IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 80508

HELIX ELECTRIC OF NEVADA, LLC,

Appellant,

v.

APCO CONSTRUCTION, INC., A NEVADA CORPORATION,

Respondent.

APPENDIX TO DOCKETING STATEMENT
Volume IV

ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
PEEL BRIMLEY LLP
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ezimbelman@peelbrimley.com
Attorneys for Appellant
Helix Electric of Nevada, LLC

Exhibit	Description	Bates Range	Volume
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 - Helix00066**	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
	Notice of Entry of Judgment	Helix000440 – Helix000462	IV
	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.

PEEL BRIMLEY LLP

Bar # 14379

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ezimbelman@peelbrimley.com
Attorneys for Appellant
Helix Electric of Nevada, LLC

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 27th 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:

John Randall Jeffries, Esq. (NV Bar No. 3512)
Christopher H. Byrd, Esq. (NV Bar No. 1633)
400 S. Fourth Street, Suite 500
Las Vegas, NV 89101
Telephone: (702) 408-3411

- and -

Jack Chen Min Juan, Esq. (NV Bar No. 6367)
Cody S. Mounteer, Esq. (NV Bar No. 11220)
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 382-0711

Attorneys for Respondent/Cross-Appellant
APCO Construction, Inc.

Settlement Judge:
Stephen E. Haberfeld
8224 Blackburn Ave, Suite 100
Los Angeles, CA 90048

An employee of **PEEL BRIMLEY, LLP**

Exhibit A

Scott
Financial Corporation

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,

Brad J. Scott
President

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

Exhibit "A"

Scott
Financial Corporation

December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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

Exhibit B

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

Exhibit "B"

Jennifer Olivares

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

Jen:

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

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

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

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

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

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

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

Thanks.

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

Scott Financial Corporation

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

15010 Sundown Drive
Bismarck, ND 58503
Office: 701.255.2215
Fax: 701.223.7299
Cell: 701.220.3999

A licensed and bonded corporate finance company.

4/1/2009

Exhibit B

Jennifer Olivares

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

Jennifer & Anne:

NCS is hereby instructed by SFC to wire the previous (advanced, but unspersed) funds held on account at NCS in the amount of $993,866.72 back to SFC (US) on the attached wiring instructions.

This amount includes the current Interim Payment Request for $66,827.29 as it has not been approved by SFC or its participants.

These funds will be held at SFC until further notice.

Please call with any questions.

Thanks.

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

Scott Financial Corporation

Brad J. Scott, CRE
President
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Office: 701.255.2215
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Cell: 701.220.3999

A licensed and bonded corporate finance company.

4/1/2009

Notice of Entry of Stipulation and Order of Dismissal

NESO
ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
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ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
Attorneys for Various Lien Claimants

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **NOTICE OF ENTRY OF STIPULATON AND ORDER OF DISMISSAL**

PLEASE TAKE NOTICE that a Stipulation and Order of Dismissal of All Claims

///

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///

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

Relating to Cardno WRG, Inc. was filed on September 20, 2017, a copy of which is attached as Exhibit A.

Dated this 21st day of September 2017.

PEEL BRIMLEY, LLP

/s/ Eric Zimbelman
ERIC B. ZIMBELMAN, ESQ.
Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Cardno WRG, Inc.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 28th day of June, 2017, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF STIPULATION AND ORDER OF DISMISSAL** to be served to the party(ies) and/or attorney(s) listed below as follows:

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the parties identified below; and/or

X pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;

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

☐ to be hand-delivered; and/or

☐ other _____

/s/Amanda Armstrong
An Employee of Peel Brimley LLP

Exhibit A

SAO
ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
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ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
Attorneys for Various Lien Claimants

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **STIPULATION AND ORDER OF DISMISSAL OF ALL CLAIMS RELATING TO CARDO WRG, INC.**

APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design, Inc. ("Cardno") hereby stipulate as follows:

1. All claims between and APCO and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party;

2. All claims between Camco and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.

Dated: 9/14/2017

PEEL BRIMLEY LLP

By: _____
Eric Zimbelman, Esq.
Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Attorneys for Cardno WRG, Inc.

Dated: 9/12/17

MARQUIS AURBACH COFFING

By: _____
Jack Chen Min Juan, Esq.
Nevada Bar No. 6367
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for APCO Construction

Dated: _____

GRANT MORRIS DODDS PLLC

By: _____
Steven L. Morris, Esq.
Nevada Bar No. 7454
2520 St. Rose Parkway, Suite 319
Henderson Nevada 89074
Attorneys for Canco Pacific Construction Company, Inc.

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

ORDER

Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design, Inc. ("Cardno"),

IT IS HEREBY ORDERED as follows:

1. All claims between and APCO and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.;
2. All claims between Camco and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.

DATED: September 19, 2017.

_____
DISTRICT COURT JUDGE

AM

Dated: _____

PEEL BRIMLEY LLP

By: _____
Eric Zimbelman, Esq.
Nevada Bar No. 9407
3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074
Attorneys for Cardno WRG, Inc.

Dated: _____

MARQUIS AURBACH COFFING

By: _____
Jack Chen Min Juan, Esq.
Nevada Bar No. 6367
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for APCO Construction

Dated: _____

GRANT MORRIS DODDS PLLC

By: _____
Steven L. Morris, Esq.
Nevada Bar No. 7454
2520 St. Rose Parkway, Suite 319
Henderson Nevada 89074
Attorneys for Canco Pacific Construction Company, Inc.

PEEL BRIMLEY LLP
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ORDER

Upon the Stipulation of APCO CONSTRUCTION ("APCO"), CAMCO PACIFIC CONSTRUCTION COMPANY, INC. ("Camco"), and CARDNO WRG, INC. fka WRG Design, Inc. ("Cardno"),

IT IS HEREBY ORDERED as follows:

1. All claims between and APCO and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.;
2. All claims between Camco and Cardno are mutually dismissed with prejudice and without an award of costs or fees to any party.

