and permit related adjustments in scheduled performance; and

d. Failing and/or refusing to comply with the JHPC Agreement and Nevada law.

19. HD Supply is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the JHPC Supplies.

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20. HD Supply has been required to engage the services of an attorney to collect the HPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract – E&E Credit Agreement)

21. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22. In or around December 2008 HD Supply entered into a Credit Agreement with E&E (the "E&E Agreement") to provide certain piping, valves and related materials and supplies to the Property located in Clark County, Nevada (the "E&E Supplies").

23. HD Supply furnished the E&E Supplies for the benefit of and at the specific instance and request of E&E.

24. Pursuant to the E&E Agreement, HD Supply was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "E&E Outstanding Balance") for the E&E Supplies.

25. HD Supply furnished the E&E Supplies and has otherwise performed its duties and obligations as required by the E&E Agreement.

26. E&E has breached the E&E Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to HD Supply for the E&E Supplies;

b. Failing to adjust the E&E Agreement price to account for extra and/or changed work, as well as suspensions and delays of E&E Supplies caused or ordered by the Defendants and/or their representatives;

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c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the E&E Agreement and permit related adjustments in scheduled performance; and

d. Failing and/or refusing to comply with the E&E Agreement and Nevada law.

27. HD Supply is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the E&E Supplies.

28. HD Supply has been required to engage the services of an attorney to collect the E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against JHPC)

29. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

30. There is a covenant of good faith and fair dealing implied in every agreement, including the JHPC Agreement.

31. JHPC breached its duty to act in good faith by performing the JHPC Agreement in a manner that was unfaithful to the purpose of the JHPC Agreement, thereby denying HD Supply's justified expectations.

32. Due to the actions of JHPC, HD Supply has suffered damages in an amount to be determined at trial for which HD Supply is entitled to judgment plus interest.

33. HD Supply has been required to engage the services of an attorney to collect the JHPC Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against E&E)

34. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

35. There is a covenant of good faith and fair dealing implied in every agreement, including the E&E Agreement.

36. E&E breached its duty to act in good faith by performing the E&E Agreement in a manner that was unfaithful to the purpose of the E&E Agreement, thereby denying HD Supply's justified expectations.

37. Due to the actions of E&E, HD Supply has suffered damages in an amount to be determined at trial for which HD Supply is entitled to judgment plus interest.

38. HD Supply has been required to engage the services of an attorney to collect the E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

39. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

40. HD Supply furnished the JHPC Supplies and E&E Supplies for the benefit of and at the specific instance and request of the Defendants.

41. As to JHPC and E&E, this cause of action is being pled in the alternative.

42. The Defendants accepted, used and enjoyed the benefit of the JHPC Supplies and E&E Supplies.

43. The Defendants knew or should have known that HD Supply expected to be paid for the JHPC Supplies and E&E Supplies.

44. HD Supply has demanded payment of the JHPC Outstanding Balance and E&E Outstanding Balance.

45. To date, the Defendants have failed, neglected, and/or refused to pay the JHPC Outstanding Balance and E&E Outstanding Balance.

46. The Defendants have been unjustly enriched, to the detriment of HD Supply.

47. HD Supply has been required to engage the services of an attorney to collect the JHPC Outstanding Balance and E&E Outstanding Balance, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien – JHPC Lien)

48. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

49. The provision of the JHPC Supplies was at the special instance and request of the Defendants for the Property.

50. As provided at NRS 108.245 and common law, the Defendants had knowledge of HD Supply's delivery of the JHPC Supplies to the Property or HD Supply provided a Notice of Right to Lien.

51. HD Supply demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

52. On or about December 29, 2008, HD Supply timely recorded a Notice of Lien in Book 20081229 of the Official Records of Clark County, Nevada, as Instrument No. 0000767 (the "JHPC Original Lien").

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53. On or about February 4, 2009, HD Supply timely recorded an Amended Notice of Lien in Book 20090204 of the Official Records of Clark County, Nevada, as Instrument No. 0004357 (the "JHPC Amended Lien").

54. The JHPC Original Lien and JHPC Amended Lien are collectively hereinafter referred to as the "JHPC Liens.

55. The JHPC Liens were in writing and were recorded against the Property for the outstanding balance due to HD Supply in the amount of Twenty-Five Thousand Four Hundred Forty-One and 40/100 Dollars ($25,441.40).

56. The JHPC Liens were served upon the Owner and/or its authorized agents, as required by law.

57. HD Supply is entitled to an award of reasonable attorney's fees, costs and interest on the JHPC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

SEVENTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien – E&E Lien)

58. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

59. The provision of the E&E Supplies was at the special instance and request of the Defendants for the Property.

60. As provided at NRS 108.245 and common law, the Defendants had knowledge of HD Supply's delivery of the E&E Supplies to the Property or HD Supply provided a Notice of Right to Lien.

61. HD Supply demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

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62. On or about February 3, 2009, HD Supply timely recorded a Notice of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0004359 (the "E&E Lien").

63. The E&E Lien was in writing and was recorded against the Property for the outstanding balance due to HD Supply in the amount of One Hundred Fifty-Nine Thousand Four Hundred Seventy-Eight and 55/100 Dollars ($159,478.55).

64. The E&E Lien was served upon the Owner and/or its authorized agents, as required by law.

65. HD Supply is entitled to an award of reasonable attorney's fees, costs and interest on the E&E Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

EIGHTH CAUSE OF ACTION
(Claim of Priority)

66. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

67. HD Supply is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

68. HD Supply is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to HD Supply's statutory mechanics' lien thereby elevating HD Supply's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

69. HD Supply's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Doe Lender.

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70. HD Supply has been required to engage the services of an attorney to collect the JHPC Outstanding Balance due and owing for the JHPC Supplies and the E&E Outstanding Balance due and owing for the E&E Supplies, and HD Supply is entitled to recover its reasonable costs, attorney's fees and interest therefore.

NINTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

71. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

72. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 873972] (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

73. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

74. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

75. HD Supply furnished the E&E Supplies as stated herein and has not been paid for the same. HD Supply therefore claims payment on said Bond.

76. The CPCC Surety is obligated to pay HD Supply the sums due.

77. Demand for the payment of the sums due to HD Supply has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to HD Supply.

78. CPCC and the CPCC Surety owe HD Supply the penal sum of the Bond.

79. HD Supply was required to engage the services of an attorney to collect the E&E Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its reasonable attorney's fees and costs therefore.

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TENTH CAUSE OF ACTION
(Claim Against Bond – JHPC Surety)

80. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Prior to the events giving rise to this Amended Complaint, the JHPC Surety issued License Bond No. 1225706 (hereinafter the "Bond") in the sum of Five Thousand Dollars ($5,000.00).

82. JHPC is named as principal and JHPC Surety is named as surety on the Bond.

83. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

84. HD Supply furnished the JHPC Supplies as stated herein and has not been paid for the same. HD Supply therefore claims payment on said Bond.

85. The JHPC Surety is obligated to pay HD Supply the sums due.

86. Demand for the payment of the sums due to HD Supply has been made, but JHPC and the JHPC Surety have failed, neglected and refused to pay the same to HD Supply.

87. JHPC and the JHPC Surety owe HD Supply the penal sum of the Bond.

88. HD Supply was required to engage the services of an attorney to collect the JHPC Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its reasonable attorney's fees and costs therefore.

ELEVENTH CAUSE OF ACTION
(Claim Against Bond – E&E Surety)

89. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

90. Prior to the events giving rise to this Amended Complaint, the E&E Surety issued License Bond No. 41104547 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

91. E&E is named as principal and E&E Surety is named as surety on the Bond.

92. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

93. HD Supply furnished the E&E Supplies as stated herein and has not been paid for the same. HD Supply therefore claims payment on said Bond.

94. The E&E Surety is obligated to pay HD Supply the sums due.

95. Demand for the payment of the sums due to HD Supply has been made, but E&E and the E&E Surety have failed, neglected and refused to pay the same to HD Supply.

