

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 80508

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Elizabeth A. Brown
Clerk of Supreme Court

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

**APPENDIX TO DOCKETING STATEMENT
Volume II**

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<u>Exhibit</u>	<u>Description</u>	<u>Bates Range</u>	<u>Volume</u>
A	Court Docket for Case No. 09A587168	Helix000001 – Helix000044	I
B	Notice of Entry of Order to Consolidate	Helix000045 – Helix000053	I
C	Consolidated Case List	Helix000054 – Helix000062	I
D			
D-1	Pleadings Related to Accuracy	Helix000063 - Helix000066	I
	Complaint Re Foreclosure filed by Accuracy Glass & Mirror Company	Helix000067 – Helix000103	I
	First Amended Complaint Re: Foreclosure	Helix000104 – Helix000119	I
	APCO's Answer to Accuracy's First Amended Complaint Re: Foreclosure	Helix000120 – Helix000135	I & II
	CAMCO's Answer and Counterclaim	Helix000136 – Helix000155	II
	Accuracy's Answer to CAMCO's Counterclaim	Helix000156 – Helix000160	II
D-2	Pleadings Related to Helix Electric of Nevada, LLC d/b/a Helix Electric	Helix000161 – Helix000163	II
	Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint	Helix000164 – Helix000179	II

	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000180 – Helix000195	II
	CAMCO and Fidelity's Answer and CAMCO's Counterclaim	Helix000196 – Helix000211	II
	Notice of Entry of Granting Helix's Motion for Fees, Interest and Costs	Helix000212 – Helix000220	II
	Notice of Entry of Judgment	Helix000221 – Helix000240	II
	Notice of Entry of Judgment [As to the Claims of Helix and National Wood Products Against APCO]	Helix000241 – Helix000251	II & III
	Findings of Fact and Conclusions of Law and Order as to the Claims of Helix and Cabenetec Against APCO	Helix000252 – Helix000323	III
D-3	Pleadings Related to WRG Design, Inc.	Helix000324 – Helix000326	III
	WRG's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000327 – Helix000343	III
	APCO's Answer to Helix's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000344 – Helix000359	III
	CAMCO & FDCM's Answer and CAMCO's Third-Party Complaint	Helix000360 – Helix000380	III & IV
	Notice of Entry of Stipulation and Order of Dismissal	Helix000381 – Helix000388	IV

	WRG's Answer to CAMCO's Counterclaim	Helix000389 – Helix000393	IV
D-4	Pleadings Related to Heinaman Contract Glazing	Helix000394 – Helix000396	IV
	Heinaman's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000397 – Helix000409	IV
	CAMCO and FDCM's Answer to Heinaman's Statement of Facts and CAMCO's Counterclaim	Helix000410 – Helix000430	IV
	Notice of Entry of Order	Helix000431 – Helix000439	IV
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	Heinaman's Answer to CAMCO's Counterclaim	Helix000463 – Helix000467	IV
D-5	Pleadings Related to Bruin Painting Corporation	Helix000468 – Helix000469	IV
	Bruin Painting's Amended Statement of Facts Constituting Amended Notice of Lien and Third-Party Complaint	Helix000470 – Helix000482	IV
	CAMCO's Answer and Counterclaim	Helix000483 – Helix000503	IV & V
	Voluntary Dismissal	Helix000503 – Helix000505	V

D-6	Pleadings Related to HD Supply Waterworks, LP	Helix000506 – Helix000508	V
	HD Supply's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000509 – Helix000526	V
	APCO's Answer to Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000527 – Helix000541	V
	Amended Answer to HD Supply & Waterworks, LP's Statement of Facts Constituting Lien and CAMCO's Third-Party Complaint	Helix000542 – Helix000548	V
	Jeff Heit Plumbing and Old Republic's Answer to HD Supply's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000549 – Helix000558	V
	Stipulation and Order to Dismiss E&E Fire Protection	Helix000559 – Helix000569	V
	Voluntary Dismissal of Platte River Insurance	Helix000570 – Helix000577	V
	Scott Financial's Answer to HD Supply's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint	Helix000578 – Helix000601	V
E	Accuracy Glass & Mirror Company's Complaint Re: Foreclosure	Helix000602 – Helix000638	V & VI