DATED: _____ 2017.

_____
DISTRICT COURT JUDGE

WRG's Answer to CAMCO's Counterclaim

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CLERK OF THE COURT

ANS
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
MICHAEL T. GEBHART, ESQ.
Nevada Bar No. 7718
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rpeel@peelbrimley.com
mgebhart@peelbrimley.com
Attorneys for WRG Design, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

In re: MANHATTAN WEST MECHANICS' LIEN LITIGATION	LEAD CASE NO.: A571228 DEPT. NO.: 25 **WRG DESIGN, INC.'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY, INC.'S COUNTERCLAIM**
AND ALL CONSOLIDATED MATTERS.	

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Plaintiff and Counterclaim Defendant WRG Design, Inc. ("WRG"), by and through its counsel, Richard L. Peel, Esq. and Michael T. Gebhart, Esq. of the law firm PEEL BRIMLEY LLP, hereby answer the Counterclaim of Camco Pacific Construction Company, Inc. ("Camco"), on file herein, and admit, deny and allege as follows:

1. WRG denies each and every factual allegation and legal conclusion contained in Paragraphs 9, 10, 11, 12, 13, 16, 17 and 18.

2. WRG is without information or knowledge sufficient to ascertain the truth of the allegations contained in Paragraphs 3 and 8.

3. WRG admits the allegations contained in Paragraphs 1, 2, 5 and 6.

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

5. Answering Paragraph 7, WRG states that the contract document(s) referenced therein speak for themselves, and on this basis, denies any factual allegations or legal conclusions contained therein.

6. As to Paragraph 15, WRG admits that a covenant of good faith and fair dealing is implied in every enforceable agreement. WRG further admits that it acted in good faith, but denies any remaining factual allegations or legal conclusions contained in Paragraph 15.

7. It has become necessary for WRG to retain the services of Peel Brimley LLP, attorneys at law, to defend this counterclaim, and as a result, WRG has been damaged by the Counterclaimant, and WRG is accordingly entitled to its attorney fees and costs incurred herein.

AFFIRMATIVE DEFENSES

1. The Counterclaim on file herein fails to state a claim against WRG 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. WRG 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 WRG.

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, WRG reserves the right to

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amend its answer to allege additional affirmative defenses if subsequent investigation and discovery of facts so warrants.

WHEREFORE, Plaintiff/Counterdefendant WRG prays as follows:

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 15 day of April, 2010.

PEEL BRIMLEY LLP

RICHARD L. PEEL, ESQ.
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MICHAEL T. GEBHART, ESQ.
Nevada Bar No. 7718
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Attorneys for WRG Design, 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 15th day of April 2010, I served a true and correct copy of the foregoing **WRG, INC.'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S COUNTERCLAIM,** by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

Susan Kingsbury
An Employee of PEEL BRIMLEY LLP

EXHIBIT D-4

(Pleadings Related to Heinaman Contract Glazing)

HEINAMAN CONTRACT GLAZING AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

Plaintiff-in-Intervention	Heinaman Contract Glazing
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

Causes of Action		**Party Name**	**Disposition**
Substantially identical claims to Helix's Amended Statement of Facts Constituting Lien and Complaint-in-Intervention			Judgment for Attorney's Fees, Costs and Interest awarded July 2, 2018 in favor of Heinaman and Against CAMCO for a total Amended Judgment of $262,010.64 Judgment awarded in the principal sum of $187,525.26 against CAMCO on May 31, 2018
First Cause of Action	Breach of Contract	CAMCO	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Second Cause of Action	Breach of Implied Covenant of Good Faith and Fair Dealing	CAMCO	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Third Cause of Action	Unjust Enrichment or in the Alternative *Quantum Meriut*	All Defendants	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Fourth Cause of Action	Foreclosure of Mechanic's Lien	All Defendants	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Fifth Cause of Action	Claim of Priority	All Defendants	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Sixth Cause of Action	Claim Against Bond	CAMCO Surety	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Seventh Cause of Action	Violation of NRS 624	All Defendants	Judgment in favor of Heinaman Pursued claims only against CAMCO at trial
Eighth Cause of Action	Declaratory Judgment	All Defendants	Judgment in favor of Heinaman

			Pursued claims only against CAMCO at trial
COUNTERCLAIM OF CAMCO AGAINST HEINAMAN CONTRACT GLAZING			
First Cause of Action	Breach of Contract	Heinaman Contract Glazing	Cross-Claims not pursued at Trial Answer filed April 15, 2010
Second Cause of Action	Breach of Covenant and Good Faith and Fair Dealing	Heinaman Contract Glazing	Cross-Claims not pursued at Trial Answer filed April 15, 2010

Heinaman's Amended Statement of Facts Constituting Notice of Lien and Third-Party Complaint

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

HEINAMAN CONTRACT GLAZING, a California corporation,

Plaintiff in Intervention,

vs.

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

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

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

HEINAMAN CONTRACT GLAZING'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

09A587168
211104

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BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,
Defendants.

HEINAMAN CONTRACT GLAZING ("Heinaman") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

1. Heinaman is and was at all times relevant to this action a California corporation, duly authorized, licensed and qualified to do business in Clark County, Nevada holding a Nevada State Contractor's license, which license is in good standing.

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

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

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

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

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

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

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

7. Heinaman does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE LENDERS I through X. Heinaman alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Heinaman as more fully discussed under the claims for relief set forth below. Heinaman will request leave of this Honorable Court to amend this Amended Complaint to show the true names and capacities of each such fictitious Defendant when Heinaman discovers such information.