96. E&E and the E&E Surety owe HD Supply the penal sum of the Bond.

97. HD Supply was required to engage the services of an attorney to collect the E&E Outstanding Balance due and owing to HD Supply and HD Supply is entitled to recover its reasonable attorney's fees and costs therefore.

TWELFTH CAUSE OF ACTION
(Declaratory Judgment)

98. HD Supply repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

99. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

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c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

100. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

101. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as HD Supply's mechanics' lien.

102. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

103. HD Supply is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by law, all mechanics' liens, including HD Supply's, enjoy a position of priority over the Senior Debt Deed of Trust.

104. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,

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it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including HD Supply's.

105. A dispute has arisen, and an actual controversy now exists over the priority issue of HD Supply's mechanics' lien over other encumbrances on the property.

106. HD Supply is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Property over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

WHEREFORE, HD Supply prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the JHPC Outstanding Balance and E&E Outstanding Balance amounts;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for HD Supply's reasonable costs and attorney's fees incurred in the collection of the JHPC Outstanding Balance and E&E Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that HD Supply has valid and enforceable mechanic's liens against the Property, with priority over all Defendants, in an amount of the JHPC Outstanding Balance and E&E Outstanding Balance;

4. Adjudge a lien upon the Property for the JHPC Outstanding Balance and E&E Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due HD Supply herein;

5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of priority superior to any lien or encumbrance created by or for the benefit of SFC or any other entity; and

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6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

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EXHIBIT "17"

EXHIBIT "17"

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; ROE BONDING COMPANIES I through X; ROE LENDERS I through X, inclusive,

Defendants.

HELIX ELECTRIC OF NEVADA, LLC, a Nevada limited-liability company, d/b/a HELIX ELECTRIC,

Plaintiff in Intervention,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

HELIX ELECTRIC'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

09A587168
211076

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

HELIX ELECTRIC OF NEVADA, LLC d/b/a HELIX ELECTRIC ("Helix") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. Helix is and was at all times relevant to this action a Nevada limited-liability company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

2. Helix is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

3. The whole of the Property is reasonably necessary for the convenient use and occupation of the improvements.

4. Helix is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada. APCO may also be known as Asphalt Products Company.

5. Helix is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

6. Helix is informed and believes and therefore alleges that Defendant, FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

7. Helix is informed and believes and therefore alleges that Defendant Scott Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans, selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust securing loans given to the Owner for, inter alia, development of the Property.

8. Helix does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE

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LENDERS I through X. Helix alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Helix as more fully discussed under the claims for relief set forth below. Helix will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Defendant when Helix discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract against APCO)

9. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

10. On or about April 17, 2007 Helix entered into an Agreement with APCO (the "APCO Agreement") to provide certain electrical related work, materials and equipment (the "APCO Work") for the Property located in Clark County, Nevada.

11. Helix furnished the APCO Work for the benefit of and at the specific instance and request of APCO and/or Owner.

12. Pursuant to the APCO Agreement, Helix was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO Work.

13. Helix furnished the APCO Work and has otherwise performed its duties and obligations as required by the APCO Agreement.

14. APCO has breached the APCO Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Helix for the APCO Work;

b. Failing to adjust the APCO Agreement price to account for extra and/or changed work, as well as suspensions and delays of APCO Work caused or ordered by the Defendants and/or their representatives;

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c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the APCO Agreement and permit related adjustments to scheduled performance;

d. Failing and/or refusing to comply with the APCO Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Helix's performance of the APCO Work.

15. Helix is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the APCO Work.

16. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract against CPCC)

17. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

18. On or about September 4, 2008, Helix entered into the Ratification and Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general contractor on the Project, to continue the work for the Property ("CPCC Work").

19. Helix furnished the CPCC Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

20. Pursuant to the CPCC Agreement, Helix was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC Work.

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21. Helix furnished the CPCC Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

22. CPCC has breached the CPCC Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Helix for the CPCC Work;

b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of CPCC Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Helix's performance of the CPCC Work.

23. Helix is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the CPCC Work.

24. Helix has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

25. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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26. There is a covenant of good faith and fair dealing implied in every agreement, including the APCO Agreement.

27. APCO breached its duty to act in good faith by performing the APCO Agreement in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Helix's justified expectations.

28. Due to the actions of APCO, Helix suffered damages in an amount to be determined at trial for which Helix is entitled to judgment plus interest.

29. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)

30. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

31. There is a covenant of good faith and fair dealing implied in every agreement, including the CPCC Agreement.

32. CPCC breached its duty to act in good faith by performing the CPCC Agreement in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Helix's justified expectations.

33. Due to the actions of CPCC, Helix suffered damages in an amount to be determined at trial for which Helix is entitled to judgment plus interest.

34. Helix has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

35. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

36. Helix furnished the APCO Work and the CPCC Work for the benefit of and at the specific instance and request of the Defendants.

37. As to APCO and CPCC, this cause of action is being pled in the alternative.

38. The Defendants accepted, used and enjoyed the benefit of the APCO Work and CPCC Work.

39. The Defendants knew or should have known that Helix expected to be paid for the APCO Work and CPCC Work.

40. Helix has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Helix.

43. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

44. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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45. The provision of the Work was at the special instance and request of the Defendants for the Property.

46. As provided at NRS 108.245 and common law, the Defendants had knowledge of Helix's delivery of the APCO Work and CPCC Work to the Property or Helix provided a Notice of Right to Lien.

47. Helix demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

48. On or about January 12, 2009, Helix timely recorded a Notice of Lien in Book 20090112 of the Official Records of Clark County, Nevada, as Instrument No. 0002864 (the "Original Lien").

49. On or about January 29, 2009, Helix timely recorded an Amended Notice of Lien in Book 20090129 of the Official Records of Clark County, Nevada, as Instrument No. 0000237 (the "Amended Lien").

50. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

51. The Liens were in writing and were recorded against the Property for the outstanding balance due to Helix in the amount of Three Million One Hundred Eighty-Six Thousand One Hundred Two and 67/100 Dollars ($3,186,102.67).

52. The Liens were served upon the Owner and/or its authorized agents, as required by law.

53. Helix is entitled to an award of reasonable attorney's fees, costs and interest on the APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

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SEVENTH CAUSE OF ACTION
(Claim of Priority)

54. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

55. Helix is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

56. Helix is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Helix's statutory mechanics' lien thereby elevating Helix's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

57. Helix's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Doe Lender.

58. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Work due and owing for the APCO Work and CPCC Work, and Helix is entitled to recover its reasonable costs, attorney's fees and interest therefore.

EIGHTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

59. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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60. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

61. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

62. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

63. Helix furnished the CPCC Work as stated herein and has not been paid for the same. Helix therefore claims payment on said Bond.

64. The CPCC Surety is obligated to pay Helix the sums due.

65. Demand for the payment of the sums due to Helix has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Helix.

66. CPCC and the CPCC Surety owe Helix the penal sum of the Bond.

67. Helix was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to Helix and Helix is entitled to recover its reasonable attorney's fees and costs therefore.

NINTH CAUSE OF ACTION
(Violation of NRS 624 - APCO)

68. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

69. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as APCO), to, among other things, timely pay their subcontractors (such as Helix), as provided in the in the Statute.

70. In violation of the Statute, APCO have failed and/or refused to timely pay Helix monies due and owing.

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71. APCO's violation of the Statute constitutes negligence per se.

72. By reason of the foregoing, Helix is entitled to a judgment against APCO in the amount of the APCO Outstanding Balance.

73. Helix has been required to engage the services of an attorney to collect the APCO Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and interests therefore.

TENTH CAUSE OF ACTION
(Violation of NRS 624 - CPCC)

74. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

75. NRS 624.606 to 624.630, et seq. (the "Statute") requires contractors such as CPCC to, among other things, timely pay their subcontractors (such as Helix), as provided in the in the Statute.