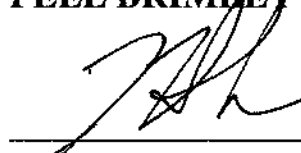
F	Accuracy Glass & Mirror Company's First Amended Complaint Re: Foreclosure	Helix000639 – Helix 000654	VI
G	Bruin Painting	Helix000655- Helix691	VI
H	HD Supply	Helix000692 – Helix000785	VI & VII
I	Heinaman	Helix000786 – Helix000857	VII & VIII
J	WRG	Helix000858 – Helix000925	VIII & IX
K	131 Nev Advance Opinion	Helix000926 – Helix000943	IX
L	Notice of Entry of Order Granting Plaintiff's Motion to Dismiss	Helix000944 – Helix000950	IX
M	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC and Plaintiff in Intervention National Wood Products, Inc.'s Against APCO Construction, Inc.	Helix000951 – Helix961	IX
N	Notice of Entry of Judgment [As to the Claims of Helix Electric of Nevada, LLC Against CAMCO Construction Co., Inc.]	Helix000962 – Helix000981	IX
O	Notice of Entry of Judgment [As to the Claims of Heinaman Contract Glazing Against CAMCO Construction Co., Inc.)	Helix000982 – Helix001004	IX & X

P	Order Dismissing Appeal (NV Supreme Court Case No. 76276)	Helix001005 – Helix001008	X
Q	Notice of Entry of Granting Helix Electric of Nevada's Motion for Rule 54(b) Certification	Helix001009 – Helix001017	X
R	Notice of Appeal	Helix001018 – Helix1607	X & XI & XII & XIII

Dated this 5th day of March, 2020.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 3rd day of March, 2020, I caused the above and foregoing document, **APPENDIX TO DOCKETING STATEMENT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Nevada Supreme Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

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APCO Construction, Inc.*

Settlement Judge:

Stephen E. Haberfeld
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Los Angeles, CA 90048


An employee of **PEEL BRIMLEY, LLP**

1 belief as to the truth of the allegations contained therein, and upon said grounds, denies each
2 and every allegation contained therein.

3 **SEVENTH CAUSE OF ACTION**

4 **(Claim of Priority)**

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

20 **(Claim Against Bond – CAMCO Surety)**

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

24 27. Answering Paragraphs 60, 61, 62, 63, 64, 65, 66, and 67 of the Complaint,
25 APCO does not have sufficient knowledge or information upon which to base a belief as to the
26 truth of the allegations contained therein, and upon said grounds, denies each and every
27 allegation contained therein.
28

NINTH CAUSE OF ACTION

(Violation of NRS 624 - APCO)

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

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

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

TENTH CAUSE OF ACTION

(Violation of NRS 624 – CAMCO)

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

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

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

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ELEVENTH CAUSE OF ACTION

(Declaratory Judgment)

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

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

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

1 At the time and place under the circumstances alleged by the Accuracy, Accuracy had
2 full and complete knowledge and information with regard to the conditions and circumstances
3 then and there existing, and through Accuracy's own knowledge, conduct, acts and omissions,
4 assumed the risk attendant to any condition there or then present.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 Whatever damages, if any, were sustained by Accuracy, were caused in whole or in part
7 or were contributed to by reason of Accuracy's own actions.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 The liability, if any, of APCO must be reduced by the percentage of fault of others,
10 including Accuracy.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 The damages alleged by Accuracy were caused by and arose out of the risk which
13 Accuracy had knowledge and which Accuracy assumed.

14 **NINTH AFFIRMATIVE DEFENSE**

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

18 **TENTH AFFIRMATIVE DEFENSE**

19 APCO's obligations to Accuracy have been satisfied or excused.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 Accuracy failed to perform their work in workmanlike manner thus causing damages in
22 excess to the sums Accuracy claim are due under the subcontract with APCO.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The claim for breach of contract is barred as a result of Accuracy's failure to satisfy
25 conditions precedent.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 The claims, and each of them, are premature.
28

FOURTEENTH AFFIRMATIVE DEFENSE

Accuracy should indemnify APCO for any and all losses, damages or expenses APCO sustains as a result of any claims by Gemstone for damages that Gemstone allegedly sustained due to Accuracy's improper workmanship on the Manhattan West Project, including, but not limited to, any damage amount and the attorney's fees and costs incurred by APCO relative thereto.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

Accuracy has failed to comply with the requirements of NRS 624.