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

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

9. In or around November 4, 2008, Heinaman entered into the Subcontract Agreement ("CPCC Agreement") with CPCC, to provide certain glass and glazing related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada.

10. Heinaman furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

11. Pursuant to the CPCC Agreement, Heinaman was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "Outstanding Balance") for the Work.

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

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

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

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

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

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

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Heinaman's performance of the Work.

14. Heinaman is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the Work.

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

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

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

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

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

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

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

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

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

22. Heinaman furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Heinaman expected to be paid for the Work.

26. Heinaman has demanded payment of the Outstanding Balance.

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

28. The Defendants have been unjustly enriched, to the detriment of Heinaman.

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

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

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

31. The provision of the Work was at the special instance and request of the Defendants for the Property.

32. As provided at NRS 108.245 and common law, the Defendants had knowledge of Heinaman's delivery of the Work to the Property or Heinaman provided a Notice of Right to Lien.

33. Heinaman demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

34. On or about February 3, 2009, Heinaman timely recorded a Notice of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000318 (the "Original Lien").

35. On or about April 9, 2009, Heinaman timely recorded an Amended Notice of Lien in Book 20090409 of the Official Records of Clark County, Nevada, as Instrument No. 0001355 (the "Amended Lien").

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

37. The Liens were in writing and were recorded against the Property for the outstanding balance due to Heinaman in the amount of One Hundred Eighty-Seven Thousand Five Hundred Twenty-Five and 26/100 Dollars ($187,525.26).

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

39. Heinaman is entitled to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

FIFTH CAUSE OF ACTION
(Claim of Priority)

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

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

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

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

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

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

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

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

47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

48. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

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49. Heinaman furnished the Work as stated herein and has not been paid for the same. Heinaman therefore claims payment on said Bond.

50. The CPCC Surety is obligated to pay Heinaman the sums due.

51. Demand for the payment of the sums due to Heinaman has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Heinaman.

52. CPCC and the CPCC Surety owe Heinaman the penal sum of the Bond.

53. Heinaman was required to engage the services of an attorney to collect the Outstanding Balance due and owing to Heinaman and Heinaman is entitled to recover its reasonable attorney's fees and costs therefore.

SEVENTH CAUSE OF ACTION
(Violation of NRS 624)

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

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

56. In violation of the Statute, CPCC have failed and/or refused to timely pay Heinaman monies due and owing.

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

58. By reason of the foregoing, Heinaman is entitled to a judgment against CPCC in the amount of the Outstanding Balance

59. Heinaman has been required to engage the services of an attorney to collect the Outstanding Balance and Heinaman is entitled to recover its reasonable costs, attorney's fees and interests therefore.

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EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

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

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

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

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

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

66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including Heinaman's.

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

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

WHEREFORE, Heinaman prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the Outstanding Balance amount;

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

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

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

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

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

Dated this 22 day of June 2009.

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CAMCO and FDCM's Answer to Heinaman's Statement of Facts and CAMCO's Counterclaim

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pd.

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

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

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HEINAMAN CONTRACT GLAZING, a California corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendants,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

10. Plaintiff has failed to mitigate its damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

David Blue #1059 for

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

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CERTIFICATE OF MAILING

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

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

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

An Employee of Woodbury, Morris & Brown

EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
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,

Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299
A licensed and bonded corporate finance company.

Exhibit "A"

Scott
Financial Corporation

December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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

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

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

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

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

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

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

Thanks.

Brad J. Scott
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Scott Financial Corporation

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4/1/2009

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 undispersed funds held on account at NCS in the amount of $993,866.72 back to SFC using the attached wiring instructions.

This amount includes the current Heineman Payment request of 166827.29, 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.

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4/1/2009

Notice of Entry of Order

NEOJ
ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
PEEL BRIMLEY LLP
3333 E. Serene Avenue, Suite 200
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ezimbelman@peelbrimley.com
rpeel@peelbrimley.com
Attorneys for Heinaman Contract Glazing

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants.	CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **NOTICE OF ENTRY OF ORDER**
AND ALL RELATED MATTERS.	

///

///

///

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

NOTICE OF ENTRY OF ORDER

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

DATED this 2 day of July, 2018.

PEEL BRIMLEY LLP

11776

ERIC B. ZIMBELMAN,
Nevada Bar No. 9407
RICHARD L. PEEL, ESQ.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 7 day of July 2018, I caused the above and foregoing document entitled **NOTICE OF ENTR OF ORDER** to be served as follows:

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

Apco Construction:
Rosie Wesp (rwesp@maclaw.com)

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:
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Exhibit A

OGM
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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **ORDER GRANTING HEINAMAN CONTRACT GLAZING'S MOTION FOR ATTORNEY'S FEES, INTEREST AND COSTS**

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorneys' fees in the amount of $10,113.47 is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs in the amount of $2,704.96 is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that interest in the amount of $61,666.85 through May 31, 2018 (and continuing to accrue until paid) is granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Heinaman's request for an Amended Judgment in the amount of $262,010.64, with interest accruing thereon from the date of Judgment at prime plus 4% is granted.

Dated this 2d day of June, 2018.

DISTRICT COURT JUDGE

Submitted by:
PEEL BRIMLEY LLP

#11776

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Notice of Entry of Judgment

NJUD
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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs. GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants.	Case No. : 08A571228 Dept. No. : XIII *Consolidated with:* *A571792, A574391, A577623, A580889, A583289, A584730, and A587168* **NOTICE OF ENTRY OF JUDGMENT**
AND ALL RELATED MATTERS	

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NOTICE OF ENTRY OF JUDGMENT

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

DATED this 31st day of May, 2018.