76. In violation of the Statute, CPCC failed and/or refused to timely pay Helix monies due and owing.

77. CPCC's violation of the Statute constitutes negligence per se.

78. By reason of the foregoing, Helix is entitled to a judgment against CPCC in the amount of the CPCC Outstanding Balance

79. Helix has been required to engage the services of an attorney to collect the CPCC Outstanding Balance and Helix is entitled to recover its reasonable costs, attorney's fees and interests therefore.

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ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

80. Helix repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

83. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Helix's mechanics' lien.

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

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conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

85. Helix is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt Deed of Trust.

86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including Helix's.

87. A dispute has arisen, and an actual controversy now exists over the priority issue of Helix's mechanics' lien over other encumbrances on the property.

88. Helix is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Property over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

WHEREFORE, Helix prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the APCO Outstanding Balance and CPCC Outstanding Balance amounts;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for Helix's reasonable costs and attorney's fees incurred in the collection of the APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that Helix has valid and enforceable mechanic's liens against the Property, with priority over all Defendants, in an amount of the APCO Outstanding Balance and CPCC Outstanding Balance;

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4. Adjudge a lien upon the Property for the APCO Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Helix herein;

5. Enter a judgment declaring that Helix' mechanics' lien enjoys a position of priority superior to any lien or encumbrance created by or for the benefit of SFC or any other entity; and

6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

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EXHIBIT "18"

EXHIBIT "18"

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CLERK OF THE COURT

STMT
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Attorneys for Heinaman Contract Glazing

DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

HEINAMAN CONTRACT GLAZING, a California corporation,

Plaintiff in Intervention,

vs.

CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

HEINAMAN CONTRACT GLAZING'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

09A587168
211104

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BONDING COMPANIES I through X; LOE LENDERS 1 through X, inclusive,
Defendants.

HEINAMAN CONTRACT GLAZING ("Heinaman") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. Heinaman is and was at all times relevant to this action a California corporation, duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

2. Heinaman is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

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3. The whole of the Property is reasonably necessary for the convenient use and occupation of the improvements.

4. Heinaman is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

5. Heinaman is informed and believes and therefore alleges that Defendant, FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

6. Heinaman is informed and believes and therefore alleges that Defendant Scott Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans, selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust securing loans given to the Owner for, inter alia, development of the Property.

7. Heinaman does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE LENDERS I through X. Heinaman alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Heinaman as more fully discussed under the claims for relief set forth below. Heinaman will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Defendant when Heinaman discovers such information.

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

8. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

9. In or around November 4, 2008, Heinaman entered into the Subcontract Agreement ("CPCC Agreement") with CPCC, to provide certain glass and glazing related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada.

10. Heinaman furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

11. Pursuant to the CPCC Agreement, Heinaman was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "Outstanding Balance") for the Work.

12. Heinaman furnished the Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

13. CPCC has breached the CPCC Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Heinaman for the Work;

b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law; and

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e. Negligently or intentionally preventing, obstructing, hindering or interfering with Heinaman's performance of the Work.

14. Heinaman is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the Work.

15. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)

16. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

17. There is a covenant of good faith and fair dealing implied in every agreement, including the CPCC Agreement.

18. CPCC breached its duty to act in good faith by performing the CPCC Agreement in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Heinaman's justified expectations.

19. Due to the actions of CPCC, Heinaman suffered damages in an amount to be determined at trial for which Heinaman is entitled to judgment plus interest.

20. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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THIRD CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

21. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22. Heinaman furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Heinaman expected to be paid for the Work.

26. Heinaman has demanded payment of the Outstanding Balance.

27. To date, the Defendants have failed, neglected, and/or refused to pay the Outstanding Balance.

28. The Defendants have been unjustly enriched, to the detriment of Heinaman.

29. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

30. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

31. The provision of the Work was at the special instance and request of the Defendants for the Property.

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32. As provided at NRS 108.245 and common law, the Defendants had knowledge of Heinaman's delivery of the Work to the Property or Heinaman provided a Notice of Right to Lien.

33. Heinaman demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the "Original Lien").

35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355 (the "Amended Lien").

36. The Original Lien and Amended Lien are hereinafter referred to as the "Liens".

37. The Liens were in writing and were recorded against the Property for the outstanding balance due to Heinaman in the amount of One Hundred Eighty-Seven Thousand Five Hundred Twenty-Five and 26/100 Dollars ($187,525.26).

38. The Liens were served upon the Owner and/or its authorized agents, as required by law.

39. Heinaman is entitled to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

FIFTH CAUSE OF ACTION
(Claim of Priority)

40. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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41. Heinaman is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC.

42. Heinaman is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Heinaman's statutory mechanics' lien thereby elevating Heinaman's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

43. Heinaman's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Doe Lender.

44. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance due and owing for the Work, and Heinaman is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

45. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

46. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

48. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

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49. Heinaman furnished the Work as stated herein and has not been paid for the same. Heinaman therefore claims payment on said Bond.

50. The CPCC Surety is obligated to pay Heinaman the sums due.

51. Demand for the payment of the sums due to Heinaman has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Heinaman.

52. CPCC and the CPCC Surety owe Heinaman the penal sum of the Bond.

53. Heinaman was required to engage the services of an attorney to collect the Outstanding Balance due and owing to Heinaman and Heinaman is entitled to recover its reasonable attorney's fees and costs therefore.

SEVENTH CAUSE OF ACTION
(Violation of NRS 624)

54. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

55. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as CPCC), to, among other things, timely pay their subcontractors (such as Heinaman), as provided in the in the Statute.

56. In violation of the Statute, CPCC have failed and/or refused to timely pay Heinaman monies due and owing.

57. CPCC's violation of the Statute constitutes negligence per se.

58. By reason of the foregoing, Heinaman is entitled to a judgment against CPCC in the amount of the Outstanding Balance

59. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance and Heinaman is entitled to recover its reasonable costs, attorney's fees and interests therefore.

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EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

60. Heinaman repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

61. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

62. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

63. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Heinaman's mechanics' lien.

64. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books

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conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

65. Heinaman is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by law, all mechanics' liens, including Heinaman's, enjoy a position of priority over the Senior Debt Deed of Trust.

66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including Heinaman's.

67. A dispute has arisen, and an actual controversy now exists over the priority issue of Heinaman's mechanics' lien over other encumbrances on the property.

68. Heinaman is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Property over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

WHEREFORE, Heinaman prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the Outstanding Balance amount;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for Heinaman's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that Heinaman has valid and enforceable mechanic's liens against the Property, with priority over all Defendants, in an amount of the Outstanding Balance;

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4. Adjudge a lien upon the Property for the Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Heinaman herein;

5. Enter a judgment declaring that Accuracy's mechanics' lien enjoys a position of priority superior to any lien or encumbrance created by or for the benefit of SFC or any other entity; and

6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

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EXHIBIT "19"

EXHIBIT "19"

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

INTERSTATE PLUMBING & AIR CONDITIONING, LLC, a Nevada limited-liability company,

Plaintiff in Intervention,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

INTERSTATE PLUMBING & AIR CONDITIONING'S STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND COMPLAINT

EXEMPTION FROM ARBITRATION: Title to Real Estate

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DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

INTERSTATE PLUMBING & AIR CONDITIONING, LLC ("Interstate") by and through its attorneys PEEL BRIMLEY LLP, as for its Statement of Facts Constituting a Notice of Lien and Complaint ("Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. Interstate is and was at all times relevant to this action a Nevada limited-liability company, duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

2. Interstate is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

County Assessor Description:	Manhattan West Condominiums Spring Valley See Attached Exhibit 1 SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 63-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and

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appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Work of Improvement").

3. The whole of the Work of Improvement and any leasehold estate in thereon is reasonably necessary for the convenient use and occupation of the Work of Improvement.

4. Interstate is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada. APCO may also be known as Asphalt Products Company.

5. Interstate is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

6. Interstate is informed and believes and therefore alleges that Defendant, FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

7. Interstate is informed and believes and therefore alleges that Defendant Scott Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans, selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust securing loans given to the Owner for, inter alia, development of the Work of Improvement.