NINETIETH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

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TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

Accuracy's claims are barred under the doctrine of accord and satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE

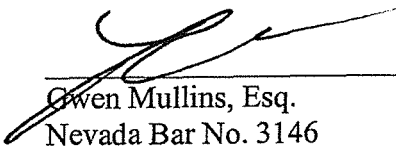
Pursuant to NRCP Rule 8 and 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to the Statement, and therefore, APCO reserves the right to amend their Answer to allege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

WHEREFORE, APCO prays for judgment as follows:

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

DATED this 3rd day of August, 2009.

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CERTIFICATE OF MAILING

On the 5th day of August, 2009, the undersigned served a true and correct copy of the foregoing APCO CONSTRUCTION'S ANSWER TO ACCURACY GLASS & MIRROR COMPANY'S FIRST AMENDED COMPLAINT RE FORECLOSURE, by U.S. Mail, postage prepaid, upon the following:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

CAMCO PACIFIC CONSTRUCTION
COMPANY, INC., a California corporation

Counterclaimant,

vs.

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

Counterdefendant,

FILED

SEP 11 5 25 PM '09

Earl B. Smith
CLERK OF THE COURT

Case No. A587168
Dept. No: XIII

Consolidated with:
A571228

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

09A587168
389415



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

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

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

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

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

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

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

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

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

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Henderson, Nevada 89074
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1 that payment would have been made by Owner, but denies the remaining allegations therein.

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

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

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

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

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

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

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

20 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 COUNTERCLAIM

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

8 JURISDICTIONAL ALLEGATIONS

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

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

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

21 FIRST CAUSE OF ACTION

22 (Breach of Contract)

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

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

1 "Project").

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

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

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

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

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

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

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

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

25 **SECOND CAUSE OF ACTION**

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

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

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Henderson, Nevada 89074
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1 reference and further allege:

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

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

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

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

11 WHEREFORE, Counterclaimant Camco prays as follows:

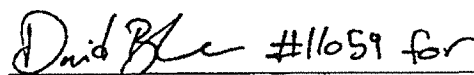
12 1. This Court enter judgment against Counterdefendants, and each of them, in an
13 amount in excess of \$10,000.00, plus interest at the contract rate;

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

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

17 DATED this 11th day of September 2009.

18 WOODBURY, MORRIS & BROWN

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

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

CERTIFICATE OF MAILING

I hereby certify that on this 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.

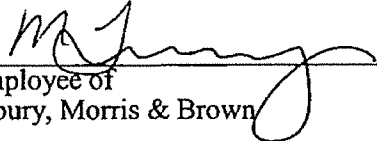

An Employee of
Woodbury, Morris & Brown

EXHIBIT A



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

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

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

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

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

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

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

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

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

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

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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.

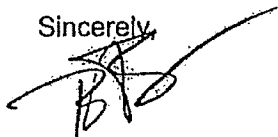
SFC delivered on a limited basis, letters to such disgruntled trade contractors informing them that all credit decisions on payment funding must be approved by SFC and that such funds would be only paid once SFC had completed its required approval process and determined that such payments were appropriate.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



November 4, 2008

Mr. Mike Evans

~~E&E Fire Protection LLC~~

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

RE: ManhattanWest Funding

Mr. Evans:

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

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

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

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

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

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

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

Sincerely,

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

Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit 'A'

December 1, 2008

Leo Duckstein

~~Cabine Tec Inc.~~

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

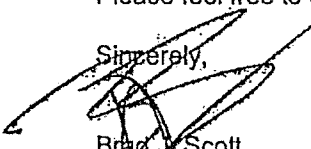
~~Although we cannot guarantee the approval SFC anticipates the draw request to be processed and funded to NCS Voucher control in December.~~

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

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

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

Sincerely,


Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299

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Exhibit B

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

Exhibit "B"

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Jennifer Olivares

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

Subject: ManhattanWest Status

Importance: High

Jen:

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

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

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

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


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

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

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

Thanks.

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

	
Brad J. Scott, CRE President brad@scottfinancialcorp.com	15010 Sundown Drive Bismarck, ND 58503 Office: 701.255.2215 Fax: 701.223.7299 Cell: 701.220.3999
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4/1/2009

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Exhibit B

Jennifer Olivares

From: Brad Scott [brad@scottfinancialcorp.com]

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

To: Anne Dwyer; Jennifer Olivares

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

Subject: FW: ManhattanWest

Importance: High

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

Jennifer & Anne:

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

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

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

Brad J. Scott
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M: 701.220.3999
F: 701.223.7299
brad@scottfinancialcorp.com