PEEL BRIMLEY LLP

/S/ Eric B Zimbelman
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CERTIFICATE OF SERVICE

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

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

☒ pursuant to NEFCR 9, upon all registered parties via the Court's electronic filing system;

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

☐ to be hand-delivered; and/or

☐ other _____

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

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Camco Pacific Construction Co Inc:
Steven Morris (steve@gmdlegal.com)

Camco Pacific Construction Co Inc:
Steven Morris (steve@gmdlegal.com)

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Elizabeth Stephens (stephens@sullivanhill.com)

United Subcontractors Inc:
Bradley Slighting (bslighting@fabianvancott.com)

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/s/ Amanda Armstrong
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Exhibit A

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **JUDGMENT** **[AS TO THE CLAIMS OF HEINAMAN CONTRACT GLAZING AGAINST CAMCO CONSTRUCTION CO., INC.]**

This matter having come on for a non-jury trial on the merits on January 17-19, 23, 24 and February 6, 2018, Helix Electric of Nevada, LLC ("Helix"), SWPPP Compliance Solutions, Inc. ("SWPPP"), Cactus Rose Construction, Co., Inc. ("Cactus Rose"), Fast Glass, 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

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

The Court having taken the matter under consideration and advisement;

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

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

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

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

Dated this 29th day of May 2018.

DISTRICT COURT JUDGE

Respectfully submitted by:
PEEL BRIMLEY LLP

#11776 fa

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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. AND ALL RELATED MATTERS.	CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with:* A571792, A574391, A577623, A580889, A583289, A584730, and A587168 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO THE CLAIMS OF HEINAMAN CONTRACT GLAZING**

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

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

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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

A. Procedural History.

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

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

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

. . . . .

B. **Significant Pre-Trial Orders**

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

2. **Order on Peel Brimley Lien Claimants' Motion in Limine Against Camco.** On December 29, 2017 the Court issued an order on motions *in limine* brought by the Peel Brimley Lien Claimants Against Camco. Specifically, the Court precluded Camco from asserting or offering evidence that any of the Peel Brimley Lien Claimants' work on the Project was (i) defective, (ii) not done in a workmanlike manner or (iii) not done in compliance with the terms of the parties' agreement because Camco's person most knowledgeable was not aware of any evidence to support such claims. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial that the Peel Brimley Lien Claimants have breached their agreements other than with respect to pay-if-paid agreements, evidence and argument of which is otherwise precluded by the Partial Summary Judgment discussed above. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial to dispute the amounts invoiced, paid

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

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

and that remain to be owed as asserted by the Peel Brimley Lien Claimants in their respective Requests for Admission. For the same reason, the Court also precluded Camco from asserting or offering evidence at trial that any liens recorded by the Peel Brimley Lien Claimants were in any way defective or unperfected and are otherwise valid and enforceable.

C. **Findings of Fact.**

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

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

2. Among other things, and in exchange for a guaranteed maximum price ("GMP") of $153,472,300.00 as forth in the APCO-Gemstone Agreement (Ex. 2, ¶ 5.02(a)), APCO agreed to:

- "Complete the work" required by the APCO-Gemstone Agreement, "furnish efficient business administration and superintendence" and "use its best efforts to complete the Project;" [Ex 2., ¶ 2.01(a)];
- "...engage contractors, subcontractors, sub-subcontractors, service providers, [and others, collectively referred to as "Third-Party Service Providers"] to perform the work..."; [Ex 2., ¶ 2.02(a)];
- Monthly submit to Gemstone "applications for payment for the previous month on forms similar to AIA G702 and G703 and a corresponding approved Certificate for Payment;" [Ex 2., ¶ 5.05(a)]. Each payment application was to be "based on a Schedule of Values [that] shall allocate the entire GMP among the various portions of the Work" with APCO's fee to be shown as a separate line item." [Ex 2., ¶ 5.05(b)]; The payment applications were to "show the Percentage of Completion of each portion of

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

the Work as of the end of the period covered by the Application for Payment. [Ex 2., ¶ 5.05(c)]; and

- Upon receipt of a monthly progress payment, "promptly pay each Third-Party Service Provider the amount represented by the portion of the Percentage of the Work Completed that was completed by such Third-Party Service Provider[2] during the period covered by the corresponding Progress Payment." [Ex 2., ¶ 5.05(g)];

3. APCO in turn hired various subcontractors to perform certain scopes of work and provided its form Subcontract Agreement to its subcontractors ("the APCO Subcontract"). Heinaman did not work for APCO on the Project and only first provided work after APCO ceased work on the project and, as discussed below, Gemstone hired Camco as the general contractor to replace APCO. APCO ceased work on the Project in or about the end of August 2008. APCO and Gemstone each claim to have terminated the other.

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

5. On cross examination, Camco's Dave Parry could not point to any portion of the Camco-Gemstone Agreement that required Camco to supervise the work of the subcontractors. [TR5-50:17-51:9]. Nothing in Article II ("General Contractor Responsibilities") obligates Camco to supervise the work or the subcontractors. [See Ex. 162, ¶Article II]. Parry did not deny that Camco was "essentially … there to lend [its] license" to Gemstone. [TR5-50:15-17].

6. Mr. Parry described Camco as "more of a construction manager at this point

[2] Because the only Third-Party Service Providers at issue on this trial were subcontractors, the Court will herein use the terms "subcontractor" and "Third-Party Service Provider" interchangeably and synonymously.

than a general contractor" [TR5-31:10-11[3]]. Nonetheless, the Camco-Gemstone Agreement is plainly called a "General Construction Agreement." The Camco-Gemstone Agreement also requires Camco, in the same way that APCO did, to aggregate payment applications from subcontractors and prepare and submit to Gemstone payment applications for the amounts represented by the subcontractor payment applications and Camco's fee. [*See* Ex. 162-008-010, ¶7.01].