8. Interstate does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE

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LENDERS I through X. Interstate alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Interstate as more fully discussed under the claims for relief set forth below. Interstate will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Interstate discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract against APCO)

9. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

10. On or about April 17, 2007 Interstate entered into an Agreement with APCO (the "APCO Agreement") to provide certain plumbing and HVAC related work, materials and equipment (the "APCO Work") for the Work of Improvement located in Clark County, Nevada.

11. Interstate furnished the APCO Work for the benefit of and at the specific instance and request of APCO and/or Owner.

12. Pursuant to the APCO Agreement, Interstate was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO Work.

13. Interstate furnished the APCO Work and has otherwise performed its duties and obligations as required by the APCO Agreement.

14. APCO has breached the APCO Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Interstate for the APCO Work;

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b. Failing to adjust the APCO Agreement price to account for extra and/or changed work, as well as suspensions and delays of APCO Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the APCO Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the APCO Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Interstate's performance of the APCO Work.

15. Interstate is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the APCO Work.

16. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract against CPCC)

17. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

18. On or about August 26, 2008, Interstate entered into a Ratification and Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general contractor on the Project, to continue the work for the Work of Improvement ("CPCC Work").

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19. Interstate furnished the CPCC Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

20. Pursuant to the CPCC Agreement, Interstate was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC Work.

21. Interstate furnished the CPCC Work and has otherwise performed its duties and obligations as required by the CPCC Agreement.

22. CPCC has breached the CPCC Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to Interstate for the CPCC Work;

b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of CPCC Work caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Interstate's performance of the CPCC Work.

23. Interstate is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the CPCC Work.

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24. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

25. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

26. There is a covenant of good faith and fair dealing implied in every agreement, including the APCO Agreement.

27. APCO breached its duty to act in good faith by performing the APCO Agreement in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Interstate's justified expectations.

28. Due to the actions of APCO, Interstate suffered damages in an amount to be determined at trial for which Interstate is entitled to judgment plus interest.

29. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)

30. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

31. There is a covenant of good faith and fair dealing implied in every agreement, including the CPCC Agreement.

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32. CPCC breached its duty to act in good faith by performing the CPCC Agreement in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Interstate's justified expectations

33. Due to the actions of CPCC, Interstate suffered damages in an amount to be determined at trial for which Interstate is entitled to judgment plus interest.

34. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

35. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

36. Interstate furnished the APCO Work and the CPCC Work for the benefit of and at the specific instance and request of the Defendants.

37. As to APCO and CPCC, this cause of action is being pled in the alternative.

38. The Defendants accepted, used and enjoyed the benefit of the APCO Work and CPCC Work.

39. The Defendants knew or should have known that Interstate expected to be paid for the APCO Work and CPCC Work.

40. Interstate has demanded payment of the APCO Outstanding Balance and CPCC Outstanding Balance.

41. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

42. The Defendants have been unjustly enriched, to the detriment of Interstate.

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43. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

44. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

45. The provision of the Work was at the special instance and request of the Defendants for the Work of Improvement.

46. As provided at NRS 108.245 and common law, the Defendants had knowledge of Interstate's delivery of the APCO Work and CPCC Work to the Work of Improvement or Interstate provided a Notice of Right to Lien.

47. Interstate demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

48. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the Official Records of Clark County, Nevada, as Instrument No. 201003290001085 (the "Plumbing Lien").

49. The Plumbing Lien was in writing and was recorded against the Work of Improvement for the outstanding balance due to Interstate in the amount of Three Million Three Hundred Seventy-Six Thousand Six Hundred and 45/100 Dollars ($3,376,600.45).

50. On or about March 29, 2010, Interstate timely recorded a Notice of Lien in the Official Records of Clark County, Nevada, as Instrument No. 201003290001086 (the "HVAC Lien").

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51. The HVAC Lien was in writing and was recorded against the Work of Improvement for the outstanding balance due to Interstate in the amount of Seven Hundred Thirty-Eight Thousand One Hundred Sixty-One and 63/100 Dollars ($738,161.63).

52. The Plumbing Lien and HVAC Lien were served upon the Owner and/or its authorized agents, as required by law.

53. Interstate is entitled to an award of reasonable attorney's fees, costs and interest on the APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

SEVENTH CAUSE OF ACTION
(Claim of Priority)

54. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

55. Interstate is informed and believes and therefore alleges that construction on the Work of Improvement commenced before the recording of any deed(s) of trust and/or other interest(s) in the Work of Improvement, including the deeds of trust recorded by SFC.

56. Interstate is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Work of Improvement were recorded before construction on the Work of Improvement commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to Interstate's statutory mechanics' lien thereby elevating Interstate's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Work of Improvement.

57. Interstate's claim against the Work of Improvement is superior to the claim(s) of SFC, any other defendant, and/or any Doe Lender.

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58. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Work due and owing for the APCO Work and CPCC Work, and Interstate is entitled to recover its reasonable costs, attorney's fees and interest therefore.

EIGHTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

59. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

60. Prior to the events giving rise to this Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

61. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

62. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

63. Interstate furnished the CPCC Work as stated herein and has not been paid for the same. Interstate therefore claims payment on said Bond.

64. The CPCC Surety is obligated to pay Interstate the sums due.

65. Demand for the payment of the sums due to Interstate has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Interstate.

66. CPCC and the CPCC Surety owe Interstate the penal sum of the Bond.

67. Interstate was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to Interstate and Interstate is entitled to recover its reasonable attorney's fees and costs therefore.

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NINTH CAUSE OF ACTION
(Violation of NRS 624 - APCO)

68. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

69. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors (such as APCO), to, among other things, timely pay their subcontractors (such as Interstate), as provided in the in the Statute.

70. In violation of the Statute, APCO have failed and/or refused to timely pay Interstate monies due and owing.

71. APCO's violation of the Statute constitutes negligence per se.

72. By reason of the foregoing, Interstate is entitled to a judgment against APCO in the amount of the APCO Outstanding Balance.

73. Interstate has been required to engage the services of an attorney to collect the APCO Outstanding Balance and Interstate is entitled to recover its reasonable costs, attorney's fees and interests therefore.

TENTH CAUSE OF ACTION
(Violation of NRS 624 - CPCC)

74. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

75. NRS 624.606 to 624.630, et. seq. (the "Statute") requires contractors such as CPCC to, among other things, timely pay their subcontractors (such as Interstate), as provided in the in the Statute.

76. In violation of the Statute, CPCC failed and/or refused to timely pay Interstate monies due and owing.

77. CPCC's violation of the Statute constitutes negligence per se.

78. By reason of the foregoing, Interstate is entitled to a judgment against CPCC in the amount of the CPCC Outstanding Balance

79. Interstate has been required to engage the services of an attorney to collect the CPCC Outstanding Balance and Interstate is entitled to recover its reasonable costs, attorney's fees and interests therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

80. Interstate repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

81. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

82. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

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83. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as Interstate's mechanics' lien.

84. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

85. Interstate is informed and believes and therefore alleges that construction on the Work of Improvement commenced at least before the recording of the Senior Debt Deed of Trust and that by law, all mechanics' liens, including Interstate's, enjoy a position of priority over the Senior Debt Deed of Trust.

86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including Interstate's.

87. A dispute has arisen, and an actual controversy now exists over the priority issue of Interstate's mechanics' lien over other encumbrances on the property.

88. Interstate is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Work of Improvement over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

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WHEREFORE, Interstate prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the APCO Outstanding Balance and CPCC Outstanding Balance amounts;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for Interstate's reasonable costs and attorney's fees incurred in the collection of the APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that Interstate has valid and enforceable mechanic's liens against the Work of Improvement, with priority over all Defendants, in an amount of the APCO Outstanding Balance and CPCC Outstanding Balance;

4. Adjudge a lien upon the Work of Improvement for the APCO Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and interest thereon, and that this Honorable Court enter an Order that the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due Interstate herein;

5. Enter a judgment declaring that Interstate' mechanics' lien enjoys a position of priority superior to any lien or encumbrance created by or for the benefit of SFC or any other entity; and

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6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 5 day of April 2010.