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Cell: 701.220.3999

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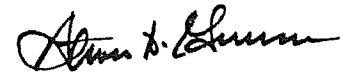
Email is not always a secure transmission medium. Caution should always be used to communicate "confidential information". If you elect to send or receive information via email, Scott Financial Corporation cannot assure its security and will not be liable if it is intercepted or viewed by another party.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

4/1/2009

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Accuracy's Answer to CAMCO's Counterclaim

Helix000156



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

14 APCO CONSTRUCTION, a Nevada
15 corporation,

16 Plaintiff,

17 vs

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

27 Defendants.

28 AND ALL RELATED MATTERS.

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

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

Case No.: A587168

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

9. Counterclaimant has failed to mitigate its damages.

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

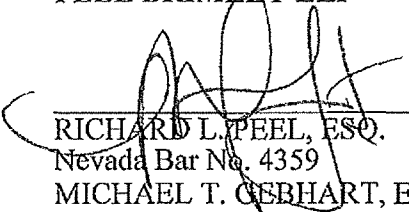
WHEREFORE, Plaintiff/Counterdefendant Accuracy Glass prays as follows:

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

DATED this 13 day of April, 2010.

PEEL BRIMLEY LLP


RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

MICHAEL T. GEBHART, ESQ.

Nevada Bar No. 7718

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

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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 13th day of April 2010, I served a true and correct copy of the foregoing **ACCURACY GLASS & MIRROR COMPANY, INC.'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S COUNTERCLAIM**, by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.


An Employee of PEEL BRIMLEY LLP

EXHIBIT D-2
(Pleadings Related to
Helix Electric of Nevada, LLC d/b/a Helix Electric)

Helix000161

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

<u>Role in Case</u>	<u>Party Name</u>	<u>Disposition</u>
Plaintiff-in-Intervention	Helix Electric of Nevada, LLC dba Helix Electric ("Helix")	
Original Defendant	Asphalt Products Corp.	
Original Defendant	APCO Construction ("APCO")	
Original Defendant	CAMCO Pacific Construction Company, Inc. ("CAMCO")	
Original Defendant	Gemstone Development West, Inc. ("Gemstone")	
Original Defendant	Fidelity and Deposit Company of Maryland ("FDCM")	
Original Defendant	Scott Financial Corporation	

<u>Causes of Action</u>	<u>Party Name</u>	<u>Disposition</u>
Allegations substantially identical claims to Accuracy's Statement of Facts Constituting Lien and Complaint-in-Intervention		Amended Judgment awarded in the amount of \$1,277,601.82 on July 2, 2018
		Judgment awarded in the principal sum of \$834,476.45 against CAMCO on May 31, 2018
First Cause of Action	Breach of Contract	APCO
		Judgment awarded to APCO June 1, 2018 Findings of Fact and Conclusions of Law and Order
Second Cause of Action	Breach of Contract	CAMCO
		Judgment after trial against CAMCO
Third Cause of Action	Breach of Implied Covenant of Good Faith and Fair Dealing	APCO
		Judgment after trial
Fourth Cause of Action	Breach of Implied Covenant of Good Faith and Fair Dealing	CAMCO
		Judgment after trial against CAMCO
Fifth Cause of Action	Unjust Enrichment or in the Alternative <i>Quantum Meruit</i>	All Defendants
		Judgment after trial against CAMCO
Sixth Cause of Action	Foreclosure of Mechanic's Lien	All Defendants
		Judgment after trial against CAMCO
Seventh Cause of Action	Claim of Priority	All Defendants
		Dismissed
Eighth Cause of Action	Claim Against Bond	CAMCO Surety
		Judgment after trial against CAMCO
Ninth Cause of Action	Violation of NRS 624	APCO
		Dismissed after trial against CAMCO
Tenth Cause of Action	Violation of NRS 624	CAMCO
		Judgment after trial against CAMCO
Eleventh Cause of Action	Declaratory Judgment	All Defendants
		Judgment after trial against CAMCO

COUNTERCLAIM OF CAMCO AGAINST HELIX ELECTRIC

First Cause of Action	Abuse of Process	Cross-Claims not pursued at Trial
Second Cause of Action	Breach of Contract – in the Alternative	Cross-Claims not pursued at Trial
Third Cause of Action	Breach of Covenant and Good Faith and Fair Dealing – In the Alternative	Cross-Claims not pursued at Trial
Fourth Cause of Action	Declaratory Relief	Cross-Claims not pursued at Trial
Fifth Cause of Action	Attorneys' Fees	Cross-Claims not pursued at Trial

Helix Electric's Amended Statement of Facts Constituting Lien and Third-Party Complaint

Helix000164

Edmund A. Smith
CLERK OF THE COURT

1 STMT
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 MICHAEL T. GEBHART, ESQ.
5 Nevada Bar No. 7718
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14 mgebhart@peelbrimley.com
15 dwayment@peelbrimley.com
16 Attorneys for Helix Electric of Nevada, LLC d/b/a Helix Electric

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Plaintiff in Intervention,

vs.