7. Camco continued the same payment application format and numbering and same schedule of values that APCO had been following. [*See* **Exhibit 218**; TR5-30:21-31:4[4]]. Like APCO before it, Camco compiled and included in its payment applications to Gemstone the amounts billed by its subcontractors, including Heinaman. [*See e.g.*, **Exhibit 522-001-011**]. Also like the APCO-Gemstone Agreement, the Camco-Gemstone Agreement required Camco, upon receipt of a progress payment from Gemstone, to "promptly pay each [subcontractor] the amount represented by the portion of the Percentage of the Work Completed that was completed by such [subcontractor]." [Ex. 162-010, ¶7.03(e)].[5] It is only after Gemstone announced that the Project would be suspended that Camco asserted otherwise.

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

> Camco is left with no choice but to terminate our agreement with Gemstone and all subcontracts on the Project, including our agreement with your company. Accordingly, we have terminated for cause our agreement with Gemstone, effective December 19, 2008, and we hereby terminate for convenience our subcontract with your company, effective immediately.
>
> Please submit to Camco all amounts you believe are due and owing on your subcontract. We will review and advise you of any issues regarding any

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

amounts you claim are owed. For all amounts that should properly be billed to Gemstone, Camco will forward to Gemstone such amounts for payment y Gemstone. If your claims appear to be excessive, we will ask you to justify and/or revise the amount.

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

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

- Deleted its statement that it had terminated the Camco-Gemstone Agreement (while continuing to terminate the subcontractors);
- Asserts that the subcontractors agreed to Pay-if-Paid and accepted the risk of non-payment from the owner (which is also Pay-if-Paid); and,
- Stated, inaccurately, that "Camco's contract with Gemstone is a cost-plus agreement wherein the subcontractors and suppliers were paid directly by Gemstone and/or its agent Nevada Construction Services." [See e.g., Ex. 804-007].

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

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

11. Camco presented some subcontractors with a standard form subcontract Agreement ("the Camco Subcontract"), a representative example of which is Camco's

subcontract with Fast Glass. [*See* **Exhibit 801-007-040**; TR5-57:8-16[6]].

12. However, Heinaman and Camco never entered into the Camco Subcontract. Instead, the agreement between Camco and Heinaman is memorialized by a Letter of Intent to proceed with the Work and Memorandum of Understanding Regarding Terms and Conditions between Heinaman, Camco and Gemstone. [**Exhibit 701** - "the Heinaman Agreement"]. The Heinaman Agreement provides, among other things:

- "CAMCO and Gemstone both promise to pay and to be liable to [Heinaman] ..."
- "CAMCO and Gemstone agree to be jointly and severally liable for payment of [Heinaman's invoices]" and to "pay [Heinaman on the fifth day after receipt of an Invoice from [Heinaman];"
- "Each [Heinaman] invoice shall be paid without retention;"
- "Each invoice shall be [prepared on a Time and Material basis plus 15% standard mark up on each invoice for Overhead and 10% mark up on each invoice for Profit;"
- CAMCO and Gemstone authorize [Heinaman] to proceed with the scope of work as referenced herein.;" and
- The Parties understand that this document shall be binding on all Parties until a different contract is signed by all parties."

[Ex. 701].

13. Heinaman's representative, Mark Heinaman, testified that there is no "different contract signed by all Parties." Camco did not dispute this testimony or offer any contract signed by Heinaman, Camco and Gemstone.

14. In fact, Heinaman offered, and the Court admitted, a separate agreement between Camco, Gemstone, Scott Financial Corporation ("SCF" - Gemstone's lender) and Nevada Construction Services, Inc. ("NCS") titled ManhattanWest Heinaman Contract

[6] Testimony of Dave Parry.

Glazing Funding Instruction Agreement ("the Heinaman Funding Agreement") that confirms:

- "[I]t is in the best interests if the project to engage Heinaman ...;" and
- "Heinaman has demanded the right to invoice Camco weekly and requires that Camco pay each invoice within five calendar days."

[**Exhibit 718**-002]. In addition, the Heinaman Funding Agreement identifies a source of payments to Heinaman (monies in the NCS account previously "earmarked" to pay a terminated glazing contractor) and sets forth a procedure as between Camco, Gemstone, Scott and NCS to make payments to Heinaman for its work. [Ex. 718-002-004] Heinaman was not a party to the Heinaman Funding Agreement.

15. Consistent with the Heinaman Agreement (i.e., time and materials plus 15% overhead and 10% profit), Heinaman submitted multiple invoices to Camco, some of which were paid [see **Exhibit 702**-001-003] and some of which were unpaid [see Ex. 702-004-007]. Heinaman's unpaid invoices total $187,525.26. The Court finds that Camco agreed to pay all of Heinaman's invoices, breached the Heinaman Agreement by failing to pay the unpaid invoices and owes Heinaman the principal sum (i.e., exclusive of interest, costs and attorney's fees) of $187,525.26.

16. The Court further finds that Heinaman performed the work for which it invoiced. [See e.g., Exhibits 704, 705. 706, 707 and 708 (project record documents)]. Based in part on the undisputed testimony of Mark Heinaman the Court finds that Heinaman's invoices represent a reasonable value for the work performed.

17. Heinaman presented undisputed evidence, and the Court finds, that Heinaman timely recorded a mechanic's lien, as amended ("the Heinaman Lien"), pursuant to NRS Chapter 108 and perfected the same. [*See* **Exhibit 703**]. The Heinaman Lien identified both Camco as the "person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment." [*See* Ex. 703-038].

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

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

B. Conclusions of Law.

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

2. The Court concludes that Camco entered into and breached the Heinaman Agreement by failing, without excuse, to pay Heinaman in full for the invoices it submitted and for the work it performed in the amount of $187,525.26 and that Heinaman is entitled to judgment for that amount, exclusive of interest, costs and attorney's fees.