PEEL BRIMLEY LLP

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EXHIBIT 1
Manhattan West

County Assessor Parcel Nos.: 163-32-101-020 and 163-32-101-022 thru 163-32-101-024
(Formerly 163-32-112-001 thru 163-32-112-246; formerly 163-32-101-019)

Parcel Number/ Location Address/ Township	Property Description	Owner Name & Address
163-32-101-020 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West, Inc, 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465
163-32-101-022 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West, Inc, 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465
163-32-101-023 Spring Valley	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465
163-32-101-024 Spring Valley (Formerly 163-32-112-001 thru 163-32-112-246; formerly 163-32-101-019)	PT NE4 NW4 SEC 32 21 60 SEC 32 TWP 21 RNG 60	Gemstone Development West, Inc. 10170 W Tropicana Ave #156-169 Las Vegas, NV 89147-8465

EXHIBIT "20"

EXHIBIT "20"

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CLERK OF THE COURT

STMT
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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation,

Plaintiff,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

WRG DESIGN, INC., a Delaware corporation,

Plaintiff in Intervention,

vs.

ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE

LEAD CASE NO.: A571228
DEPT. NO.: XIII

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

09AB87168
203739

WRG DESIGN, INC.'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

WRG DESIGN, INC. ("WRG") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. WRG is and was at all times relevant to this action a Delaware corporation, duly authorized, licensed and qualified to do business in Clark County, Nevada.

2. WRG is informed and believes and therefore alleges that Defendant GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation ("Owner") is and was at all times relevant to this action, the owner, reputed owner, or the person, individual and/or entity who claims an ownership interest in that certain real property portions thereof located in Clark County, Nevada and more particularly described as follows:

Manhattan West Condominiums (Project)
Spring Valley
County Assessor Description: PT NE4 NW4 SEC 32 21 60 &
PT N2 NW4 SEC 32 21 60
SEC 32 TWP 21 RNG 60

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and

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occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

3. The whole of the Property is reasonably necessary for the convenient use and occupation of the improvements.

4. WRG is informed and believes and therefore alleges that Defendant APCO CONSTRUCTION, a Nevada corporation ("APCO"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada. APCO may also be known as Asphalt Products Company.

5. WRG is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada.

6. WRG is informed and believes and therefore alleges that Defendant, FIDELITY AND DEPOSIT COMPANY OF MARYLAND (hereinafter "CPCC Surety"), was and is a bonding company licensed and qualified to do business as a surety in Nevada.

7. WRG is informed and believes and therefore alleges that Defendant Scott Financial Corporation ("SFC") is a North Dakota corporation with its principle place of business in Bismark, North Dakota. SFC is engaged in the business of underwriting and originating loans, selling participation in those loans, and servicing the loans. SFC has recorded deeds of trust securing loans given to the Owner for, inter alia, development of the Property.

8. WRG does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE LENDERS I through X. WRG alleges that such Defendants claim an interest in or to the

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Properties, and/or are responsible for damages suffered by WRG as more fully discussed under the claims for relief set forth below. WRG will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Defendant when WRG discovers such information.

FIRST CAUSE OF ACTION
(Breach of Contract against Owner)

9. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

10. On or about July 31, 2006 WRG entered into an Agreement with Owner (the "Owner Agreement") to provide certain surveying and mapping related work, materials and equipment to the Property located in Clark County, Nevada (the "Owner Services")

11. WRG furnished the Services for the benefit of and at the specific instance and request of the Owner.

12. Pursuant to the Owner Agreement, WRG was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "Owner Outstanding Balance") for the Owner Services.

13. WRG furnished the Owner Services and has otherwise performed its duties and obligations as required by the Owner Agreement.

14. The Owner has breached the Owner Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to WRG for the Owner Services;

b. Failing to adjust the Owner Agreement price to account for extra and/or changed work, as well as suspensions and delays of Owner Services caused or ordered by the Defendants and/or their representatives;

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c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the Owner Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the Owner Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with WRG's performance of the Owner Services.

15. WRG is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the Owner Services.

16. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SECOND CAUSE OF ACTION
(Breach of Contract against APCO)

17. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

18. On or about April 17, 2007 WRG entered into an Agreement with APCO (the "APCO Agreement") to provide certain surveying and mapping related work, materials and equipment to the Property located in Clark County, Nevada (the "APCO Services")

19. WRG furnished the APCO Services for the benefit of and at the specific instance and request of APCO and/or Owner.

20. Pursuant to the APCO Agreement, WRG was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "APCO Outstanding Balance") for the APCO Services.

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21. WRG furnished the APCO Services and has otherwise performed its duties and obligations as required by the APCO Agreement.

22. APCO has breached the APCO Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to WRG for the APCO Services;

b. Failing to adjust the APCO Agreement price to account for extra and/or changed work, as well as suspensions and delays of APCO Services caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the APCO Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the APCO Agreement and Nevada law, and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with WRG's performance of the APCO Services.

23. WRG is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the APCO Services.

24. WRG has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

THIRD CAUSE OF ACTION
(Breach of Contract against CPCC)

25. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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26. On or about August 26, 2008, WRG entered into the Ratification and Amendment of Subcontract Agreement ("CPCC Agreement") with CPCC, who replaced APCO as the general contractor on the Project, to continue the services for the Property ("CPCC Services").

27. WRG furnished the CPCC Services for the benefit of and at the specific instance and request of CPCC and/or Owner.

28. Pursuant to the CPCC Agreement, WRG was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "CPCC Outstanding Balance") for the CPCC Services.

29. WRG furnished the CPCC Services and has otherwise performed its duties and obligations as required by the CPCC Agreement.

30. CPCC has breached the CPCC Agreement by, among other things:

a. Failing and/or refusing to pay the monies owed to WRG for the CPCC Services;

b. Failing to adjust the CPCC Agreement price to account for extra and/or changed work, as well as suspensions and delays of CPCC Services caused or ordered by the Defendants and/or their representatives;

c. Failing to promptly recognize and grant time extensions to reflect additional time allowable under the CPCC Agreement and permit related adjustments in scheduled performance;

d. Failing and/or refusing to comply with the CPCC Agreement and Nevada law; and

e. Negligently or intentionally preventing, obstructing, hindering or interfering with WRG's performance of the CPCC Services.

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31. WRG is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the CPCC Services.

32. WRG has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)

33. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

34. There is a covenant of good faith and fair dealing implied in every agreement, including the Owner Agreement.

35. Owner breached its duty to act in good faith by performing the Owner Agreement in a manner that was unfaithful to the purpose of the Owner Agreement, thereby denying WRG's justified expectations.

36. Due to the actions of Owner, WRG suffered damages in an amount to be determined at trial for which WRG is entitled to judgment plus interest.

37. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

FIFTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against APCO)

38. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

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39. There is a covenant of good faith and fair dealing implied in every agreement, including the APCO Agreement.

40. APCO breached its duty to act in good faith by performing the APCO Agreement in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying WRG's justified expectations.

41. Due to the actions of APCO, WRG suffered damages in an amount to be determined at trial for which WRG is entitled to judgment plus interest.

42. WRG has been required to engage the services of an attorney to collect the APCO Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

SIXTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)

43. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

44. There is a covenant of good faith and fair dealing implied in every agreement, including the CPCC Agreement.

45. CPCC breached its duty to act in good faith by performing the CPCC Agreement in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying WRG's justified expectations.

46. Due to the actions of CPCC, WRG suffered damages in an amount to be determined at trial for which WRG is entitled to judgment plus interest.

47. WRG has been required to engage the services of an attorney to collect the CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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SEVENTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

48. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

49. WRG furnished the Owner Services, APCO Services and CPCC Services for the benefit of and at the specific instance and request of the Defendants.