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

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

Consolidated with:

A571792

A574391

A577623

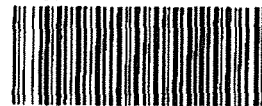
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HELIX ELECTRIC'S AMENDED
STATEMENT OF FACTS
CONSTITUTING NOTICE OF LIEN
AND THIRD-PARTY COMPLAINT

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EXEMPTION FROM ARBITRATION:
Title to Real Estate

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

9 Defendants.

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

15 **THE PARTIES**

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

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

24
25
26
27
28
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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West]\WPX\Originals\090622 Helix And Stmt of

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

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

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

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

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

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

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

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

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

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

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

15 11. Helix furnished the APCO Work for the benefit of and at the specific instance and
16 request of APCO and/or Owner.
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **THIRD CAUSE OF ACTION**

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

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

1 26. There is a covenant of good faith and fair dealing implied in every agreement,
2 including the APCO Agreement.

3 27. APCO breached its duty to act in good faith by performing the APCO Agreement
4 in a manner that was unfaithful to the purpose of the APCO Agreement, thereby denying Helix's
5 justified expectations.

6 28. Due to the actions of APCO, Helix suffered damages in an amount to be
7 determined at trial for which Helix is entitled to judgment plus interest.

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

11
12 **FOURTH CAUSE OF ACTION**
13 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against CPCC)**

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

17 31. There is a covenant of good faith and fair dealing implied in every agreement,
18 including the CPCC Agreement.

19 32. CPCC breached its duty to act in good faith by performing the CPCC Agreement
20 in a manner that was unfaithful to the purpose of the CPCC Agreement, thereby denying Helix's
21 justified expectations

22 33. Due to the actions of CPCC, Helix suffered damages in an amount to be
23 determined at trial for which Helix is entitled to judgment plus interest.

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

FIFTH CAUSE OF ACTION
(Unjust Enrichment or in the Alternative Quantum Meruit – Against All Defendants)

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

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

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

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

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

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

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

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

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

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

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

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

27 ///

28 ///

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SEVENTH CAUSE OF ACTION
(Claim of Priority)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ///

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ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

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

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

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

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

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

3 85. Helix is informed and believes and therefore alleges that construction on the
4 Property commenced at least before the recording of the Senior Debt Deed of Trust and that by
5 law, all mechanics' liens, including Helix's, enjoy a position of priority over the Senior Debt
6 Deed of Trust.
7

8 86. Because the Mezzanine Deeds of Trust Subordination Agreement renders the
9 Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust,
10 it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly
11 subordinate to all mechanics' liens, including Helix's.
12

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

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

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

19 1. Enters judgment against the Defendants, and each of them, jointly and severally, in
20 the APCO Outstanding Balance and CPCC Outstanding Balance amounts;
21

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

25 3. Enter a judgment declaring that Helix has valid and enforceable mechanic's liens
26 against the Property, with priority over all Defendants, in an amount of the APCO Outstanding
27 Balance and CPCC Outstanding Balance;
28

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

6
7 5. Enter a judgment declaring that Helix' mechanics' lien enjoys a position of
8 priority superior to any lien or encumbrance created by or for the benefit of SFC or any other
9 entity; and

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

12 Dated this 22 day of June 2009.

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**APCO'S Answer to Helix's Amended
Statement of Facts Constituting Lien and
Third-Party Complaint**


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**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 APCO CONSTRUCTION, a Nevada
13 corporation,

14 Plaintiff,

15 vs.

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

25 Defendants.

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

Lien Claimant/Intervenor,

vs.

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

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

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

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

Defendants.

11 AND ALL RELATED CASES AND
12 MATTERS.

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

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

22 **THE PARTIES**

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

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

FIRST CAUSE OF ACTION

(Breach of Contract Against APCO)

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Contract Against CPCC)

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

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

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

7 **THIRD CAUSE OF ACTION**

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

3 **FIFTH CAUSE OF ACTION**

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

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

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

14 **SIXTH CAUSE OF ACTION**

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

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

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

25 ...