3. Alternatively, the Court concludes that there is an implied contract between Heinaman and Camco and that Heinaman is entitled *quantum meruit* damages for recovery of the full and reasonable value of the work it has performed. See *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 257 (2012) ("*quantum meruit*'s first application is in actions based upon contracts implied-in-fact."). A contract implied-in-fact must be "manifested by conduct." *Id.* at 380 citing *Smith v. Recrion Corp.*, 91 Nev. 666, 668, 541 P.2d 663, 664 (1975); Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). It "is a true contract that arises from the tacit agreement of the parties." *Id.* To find a contract implied-in-fact, the fact-finder must conclude that the parties intended to

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

contract and promises were exchanged, the general obligations for which must be sufficiently clear. *Id.* Here, Heinaman and and Camco clearly intended to enter into a contract whereby Heinaman would perform work for Camco and Camco would pay Heinaman for its work.

4. Where an implied-in-fact contract exists "*quantum meruit* ensures the laborer receives the reasonable value, usually market price, for his services." *Precision Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment § 31 cmt. e (2011), *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) ("The doctrine of *quantum meruit* generally applies to an action ... involving work and labor performed which is founded on a[n] oral promise [or other circumstances] on the part of the defendant to pay the plaintiff as much as the plaintiff reasonably deserves for his labor in the absence of an agreed upon amount."). Here, the only and undisputed testimony was that the monies Heinaman billed for its work were a reasonable value for the work performed. Moreover, Camco's submission of at least some of those amounts to Gemstone as part of its own pay application estopps Camco from disputing the reasonable value of Heinaman's work. Heinaman is therefore entitled *quantum meruit* damages in the amount of $187,525.26 for recovery of the full and reasonable value of the work it performed. *See Certified Fire Prot.*, 128 Nev. at 380.

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

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DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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

7. Specific to Heinaman, the Court concludes that Camco's reliance on any form of Pay-if-Paid (i.e., even if the same could be deemed permissible under Nevada law) is inapplicable to its relationship with Heinaman. Pursuant to the Heinaman Agreement, Camco expressly agreed to be liable to Heinaman "jointly and severally with Gemstone. Accordingly, even if (as Camco urges) the subcontractors as a whole are required to look solely to the defunct Gemstone for payment (which, for the reasons explained above, they are not), Camco has expressly agreed to be liable to Heinaman in the same way that Gemstone is liable.

8. Heinaman is therefore awarded the principal sum of $187,525.26 (i.e., exclusive of interest, costs and attorney's fees) against Camco and may apply for judgment as to the same.

9. The Court denies all of Camco's affirmative defenses.

10. Heinaman is entitled to prejudgment interest pursuant to NRS 108.237 and/or NRS 17.130 and is granted leave to apply for the same by way of an amendment or supplement to these Findings of Fact and Conclusions of Law and for judgment as to the same.

11. Heinaman is the prevailing party and/or prevailing lien claimant as to Camco and is entitled to an award of reasonable attorney's fees pursuant to NRS 108.237.

MARK R. DENTON
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DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

Heinaman is granted leave to apply for the same by way of an amendment or supplement to these Findings of Fact and Conclusions of Law and for judgment as to the same.

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

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

ORDER

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

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

IT IS SO ORDERED this 24th day of April, 2018.

DISTRICT COURT JUDGE

CERTIFICATE

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

LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

Heinaman's Answer to CAMCO's Counterclaim

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DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, vs GEMSTONE DEVELOPMENT WEST, INC., Nevada corporation; NEVADA CONSTRUCTION SERVICES, a Nevada corporation; SCOTT FINANCIAL CORPORATION, a North Dakota corporation; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIRST AMERICAN TITLE INSURANCE COMPANY and DOES I through X, Defendants. AND ALL RELATED MATTERS.	LEAD CASE NO.: A571228 DEPT. NO.: XIII *Consolidated with Case Nos.: A574391, A571792, A577623, A580889, A583289, A584730, A584960, A587168, A589195, A589677, A590319, A592826, A595552, A596924, A597089* **Case No.: A587168** **HEINAMAN CONTRACT GLAZING'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S COUNTERCLAIM**

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Plaintiff and Counterclaim Defendant Heinaman Contract Glazing ("Heinaman"), by and through its counsel, Richard L. Peel, Esq. and Michael T. Gebhart, Esq. of the law firm Peel Brimley LLP, hereby answer the Counterclaim of Camco Pacific Construction Company, Inc. ("Camco"), on file herein, and admit deny and allege as follows:

1. Heinaman denies each and every allegation contained in Paragraphs 5, 6, 9, 10, 11, 12, 15, 16 and 17.

2. Heinaman is without information or knowledge sufficient to ascertain the truth of the allegations contained in Paragraphs 3, 7 and 8.

3. Heinaman admits the allegations contained in Paragraphs 1 and 2.

4. As to Paragraphs 4 and 13 of Camco's Counterclaim, Heinaman repeats and realleges the answers to Paragraphs 1 through 17 as though fully set forth herein.

5. As to Paragraph 14, Heinaman admits that there is a covenant of good faith and fair dealing implied in every enforceable agreement. Heinaman further admits that it acted in good faith, but denies any remaining allegations contained in Paragraph 14.

6. It has become necessary for Heinaman to retain the services of Peel Brimley LLP, attorneys at law, to defend this counterclaim, and as a result, Heinaman has been damaged by the Counterclaimant, and Heinaman is accordingly entitled to its attorney fees and costs incurred herein.

AFFIRMATIVE DEFENSES

1. The Counterclaim on file herein fails to state a claim against Heinaman 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. Heinaman 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

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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 Heinaman prays as follows:

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 15 day of April, 2010.