50. As to Owner, Asphalt, APCO and CPCC, this cause of action is being pled in the alternative.

51. The Defendants accepted, used and enjoyed the benefit of the Owner Services, APCO Services and CPCC Services.

52. The Defendants knew or should have known that WRG expected to be paid for the Owner Services, APCO Services and CPCC Services.

53. WRG has demanded payment of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance.

54. To date, the Defendants have failed, neglected, and/or refused to pay the APCO Outstanding Balance and CPCC Outstanding Balance.

55. The Defendants have been unjustly enriched, to the detriment of WRG.

56. WRG has been required to engage the services of an attorney to collect the APCO Outstanding Balance and CPCC Outstanding Balance, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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EIGHTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

57. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

58. The provision of the Owner Services, APCO Services and CPCC Services was at the special instance and request of the Defendants for the Property.

59. As provided at NRS 108.245 and common law, the Defendants had knowledge of WRG's delivery of the Owner Services, APCO Services and CPCC Services Services to the Property or WRG provided a Notice of Right to Lien.

60. WRG demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

61. On or about February 13, 2009, WRG timely recorded a Notice of Lien in Book 20090213 of the Official Records of Clark County, Nevada, as Instrument No. 0004321 (the "Original Lien").

62. One or about April 27, 2009, WRG timely recorded an Amended Notice of Lien in Book 20090427 of the Official Records of Clark County, Nevada, as Instrument No. 0000107 (the "Amended Lien").

63. The Original Lien and Amended Lien are hereinafter collectively referred to as the "Liens".

64. The Liens were in writing and were recorded against the Property for the outstanding balance due to WRG in the amount of Two Hundred Seventy-Five Thousand One Hundred Fifteen and 66/100 Dollars ($275,115.66).

65. The Liens were served upon the Owner and/or its authorized agents, as required by law.

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Docket 80508 Document 2020-08758

66. WRG is entitled to an award of reasonable attorney's fees, costs and interest on the APCO Outstanding Balance and CPCC Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

NINTH CAUSE OF ACTION
(Claim of Priority)

67. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

68. WRG is informed and believes and therefore alleges that construction on the Property commenced before the recording of any deed(s) of trust and/or other interest(s) in the Property, including the deeds of trust recorded by SFC;

69. WRG is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to WRG's statutory mechanics' lien thereby elevating WRG's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

70. WRG's claim against the Property is superior to the claim(s) of SFC, any other defendant, and/or any Loe Lender.

71. WRG has been required to engage the services of an attorney to collect the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance due and owing for the Owner Services, APCO Services and CPCC Services, and WRG is entitled to recover its reasonable costs, attorney's fees and interest therefore.

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TENTH CAUSE OF ACTION
(Claim Against Bond – CPCC Surety)

72. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Amended Complaint, incorporates them by reference, and further alleges as follows:

73. Prior to the events giving rise to this Amended Complaint, the CPCC Surety issued License Bond No. 8739721 (hereinafter the "Bond") in the sum of Fifty Thousand Dollars ($50,000.00).

74. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

75. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

76. WRG furnished the CPCC Services as stated herein and has not been paid for the same. WRG therefore claims payment on said Bond.

77. The CPCC Surety is obligated to pay WRG the sums due.

78. Demand for the payment of the sums due to WRG has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to WRG.

79. CPCC and the CPCC Surety owe WRG the penal sum of the Bond.

80. WRG was required to engage the services of an attorney to collect the CPCC Outstanding Balance due and owing to WRG and WRG is entitled to recover its reasonable attorney's fees and costs therefore.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

81. WRG repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

82. Upon information and belief, Owner is the Trustor and SFC is the beneficiary under the following deeds of trust covering the real property at issue:

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

83. On February 7, 2008, SFC executed a Mezzanine Deeds of Trust Subordination Agreement that expressly subordinated the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust "in all respects", "for all purposes", and, " regardless of any priority otherwise available to SFC by law or agreement".

84. The Mezzanine Deeds of Trust Subordination Agreement contains a provision that it shall not be construed as affecting the priority of any other lien or encumbrances in favor of SFC. Thus, no presumptions or determinations are to be made in SFC's favor concerning the priority of competing liens or encumbrances on the property, such as WRG's mechanics' lien.

85. Pursuant to the a Mezzanine Deeds of Trust Subordination Agreement, SFC was to cause the Senior, Junior, and Third Deeds of Trust to contain specific statements thereon that they were expressly subordinated to the Senior Debt Deed of Trust and SFC was to mark its books conspicuously to evidence the subordination of the Senior, Junior, and Third Deeds of Trust to the Senior Debt Deed of Trust.

86. WRG is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by

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law, all mechanics' liens, including WRG's, enjoy a position of priority over the Senior Debt Deed of Trust.

87. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including WRG's.

88. A dispute has arisen, and an actual controversy now exists over the priority issue of WRG's mechanics' lien over other encumbrances on the property.

89. WRG is entitled to a court order declaring that its mechanics' lien has a superior lien position on the Property over any other lien or encumbrance created by or for the benefit of SFC or any other entity.

WHEREFORE, WRG prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance amounts;

2. Enters a judgment against Defendants, and each of them, jointly and severally, for WRG's reasonable costs and attorney's fees incurred in the collection of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance, as well as an award of interest thereon;

3. Enter a judgment declaring that WRG has valid and enforceable mechanic's liens against the Property, with priority over all Defendants, in an amount of the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance;

4. Adjudge a lien upon the Property for the Owner Outstanding Balance, APCO Outstanding Balance and CPCC Outstanding Balance, plus reasonable attorneys fees, costs and

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interest thereon, and that this Honorable Court enter an Order that the Property, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due WRG herein;

5. Enter a judgment declaring that WRG's mechanics' lien enjoys a position of priority superior to any lien or encumbrance created by or for the benefit of SFC or any other entity; and

6. For such other and further relief as this Honorable Court deems just and proper in the premises.

Dated this 22 day of June 2009.

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EXHIBIT "21"

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DISTRICT COURT

CLARK COUNTY, NEVADA

ACCURACY GLASS & MIRROR COMPANY, INC., a Nevada corporation, Plaintiff, vs. ASPHALT PRODUCTS CORP., a Nevada corporation; APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; FIDELITY AND DEPOSIT COMPANY OF MARYLAND; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive, Defendants.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* *A571792* *A574391* *A577623* *A583289* *A584730* *A587168*
HD SUPPLY WATERWORKS, LP, a Florida limited partnership, Plaintiff in Intervention, vs. APCO CONSTRUCTION, a Nevada corporation; CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation; GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; JEFF HEIT PLUMBING CO, LLC, a Nevada limited-liability company; E & E FIRE PROTECTION, LLC, a Nevada limited liability company; FIDELITY AND DEPOSIT	**HD SUPPLY WATERWORKS, LP'S VOLUNTARY DISMISSAL OF PLATTE RIVER INSURANCE COMPANY ONLY WITHOUT PREJUDICE**

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COMPANY OF MARYLAND; OLD REPUBLIC SURETY; PLATTE RIVER INSURANCE COMPANY; SCOTT FINANCIAL CORPORATION, a North Dakota corporation ; DOES I through X; ROE CORPORATIONS I through X; BOE BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,

Defendants.

Pursuant to NRCP 41(a)(1), Plaintiff-in-Intervention, HD SUPPLY WATERWORKS, LP voluntarily dismisses the above referenced matter as to PLATTE RIVER INSURANCE COMPANY only. No answer or motion for summary judgment has been served and the Court has set no trial date in this action.

Therefore, Plaintiff-in-Intervention authorizes and directs the Clerk of this Court to enter a Dismissal of PLATTE RIVER INSURANCE COMPANY from this action without prejudice.