26 ...

27 ...

SEVENTH CAUSE OF ACTION

(Claim of Priority)

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

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

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

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

EIGHTH CAUSE OF ACTION

(Claim Against Bond – CPCC Surety)

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

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

...

...

NINTH CAUSE OF ACTION

(Violation of NRS 624 - APCO)

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

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

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

TENTH CAUSE OF ACTION

(Violation of NRS 624 - CPCC)

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

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

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

...

ELEVENTH CAUSE OF ACTION

(Declaratory Judgment)

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

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

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

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

3 **SIXTH AFFIRMATIVE DEFENSE**

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

6 **SEVENTH AFFIRMATIVE DEFENSE**

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

9 **EIGHTH AFFIRMATIVE DEFENSE**

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

12 **NINTH AFFIRMATIVE DEFENSE**

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

16 **TENTH AFFIRMATIVE DEFENSE**

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

18 **ELEVENTH AFFIRMATIVE DEFENSE**

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

21 **TWELFTH AFFIRMATIVE DEFENSE**

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

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

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

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

17 **NINETIETH AFFIRMATIVE DEFENSE**

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

19 **TWENTIETH AFFIRMATIVE DEFENSE**

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

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

28 ...

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TWENTY-THIRD AFFIRMATIVE DEFENSE


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

WHEREFORE, APCO prays for judgment as follows:

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

DATED this 5th day of August, 2009.

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CERTIFICATE OF MAILING

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

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4 Las Vegas, NV 89169-5994
5 *Attorney for the Masonry Group Nevada, Inc.*



An employee of Howard and Howard Attorneys PLLC

CAMCO and Fidelity's Answer and CAMCO's Counterclaim

ORIGINAL

80

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

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

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

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

16 **Plaintiff,**

17 **vs.**

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

Defendants.

FILED

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Earl B. ...
CLERK OF THE COURT

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

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SEP 10 2009
CLERK OF THE COURT

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

4 Plaintiff-in-Intervention,

5 vs.

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

19 Defendants-in-Intervention.

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

22 Counterclaimant,

23 vs.

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

27 Counterdefendants.

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

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

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

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

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

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

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

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

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

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

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

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

1 expressly set forth hereinabove.

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

6 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 23. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **COUNTERCLAIM**

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

6 **JURISDICTIONAL ALLEGATIONS**

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

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

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

19 **FIRST CAUSE OF ACTION**

20 **(Abuse of Process)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **FOURTH CAUSE OF ACTION**

5 **(Declaratory Relief)**

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

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

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

19 **FIFTH CAUSE OF ACTION**

20 **(Attorneys' Fees)**

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

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

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

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

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

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

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

8 WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

14 DATED this 9th day of September 2009.

15 WOODBURY, MORRIS & BROWN

16 *Steven L. Morris* #11059 for

17 STEVEN L. MORRIS, ESQ.

18 Nevada Bar No. 7454

19 701 N. Green Valley Pkwy., Suite 110

20 Henderson, NV 89074-6178

21 Attorneys for Camco and Fidelity

22 **CERTIFICATE OF MAILING**

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

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

WOODBURY, MORRIS & BROWN

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Henderson, Nevada 89074-6571

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



An Employee of Woodbury, Morris & Brown

EXHIBIT A

Helix000209



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: 701.223.7299

A licensed and bonded corporate finance company.

Helix000210

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.

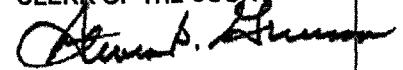
In addition, Gemstone provided the financial management component of the Project and was responsible for (a) establishing and maintaining the budget and (b) keeping full and detailed accounts on the Project.

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.

**Notice of Entry of Order Granting Helix's
Motion for Fees, Interest and Costs**

Helix000212



1 **NEOJ**
ERIC B. ZIMBELMAN,
2 Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
PEEL BRIMLEY LLP
4 3333 E. Serene Avenue, Suite 200
Henderson, NV 89074-6571
5 Telephone: (702) 990-7272
Fax: (702) 990-7273
6 ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
7 *Attorneys for Helix Electric of Nevada, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 vs

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

19 Defendants.

20 AND ALL RELATED MATTERS.

CASE NO.: A571228

DEPT. NO.: XIII

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

NOTICE OF ENTRY OF ORDER

21 ///

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28

PEEL BRIMLEY LLP
3333 E. SERENE AVENUE, STE. 200
HENDERSON, NEVADA 89074
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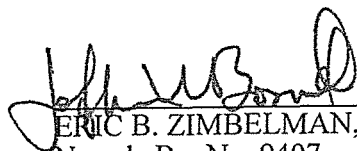
PEEL BRIMLEY LLP
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NOTICE OF ENTRY OF ORDER

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

DATED this 2 day of July, 2018.