PEEL BRIMLEY LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am employed in the Law Offices of PEEL BRIMLEY LLP, and that on this 15th day of April 2010, I served a true and correct copy of the foregoing **HEINAMAN CONTRACT GLAZING'S ANSWER TO CAMCO PACIFIC CONSTRUCTION COMPANY'S COUNTERCLAIM,** by e-serving a copy on all parties listed in the Master Service List in accordance with the Electronic Filing Order entered in this matter.

Susan Kingsbury

An Employee of PEEL BRIMLEY LLP

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EXHIBIT D-5

(Pleadings Related to Bruin Painting Corporation)

BRUIN PAINTING CORPORATION AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

Plaintiff-in-Intervention	Bruin Painting Corp. ("Bruin")
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

Causes of Action		**Party Name**	**Disposition**
Substantially identical claims to Helix's Amended Statement of Facts Constituting Lien and Complaint-in-Intervention			No later than October 7, 2016, Bruin ceased to be a party. *Special Master Report Regarding Remaining Parties to the Litigation*
First Cause of Action	Breach of Contract	CAMCO	Dismissed
Second Cause of Action	Breach of Implied Covenant of Good Faith and Fair Dealing	CAMCO	Dismissed
Third Cause of Action	Unjust Enrichment or in the Alternative *Quantum Meruit*	All Defendants	Dismissed
Fourth Cause of Action	Foreclosure of Mechanic's Lien	All Defendants	Dismissed
Fifth Cause of Action	Claim of Priority	All Defendants	Dismissed
Sixth Cause of Action	Claim Against Bond	FDCM	Dismissed August 3, 2009
Seventh Cause of Action	Violation of NRS 624	All Defendant	Dismissed
Eighth Cause of Action	Declaratory Judgment	All Defendants	Dismissed

COUNTERCLAIM OF CAMCO AGAINST BRUIN PANTING CORPORATION

First Cause of Action	Breach of Contract	Bruin	Dismissed
Second Cause of Action	Breach of Covenant and Good Faith and Fair Dealing – In the Alternative	Bruin	Dismissed

Bruin Painting's Amended Statement of Facts Constituting Amended Notice of Lien and Third-Party Complaint

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

BRUIN PAINTING CORPORATION, a California corporation,

Plaintiff in Intervention,

vs.

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

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

Consolidated with:
A571792
A574391
A577623
A583289
A584730
A587168

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BRUIN PAINTING'S AMENDED STATEMENT OF FACTS CONSTITUTING NOTICE OF LIEN AND THIRD-PARTY COMPLAINT

EXEMPTION FROM ARBITRATION:
Title to Real Estate

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BONDING COMPANIES I through X; LOE LENDERS I through X, inclusive,
Defendants.

BRUIN PAINTING CORPORATION ("Bruin") by and through its attorneys PEEL BRIMLEY LLP, as for its Amended Statement of Facts Constituting a Notice of Lien and Third Party Complaint ("Amended Complaint") against the above-named defendants complains, avers and alleges as follows:

THE PARTIES

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

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

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

and more particularly described as Clark County Assessor Parcel Numbers 163-32-101-020 and 163-32-101-022 through 163-32-101-024 (formerly known as 163-32-101-019 and 163-32-112-001 thru 163-32-112-246) including all easements, rights-of-way, common areas and appurtenances thereto, and surrounding space may be required for the convenient use and occupation thereof, upon which Owners caused or allowed to be constructed certain improvements (the "Property").

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

4. Bruin is informed and believes and therefore alleges that Defendant CAMCO PACIFIC CONSTRUCTION COMPANY, INC., a California corporation ("CPCC"), is and was at all times relevant to this action doing business as a licensed contractor authorized to conduct business in Clark County, Nevada and acting as the general contractor to the Project.

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

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

7. Bruin does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, ROE CORPORATIONS I through X, BOE BONDING COMPANIES I through X and LOE LENDERS I through X. Bruin alleges that such Defendants claim an interest in or to the Properties, and/or are responsible for damages suffered by Bruin as more fully discussed under the claims for relief set forth below. Bruin will request leave of this Honorable Court to amend this Complaint to show the true names and capacities of each such fictitious Defendant when Bruin discovers such information.

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FIRST CAUSE OF ACTION
(Breach of Contract against CPCC)

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

9. On or about August 26, 2008, Bruin entered into a Subcontract Agreement ("Agreement") with CPCC to provide certain painting and wall covering related work, materials and equipment (the "Work") for the Property located in Clark County, Nevada

10. Bruin furnished the Work for the benefit of and at the specific instance and request of CPCC and/or Owner.

11. Pursuant to the Agreement, Bruin was to be paid an amount in excess of Ten Thousand Dollars ($10,000.00) (hereinafter "Outstanding Balance") for the Work.

12. Bruin furnished the Work and has otherwise performed its duties and obligations as required by the Agreement.

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

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

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

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

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

e. Negligently or intentionally preventing, obstructing, hindering or interfering with Bruin's performance of the Work.

14. Bruin is owed an amount in excess of Ten Thousand Dollars ($10,000.00) for the Work.

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

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

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

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

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

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

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

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

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

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22. Bruin furnished the Work for the benefit of and at the specific instance and request of the Defendants.

23. As to CPCC, this cause of action is being pled in the alternative.

24. The Defendants accepted, used and enjoyed the benefit of the Work.

25. The Defendants knew or should have known that Bruin expected to be paid for the Work.

26. Bruin has demanded payment of the Outstanding Balance.

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

28. The Defendants have been unjustly enriched, to the detriment of Bruin.

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

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

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

31. The provision of the Work was at the special instance and request of the Defendants for the Property.

32. As provided at NRS 108.245 and common law, the Defendants had knowledge of Bruin's delivery of the Work to the Property or Bruin provided a Notice of Right to Lien.