Dated this 5 day of April 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 5th day of April 2010, I served the above and foregoing **HD SUPPLY WATRWORKS, LLP'S VOLUNTARY DISMISSL OF PLATTE RIVER INSURANCE COMPANY ONLY WITHOUT PREJUDICE.** in accordance with EDCR 7.25(A)(3), by placing a true and correct copy by electronic means via the courts website (Wiznet):

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EXHIBIT "22"

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, INC., a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada. corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAM) TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; and DOES I through X, Defendants. And all related matters.	Case No.: A-08-571228 Dept. No.: XXV Consolidated With: A-08-574391 A-08-574792 A-08-577623 A-09-580889 A-09-583289 A-09-584730 A-09-584960 A-09-587168 A-09-589195 A-09-589677 A-09-590319 A-09-592826 A-09-596924 A-09-597089

ORDER STRIKING DEFENDANT GEMSTONE DEVELOPMENT WEST, INC.'S ANSWER AND COUNTERCLAIMS, AND ENTERING DEFAULT

The Court's Order to Show Cause why default should not be entered against GEMSTONE DEVELOPMENT WEST, INC. pursuant to EDCR 7.60 for failure to give reasonable attention to the matters captioned herein, failure to obtain new counsel pursuant to EDCR 7.42(b), and failure to appear at the hearing on Tuesday, April 13, 2010 came on for hearing on May 17, 2010 at 9:00 a.m. before the Honorable Kathleen E. Delaney. The Court, having reviewed the papers and pleadings on file herein, and oral argument presented hereto, and good cause appearing therefore:

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///

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT TWENTY FIVE
LAS VEGAS NV 89155

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant GEMSTONE DEVELOPMENT WEST, INC.'S Answer and Counterclaims are hereby stricken and default is entered against it.

DATED: May 25, 2010.

KATHLEEN E. DELANEY
District Court Judge

CERTIFICATE OF SERVICE

On or about the date filed, the undersigned served a true and correct copy of the foregoing **ORDER STRIKING DEFENDANT GEMSTONE DEVELOPMENT WEST, INC.'S ANSWER AND COUNTERCLAIMS, AND ENTERING DEFAULT** by U.S. Mail, postage prepaid, upon the following:

Gemstone Development West.. Inc.
c/o Alexander Edelstein
10170 W. Tropicana Ave., Suite 156-169
Las Vegas, NV 89147

Monica Caffaratti, Esq.
411 15th Avenue, #31
San Francisco, CA 94118

and by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

Cindy Springberg
Judicial Executive Assistant

EXHIBIT "23"

EXHIBIT "23"

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re Manhattan West Mechanic's Lien Litigation,

APCO CONSTRUCTION, INC., a Nevada corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; and DOES I through X,

Defendants.

And all Related and Consolidated Claims.

Case No. 08-A571228-B
Dept. No. XXIX

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

Date: April 4, 2012
Time: 11:00 a.m.

NOTICE OF ENTRY OF DECISION, ORDER AND JUDGMENT ON DEFENDANT SCOTT FINANCIAL CORPORATION'S MOTION FOR SUMMARY JUDGMENT AS TO PRIORITY OF LIENS

PLEASE TAKE NOTICE that on the 7th day of May, 2012, Decision, Order and Judgment on Scott Financial Corporation's Motion for Summary Judgment as to Priority of

///

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///

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Liens was entered in the above-captioned matter, a copy of which is annexed hereto.

Dated: May 7, 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an Employee of the law firm of MEIER & FINE, LLC, and that on May 7, 2012, I served the above and foregoing **NOTICE OF ENTRY OF SCOTT FINANCIAL CORPORATIONS FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** in accordance with EDCR 7.26(a)(3) by sending a true and correct copy of same via facsimile transmission as indicated below, by electronic means via the court's website ("Wiznet"), as indicated below to the parties on the attached E-Service List.

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DISTRICT COURT

CLARK COUNTY, NEVADA

In Re Manhattan West Mechanic's Lien Litigation,

APCO CONSTRUCTION, INC., a Nevada corporation,

Plaintiff,

vs.

GEMSTONE DEVELOPMENT WEST, INC., a Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY; and DOES I through X,

Defendants.

And all Related and Consolidated Claims.

Case No. 08-A571228-B
Dept. No. XXIX

Consolidated With

08-A574391	A-09-589195-C
08-A574792	A-09-589677-C
08-A577623	A-09-590319-C
09-A579963	A-09-592826-C
09-A580889	A-09-596924-C
09-A583289	A-09-597089-C
09-A584730	A-09-606730-C
09-A587168	A-10-608717-C
	A-10-608718-C

DECISION, ORDER AND JUDGMENT ON DEFENDANT SCOTT FINANCIAL CORPORATION'S MOTION FOR SUMMARY JUDGMENT AS TO PRIORITY OF LIENS

Date: April 4, 2012
Time: 11:00 a.m.

Defendant SCOTT FINANCIAL CORPORATION'S ("SFC") re-hearing of its Motion for Summary Judgment as to Priority of Liens having come on for hearing on March 21, 2012, and after reviewing all of the moving papers, oppositions, joinders and replies filed as a result of both the original and the re-hearing; and having entertained arguments of counsel;

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The following is the Court's DECISION:

As threshold finding, the Court finds that this issue is ripe for summary judgment as there are no genuine issues of material fact. The following are the undisputed facts material to the resolution of the issue of lien priority:

UNDISPUTED FACTS

1. At issue in this motion is the relative priority of competing liens encumbering certain real property in Clark County, Nevada commonly referred to as 9205 W. Russell Road, Clark County, Nevada. The property at issue was initially identified by Assessor Parcel Numbers: 163-32-101-003; 163-32-101-004; 163-32-101-005; 163-32-101-010; and 163-32-101-014, but were later identified by the Clark County Assessor's Office as Assessor Parcel Number: 163-32-101-019. The parcel was subsequently sub-divided into parcels numbered 163-32-101-019; 163-32-101-020; 163-32-101-022; and 163-32-101-023 and those are the parcel numbers as assigned by the Clark County Assessor's office as of the date of this order. ("Subject Property").

2. The priority issues decided in this motion deal with the relative priority of two groups of liens. The first group of liens are represented by numerous deeds of trust securing purchase money and construction loans while the second are mechanics' liens asserted by various contractors who have claimed to furnish labor and materials in support of improving the Subject Property and assert liens pursuant to Chapter 108 of the Nevada Revised Statutes.

3. The Subject Property was acquired by Gemstone Apache, LLC in July 5, 2006, and this acquisition was financed by two Purchase Money Deeds of Trust in favor of SFC in the amount of $15 million and $10 million, respectively, and a third line of Credit Deed of Trust in the amount of $13 million.

4. The loans referenced above were secured by three separate Deeds of Trust. A First Deed of Trust for $15,000,000.00, was recorded in Book Number 20060705 as Instrument Number 0004264 on July 5, 2006. A Junior Deed of Trust for $10,000,000.00 was recorded in Book Number 200607045 as Instrument Number 0004265 on July 5, 2006, and a Third Deed of Trust for $13,000,000.00 recorded as Book Number 20060705 as Instrument Number 0004266 on July 5, 2006 in the Official Records of the Clark County Recorder for Clark County, Nevada

(collectively, the "Original Mezzanine Deeds of Trust").

5. No work commenced until April 2007, well after Original Mezzanine Deeds of Trust were properly recorded.

6. On or about May 22, 2007 SFC extended additional financing in the amount of $8,000,000.00 to Gemstone and such financing was secured by way of an Amendment to the above-referenced Junior Deed of Trust. The Junior Deed of Trust Amendment was recorded in Book Number 20070522 as Instrument Number 0004011 in the Official Records of the Clark County Recorder for Clark County, Nevada, on May 22, 2007. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of $8,000,000.00 was new money for the Manhattan West project.

7. On or about October 24, 2007 SFC extended additional financing in the amount of $10,000,000.00 secured by way of an Amendment to the Third Deed of Trust which was recorded in Book Number 20071024 as Instrument Number 0004182 in the Official Records of the Clark County Recorder for Clark County, Nevada. This was not a refinance of the existing debt, nor was the original loan paid off. The additional financing of $10,000,000.00 was new money for the Manhattan West project.