PEEL BRIMLEY LLP

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

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

CERTIFICATE OF SERVICE

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

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

Apco Construction:

Rosie Wesp (rwesp@maclaw.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Camco Pacific Construction Co Inc:

Steven Morris (steve@gmdlegal.com)

Fidelity & Deposit Company Of Maryland:

Steven Morris (steve@gmdlegal.com)

E & E Fire Protection LLC:

Tracy Truman (district@trumanlegal.com)

Interstate Plumbing & Air Conditioning Inc:

Jonathan Dabbieri (dabbieri@sullivanhill.com)

National Wood Products, Inc.'s:

Richard Tobler (rltldck@hotmail.com)

Tammy Cortez (tcortez@caddenfuller.com)

S. Judy Hirahara (jhirahara@caddenfuller.com)

Dana Kim (dkim@caddenfuller.com)

Richard Reincke (rreincke@caddenfuller.com)

Chaper 7 Trustee:

Jonathan Dabbieri (dabbieri@sullivanhill.com)
Jennifer Saurer (Saurer@sullivanhill.com)
Gianna Garcia (ggarcia@sullivanhill.com)
Elizabeth Stephens (stephens@sullivanhill.com)

United Subcontractors Inc:

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

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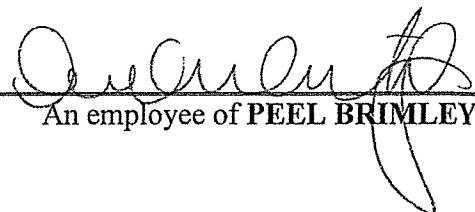
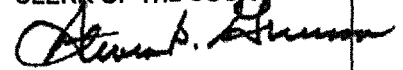

An employee of PEEL BRIMLEY, LLP

Exhibit A



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2 Nevada Bar No. 9407
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3 Nevada Bar No. 4359
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6 ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
7 Attorneys for Helix Electric of Nevada, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs.

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

18 Defendants.

19 AND ALL RELATED MATTERS.
20
21

CASE NO.: A571228
DEPT. NO.: XIII

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

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

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

27 ///

28 ///

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

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

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

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


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

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

14 Dated this 2nd day of June, 2018.

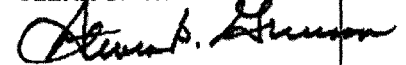

DISTRICT COURT JUDGE

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

20  #11776
21 ERIC B. ZIMBELMAN, ESQ
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23 RICHARD L. PEEL, ESQ.
24 Nevada Bar No. 4359
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Attorneys for Helix Electric of Nevada, LLC

Notice of Entry of Judgment

Helix000221



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Attorneys for Helix Electric of Nevada LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS

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

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

NOTICE OF ENTRY OF JUDGMENT

///

///

///

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NOTICE OF ENTRY OF JUDGMENT

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

DATED this 31st day of May, 2018.

PEEL BRIMLEY LLP

/s/ Eric B Zimbelman
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RICHARD L. PEEL, ESQ.
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Attorneys for Helix Electric of Nevada LLC

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 31st day of May, 2018, I caused the above and foregoing document,

NOTICE OF ENTRY OF JUDGMENT to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other _____

to the attorney(s) and/or party(ies) listed below at the address and/or facsimile number indicated below:

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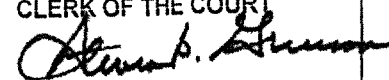
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/s/ Amanda Armstrong

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Exhibit A



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Attorneys for Helix Electric of Nevada, LLC

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
corporation,

11 Plaintiff,

12 vs

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

18 Defendants.

19 AND ALL RELATED MATTERS.
20

CASE NO.: A571228
DEPT. NO.: XIII

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

JUDGMENT

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

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

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MAY 22 2018

DISTRICT COURT DEPT. 13

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

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

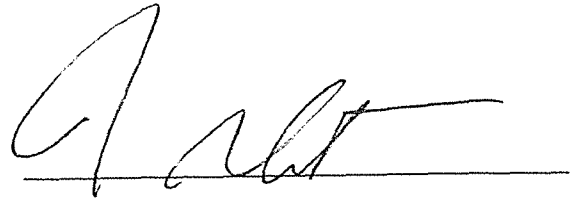
7 The Court having entered its April 26, 2018 Findings of Fact and Conclusions of Law
8 as to the Claims of Helix against Camco, incorporated herein by this reference and attached
9 hereto as Exhibit 1 ("the Helix FFCL");