33. Bruin demanded payment of an amount in excess of Ten Thousand and no/100 Dollars ($10,000.00), which amount remains past due and owing.

34. On or about December 17, 2008, Bruin timely recorded a Notice of Lien in Book 20081217 of the Official Records of Clark County, Nevada, as Instrument No. 0001837 (the "Original Lien").

35. On or about February 3, 2009, Bruin timely recorded an Amended/Restated Notice of Lien in Book 20090203 of the Official Records of Clark County, Nevada, as Instrument No. 0000315 (the "Amended Lien").

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

37. The Liens were in writing and were recorded against the Property for the outstanding balance due to Bruin in the amount of Seven Hundred Seventy-One Thousand Four Hundred One and 32/100 Dollars ($771,401.32).

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

39. Bruin is entitled to an award of reasonable attorney's fees, costs and interest on the Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

FIFTH CAUSE OF ACTION
(Claim of Priority)

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

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

42. Bruin is informed and believes and therefore alleges that even if a deed(s) of trust and/or other interest(s) in the Property were recorded before construction on the Property commenced, those deed(s) of trust, including SFC's, were thereafter expressly subordinated to

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Bruin's statutory mechanics' lien thereby elevating Bruin's statutory mechanics' lien to a position superior to those deed(s) of trust and/or other interests(s) in the Property.

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

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

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

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

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

47. CPCC is named as principal and CPCC Surety is named as surety on the Bond.

48. The Bond was provided pursuant to the requirements of NRS 624.270, which Bond was in force during all times relevant to this action.

49. Bruin furnished the Work as stated herein and has not been paid for the same. Bruin therefore claims payment on said Bond.

50. The CPCC Surety is obligated to pay Bruin the sums due.

51. Demand for the payment of the sums due to Bruin has been made, but CPCC and the CPCC Surety have failed, neglected and refused to pay the same to Bruin.

52. CPCC and the CPCC Surety owe Bruin the penal sum of the Bond.

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53. Bruin was required to engage the services of an attorney to collect the Outstanding Balance due and owing to Bruin and Bruin is entitled to recover its reasonable attorney's fees and costs therefore.

SEVENTH CAUSE OF ACTION
(Violation of NRS 624)

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

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

56. In violation of the Statute, CPCC have failed and/or refused to timely pay Bruin monies due and owing.

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

58. By reason of the foregoing, Bruin is entitled to a judgment against CPCC in the amount of the Outstanding Balance

59. Bruin has been required to engage the services of an attorney to collect the Outstanding Balance and Bruin is entitled to recover its reasonable costs, attorney's fees and interests therefore.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

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

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

a. Senior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004264;

b. Junior Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004265;

c. Third Deed of Trust dated June 26, 2006, and recorded July 5, 2006, at Book 20060705, Instrument No. 0004266; and,

d. Senior Debt Deed of Trust dated and recorded February 7, 2008, at Book 20080207, Instrument No. 01482.

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

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

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

65. Bruin is informed and believes and therefore alleges that construction on the Property commenced at least before the recording of the Senior Debt Deed of Trust and that by

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law, all mechanics' liens, including Bruin's, enjoy a position of priority over the Senior Debt Deed of Trust.

66. Because the Mezzanine Deeds of Trust Subordination Agreement renders the Senior, Junior, and Third Deeds of Trust expressly subordinate to the Senior Debt Deed of Trust, it also renders, as a matter of law, the Senior, Junior, and Third Deeds of Trust expressly subordinate to all mechanics' liens, including Bruin's.

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

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

WHEREFORE, Bruin prays that this Honorable Court:

1. Enters judgment against the Defendants, and each of them, jointly and severally, in the Outstanding Balance amount;

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

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

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

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

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

Dated this 22 day of June 2009.

PEEL BRIMLEY LLP

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CAMCO's Answer and Counterclaim

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

ANS/CTCM
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slmorris@wmb-law.net
Attorneys for
Camco Pacific Construction Company, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A587168
Dept. No: XIII

Consolidated with:
A571228

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

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BRUIN PAINTING CORPORATION, a California corporation,

Plaintiff in Intervention,

vs.

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

Defendants.

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

Counterclaimant,

vs.

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

Counterdefendants,

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

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

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

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and therefore denies each and every allegation contained therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Plaintiff has failed to mitigate its damages.

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

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

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

WHEREFORE, Third Party Defendant Camco prays as follows:

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

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

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

COUNTERCLAIM

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

JURISDICTIONAL ALLEGATIONS

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

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

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

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

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

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

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

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

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

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

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

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

reasonable attorneys' fees and costs therefor.

SECOND CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

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

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

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

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

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

WHEREFORE, Counterclaimant Camco prays as follows:

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

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

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

DATED this 11th day of September 2009.

WOODBURY, MORRIS & BROWN

David Blue #11059 for

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

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CERTIFICATE OF MAILING

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

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

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

An Employee of Woodbury, Morris & Brown

EXHIBIT A

Scott
Financial Corporation

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

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

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

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

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

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

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

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

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

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

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A licensed and bonded corporate finance company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brad Scott
President
Scott Financial Corporation

Exhibit A

Payment Status Letters from SFC to Trade Contractors

Exhibit A

Scott
Financial Corporation

November 4, 2008

Mr. Mike Evans
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,

Brad J. Scott
President

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

Exhibit "A"

Scott
Financial Corporation

December 1, 2008

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

RE: ManhattanWest Funding

Mr. Duckstein:

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

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

The October Draw was submitted to SFC late last week.

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

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

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

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

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

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

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

Sincerely,

Brad J. Scott
President

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Office: 701.255.2215 • Fax: 701.223.7299
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Exhibit B

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