8. On January 22, 2008 an Assumption Agreement was executed and entered with SFC as Lender, Gemstone Apache, LLC and Gemstone Development West, LLC in which Gemstone Apache conveyed its interest in the Subject Property to Gemstone Development West, LLC and Gemstone Development West, LLC assumed the Senior Deed of Trust, Junior Deed of Trust and Third Deed of Trust with the amendments thereto. The Assumption Agreement was recorded on February 7, 2008 on Book Number 20080207 as Instrument Number 0001483 in the Official Records of the Clark County Recorder for Clark County, Nevada.

9. On January 22, 2008 a First Amendment to the Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixtures Filing (Line of Credit) (Mezzanine) was executed ("Senior Deed of Trust Amendment"). The Senior Deed of Trust Amendment was recorded on February 7, 2008 in Book Number 20080207 as Document Number 0001484.

10. On January 22, 2008 a Second Amendment to the Junior Deed of Trust and

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Security Agreement with the Assignment of Rents and Fixture Filing was executed and recorded on February 7, 2008 in Book Number 200080207 as Document Number 0001485. The Senior Deed of Trust Amendment and the Junior Deed of Trust Second Amendment were renamed the Mezzanine Trust Deeds. This additional funding provided by SFC simply introduced new money to the project and did not constitute a new loan or a refinance of any existing debt.

11. On January 28, 2008 the Senior Deed of Trust and Security Agreement with Assignment of Rents and Fixture Filings for $110,000,000.00 was executed ("Construction Deed of Trust"). SFC was the beneficiary of the Construction Deed of Trust which was recorded on February 7, 2008 in Book Number 20080207 as Document Number 00014882. This was not a refinance of the existing debt, nor was the original loan paid off. This additional funding provided by SFC simply introduced new money to the project and did not constitute a new loan or a refinance of any existing debt.

12. In addition to the execution of the above-referenced Deeds of Trust, on January 22, 2008 a Mezzanine Deed of Trust Subordination Agreement was executed ("Subordination Agreement") solely by Gemstone and SFC and provided that the Construction Deed of Trust was to be deemed superior and hold a first security interest as between these two entities. The Subordination Agreement was recorded on February 7, 2008 in Book Number 20080207 as Document Number 0001486.

13. In July of 2006, prior to the commencement of construction for any work of improvement on the Subject Property, the Original Mezzanine Deeds of Trusts secured obligations totaling $38,000,000.00. In May of 2007 the total amount secured by all Mezzanine Deeds of Trust (including post-April 2007 amendments) was $46,000,000.00, and in October of 2007 the total amount again increased to $56,000,000.00. In February of 2008 the Construction Deed of Trust added an additional $110,000,000.00 of financing for the Subject Project to the $56,000,000.00 which was already in existence. At that time, all the Mezzanine Deeds of Trust were subordinated to the Construction Deed of Trust pursuant to the Subordination Agreement.

14. The Original Mezzanine Deeds of Trust were never released or reconveyed.

15. In all amendments to the Original Mezzanine Deeds of Trust, all Mezzanine

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Deeds of Trust were affirmed, and all Notes and Trust Deeds were amended and not replaced.

16. The express purpose of the Subordination Agreement is to place the $110,000,000.00 Construction Deed in a senior priority position to the Mezzanine Trust Deeds.

17. The clear language of the Subordination Agreement when read in its entirety demonstrates that the language in paragraph 1 page 2 of the Subordination Agreement modifies and references the $110,000,000.00 Construction Deed in reference to the Mezzanine Trust Deeds and does not subordinate the Mezzanine Trust Deeds to any other interest in the Subject Property. No language in the Subordination Agreement evidences a clear intent for the parties to the Subordination Agreement to benefit any non-party to the Subordination Agreement.

CONCLUSIONS OF LAW

20. Pursuant to NRS § 108.225, encumbrances that are of record prior to the date that construction commences on any work of improvement (as that term is used in NRS Chapter 108) are entitled to priority over any mechanic lien claims asserted pursuant to NRS Chapter 108. The Original Mezzanine Deeds of Trust with principal amounts totaling $38,000,000.00 were recorded before the commencement of construction for the project at issue and are therefore entitled to a senior priority lien position over any mechanics lien claims at issue in this case.

21. The fact that SFC obtained title insurance as part of the loan transactions is irrelevant and is common procedure. SFC's purchase of title insurance does not operate in any way to waive any claim it would have to priority under any of the Deeds of Trust at issue in this case.

22. This case presents an issue of first impression in Nevada, specifically, whether the Subordination Agreement operates to alter the priority positions of any non-parties to that Agreement, in this case, specifically the mechanics lien claimants.

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23. The mechanics lien claimants in this case have argued that as the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust, were subordinated to the Construction Loan Deed of Trust that was recorded after the commencement of construction for the work of improvement at issue, that the effect of the Subordination Agreement is to subordinate the initial Senior, Junior and Third Deeds of Trusts, as amended by the Mezzanine Deeds of Trust to both the Construction Loan Deed of Trust and the mechanics lien claims.

24. The clear intent of the Subordination Agreement when read in its entirety reveals no intent to do anything other than ensure that the $110,000,000.00 Construction Deed of Trust would be paid prior to the Mezzanine Deeds of Trust.

25. The clear intent of the Subordination Agreement would be contradicted by placing mechanic's liens in higher priority than the Construction Deed of Trust.

26. The Subordination Agreement does not evidence any expressed or implied intent to benefit any third-party and specifically evidences no intent to benefit the mechanics lien claimants.

27. It is undisputed that lien claimants had actual and/or constructive knowledge that they were commencing construction on a project already subject to a $38,000,000.00 lien.

28. This Court adopts the reasoning of Bratcher v. Buckner, 90 Cal. App. 4th 1177 (2001) and as such the Subordination Agreement does not change the lien claimants' priority.

29. The lien claimants commenced work subject to a $38,000,000.00 lien when they started work on the Manhattan West project. To place them in a more advantageous position due to a subordination agreement they were not a party to would be to grant them a windfall.

28. The lien claimants received benefit from the construction funding including the funds advanced and secured by the Construction Deed of Trust.

29. The reasoning provided in the AmSouth Bank v. J&D Financing Corp., 679 So. 2d 695 (Ala. 1996) is not persuasive and the Bratcher case more correctly and fairly describes the issue of circuity of liens in line with the policies and laws of the state of Nevada.

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30. Specifically under Bratcher assuming that there are three liens respectively in priority (referred to for convenience herein as liens A, B, and C), subordinating A to C does not result in the subordinating of A to B. The legal effect of the Subordination Agreement in this context is that A and C have switched places in priority but only to the amount of A's lien against the property. B's interest in the property is neither benefited nor burdened by this result since B's interest in the property is still subordinate to a lien of the same amount as it was when its lien attached to the property.

31. This reasoning was likewise adapted by Nevada's neighbor Arizona in 2002 in In re Price Waterhouse, Ltd, 202 Ariz. 379 (2002) and appears to be the majority view nationally.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED SFC's Motion for Partial Summary Judgment as to Priority of Liens is GRANTED as reconsidered and/or reheard by this Court;

IT IS FURTHER ORDERED ADJUDGED AND DECREED that SFC's loan of $110,000,000.00 is in first position priority regarding the other claimants in the principal amount of $38,000,000.00. Thereafter, the mechanic lien claimants are in second position and the remainder of SFC's $110,000,000.00 principal amount loan, namely $72,000,000.00 in principal is in third position, and the Original Mezzanine Deeds of Trust along with the post-April 2007 Mezzanine Deeds of Trust are in junior priority position to the aforementioned encumbrances;

IT IS FURTHER ORDERED ADJUDGED AND DECREED a further stay of this litigation is granted pending a petition to the Nevada Supreme Court provided such is timely filed and for which no bond is required; and

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IT IS FURTHER ORDERED ADJUDGED AND DECREED this matter is set for a status check on May 9, 2012 at 10:00 a.m.

Dated: ~~April~~ May 4, 2012.

DISTRICT COURT JUDGE

Submitted by:

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