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

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

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

16 Dated this 29th day of May 2018.



DISTRICT COURT JUDGE

21 Respectfully submitted by:

22 **PEEL BRIMLEY LLP**

23  #11776 for

24 ERIC B. ZIMBELMAN,

25 Nevada Bar No. 9407

26 RICHARD L. PEEL, ESQ.

27 Nevada Bar No. 4359

28 3333 E. Serene Avenue, Suite 200

Henderson, NV 89074-6571

Attorneys for Helix Electric of Nevada, LLC

EXHIBIT 1



DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada
corporation,

Plaintiff,

vs

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

Defendants.

CASE NO.: A571228

DEPT. NO.: XIII

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

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

AND ALL RELATED MATTERS.

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

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

CLERK OF THE COURT

APR 26 2018

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40

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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

A. Procedural History.

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

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

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

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

4 **B. Significant Pre-Trial Orders**

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

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

27 ¹ The Peel Brimley Lien Claimants are: Helix, Heinaman, Fast Glass, Cactus Rose and SWPPP.
28

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

9 **C. Findings of Fact.**

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

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

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

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

27 _____
28 ² Testimony of Dave Parry.

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

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

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

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

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

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

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

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

1 804-007].

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

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

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

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

27 ⁴ Testimony of Dave Parry.

28 ⁵ i.e., less retention.

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

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

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

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

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

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

26 _____
27 ⁶ See also summary document, Ex. 508-061, which does not include Pay Application No. 15. [See
28 TR3-68:17-69:7].

⁷ Testimony of Andy Rivera.

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

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

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

10 B. Conclusions of Law.

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

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

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

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

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

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

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

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

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

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

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

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

9 ORDER

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

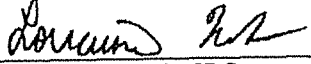
12 IT IS FURTHER ORDERED that, based upon the foregoing Findings of Fact
13 and Conclusions of Law, and those made regarding the other parties and claims
14 involved in the consolidated cases, the Court shall issue a separate Judgment or
15 Judgments reflective of the same at the appropriate time subject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

17 DATED this 24th day of April, 2018.

18
19 
DISTRICT COURT JUDGE

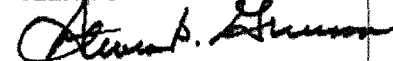
20
21 CERTIFICATE

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

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

**Notice of Entry of Judgment [As to the
Claims of Helix and National Wood Products
Against APCO]**

Helix000241



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8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

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

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

NOTICE OF ENTRY OF JUDGMENT

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

20 AND ALL RELATED MATTERS

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


25 ///

27 ///

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

2
3 Dated this 1st day of June, 2018.

4 SPENCER FANE LLP

5 
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7 John Randall Jefferies, Esq. (Bar No. 3512)
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11 *Attorneys for APCO Construction, Inc.*

1
2 **CERTIFICATE OF SERVICE**

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

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

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

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

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

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

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

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

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19 Richard Reincke (rreincke@caddenfuller.com)

20 S. Judy Hirahara (jhirahara@caddenfuller.com)

21 Tammy Cortez (tcortez@caddenfuller.com)

22 **Other: Chaper 7 Trustee**

23 Elizabeth Stephens (stephens@sullivanhill.com)

24 Gianna Garcia (ggarcia@sullivanhill.com)

25 Jennifer Saurer (Saurer@sullivanhill.com)

26 Jonathan Dabbieri (dabbieri@sullivanhill.com)

27 **Plaintiff: Apco Construction**

28 Rosie Wesp (rwesp@maclaw.com)

Third Party Plaintiff: E & E Fire Protection LLC

TRACY JAMES TRUMAN (DISTRICT@TRUMANLEGAL.COM)

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EXHIBIT A



1 JUDGE
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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 APCO CONSTRUCTION, a Nevada
11 corporation,

12 Plaintiff,

13 v.

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

16 Defendant.

Case No.: A571228

Dept. No.: XIII

Consolidated with:

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

JUDGMENT

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

20 AND ALL RELATED MATTERS

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

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DISTRICT COURT DEPT#13

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

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

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

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

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

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

23 ///

24

25

26 ///

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28 ///